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Memorandum to Clients

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Tax Certificates On the Comeback Trail?

McCain Proposal would benefit "economically or socially disadvantaged"

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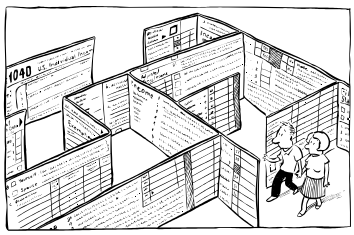
Senator John McCain (R-Ariz.), Chairman of the Senate Commerce Committee, has introduced a bill which would bring back "tax certificates" for those who sell communications companies, including broadcast stations, to qualified small businesses. "Tax certificates" allow the seller to defer paying a portion of the taxes related to a sale. For many years tax certificates were granted to those who sold broadcast stations to minorities, but were later eliminated by Congress.



McCain's bill, entitled "Telecommunications Ownership Diversification Act of 2003," is designed to encourage companies to sell communications properties to women and minorities and financially assist women and minorities to purchase the properties. Some believe the tax certificates would encourage large broadcast companies, which would otherwise trade stations with each other to avoid taxes, to sell for cash to women and minorities who have few or no stations to trade. They also believe the lower taxes provided by the tax certificates would allow sellers to sell broadcast properties to women and minorities at a lesser price, making it easier for women and minorities to enter the broadcast business.

While the apparent goal of the legislation is to benefit women and minorities, the bill's language avoids the terms "women" and "minorities", and instead speaks of "economically or socially disadvantaged businesses". This circumlocution is likely intended to avoid the argument that the legislation constitutes improper "affirmative action" (or "reverse discrimination").

The term "economically or socially disadvantaged business" is not defined in the bill; instead, the bill leaves that particular hot potato to the Secretary of the Treasury. The only indication of that term's intended meaning that the "economically or socially disadvantaged class" would have to be "underrepresented in the ownership of the relevant telecommunications business." Of course, the notion of "underrepresentation" is problematic, because it can be argued that any effort to establish a level of supposedly adequate "representation" may be deemed a constitutionally impermissible "quota".

The bill does make clear that the "economically or socially disadvantaged businesses" it seeks to benefit are not necessarily "small" businesses. For example, an entity could still be eligible if it owns television stations with an aggregate national audience reach of up to 5%. On the radio side, otherwise eligible entities could own as many as 50 radio stations nationally, and control up to 10% of the revenues in the relevant market.

The bill has received great support from the broadcast industry, minorities, and FCC Chairman Powell, but has no other backers in Congress. McCain introduced the bill without any co-sponsors and referred it to the Senate Finance Committee, not the committee he chairs. McCain introduced similar bills in the past two Congresses and neither moved out of the Finance Committee.

The Scoop Inside

When it comes to buying a CP . . .

Caveat Emptor

FCC affirms strict enforcement of CP terms

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Anyone who might be considering the purchase of a construction permit should take a close look at a recent FCC decision rejecting a CP buyer's efforts to get the permit extended. There are lessons galore to be learned.

The case involves Birach Broadcasting Corporation, which bought a permit to build a new AM station in Palm Beach Gardens, Florida. The original permit -- good for 36 months -- was issued on March 9, 1998. In December, 2000, a scant three months before the permit was set to expire, Birach filed its application to buy the permit, and simultaneously requested that the Commission's staff toll the permit and revise or waive its construction deadline because, according to Birach, the site specified in the permit was no longer available. Birach also claimed that the original permittee was inexperienced in the Florida construction business, which supposedly somehow impeded his efforts. And for good measure Birach observed that the original permittee had filed for the permit in 1986, when he was 49, but the permit wasn't granted until 1998, when the applicant was 61 and "essentially retired". Birach's suggestion was that, if the Commission had just moved a bit more quickly, it would have been easier to get the station built.

In February, 2001 the staff denied Birach's tolling request, stating that the three-year-old events Birach described did not satisfy the Commission's tolling criteria. It also denied Birach's waiver request because Birach failed to allege "rare and exceptional" circumstances necessary to justify waiver of the rule and because, in any event, Birach offered no documentation or substantiation of the circumstances allegedly justifying waiver. Birach filed for reconsideration, this time submitting a declaration from the original permittee supporting the facts in the original tolling and waiver request. On March 6, 2001, the staff denied reconsideration because that Birach failed to establish that the declaration could not have been filed in a timely manner. Also, the unsubstantiated facts in the declaration did not warrant a waiver of the rules.

Two days later, one day before the construction deadline, Birach consummated the assignment of the permit for the unbuilt station. Soon thereafter, Birach filed an Application for Review of the staff's decisions. But that ultimately went nowhere as well: finding no error in the staff's decisions, the Commission denied Birach's Application for Review.

The Commission also took the opportunity to clarify a few issues regarding tolling and waiver requests. Pursuant to the Commission's rules, a permittee is required to file its tolling request no later than 30 days from the event upon which the request is based. This, the Commission noted, is to ensure ongoing permittee construction diligence and to "avoid post hoc permittee temporizing." Unfortunately for Birach, in addition to the substantive reasons for denial of Birach's tolling request, the Commission concluded that the tolling request was untimely.

As for the waiver, the Commission acknowledged that it has shown some leniency in the timing of waiver requests. In the Commission's view, however, the permittee should file any waiver request as soon as possible following the event upon which it bases its request, "preferably within the same 30 day period afforded to tolling applicants." Birach's eleventh-hour request, filed less than three months before the expiration of the permit, clearly did not meet this standard.

Finally, in a footnote, the Commission added insult to injury by noting that while Birach's tolling notification was made with the original permittee's full knowledge, the Commission's rules state that these requests may only be submitted by the permittee.

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Focus on FCC Fines

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Florida Buccaneers Lose - From Jacksonville down to Naples, the FCC and courts have punished four different FM pirates for transmitting without a license. Three apparently unrelated pirates in Jacksonville, Immokalee and Naples were each hit with $10,000 fines for operating on 95.5, 103.3 and 100.5 MHz respectively. In a separate incident, an Orlando pirate (*see* the November 2002 edition of this column) was sentenced to 18 months of probation - - with four months of house arrest - - and 50 hours of community service. This latest enforcement barrage should send a clear shot across the bow of all pirates that the FCC means business.

Georgia Bulldogs Sweep through the Southeast - FCC agents based in the Atlanta Field Office issued more than $50,000 in fines during the first ten days of February. FCC agents picked up the scent of several stations in Tennessee, Alabama, South Carolina and Georgia and pounced on the stations for rule violations. Common among the violations were antenna registration problems, tower fencing deficiencies, Emergency Alert testing failures, and two main studio violations. The fines ranged in amounts from $3,000 to $15,000. As noted repeatedly in this column, the FCC has been strictly enforcing all of its regulations and clients should ensure that they are in full compliance with all federal, state and local regulations.

FCC to Ohio Licensee: "Gimme an 'F'" - Section 73.51(e)(2) of the FCC's rules requires AM stations to calculate an efficiency factor, denominated "F", for their transmissions. The rule also requires the stations to retain these calculations among their records. An Ohio station has been fined $5,000 for failing to keep these records. The FCC received a complaint that the AM station was operating at a level above its authorized power. The FCC inspected the station and discovered that not only were personnel failing to control the station's operating power, they did not know how to monitor the operating power and had not been recording the station's "F" factor. Because of the station's failure to play by these rules, the inspectors determined that the station's daytime operation had been at approximately 828% of its authorized power, and its nighttime operation had been at, get this, about 13,800% of its actual authorized nighttime power. The FCC hit the station with a $5,000 fine. For those waiting for the answer, the preferred method for calculating the "F" factor is to take the ratio of the antenna input power to the corresponding final radio frequency power amplifier input power. Be sure to keep records of your periodic calculations.

FCC Blows Whistle on STL Motion - A New Mexico FM operator was fined $9600 for failing to notify the FCC that when its studio moved, so too did the "studio" location of its STL's. The operator, who had a transmitter located remotely from its studio, had moved its studio across town in 1998. However, the operator overlooked its Studio-Transmitter Link license and did not update the license to specify the new studio address. The FCC received a complaint about FM interference in 2001 and inspected the facility. Although the FCC agent observed power variances from the FM station, the agent also noticed that the STL licenses had not been updated to report the new Studio location. Although a $12,000 fine was originally sought it was reduced by 20% to $9,600. Please ensure that all of your stations main and auxiliary licenses (such as Remote Pick-ups, STL, Inter-city links) are kept up to date with the FCC.

FCC Refuses to do the Waive - In April, 2002, inspectors tried to check out a Moberly, Missouri FM station. But there was no phone listing for the station in local directories. When they got to the station's tower, they found a phone number posted, but it was for a phone in Tupelo, not Moberly. They called the posted number and were advised that the Moberly station didn't have a Moberly studio. While the licensee claimed that the Moberly station is operated as a satellite station, it had not sought or obtained a waiver of the rules necessary for such operation. The FCC hit the licensee with a $5,000 fine.

Following Official Review, FCC Rescinds Ruling on Dirty Play - In May, 2001, the Commission issued a notice of apparent liability to a noncommercial FM station in Portland, Oregon, setting a $7,000 fine for the broadcat of indecent material. The material in question was a recording entitled "Your Revolution". The song apparently contains descriptions or language relating to sexual activity, which was enough to rile the FCC up to the $7,000 point. But the licensee argued that, based on the overall context of the song, "Your Revolution" is not in fact "indecent" at all. And lo and behold, the FCC has agreed and has rescinded the fine. While calling it a "very close case", the Commission found that the "sexual descriptions" are not "sufficiently graphic" to warrant sanction. (That included the apparently insufficiently graphic phrase "six foot blow job machine".) Interestingly, the Commission acknowledged that the song's artist has been requested to perform the song at high school assemblies. The FCC found that that fact is "evidence to be considered when assessing whether material is patently offensive".

The Mysteries of the "Miscellaneous"

The Devil Is In The Details

Attention to routine provisions is important

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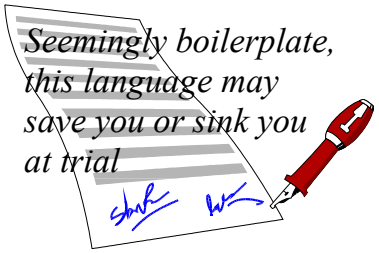
One of the least noticed, but sometimes essential, parts of a contract is the "Miscellaneous" section. The various provisions in this section are often dismissed as ministerial but, if neglected, they can sneak up and bite you. Here are some examples:

(1) ***Assignability***. In most states, a contract is fully assignable unless there is a prohibition in the contract. But it is important to both parties that there be a clear understanding on this issue. If a contract is assignable, then either of the original parties to the deal can sell its position (*i.e.*, its rights and obligations under the contract) to some third party who could be a complete stranger to the other original party. In the sale of a station, for example, the original station buyer may want to sell its contractual right to acquire the station to some third party, who may or may not be affiliated with that original station buyer. In such situations, the original station seller will often want assurances that the party which is being proposed to step into the deal is financially qualified. The original station seller may also insist that the original station buyer (*i.e.*, the party seeking to sell its contractual position) remain secondarily liable even after assignment. Such restrictions obviously complicate the ability to make the assignment, which could blow a deal.

One commonly used mechanism is a provision that requires the consent of the non-assigning party, but provides that such consent may not be "unreasonably withheld." While we insert such language in many contracts, its exact meaning is of course a matter of debate. The reasonableness standard is a useful, but vague, one. What if for example the proposed assignment is to a hated competitor of the non-assigning party? These issues are particularly critical with respect to land and tower leases, on which station buyers closely focus during due diligence.



(2) Notice. Another seemingly innocuous provision is the notice paragraph. But failure to ensure that the addresses and fax and phone numbers here are accurate and current could result in an inadvertent default, which could have catastrophic consequences.

(3) ***No Presumption Regarding Intent***. It is important to insert a provision to the effect that no presumption regarding intent should be derived from the identity of the contract's author. Courts tend to rely on such presumptions in the absence of a negating provision.

(4) ***Integration***. Seemingly boilerplate, this language may save or sink you at trial on the contract if verbal changes in the contract are not reduced to writing. However, given the human tendency to chat endlessly about the deal, this provision simplifies everyone's life.

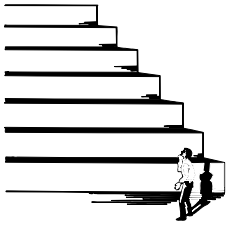
(5) ***Counterparts***. In today's era of mobile communications, it is rare that both parties sign the same piece of paper. Instead, each party usually signs a separate copy of the signature page, and once signed copies have been exchanged by the parties, the agreement is effective. But a court could refuse to enforce the contract if the parties have not signed the same piece of paper and the contract does not contain a "counterparts" provision clearly stating that they have agreed to be bound by such an approach.

More next month….

FHH - On the Job, On the Go

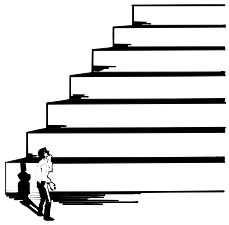
Frank Montero will speak at the BIA Capital Corp. Radio Executive Management Conference being held March 28-29, 2003, at the Longboat Key Club Resort in Longboat Key, Florida.

Harry Martin will appear on a panel on renewal application procedures at the NAB Convention in Las Vegas on April 7. Also presently scheduled to attend the Convention are ***Jim Riley, Frank Jazzo, Howard Weiss, Kathleen Victory, Frank Montero*** and ***Ed O'Neill***.



"Are We There Yet?"

FCC Seeks Comment On DTV Transition Issues



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Commencing its Second Periodic Review of the DTV Transition, the Commission has requested comment on every conceivable aspect of the industry's long march into the digital world. The following is a recap of the main subjects addressed in the FCC's inquiry. Note that the Commission specifically urged representatives of the television industry to provide anecdotal information as to their experiences and roadblocks with respect to the following issues.

- ***Channel Election*** – The Commission is proposing to establish a deadline -- May 1, 2005 is the date the Commission currently has in mind -- by which licensees with two in-core (2-51) channels would be required to make their final election as to which channel they intend to utilize for their digital operations in the future. Another main alternative under consideration would be to determine the channel election date on the basis of the deadline by which stations would have to fully replicate their analog service area with their digital facilities. To facilitate the final channel election process for those intending to operate digitally on their analog channel, the Commission is proposing to permit licensees to channel swap through an application process, rather than the currently-required rulemaking process.

- ***Replication and Maximization*** – The Commission is proposing to establish deadlines by which time licensees must either (a) construct their (analog) replicated or maximized facilities or (b) lose their interference protection for the analog service area not replicated on the digital side. Specifically, the Commission proposes to establish July 1, 2005 for affiliates of the top four networks in the top 100 markets, and July 1, 2006 for all other commercial and non-commercial licensees, as the dates on which interference protection would be eliminated for any unused service area. The Commission is seeking comment on the adequacy of these deadlines, as well as the process and standards by which the interference protection would be eliminated. Finally, the Commission is seeking comment on the appropriate replication and maximization regulations for licensees operating in the 51-69 band.

- ***Pending DTV Construction Permit Applications*** – The Commission notes that there are more than 140 pending applications for initial construction permit authorizations which have been held up for international coordination, zoning, and interference matters. In order to speed the transition, the Commission is proposing to require the licensees to commence digital broadcasting within one year of the adoption of final rules in this proceeding pursuant to special temporary authority in accordance with the licensee's initial DTV allocation.

- ***Simulcasting*** – As the digital conversion rules presently stand, the Commission will require television licensees to provide 50% of their analog channel programming on their digital channel as of April 1, 2003, just a month from now. The percentage increases to 75% by April 1, 2004, and then to 100% by April 1, 2005. The Commission is seeking comments to determine whether these deadlines are realistic, and whether they are appropriate for the intended goal.

- ***Analog Channel D-Day*** – December 31, 2006 – As you are aware, Congress established December 31, 2006 as the expiration date for all analog television licensees, unless certain DTV roll-out thresholds have not been met. The Commission is investigating how it should determine whether the specific thresholds have been met, and how to handle

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That is, Birach's position as a proposed buyer of the station did ***not*** qualify it to seek any extensions or waivers. Thus, Birach's request should properly have been dismissed without any consideration at all.

The take-home messages here are clear. If you are a permittee -- or if you are thinking of buying an outstanding permit -- understand that the Commission is ***not*** inclined to extend permits beyond their initial three year term. While some waiver requests will be considered, they will not be granted absent extraordinary showings. And from the procedural perspective, if you are going to ask for a waiver or equivalent relief, ask for it right away, as soon as you become aware of the circumstances necessitating the relief.

Alphabet soup, but with numbers

It's Important to Have Your Numbers Ready When It's Time to File

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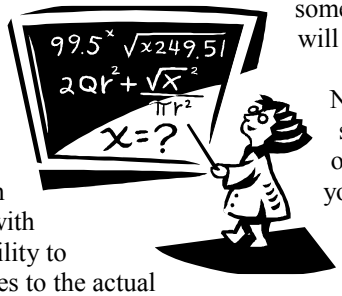
If there really is safety in numbers, as the saying goes, an electronically filed application or report should be very secure because it takes a lot of numbers to file one. For those of you unfamiliar with the alphanumeric demands of the FCC's electronic filing system, we offer this brief introduction.



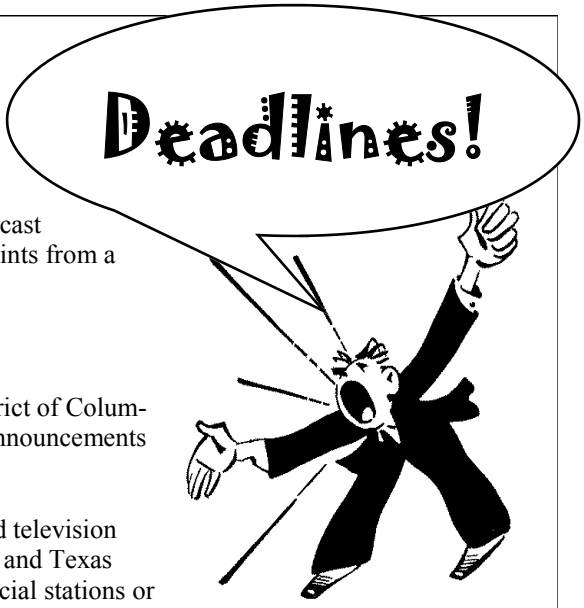
First, for virtually all filings, you need an FCC Registration Number ("FRN"). To get an FRN, you need a Taxpayer Identification Number ("TIN"). When you get an FRN, you also get a password associated with that FRN -- without the password, your ability to use the FRN is very limited. When it comes to the actual filing, you will also need to set up a CDBS (short for "Consolidated Database System") account which will have its own CDBS Account Number and a separate password, both of which will have to be on hand when you try to file anything. Once you get into the CDBS system and start to complete the application or report to be filed, you will most likely also need the Facility Identification Number for your station, which normally must be entered at a couple of points along the way. And to finish it off, you'll need to enter a credit card number to electronically pay the filing fee (the amount of which is yet another number, although CDBS can calculate the amount due for your application. And if you want to pay the filing fee with a credit card issued to somebody or some entity other than the applicant itself, you will also need that payor's TIN.

Not having all these numbers readily accessible can delay completion of an application or report, which can be a serious drag if you're trying to meet a deadline.

If you need to establish a CDBS account or an FRN, please contact us. Even if you don't need the numbers now, you will need them later, and it would be a good idea to have them ahead of time. Note that, to obtain an FRN, we will need the TIN for the entity in whose name the FRN will be requested.

If you have an FRN or a CDBS account but have misplaced those numbers or their respective passwords, please call us and we will either track them down through the FCC or, if more efficient, set up new numbers.

February 27, 2003



Field Hearing on Ownership Rules - The Commission will be holding a one-day field hearing in Richmond, Virginia, to provide the general public with an opportunity to voice opinions with regard to the broadcast ownership rules. The Commission is asking the public to offer comments on how the agency can develop broadcast ownership rules that will assist in providing the public with viewpoints from a diversity of sources and will enhance the marketplace of ideas.

April 1, 2003

Renewal Pre-Filing Announcements - Stations located in the District of Columbia, Maryland, Virginia, and West Virginia must begin pre-filing announcements in connection with the license renewal process.

Ownership Reports - All commercial and noncommercial radio and television stations in Delaware, Indiana, Kentucky, Pennsylvania, Tennessee, and Texas must file a biennial Ownership Report (FCC Form 323 for commercial stations or Form 323-E for noncommercial stations). All reports filed on FCC Form 323 or 323-E must be filed electronically.

DTV Simulcasting - DTV licensees and permittees must simulcast 50 percent of the video programming of the analog channel on the DTV channel. This requirement supercedes the allowance for operation with a reduced schedule.

FCC sheds some light on an old question

How Much (or How Little) Time Must a Station Broadcast to Avoid Automatic Expiration?

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In 1996 Congress inserted Section 312(g) into the Communications Act. That section provides that if a broadcast station "fails to transmit broadcast signals for any consecutive 12-month period", then the station's license automatically expires at the end of that 12-month period -- no ifs, ands or buts. Since this is a statutory requirement, the FCC has no discretion in the matter and therefore cannot waive the 12-month requirement. As a result, broadcasters must be extremely conscious of that provision and must be sure their licenses do not fall prey to automatic expiration.

One problem with the statute, though, is that it does not specify how much operation will be enough to avoid expiration. That is, how long must a licensee "transmit broadcast signals" during any 12-month period in order to be safe? Since 1996 the Commission has been noticeably silent on that point. As a result, it has been unclear whether it would be necessary to broadcast for an hour, or a day, or a week, or a month, or some other time span.

Recently, the Commission has provided an indication that 24 consecutive hours of operation is enough to avoid automatic expiration under Section 312(g).

But the Commission has recently provided some indication that 24 consecutive hours of operation is enough to avoid automatic expiration under Section 312(g).

A station in Texas found itself in a difficult situation in which it could not operate with its licensed facilities (because it had apparently lost its transmitter site) but it could not operate with alternate facilities conditionally authorized by the Commission because the underlying conditions had not been satisfied. As a result, the station ceased operation in March, 2001. In March, 2002, its situation still unresolved, the station sought special temporary authority ("STA") to operate in order to avoid the automatic expiration provision of Section 312(g). The staff granted the station an STA to operate for 24 hours.

The staff's action was not published, and remained a relatively well-kept secret until earlier this month, when the full Commission had occasion to consider the station's regulatory situation. In a footnote to its decision, the Commission specifically acknowledged that the Bureau had granted the 24-hour STA "in order to avoid automatic expiration" of the license and to "preserve the status quo of the license, in order to facilitate the Commission's full consideration" of the licensee's situation.

This is, of course, just a footnote to a decision relating to a somewhat unusual factual setting. But it does appear to be an acknowledgement by the Commission that operation of a station for 24 hours is sufficient to "toll" the automatic expiration provision of the Act. Licensees who find themselves in circumstances necessitating the temporary cessation of operation may want to file this away for future reference. While it is always prudent to return silent stations to operation as soon as possible, when that is not possible it may be necessary to invoke this decision for the proposition that a station's license is not subject to automatic expiration as long as the station has operated at least 24 hours during a 12-month period.

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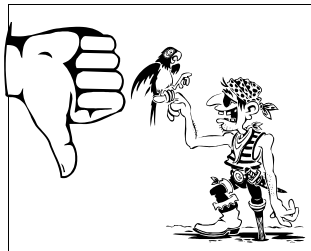
broadcasters' requests for extension of their analog channel licenses beyond that deadline.

- ***Distributed Transmission Technologies ("DTT")*** – The Commission is seeking information with respect to DTT systems, which would permit the operation of on-channel DTV boosters to fill in and strengthen the service areas of DTV stations. The Commission is particularly interested in the interplay between DTT boosters and LPTV and TV translator stations, and the necessary technical standards to ensure quality signal transmissions.

- ***DTV Public Interest Obligations*** – The Commission is seeking to refresh the records of the DTV public interest and DTV Children's Public Interest rulemakings to determine whether any additional requirements (relating, for example, to political broadcast and/or children's programming) should be placed on DTV facilities that seek to multicast.

Given the Commission's apparent willingness to consider further modifications to most elements of the DTV transition plan, television licensees should consider providing their first-hand experiences, and possible modifications to the plan. Comments are due on April 14, 2003, with reply comments due on May 14, 2003.



On second thought . . .

Court of Appeals: Pirates *Not* Eligible For LPFM Licenses

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Pirate broadcasters are back on the outside looking in when it comes to getting LPFM licenses, thanks to an extraordinary court decision. Last year, a three-judge panel of the D.C. Circuit Court found that the statutory prohibition against former pirates holding LPFM licenses was an unconstitutional "draconian sanction." (We wrote about that decision in the February, 2002 Memo to Clients.) But at the Commission's urging, the whole seven-member Court, sitting *en banc*, vacated that decision, re-heard the case, and did a full turnabout on January 31 when it decided that an argument made by the former pirate who brought the case was "nonsense on stilts."

The Court made short work of denying Greg Ruggiero's challenge to the constitutionality of the Radio Broadcasting Preservation Act of 2000 ("RBPA"), which makes pirates - past and present - ineligible for low-power FM licenses.

The "nonsense on stilts" comment came in response to Ruggiero's argument that the character qualification of the RBPA that prohibits pirates from holding LPFM licenses is impermissibly underinclusive because it does not also disqualify applicants guilty of more serious offenses, like murder, rape, and child abuse. Those serious offenders should be ousted from the LPFM realm, too, because their conduct gives rise to the same harm that the FCC says former pirates cause, according to Ruggiero. Not so, says the Court. The commission of such acts is not directly linked to chaos on the spectrum, as is the act of unauthorized broadcasting. Such violent felons also face severe penalties through other parts of the government -- state or federal -- that are far more serious than ineligibility for an LPFM license.

The Court concluded that the rule against pirates is reasonably tailored to further the government's interest in minimizing unlicensed LPFM broadcasting and protecting the broadcast spectrum. The Court used the same basis to reject Ruggerio's argument that the RBPA violates the Equal Protection guarantee of the Fifth Amendment.

Ruggiero also argued, in the alternative, that the no-LPFMs-for-pirates rule is overinclusive. It was wrong to throw good pirates, such as those who stopped illegal broadcasts when ordered to do so by the Commission, in the same brig as the bad. The Court again agreed with the Commission's a-leopard-can't-change his-spots attitude toward pirates and decided that the rule is reasonable.

Barring any intervention by the Supreme Court, which is unlikely in the extreme, or unless Congress has a change of heart and amends the Act to permit former pirates to hold LPFM licenses -- also unlikely in the extreme -- this is the last gasp for Ruggiero's arguments. Former pirate will have to content themselves with activities other than LPFM ownership.

FCC/NTIA Update 60 year-old Policy

Intragovernmental Spectrum Coordination Policy Adopted

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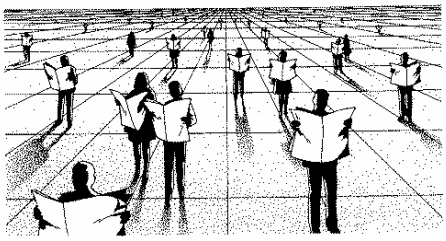
Until last month, the United States government had been developing and implementing spectrum coordination policy based upon an agreement reached prior to the outbreak of the Second World War. Last month, the FCC and the Commerce Department decided it was appropriate to update the agreement. FCC Chairman Powell admitted that the agencies were operating in a "policy time warp." The new agreement became effective on January 31.

Under the Communications Act, responsibility for spectrum management is shared by the FCC, on the one hand, and the Commerce Department's National Telecommunications and Information Administration ("NTIA"), on the other. The FCC takes care of non-federal spectrum users (including broadcasters, public safety, and state and local governmental users), while NTIA handles the federal users. The latest agreement between the two agencies establishes a framework for coordination between the FCC and NTIA, including a required meeting twice a year. The terms of the framework for coordination are broad and require regular communication and information exchange between the two government agencies.

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

Updates on the News

Performance Rights Agencies On The Prowl. Broadcasters know that they are required to pay royalties to the folks who hold the copyrights on the music they air. In most instances, those copyright holders are represented by one of the three major music licensing agencies, ASCAP, BMI and SESAC. Lest anyone fall prey to the notion that those agencies are only interested in large market stations and may therefore let the smaller fish off the hook, be advised that, according to the *Idaho Mountain Express* (a weekly newspaper in the Sun Valley area), BMI is going after five very small market stations in the area -- two of which have gone silent -- to collect on a judgment obtained in New York. We can assume that ASCAP and SESAC are being equally aggressive. So if you are not sure that whether your music performance licenses are current, you may want to doublecheck.



Ownership Meetings— Beyond Old Virginny. The FCC *en banc* road show on broadcast ownership issues is slated to hit Richmond on February 27 (weather permitting). One panel of witnesses will include a professor from the Department of Sociology and Anthropology of Virginia Commonwealth University. Meanwhile, Commissioner Copps continues to insist on more field hearings on the ownership question. The Richmond confab was set up largely in response to his expressed concern that the FCC should get out on the road and talk directly to the people. Not content with just one such meeting, though, he has announced that he will be convening "two official FCC media concentration hearings", in Seattle and Durham, North Carolina, sometime in March. It is not clear how a single Commissioner can unilaterally announce "official" hearings, but Commissioner Copps was gracious enough at least to invite his four colleagues to those hearings. Chairman Powell has not committed to attending, but did issue a statement "commend[ing] others for their interest in attending" forums other than the Richmond shindig.

Witness Protection Program? And speaking of Commissioner Copps and the broadcast ownership proceeding . . . Commission Copps has called for the establishment of some special procedure to "combat retribution against those who testify against media consolidation". According to Copps, he has "heard privately" that "speaking out" on the issue of media consolidation "would cost many people their careers." He is exploring the possibility of allowing media professionals to testify anonymously. No word yet on whether such witnesses will also be given new identities, new fingerprints, facial reconstruction and a government-created job under the watchful eye of the FBI.

A little light reading. More on the ownership proceeding. At last count, the FCC had received more than 15,000 (count 'em, 15,000) separate comments in response to its requests for comments on the broadcast ownership rules. Chairman Powell continues to project that a decision on the matter will be ready sometime this spring. But if you started reading the comments on February 1, you would have to read more than 100 comments each day, seven days a week, just to have read them all by the end of spring. Then you would have to digest the comments, reflect on their various factual presentations and legal arguments, deliberate on the proper FCC response, actually sit down to draft that response, circulate your draft to other Commissioners and staff for their input, and reach a consensus which is then reflected in a final decision. In other words, in view of the huge volume of public comment, resolution of the ownership proceeding by spring seems somewhat optimistic.

Slightly revised policy on the filing of schedules to assignment agreements. Last August we reported on a policy concerning the filing of certain transaction documents in assignment applications. Generally, the Commission had decided that it is probably not necessary to file each and every piece of paper relating to a sales agreement (such as all the schedules, exhibits, etc.), so the new policy was that extraneous documents could be withheld, as long as the applicant advised the Commission of that and disclosed the nature of the materials being withheld. Apparently some applicants may have taken more liberties with this relaxed policy than the Commission intended and we have been informally advised that, as a result, the policy is now going to be applied strictly. So if you are filing an assignment or transfer application (FCC Form 314, 315 or 316), you may withhold transactional documents only if you specifically state that you are ***not*** providing ***all*** documents ***and*** if you submit an exhibit describing ***each*** omitted item and stating the basis for the determination that the omitted item is not material to the Commission's decisionmaking. Failure to follow those steps can delay processing of the application, as the staff will demand an amendment.

Backpat, self-administered. Last month we predicted the opening of a window for new FM translator applications — and sure enough, such a window was opened. Call us for information if you may want to file during the window.

FM ALLOTMENTS PROPOSED -1/23/03-2/21/03

State	Community	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
VA	Orange	225A	03-47	Cmts - 04/11/03 Reply-04/28/03	1.420
VA	Midlothian	255B1	03-47	Cmts - 04/11/03 Reply-04/28/03	1.420
VA	South Hill	270A	03-47	Cmts - 04/11/03 Reply-04/28/03	1.420
NC	Reidsville	271C0	03-47	Cmts - 04/11/03 Reply-04/28/03	1.420
AR	Daisy	293C3	03-42	Cmts - 04/11/03 Reply-04/28/03	Drop-In
OK	Rattan	258A	03-43	Cmts - 04/11/03 Reply-04/28/03	Drop-In
NY	Water Mill	277A	03-44	Cmts - 04/11/03 Reply-04/28/03	Drop-In
OR	Lincoln City	236C2	03-41	Cmts - 04/11/03 Reply-04/28/03	1.420
OR	Monmouth	236C2	03-41	Cmts - 04/11/03 Reply-04/28/03	1.420
SC	Florence	237A	03-35	Cmts - 03/31/03 Reply-04/15/03	Drop-In
IA	Woodbine	293A	03-36	Cmts - 03/31/03 Reply-04/15/03	Drop-In
NE	Norfolk	294C0	03-36	Cmts - 03/31/03 Reply-04/15/03	Reclassification
FL	Apopka	237A	03-24	Cmts - 03/24/03 Reply-04/08/03	1.420
FL	Maitland	237C3	03-24	Cmts - 03/24/03 Reply-04/08/03	1.420
FL	Homosassa Springs	237A	03-24	Cmts - 03/24/03 Reply-04/08/03	1.420
WA	Othello	248C2	03-25	Cmts - 03/24/03 Reply-04/08/03	1.420
WA	Basin City	248C2	03-25	Cmts - 03/24/03 Reply-04/08/03	1.420
KS	Topeka	299C	03-26	Cmts - 03/24/03 Reply-04/08/03	1.420
KS	Shawnee	299C1	03-26	Cmts - 03/24/03 Reply-04/08/03	1.420
WV	Ravenswood	226A	03-22	Cmts - 03/24/03 Reply-04/08/03	1.420
OH	Racine	226A	03-22	Cmts - 03/24/03 Reply-04/08/03	1.420
AR	Conway	224A	03-23	Cmts - 03/24/03 Reply-04/08/03	1.420
AR	Vilonia	224C3	03-23	Cmts - 03/24/03 Reply-04/08/03	1.420
OK	Muldrow	286A	03-29	Cmts - 03/24/03 Reply-04/08/03	Drop-In
CA	Trona	255A	03-30	Cmts - 03/24/03 Reply-04/08/03	Drop-In
FL	Port St. Joe	270C3	03-21	Cmts - 03/24/03 Reply-04/08/03	Drop-In

FM ALLOTMENTS ADOPTED –1/23/03-2/21/03

State	Community	Channel	Docket No.	Availability for Filing
TX	O'Brian	261A	02-296	TBA
TX	Stamford	233A	02-297	TBA
TX	Panhandle	291C3	02-298	TBA
TX	Shamrock	271A	02-299	TBA
TX	Colorado City	257A	02-300	TBA
OK	Taloga	226A	02-302	TBA
OK	Haileyville	290A	01-254	TBA
TX	Jayton	231C2	01-295	TBA
CO	Genoa	288-C3	01-21	TBA
TX	Eldorado	258C1	01-273	TBA
NM	Milan	270A	02-43	TBA
MI	Alpena	289A	02-107	TBA
TX	Channing	284C	02-168	TBA
TX	Escobares	284A	02-169	TBA
TX	Ozona	275C3	02-170	TBA
TX	Rotan	290A	02-172	TBA
TX	Wellington	248A	02-173	TBA
TX	Memphis	292A	02-175	TBA
TX	Matador	227C3	02-176	TBA
NE	Arthur	300C1	02-291	TBA
TX	McLean	267C3	02-292	TBA
TX	Wheeler	280C2	02-293	TBA

Notice Concerning Listings of FM Allotments

Consistent with our past practice, Fletcher, Heald & Hildreth PLC provides these advisories on a periodic basis to alert clients both to FM channels for which applications may eventually be filed, and also to changes (both proposed and adopted) in the FM Table of Allotments which might present opportunities for further changes in other communities. Not included in this advisory are those windows, proposed allotments and proposed channel substitutions in which one of this firm's clients has expressed an interest, or for which the firm is otherwise unavailable for representation. If you are interested in applying for a channel, or if you wish us to keep track of applications filed for allocations in your area, please notify the FHH attorney with whom you normally work.