

Memorandum to Clients

March, 2003

News and Analysis of Recent Events in the Field of Communications

No. 03-03

It's still a sin to tell a lie, most of the time

FCC "Broadens" Rule Against Misrepresentation But Amended Rule May Raise Questions

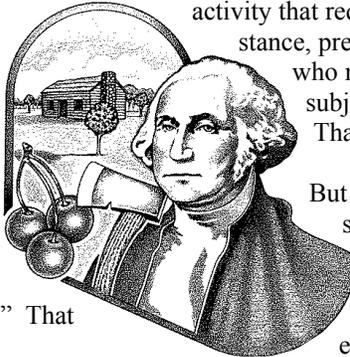
By: Harry F. Cole
703-812-0483
cole@fhhlaw.com

The Commission has reminded us that it's still a sin to tell a lie to the Commission, but the gravity of the sin apparently depends on who is doing the sinning and in what context the sinning happens to occur -- sort of the regulatory equivalent of situational ethics.

In a decision released earlier this month, the FCC announced that it was "broaden[ing]" Section 1.17 of its rules. Previously, that section required that "no applicant, permittee or licensee" could make any misrepresentation in, or material omission from, any "response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission." That previous language already seemed pretty broad.

But the Commission was apparently concerned that the earlier version of the section applied only to applicants and radio licensees and permittees, but not to others who might find

themselves submitting statements to the Commission for one reason or another. Accordingly, the scope of the universe subject to the rule has been expanded to include, among others, "any person performing without Commission authorization an activity that requires Commission authorization" -- first instance, presumably, pirate broadcasters, or other folks who may have broken the rules somehow and are the subject of a Commission inquiry or investigation. That makes sense.



But the Commission then seriously limited the scope of the rule by making it applicable only "in any investigatory or adjudicatory" and "in any proceeding to amend the FM or Television Table of Allotments (with respect to expressions of interest)". It thus appears that the rule does not apply, for example, to statements made in applications, or in rule making comments as long as those comments don't constitute "expressions of interest" in allotment proceedings.

The new version of the rule also makes clear that when one of the folks covered by the rule makes a written statement to the Commission in one of the contexts covered by the rule, the party making the written statement must have a "reasonable basis for believing" that the statement is correct and not misleading. That is, a party making a written statement to the Commission must exercise reasonable diligence in the preparation of that statement. But no equivalent limitation is placed on oral statements made by such people in such contexts -- because, according to the Commission, "of the difficulty in determining the degree of due diligence applicable to any oral statement."

Surprisingly, the Commission seems to invite inaccurate statements. With respect to declaratory ruling requests and rule making proceedings not involving channel allotments, for example, the Commission states such matters "involve wide-ranging discussions of general policy", and the Commission does not "wish to hinder full and robust public participation . . . by encouraging collateral wrangling over the truthful-

(Continued on page 4)

The Scoop Inside

Auction of Lower 700 MHz Band	
Licenses Scheduled for May 28	2
Focus on FCC Fines	3
Ask the Contracts Guy:	
Choice of Law and Arbitration	4
IBOC On Request	5
Ban on Cable-Broadcast Cross-	
Ownership Repealed.....	6
Reminder: Emergency Information	
for the Disabled	6
Commission Sheds Further	
Light on CP Tolling	7
Deadlines.....	8
Plus ça change	9
Updates on the News	10
Rural Translator Service	
Proposed.....	10
FM Allotments.....	11



Channels 52-59 on the block

Auction of Lower 700 MHz Band Licenses Scheduled for May 28

By: Liliana E. Ward
703-812-0432
ward@fhhlaw.com

Going, going, soon to be gone -- a fine set of frequencies, barely used by their previous occupants strictly for UHF broadcasting, now available for a wide variety of potentially lucrative services. Act now. This is likely to be your last chance to buy into this primo neighborhood of the spectrum. (Fine print disclaimer -- because of some pesky lingering obligations, these channels may not be ready to use as soon as the gavel closes the bidding).

On May 28, 2003 the Commission will open the final auction of spectrum in the Lower 700 MHz Band, now used for analog TV Channels 52-59.

The auction will include frequencies currently used for Channels 52, 53 and 56-58, sold as six licenses covering geographic regions of the country. The auction will also include 256 licenses which remained unsold following last September's auction of the C and D blocks of the 700 MHz band, which involved frequencies currently used for Channels 54, 55 and 59.

These channels, which have been historically used for television broadcasting, are now being offered for new uses, such as mobile Internet and "certain new broadcast operations." Because this auction is necessarily tied to the transition to digital television, however, the auction winners will not be entitled to use the frequencies until broadcasters who now occupy the subject channels have completed the switch to digital operation on channels outside the 700 MHz band. This transition will not be complete until 2006, at the earliest.

To mitigate the long transition period, the Commission has established an early buy-out policy through which it hopes to facilitate voluntary clearing of the 700 MHz bands, allow for the introduction of new services, and promote the transition of incumbent analog television licensees to DTV service. The idea is that, while the Commission may not be able to force incumbents to vacate their channels immediately, private negotiations between those incumbents and successful bidders, *i.e.*, folks who will be taking over the spectrum once the incumbents leave, may expedite the transition. To encourage initiatives along those lines, the Commission will consider affording specific regulatory relief necessary to implement voluntary agreements between incumbent broadcasters and new licensees to clear the Lower 700 MHz band early. Note that certain broadcast interference standards and minimum spacing requirements may not be waived if they will result in any degradation in or loss of service, or an increased level of interference to any television household not otherwise expressly permitted by the Commission's rules.

The FCC's expressed flexibility with respect to possible private negotiations is not entirely altruistic. The proceeds of the auction are paid into the government, which means that it is in the FCC's interest to maximize the apparent value of the available spectrum so that the auction will generate as much income to the government as possible. If the spectrum for sale is subject to conflicting uses or claims which will prevent the new owner from developing it right away, that could drive the bidding down. As a result, it is in the Commission's interest to convince bidders that the FCC will be willing to cooperate in any efforts to clear the spectrum sooner rather than later.

Since the perceived value of the licenses on the auction block is likely to be affected by the potential problems presented by incumbent occupation of certain channels in

(Continued on page 3)

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.

Copyright © 2003 Fletcher, Heald & Hildreth, P.L.C.
All rights reserved

The Godfouler - Martin Sheen's West Wing television portrayal of the president scolding and chastising God is not a matter in which the FCC chooses to become involved. An angry television viewer sent a complaint to the FCC claiming that NBC aired profane material in a West Wing episode. The FCC's Enforcement Bureau denied the complaint. Not satisfied, the viewer went to a higher authority, the five FCC Commissioners. They, in turn, upheld the staff decision to deny the viewer's complaint.

The viewer complained that in an episode of the television series "The West Wing," Martin Sheen's character prays in a cathedral and then belligerently screams irreverent references at God. Referring to a 1952 Supreme Court case, the five FCC Commissioners advised the viewer that "it is not the business of the government . . . to suppress . . . attacks upon a particular religious doctrine." The FCC also translated certain Latin phrases uttered by Sheen's character and found that these phrases did not rise to a level at which the FCC could take action. The FCC denied the viewer's complaint. Whether the viewer will seek appellate intervention is in his hands.

On the Swampwater Front - An AM licensee in Alabama argued to the FCC that he did not need to have a fence around his AM transmitter because, among other things, part of the property was on swampland and could not be casually accessed. The FCC did not accept this excuse; nor did it believe that the fact that the licensee's brother lived nearby was a deterrent. The FCC noted that on two separate occasions an FCC agent was able to drive up to the transmitter and touch it. The FCC continues to fine licensees who do not have *effective* locked enclosures for their antenna structures. The AM licensee was hit with a \$7000 forfeiture.

Gone with the Wind - An AM licensee had his obligation to pay fines reversed after he dismantled towers and sold his AM station. In deference to claims that their authority over the now former licensee had vanished, the FCC cancelled a

\$12,000 forfeiture. The licensee was fined \$12,000 when an FCC inspector found that the station did not have Antenna Registration Numbers or proper painting for its five antennas. After the fines were issued, the licensee sold his station and the towers were dismantled. The FCC cancelled the fines in a very brief decision, so brief in fact that it's impossible to say exactly why the Commission decided to cancel the fines -- although the facts that (a) the subject of the fines was no longer a licensee subject to Commission jurisdiction and (b) the towers themselves no longer exist presumably had something to do with it. Selling your station to avoid a fine is an extreme measure and, although it appears to have worked in this case, there is no guarantee that the FCC will not continue to pursue a former owner.

Focus on FCC Fines

By: R.J. Quianson
703-812-0424
quianson@fhhlaw.com



Unforgiven - The FCC eliminated a forfeiture order requiring Verizon Wireless to pay \$10,000 but continued to find Verizon liable for antenna infractions.

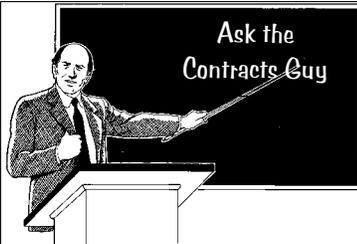
The reason that the FCC set aside the \$10,000 obligation was that it had already been paid. As a result of a distinctly bureaucratic fiat, the FCC issued a notice of liability to Verizon in October of 2002. Verizon did not contest the forfeiture and paid the full fine to the FCC in December. Two months after the payment, the FCC adopted an Order issuing a \$10,000 forfeiture to Verizon for failing to respond to or pay the fine listed in the October notice. When Verizon brought to the FCC's attention that it paid the fine two months earlier, the FCC cancelled the latter Order seeking the check that it had already cashed.

You Can't Take it With You - A radio pirate has been told that he cannot keep his transmitting equipment. A federal judge had previously issued an injunction to force the pirate to stop broadcasting. In defiance, the pirate continued to transmit his programming. Not amused, U.S. Marshals brought the pirate back to court with his transmitter. The judge imposed a \$35,000 fine and did not allow the pirate to take his equipment back. The FCC has taken a very tough stance with pirates and brought many to court around the nation.



(Continued from page 2)
certain areas, the Commission has issued a "Due Diligence Report" listing all the incumbents on the channels in question. We can send you a copy of that Report upon request.

To participate in the auction, applicants must file their short form applications (FCC Form 175) *electronically* by 6 p.m. ET, April 11, 2003. Upfront payments, accompanied by an FCC Form 159, are due by 6 p.m. ET, May 2, 2003.



More Mysteries of the "Miscellaneous"

The Devil Is Still In The Details

This month: Choice of Law and Arbitration Clauses

By: Howard M. Weiss

713.822.0471

hweiss@fhlaw.com

Here are some more key provisions that your sales or lease agreement ought to have for your protection:

Choice of Law. Lawyers take an entire course on this in law school. You need not be a "conflicts of law" expert. However, you should understand that which state law governs interpretation of a contract is important and ought to be addressed in the contract. It is not always clear that the parties' choice of law will receive deference from a court but it is certainly worth a try.

Usually, the controlling law is that of the state where the property at issue is located. However, other considerations also influence this determination, such as where the parties are incorporated or created or reside and the law of state that the parties believe is most helpful and/or accessible. It is important that the choice of law chosen excludes state conflicts of law principles because otherwise you may end up back where you started after a circular reasoning process.

This choice of law question is important because, if litigation is necessary to enforce a contract or to seek damages for breach of a contract, the parties will (absent an arbitration provision - *see below*) find themselves before a state court. And, while many principles of contract law are recognized and enforced more or less consistently throughout the various states, contract law is **not** absolutely uniform and consistent from one state to the next. As a result, it is useful to control by agreement what state law will govern, so that all parties to the contract will know what the applicable rules will be should judicial enforcement be required.

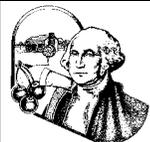
Arbitration. Should disputes arise, you may want to have agreed in advance as to how to resolve them short of litigation, if possible. There is always the time-honored method of arbitration. Typically, this is done by agreeing to resort to binding arbitration under the rules of the American Arbitration Association ("AAA") after exhausting informal methods of dispute resolution. Sometimes, a time limit during which such informal efforts may be pursued is included. Allocation of the arbitrator's fees (which will be substantial) and selection of a city

where the arbitration will be conducted must be addressed. Also, depending on the amount at stake, you should decide whether you want one arbitrator or a panel (typically of three). The outcome of the arbitration is typically binding; judicial appeals are not permitted. This can, of course, cut both ways, depending on who is the winner and who is the loser, and which party has the greater resources. The AAA has detailed rules which will govern the arbitration process -- you may want to review those before you opt for arbitration.

The issue of whether arbitration is a superior dispute resolution method is a controversial one. On the one hand, it is usually cheaper than litigation and less time-consuming. On the other hand, the process can be arbitrary and there is no recourse from a defective arbitration process or result. You should discuss carefully with your lawyer and perhaps research yourself whether to include an arbitration provision in an agreement. An alternative is mediation, which does not contemplate a binding decision, but rather use a facilitator to help the parties reach a satisfactory compromise.

More next month...

Contract law is not absolutely uniform and consistent from one state to the next.



(Continued from page 1)

ness of parties' statements." This seems to say that, in order to avoid the unpleasantness of having one party claim that another party is lying, the Commission is announcing that there is no bar against lying in declaratory ruling and non-allotment rule making proceedings. That seems an unusual position for the Commission to be adopting, but it does seem to be the consequence of the change in the rule.

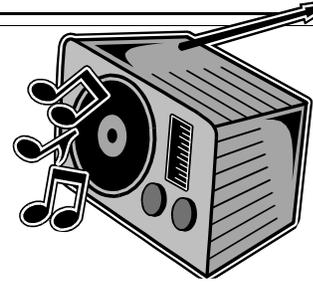
Notwithstanding the apparent softening of the Commission to misconduct that would have seemed unthinkable in the past, our hunch is that the Commission will still frown on any intentional misrepresentations which may be made to it, and for that reason we caution one and all to maintain a high degree of honesty and completeness in all communications of any sort with the FCC.

FCC OK's IBOC ASAP

IBOC On Request

"Just do it", FCC says

By: Lee G. Petro
703-812-0453
petro@fhhlaw.com



Further demonstrating its desire to jump-start the shift to digital broadcasting, the Commission has simplified its procedures for authorizing AM and FM stations to commence in-band, on-channel ("IBOC") digital service. Previously, the Commission required licensees planning to operate IBOC systems to first file a request for Special Temporary Authority. However, the Commission has announced that, as of March 20, 2003, licensees may implement IBOC operation without prior authorization, as long as they notify the FCC within 10 days of the commencement of such operation.

Always helpful, the Commission has issued a sample Notification letter which contains all the information the Commission requires to determine if the proposed facilities correspond with the iBiquity hybrid IBOC systems. Specifically, the broadcaster must provide the following information in support of its operation:

- ☐ the date that interim operation commenced;
- ☐ a certification that the IBOC facilities conform to the iBiquity hybrid specifications;
- ☐ the name and telephone number of a technical representative the Commission can call in the event of interference;

- ☐ transmitter power output (note - if separate analog and digital transmitters are used, the power output for each transmitter);
- ☐ a certification that analog effective radiated power remains as authorized;
- ☐ a certification that the interim operation would not cause human exposure to levels of radiofrequency radiation in excess of Section 1.1310 of the rules and is therefore categorically excluded from environmental processing pursuant to Section 1.1306(b). Any station that cannot certify compliance must submit an environmental assessment ("EA") pursuant to Section 1.1311 and may not commence interim operation until such EA is ruled upon by the Commission;
- ☐ if applicable, any power reduction in an AM station's primary digital carriers.

As discussed in the October 2002 Memo To Clients, AM stations can operate their IBOC systems only during daytime hours, and pre- and post-sunset hours if previously authorized.

If you plan to make the move to IBOC and would like help in the preparation and submission of an appropriate notification to the Commission, do not hesitate to call on us.



FHH - On the Job, On the Go

Jim Riley, Frank Jazzo, Harry Martin, Howard Weiss, Kathleen Victory, Ed O'Neill and Frank Montero will all be attending the NAB annual convention in Las Vegas beginning April 6, 2003. They'll be staying at the Bellagio Hotel. On April 7, **Harry Martin** will be appearing on a panel dealing with renewal application procedures.

On March 29, 2003, **Vince Curtis** will appear on a panel dealing with the new EEO rules at the Annual Convention of the Louisiana Association of Broadcasters in Baton Rouge. Vince will be joined by Larry Walke from the NAB and Charles Spencer, local counsel for the LAB.

Effective July, 2003, **Harry Martin** will be the President-Elect of the Federal Communications Bar Association, the 3500-member organization that includes most practicing communications lawyers. Harry will serve as President of the FCBA in 2004-2005. He has served as Secretary, Treasurer and a member of the FCBA's Executive Committee.

Frank Jazzo and **Ali Shapiro** attended the Society of Satellite Professionals International ("SSPI") Gala at the Grand Hyatt in Washington, D.C. on February 26.

Frank Montero and **Liliana Ward** will be speaking at the Radio Broadcasters Association of Puerto Rico Annual Convention in Mayagüez, Puerto Rico, May 1-4, 2003.



Ban on Cable-Broadcast Cross-ownership Repealed

By: Jennifer Wagner
703-812-0511
wagner@fhhlaw.com



The Commission has repealed its rule against cross-ownership of cable systems and broadcast TV stations. Broadcasters may now own cable systems, and *vice versa*.

The repeal was not unexpected, and therefore didn't draw much fire when it became official on February 26. What it did raise were questions about whether the Commission should have tried harder to revive a rule that could protect smaller broadcasters and cable systems. Among the most outspoken voices on this point is Commissioner Michael J. Copps, who wrote a separate opinion reluctantly supporting the Commission's Order that a Court decision had left it no choice but to repeal the current rule, but also saying that his colleagues should have tried harder to determine whether evidence would support a different version of the rule.

In February 2002, the U.S. Court of Appeals for the District of Columbia had sounded the rule's death knell in *Fox Television Stations, Inc. v. FCC*, saying that the FCC's decision during its Biennial Review of its rules to keep the cable/broadcast cross-ownership rule was "arbitrary and capricious" and contrary to the Telecommunications Act of 1996. According to the court, the FCC had not offered any evidence that the restriction was necessary to serve the public interest. The court did not prohibit the FCC from drafting a new rule if it could produce some support for it.

Copps said in his statement that, while the court ordered the rule to go away, the Commission could have sought an anti-

dote in the form of public and industry input on cable-broadcast consolidation instead of "just pretending the problem no longer exists." Such evidence could be helpful to smaller broadcasters and cable systems subject to tough competition from larger entities that own both television stations and cable systems in the same market.

Last year a federal appeals court saw the ban as a "hopeless cause."

The Commission had originally sought to defend the rule by arguing that: the rule would help prevent possible discrimination by cable/broadcast combinations against unaffiliated broadcasters in making cable-carriage decisions; cable should be protected from acquisition by networks bent upon pre-empting new competition; and cable-broadcast cross-

ownership harms competition and diversity. However, the court found that the Commission provided no evidence that the rule as written was necessary to support these public interest concerns. The court held that under the Act a regulation should be retained only insofar as it is necessary, not merely consonant with, the public interest. The court found that the reasons the Commission gave for retaining the rule "were at best flimsy, and its half-hearted attempt to defend its decision in this court is but another indication that the [cable-broadcast cross-ownership] rule is a hopeless cause." That said, the court then suggested the Commission could re-promulgate the rule and then require any entity that had become a prohibited cross-owner during the interim between the old and new rules could divest either its broadcast station or its cable system. The Commission's recent repeal of the rule seems to have given that suggestion the thumbs-down.



FCC Reminds Broadcasters to Make Emergency Information Accessible to the Disabled

By: Liliana E. Ward
703-812-0432
ward@fhhlaw.com

The Commission has issued a reminder to all video programming distributors, including broadcasters, cable operators, and satellite television services, that they are required to make emergency information available to persons with hearing and vision disabilities. This is particularly important in the current international situation, when emergency announcements relating to both foreign and local news are more frequent.

In the case of persons who are hearing-impaired, emergency information that is provided in the audio portion of the programming must be provided using closed captioning or other methods of video presentation, such as open captioning,

crawls or scrolls that appear on the screen. Emergency information that is provided in the video portion of a regularly scheduled newscast or a newscast that interrupts regular programming requires the oral description of emergency information in the main audio, such as open video description. If the emergency information is provided through "crawling" or "scrolling" during regular programming (as opposed to a regularly scheduled or interrupting newscast), the information must be accompanied by an aural tone, so that persons with visual disabilities are made aware that emergency information is being broadcast and that they should tune in to a radio station or seek assistance for more information.

(Continued on page 7)

Commission Sheds Further Light on CP Tolling

By: Lee G. Petro
703-812-0453
petro@fhhlaw.com

The Commission recently granted a one-year tolling request that sheds some – but not much – light on the qualifying standards for such requests. Still, the guidance may prove useful in dealing with the Commission’s policy on the tolling of construction permits. “Tolling” refers to stopping the clock on a construction permit which would otherwise expire; it is a process which was created when the FCC stopped issuing CP extensions.

Broadcast construction permits all have a three-year term which is not subject to extension. You either build out the facilities specified in the permit before the end of the three-year term, or you lose the authorization. The goal of this somewhat draconian policy was to prod permittees into moving forward with construction sooner rather than later, and thus eliminate the chronic problem of seemingly never-ending requests for extension of permits.

However, the Commission recognized that an absolute three-year limit might be unfair if construction was prevented by certain types of factors outside the control of the permittee. Accordingly, the FCC determined that, when such a factor arises to prevent construction, the permit is deemed to be “tolled” until that obstacle is removed and the path to construction is re-opened.

The recent decision provides an illustration of the tolling concept. A licensee sought and received a construction permit to modify its facilities at its licensed site. The permit was issued in March, 2000, with an expiration date three years later, in March, 2003. But in October, 2001, the owner of the station’s site -- which happened to be the local school system -- notified the licensee that the site was going to be used for a new elementary school, and that the station would thus have to be relocated. The licensee promptly located an alternate site and applied for a permit to move to that site in November, 2001. But an objector pointed out that operation from that proposed site would cause interference to another station, and in August, 2002 the FCC’s staff agreed and dismissed the application. Undaunted, the licensee located yet another site and filed for a

permit in September, 2002. The staff granted that application but, apparently deeming the new permit to be just a modification of the 2000 permit, imposed the same March, 2003 expiration date on it. As a result, the licensee was faced with the prospect of constructing a new facility at a new site in just six months, as opposed to three years.

The licensee objected, claiming that the October, 2001 eminent domain decision should have “tolled” the original construction deadline.

The Commission agreed, concluding that loss of a site though eminent domain processes is not really the same as other, more conventional loss of site situations in which tolling is not permitted. The Commission found that the licensee had exercised all necessary diligence to find and authorize a new transmitter site. However, the Commission did take this opportunity to outline limits which would apply to tolling based on loss of a site through government acquisition. When a site specified in an outstanding construction permit is lost in that manner, the permit will be deemed “tolled” for as long as it takes the permittee to locate an alternate site and obtain modification, by the FCC, of the permit to specify that alternate site -- as long as the permittee undertakes diligent, on-going efforts to locate such a site. If the permittee’s re-location efforts “lapse”, so too does the tolling effect. And, while that standard appears to leave a lot of room for years-long “tolling”, the Commission emphasized that that would not be the case: according to the Commission, permittees in those circumstances will be expected to file a grantable modification application within six months of the date on which notice of the loss of the site is received by the permittee.

Perhaps most importantly, the Commission also reminded all licensees that, if they believe that some event has tolled an outstanding permit, they must make the tolling request promptly when the event occurs, and not at the end of the construction period. And diligent, continuing efforts to identify alternate sites will also be expected in such cases.



(Continued from page 6)

The rule applies to emergency information useful to protect life, health, safety or property and can include information about immediate

weather situations or other emergencies, such as power failures, toxic gas discharges, and industrial explosions. Critical details that must be made available in an accessi-

ble form include: geographic area that is or will be affected, evacuation orders, evacuation routes, approved shelters, safety information, road closures, and how to obtain relief assistance.

For more detailed information regarding the accessibility rules, please see the text of the rule itself, 47 CFR Section 79.2, or the FCC’s website at www.fcc.gov/cgb.

April 1, 2003

Renewal Pre-Filing Announcements - Radio 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 supersedes the allowance for operation with a reduced schedule.

April 10, 2003

Children's Television Programming Reports - For all commercial 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.

April 11, 2003

Lower 700 MHz Re-Auction - For all persons interested in participating in the auction of the unsold frequencies remaining after the first lower 700 MHz band auction, Form 175 must be filed electronically by 6:00 p.m. EDT.

May 2, 2003

Lower 700 MHz Re-Auction - Upfront payments must be made by wire transfer by 6:00 p.m. EDT.

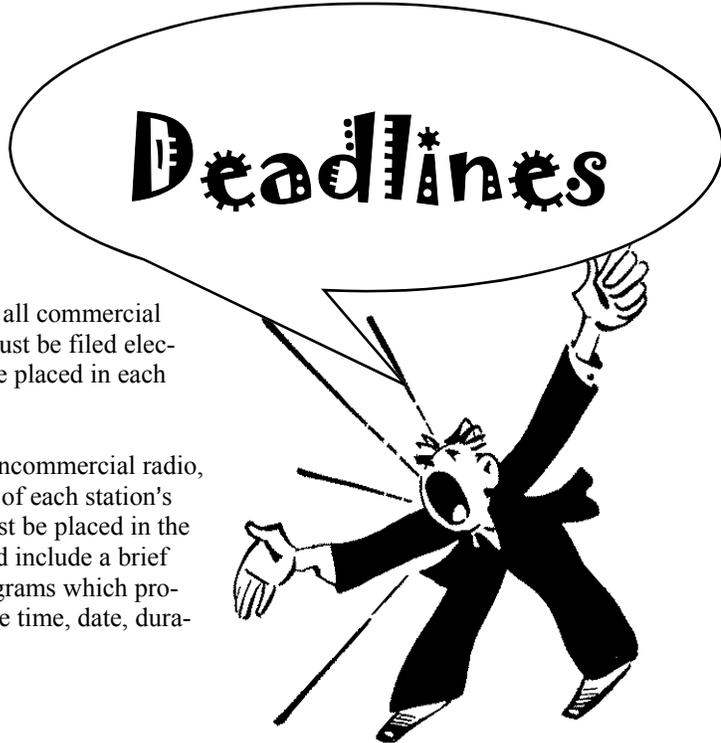
June 1, 2003

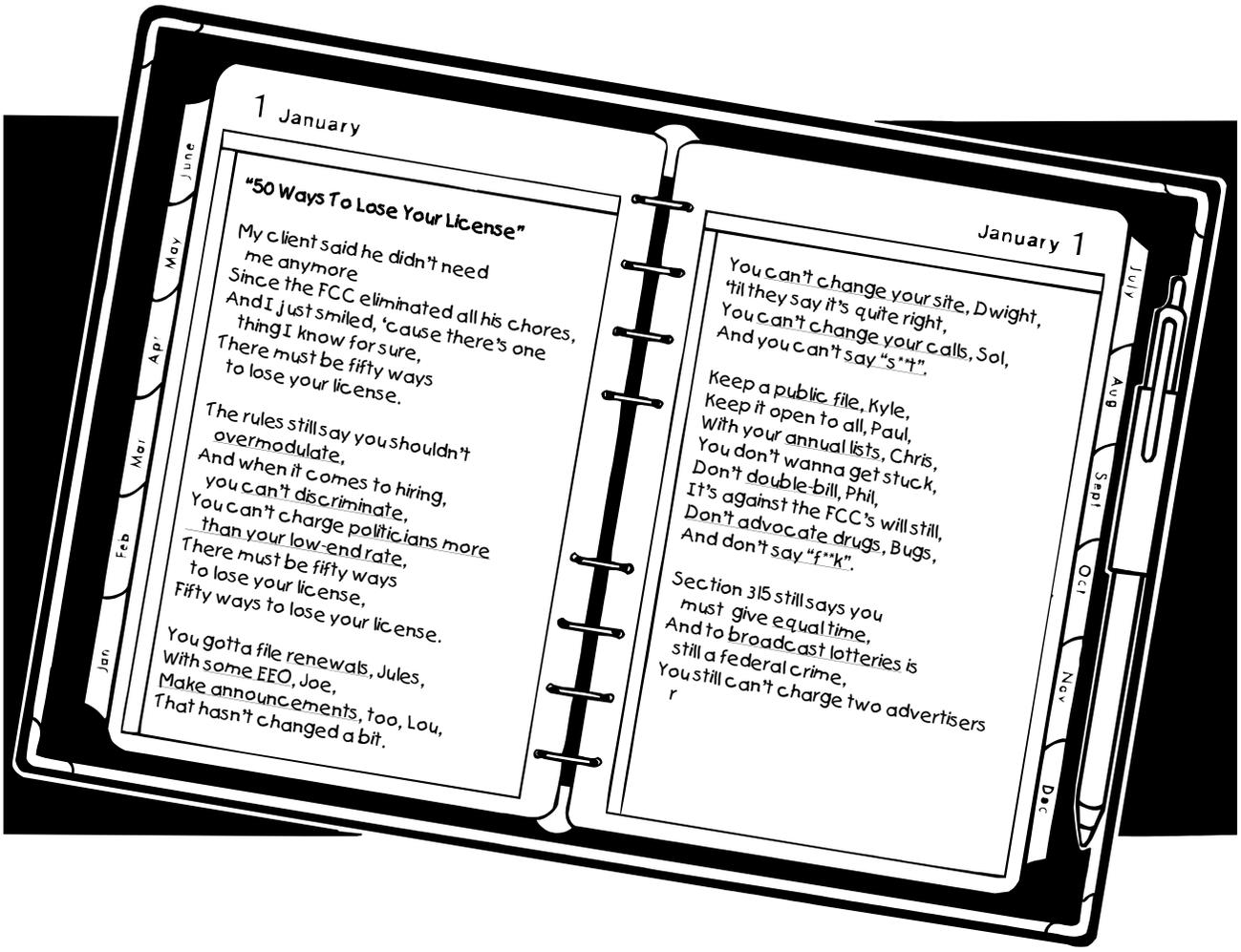
Renewal Pre-Filing Announcements - Radio stations located in *North Carolina and South Carolina* must begin pre-filing announcements in connection with the license renewal process.

Renewal Applications - All radio stations in the *District of Columbia, Maryland, Virginia, and West Virginia* must file their license renewal applications.

EEO Public File Reports - All radio and television stations in *Arizona, the District of Columbia, Idaho, Maryland, Michigan, Ohio, Nevada, New Mexico, Utah, Virginia, West Virginia, and Wyoming* must place their annual public file reports in their local public inspection files and post the reports on their websites.

Ownership Reports - All commercial and noncommercial radio and television stations in *Arizona, the District of Columbia, Idaho, Maryland, Michigan, Ohio, Nevada, New Mexico, Utah, Virginia, West Virginia, and Wyoming* 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.





1 January

"50 Ways To Lose Your License"

My client said he didn't need me anymore
Since the FCC eliminated all his chores,
And I just smiled, 'cause there's one thing I know for sure,
There must be fifty ways to lose your license.

The rules still say you shouldn't overmodulate,
And when it comes to hiring, you can't discriminate,
You can't charge politicians more than your low-end rate,
There must be fifty ways to lose your license,
Fifty ways to lose your license.

You gotta file renewals, Jules,
With some EEO, Joe,
Make announcements, too, Lou,
That hasn't changed a bit.

January 1

You can't change your site, Dwight,
'til they say it's quite right,
You can't change your calls, Sol,
And you can't say "s*t".

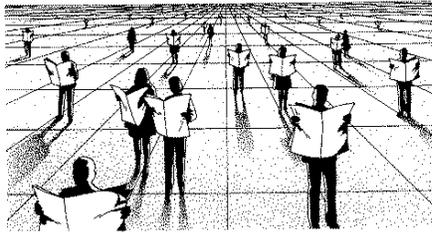
Keep a public file, Kyle,
Keep it open to all, Paul,
With your annual lists, Chris,
You don't wanna get stuck,
Don't double-bill, Phil,
It's against the FCC's will still,
Don't advocate drugs, Bugs,
And don't say "f**k".

Section 315 still says you must give equal time,
And to broadcast lotteries is still a federal crime,
You still can't charge two advertisers

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

Updates on the News

LPFM Purge. Kiss good-bye to a boatload of LPFM applications which were dismissed earlier this month. These were applications filed during the first two LPFM windows, way back in mid-2000. As you will recall, in December, 2000, Congress mandated third-adjacent protection standards that hadn't been in place for the two earlier windows. Since the applications had been prepared without regard to the third-adjacent standards, not surprisingly a number of the applications did not comply with the revised standards. The Commission gave the affected applicants an opportunity — in a five-day window filing period in October-November, 2002 — to fix things up. Between 400 and 500 applicants did not avail themselves of that opportunity, however, and the Commission summarily dismissed them.



More Biennial Ownership Reports. The Commission has reminded all you radio and TV licensees in Delaware, Indiana, Kentucky, Pennsylvania, Tennessee and Texas that your Biennial Ownership Reports are due on or before April 1, 2003. These have to be filed electronically. Let us know if you need help navigating through the FCC's CDBS electronic maze, er, filing system.

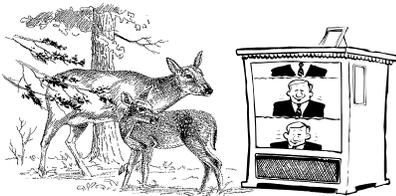
Electronic Renewal Forms Ready. And speaking of electronic filing, the Commission has announced that the electronic version of FCC Form 303-S is up and running and **must** be used for the coming round of renewal applications.

On a related note, new Form 396-A is also now ready to file electronically. Form 396-A is the "Broadcast Equal Employment Opportunity Model Program Report" which has just become mandatory for anyone filing for a new broadcast construction permit (on FCC Form 301) or anyone seeking to acquire a broadcast license through assignment or transfer of control (on FCC Form 314 or 315). Note, however, that the other EEO forms adopted late last year in rules which became effective earlier this month are **not** yet available electronically.

Those forms are Form 396 (Broadcast EEO Program Report), 396-C (Multi-Channel Video Program Distributor EEO Program Annual Report) and 397 (Broadcast Mid-Term Report).

Update your Rolodexes. Be sure to change your Christmas card address lists if you have any friends in what used to be called the FCC's "Office of Plans and Policy". That name, which was just too five minutes ago, has been sent packing. Nowadays, please refer to it as the "Office of Strategic Planning and Policy Analysis".

And a Hearty Happy Birthday to the Media Bureau (née Broadcast Bureau, re-née Mass Media Bureau), which is one year old this month.



Bringing television to the frontier?

Rural Translator Service Proposed

The Commission has asked for comments on a proposal to create a "Rural Translator Service" ("RTS") for television. According to the National Translator Association ("NTA"), which proposed the RTS, the FCC's goal of "transitioning broadcast television from analog to digital service, providing for availability and attendant benefits of high definition television, and providing for free over-the-air broadcast television . . . can only be accomplished in rural areas by the use of translator stations."

Under the NTA proposal, RTS stations would have to provide a signal to an area in which residents are unable to receive at least four free, primary, over-the-air TV signals. "Primary" would mean predicted Grade B service, al-

though even if standard prediction methods indicate that an area would receive such primary service, an applicant would still be permitted to offer an alternative Longley-Rice showing to establish that, in fact, no such Grade B service is actually received. UHF stations in the RTS would be limited to 1 kilowatt, VHF stations would be limited to 100 watts.

Because there exist few areas in which RTS stations, as defined by the NTA, could be established, this proposal is not likely to have much impact outside of the areas which are **extremely** rural. Nevertheless, if you have any interest in submitting comments on it, the deadline for comments is May 16, 2003, and for reply comments, June 15.

FM ALLOTMENTS PROPOSED -2/21/03-3/20/03

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
TX	Dalhart	70 mi. NW of Amarillo, TX	261C3	03-52	Cmts - 04/25/03 Reply-05/12/03	Drop-in
TX	Kermit	200 mi. E of El Paso, TX	229A	03-53	Cmts - 04/25/03 Reply-05/12/03	Drop-in
TX	Leakey	90 mi. NW of San Antonio, TX	257A	03-54	Cmts - 04/25/03 Reply-05/12/03	Drop-in
TN	Dickson	32 mi. W of Nashville, TN	273C1	03-51	Cmts - 04/25/03 Reply-05/12/03	1.420
TN	Pegram	16 mi. W of Nashville, TN	273C1	03-51	Cmts - 04/25/03 Reply-05/12/03	1.420
TX	Estelline	88 mi. SE of Amarillo, TX	263C3	03-55	Cmts - 05/05/03 Reply-05/20/03	Drop-in
GA	Pelham	50 mi. N of Talahasee, FL	222A	03-58	Cmts - 05/05/03 Reply-05/20/03	1.420
GA	Meigs	45 mi. N of Talahassee, FL	222A	03-58	Cmts - 05/05/03 Reply-05/20/03	1.420
CA	Lamont	88 mi. E of San Luis Obispo	247A	03-64	Cmts - 05/05/03 Reply-05/20/03	1.420
CA	McFarland	80 mi. NE of San Luis Obispo	247A	03-64	Cmts - 05/05/03 Reply-05/20/03	1.420
TX	Fort Stockton	225 mi. SE of El Paso, TX	263C	03-68	Cmts - 05/05/03 Reply-05/20/03	MX'd Drop-in
TX	Sanderson	260 mi. SE of El Paso, TX	261C3	03-68	Cmts - 05/05/03 Reply-05/20/03	MX'd Drop-in
CO	Ft. Collins	56 mi. N of Denver, CO	227C	03-57	Cmts - 05/05/03 Reply-05/20/03	1.420
CO	Westcliffe	112 mi. S of Denver, CO	249A	03-57	Cmts - 05/05/03 Reply-05/20/03	1.420
CO	Wheat Ridge	6 mi. NW of Denver, CO	227C0	03-57	Cmts - 05/05/03 Reply-05/20/03	1.420
NM	Carrizozo	60 mi. N of Alamogordo, NM	261C2	03-69	Cmts - 05/05/03 Reply-05/20/03	Drop-in
IL	Knoxville	40 mi. NW of Peoria, IL	291A	03-70	Cmts - 05/05/03 Reply-05/20/03	Drop-in
MA	Nantucket	Island 20 mi. SE of Hyannis, MA	249A	03-71	Cmts - 05/05/03 Reply-05/20/03	Drop-in
TX	Silverton	56 mi. NW of Amarillo, TX	252A	03-72	Cmts - 05/05/03 Reply-05/20/03	Drop-in
OK	Leedey	104 mi. NW of Oklahoma City, OK	297A	03-73	Cmts - 05/05/03 Reply-05/20/03	Drop-in
TX	Eden	150 mi. NW of Austin, TX	294A	03-74	Cmts - 05/05/03 Reply-05/20/03	Drop-in
TX	Memphis	80 mi. SE of Amarillo, TX	283A	03-75	Cmts - 05/05/03 Reply-05/20/03	Drop-in

FM ALLOTMENTS ADOPTED –2/21/03-3/20/03

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
CA	Lone Pine	88 mi. E of Fresno, CA	249A	02-122	TBA
MT	Roundup	45 mi. N of Billings, MT	248A	02-127	TBA
OK	Reydon	130 mi. W of Oklahoma City, OK	264C2	02-227	TBA
WI	Owen	110 mi. E of St. Paul, MN	242C3	02-120	TBA
TX	Junction	96 mi. NW of San Antonio, TX	297A	01-132	TBA
LA	Opelousas	60 mi. W of Baton Rouge, LA	279A	02-322	TBA
GA	Alamo	89 mi. W of Savannah, GA	287C3	01-111	TBA
OK	Wapanucka	120 mi. SE of Oklahoma City, OK	298A	01-181	TBA
TX	Evant	150 mi. SW of Dallas, TX	243A	01-188	TBA
TX	Comanche	150 mi. SW of Dallas, TX	280A	01-190	TBA
OK	Hollis	144 mi. SW of Oklahoma City, OK	274C2	01-217	TBA
TX	Santa Anna	200 mi. SW of Dallas, TX	282A	01-220	TBA
OK	Mooreland	112 mi. SW of Oklahoma City, OK	300C2	01-226	TBA
TX	Junction	120 mi. NW of San Antonio, TX	284A	01-228	TBA
MO	Alton	130 mi. SE of Springfield, MO	290A	01-233	TBA
TX	McCamey	60 mi. S of Odessa, TX	233C3	01-283	TBA
TX	Dickens	70 mi. W of Lubbock, TX	240A	01-284	TBA
TX	Hamlin	120 mi. SE of Lubbock, TX	283C2	01-285	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.