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Memorandum to Clients

April, 2003 | *News and Analysis of Recent Events in the Field of Communications* | No. 03-04

FCC Issues Regulatory Fee NPRM

Higher fees, New Radio Station Fee Grid and Increased Efficiency

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The rites of Spring -- trees budding, flowers blooming, swallows schlepping back to Capistrano . . . and the FCC reminding us that annual regulatory fees will be due several months from now.

Annually, the Commission issues a Notice of Proposed Rule Making ("NPRM") around this time of the year to solicit comments on proposed changes to the reg fee process and the reg fees themselves. This year is no different.

While the NPRM includes a number of proposed procedural changes, the most striking of the proposals is in the amounts of the fees. According to the Commission, the total amount of money that must be collected for each fee category will go up by 23% this year. And that 23% increase is measured by category, so if the number of members in your category has declined, your individual fee increase may be higher. On the other hand, if the number of members in your category has increased, your fee increase may not be a full 23%.

Annual regulatory fees are likely to increase, on average, by about 23%

Next, the Commission notes that its AM and FM Radio Station Regulatory Fees Grid was out of date. The current grid divides broadcast station regulatory fees by class of service, population and type of service, in order to provide fairness among radio stations with varying signal strengths. However, in recent years, there has been a trend toward more powerful stations, and increases in the general population, resulting in an ever-larger number of stations in the highest grid category (*i.e.*, stations in markets serving 1,000,000 or more listeners). Thus, the Commission is proposing a change to the population amounts in each fee category to reflect a slightly wider population field and the addition of a 3,000,000+ category.

The Commission is also revisiting its regulatory fee waiver policy. Although fee waivers have historically been given in cases of financial hardship, the Commission questions whether bankruptcy always represents an extraordinary and compelling circumstance justifying a waiver when balanced against the public interest. A policy of automatically granting a waiver to large entities owing millions of dollars in fees, for example, might have significant impact on the Commission's overall ability to collect fees to reimburse the government for its costs as required by law. Under such circumstances, a waiver "may well not promote the public interest." The FCC is seeking comment on possible limits on such waivers.

In an effort to make the regulatory fee process more efficient, the Commission is proposing several initiatives to streamline the process of collecting fees. These include the discontinuation of the routine mailing of regulatory fee public notices to all affected parties. Those public notices are dozens of pages long, and cost of reproduction and mailing is considerable. To conserve its resources, the Commission proposes to make this information available on the Internet, and mailing out the full public notices only upon request.

Along the same lines the Commission is planning a pilot pro-

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The Scoop Inside

Let me take you where the auction is . . .

FCC Decision May Clear The Way For More Broadcast Auctions

But treatment of noncommercial applicants could cause more delays

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On April 10, 2003, the Commission released new procedures for the auctioning of non-reserved broadcast spectrum. Non-reserved spectrum is that portion of the broadcast spectrum in which commercial stations may operate. The Commission was required to redraft its auction eligibility rules when the U.S.Court of Appeals for the D.C. Circuit invalidated the Commission's previous policy requiring noncommercial educational ("NCE") applicants to compete in auctions for non-reserved broadcast spectrum.

As a threshold matter, the Commission established qualifying standards for NCE entities. Specifically, an entity claiming NCE status will need to establish that (1) it is a nonprofit educational organization, and (2) that the proposed service will advance an educational program. NCE proponents for television facilities will also be required to show that the nonprofit, noncommercial service will serve the educational needs of the community of license.

Under the new auction procedures, the Commission will not permit applications for facilities to be operated as NCE stations to compete in auctions. Instead, the Commission will return any short-form application (FCC Form 175) filed by an applicant proposing to operate an NCE station. Apparently, an NCE entity would be permitted to participate in the auction only if it did not identify itself as a NCE applicant when filing its short-form application during a filing window.

Further, the FCC indicated than an attempt to change an NCE identification in the short-form application after the filing deadline has passed will be treated as a major change amendment to the application, and such change will result in the short-form application being dismissed. Whether it would be possible for any of the recently-filed FM translator short-form applications to be amended to make such a change was not discussed. But the FCC did say that secondary services would be permitted to settle mutually-exclusive applications through technical changes if possible.

Since the Commission will not auction NCE stations, it restated its current policy of permitting the reservation for noncommercial use of TV channels, and FM channels in the non-reserved portion of the FM band, during an allotment proceeding. The proponent of an NCE allotment will be required to follow the relaxed reservations standards adopted in August 2000. First, any entity seeking an NCE reservation for a channel, either as an initial proposal or as a counterproposal, will be required to demonstrate that it is a qualified NCE entity, as defined above. Next, the entity will be required to submit a technical preclusion study demonstrating that it is technically impossible to utilize a reserved channel, and that the proposed facility will provide first or second NCE service to at least 10% of the population (of at least 2000 people) within its protected service contour. Opposing parties may seek to rebut that showing by demonstrating that there is, in fact, a reserved channel available for allotment in the area.

Perhaps the FCC's most stunning decision is to permit NCE entities to attempt to reserve vacant allotments for allotment proceedings which had been initiated prior to August 7, 2000. This includes allotment proceedings that have already been concluded. Specifically, the FCC will release a public notice that will open a "brief" window for NCE entities to present technical preclusion studies demonstrating that an FM channel allotted during a rulemaking initiated prior to August 7, 2000, should be reserved for NCE use.

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Focus on FCC Fines

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Infinity warned it may lose licenses - Declaring a thirty minute radio segment "the most vulgar and disgusting indecency", Commissioner Copps called for a hearing on the revocation of an Infinity Broadcasting license in Detroit. The full Commission was more reserved, but did explicitly warn Infinity that additional serious violations may lead to the initiation of revocation proceedings.

An Infinity station in Detroit aired a thirty-minute drive time segment in January of 2002. The segment featured on-air personalities and callers who described excretory and sexual practices which the FCC determined were obscene and indecent. Transcripts of the broadcast reveal that the material was extremely graphic and descriptive of both excretory and sexual practices, often combined. A listener was not amused by the radio show and complained to the FCC.

Although many indecency issues are handled by the Enforcement Bureau of the FCC, this matter was handled directly by all five commissioners. They settled on a $27,500 fine for the station. However, three of the five commissioners were so moved by the issue that they released separate statements. Commissioner Martin stated that he would have proposed a higher fine, noting that he believes that each time a new caller reached the show, a separate fine was warranted. Commissioner Adelstein joined in the call for separate fines for separate callers and announced that fair notice has been given to broadcasters that revocation proceedings can occur for indecency rule violations.

Commissioner Copps noted that he was deeply disappointed that "a mere $27,500 fine" was levied against the station. In a scathing dissent, Copps pointed out that fines are not the only enforcement mechanism available to the FCC and suggested license revocation proceedings. Copps lamented that the FCC is not yet taking a stand against the broadcast industry's "race to the bottom." Copps noted that the fine against Infinity fails to convince broadcasters that they cannot ignore their responsibility to serve the public interest and to protect children.

This decision could be a harbinger of change in the FCC's effort to discourage the broadcast of indecency. Historically, the Commission has targeted only a limited number of stations and has issued relatively minor fines. The result, according to Commissioner Copps, is that such fines are viewed as a cost of doing business, and thus may not constitute an effective disincentive against indecency. However, until now the Commission has never suggested that it might haul out the big guns -- revocation proceedings -- to put the kibosh on indecency.

With this recent decision, however, that may be changing. Two commissioners (Copps and Adelstein) have now gone on record as being open to the revocation option -- with Copps strongly advocating that approach -- and a third (Martin) has expressed his own belief that significantly stiffer fines may be in order. If Commissioner Martin were to join Copps and Adelstein in the revocation camp, that would mean a majority of the Commission would be poised to drop the R-bomb on a licensee accused of egregious indecency. All licensees should take note.

Broadcasters fined by the FCC may choose their court In a case arising from an $ 80,000 fine against AT&T, the U.S. Court of Appeals for the District of Columbia Circuit made clear that persons or entities fined by the FCC have the ability to control which court will enforce the FCC's fine.

The Communications Act requires that if the FCC wishes to take action to enforce an unpaid fine, the action must be initiated by the Justice Department at the trial court (U.S. district court) level. However, in opposition to the FCC's claims otherwise, the Court of Appeals has ruled that if a person pays the fine to the FCC, that person then has the ability to take the decision to an appellate court (U.S. Court of Appeals) level. The FCC complained that this will allow persons which it fines to choose which court will handle the case by either paying the fine and appealing it or by waiting for the Department of Justice to sue. The Court replied that the Communications Act "gives forfeiture subjects that very choice."

While this may seem a relatively obscure and highly technical issue to be contemplated by ivory tower theorists who have a lot of time on their hands, it actually may be useful to grasp by anyone who may fall prey to the Commission's increasing enforcement activities.

When you are found to be in violation of a Commission rule, the Commission will, after a couple of preliminary procedural steps, issue you a "Notice of Forfeiture" which will include an order that you pay a fine of a certain amount. You can, technically, ignore the fine, and if the FCC wants to collect on it, it must convince the Department of Justice to initiate a civil action against you in federal district court in your home district. That action would be a trial "de novo", which means that the government would have to prove to the court's satisfaction that you did in fact violate the rules.

(Continued on page 4)

Don't Expect FCC Action On Assignment and Transfer Applications for Stations with Pending Renewals

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Be forewarned: the FCC will ***not*** grant an assignment or transfer application for a broadcast station during the station's renewal cycle.

With the first eight-year renewal cycle beginning June 1 for radio licensees in three states (Maryland, Virginia and West Virginia) and the District of Columbia, and the renewal cycles for radio and television licensees in the remaining states and territories staggered throughout the next two years, this stay on assignment and transfer applications may require some prior planning for those interested in buying or selling.

The FCC will grant assignment and transfer applications (assuming such applications are grantable) up to the date that the license renewal application is due, which is four months from the date of the station's license expiration. Such applications not granted by that date will be held until the Commission acts on the subject station's renewal application. There will be no "grant with condition that the parties not close until the renewal has been granted."

This is not a new policy. Rather, it has been standard operating procedure at the Commission for the last several license renewal cycles. We remind you of the policy now because the last renewal cycle was nearly a decade ago. Since that time the process of buying and selling stations has been streamlined considerably and undertaken frequently. As a result, it is likely that, absent a reminder, some folks interested in buying or selling a station might overlook the "no action until grant of the renewal application" policy, only to find themselves stalled by that policy when they finally get around to filing.

If you are interested in buying or selling a station, the *application* process should be started at least four months before station's renewal application is due. And remember, before you can start the application process, you must first complete the negotiation process leading up to the execution of a final agreement governing the transaction. Even that lead time is no guarantee of grant prior to the stay. Please contact the Fletcher, Heald & Hildreth attorney that handles your matters to discuss the most prudent timing for filing of an assignment or transfer application in the coming months.

(Continued from page 3)

The recent AT&T case points out a second route you can take to obtain judicial review of the agency's action. You can pay the fine, and then appeal the forfeiture notice to a U.S. Court of Appeals of your choosing. The scope of such an appeal would be considerably narrower than the de novo proceedings before the district court, but it might afford a preferable, possibly quicker and cheaper, means of seeking reversal of the forfeiture.

Note that a failure to pay a fine or forfeiture, while technically permitted under current procedures, could have an adverse effect on your ability to obtain new authorizations down the line. Before you elect not to pay, therefore, you should consult with counsel and explore carefully the likely results of such an approach.

And of course, an ounce of prevention is almost always worth a pound of cure. Readers should avoid fines completely to steer clear of ever having to encounter these problems.

Other fines issued this month included:

TOWERS - $2400 fine to a Tennessee tower owner for failure to register tower; $10,000 fine to a Missouri couple for failure to clean or repaint their tower, $1000 fine to an Illinois company for failure to enclose its tower and post its registration number.

AM STATIONS - $10,000 fine to a Tennessee station for failing to reduce its power at sunset and other technical violations. Another Tennessee station was fined $9000 for failure to reduce its nighttime power and attenuate its signal.

PIRATES - Two Florida Pirates had their fines reduced from $10,000 to $2000 due to financial circumstances.

FCC puts the squeeze on

DTV Build Out Sanctions Approved

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Seeking an impetus to help move the DTV transition forward, the Commission has adopted a series of new sanctions to be applied to DTV permittees who fail to complete construction within their required time and fail to receive an extension from the Media Bureau. As a general rule, the great majority of DTV stations currently on the air are operating with Special Temporary Authority (STA) which allows them to operate at a lower power and with less than authorized facilities. Upon commencement of STA operation, the time for building out the full facility is tolled. The only group of DTV permittees who are not given such an opportunity are network affiliates in the top 30 markets. They are required, absent extraordinary compelling circumstances, to build out a full facility. That policy was also reaffirmed in this latest action. The only ones that have met that "compelling circumstances" waiver criteria are those who were previously located on the World Trade Center.

Under the new sanction procedures, if a request for an extension of time to complete the DTV build out is denied because the Commission has not found extraordinary and compelling circumstances, the station will receive an admonition and be subject to a series of reports that need to be filed with the Commission. These reports, which will begin with a report due within 30 days after denial, must outline (a) the steps that the permittee intends to take to complete construction and (b) specific dates by which it expects construction to be completed. Again, absent extraordinary and compelling conditions, the Commission expects the build out to be done within six months of the initial denial and admonition.

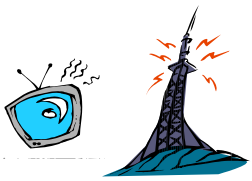
If at the end of the first six months the DTV build out of the station is *still* not completed, absent extraordinary and compelling circumstances, the Commission will issue a Notice of Apparent Liability ("NAL"). The Commission did not indicate how much the NAL would likely specify as a forfeiture amount. There have been rumors that the forfeiture may be in the $20,000 range. In addition to the NAL, the station will also be required to submit a report every 30 days as to proposed construction milestones and the efforts to meet those milestones. Once again, if construction is not completed within the second six-month period, then, absent extraordinary and compelling circumstances, the Commission will determine that the DTV permit has expired and the broadcaster will be left with an analog channel alone.

Perhaps the most important effect of the loss of the DTV authorization is that while the Licensee may at the end of transition seek to convert to DTV on its analog channel , it will be subject to cross filings even if that channel is in the core (*i.e.,* Channels 2-51). Interestingly, a station that does ***not*** currently have a paired DTV station could wait until transition, and ***then*** convert to a DTV ***without*** being subject to a cross filing, provided the analog channel in question is within the core. In many cases, it appears that it would have been better not to have a paired channel and be put to this early construction and expense of programming to a non-existing audience.

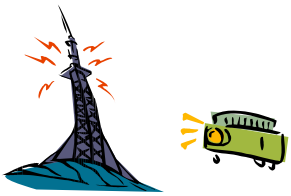
In the event that a DTV authorization is rescinded, the Commission has said that the DTV channel will be deleted from the DTV allotment table. In the future, if other parties are interested in having that allocation revived, they would be able to file a Petition for Rule Making. In the meantime, however, that allocation would not prohibit modifications or maximizations of current DTV authorizations and allotments.

FHH - On the Job, On the Go

Frank Montero and **Liliana Ward** will be attending the Puerto Rico Broadcasters convention in Mayaguez from May 1-3. They will be making joint presentations on a variety of FCC-related issues including license renewals, the new EEO rules and the FCC's multiple ownership proceeding.



FCC Opens Inquiry Into Receiver Interference Immunity



By: Harry F. Cole
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In what may be a harbinger of the regulatory future, the Commission has issued a Notice of Inquiry ("NOI") seeking comment on the possibility of "incorporating receiver interference immunity performance specifications into its spectrum policy on a broader basis." The Commission has historically sought to keep interference to an acceptable level by regulating transmission characteristics, such as transmitter power and location. With the NOI it is going to start looking at the other end of the communication, to see whether some regulatory treatment of receiver technology might increase the overall efficient use of the spectrum.

The FCC's *raison d'être*, of course, is and has always been the prevention of interference among users of the spectrum. With the Commission serving as the "traffic cop" of the spectrum, users of radiofrequency could provide their spectrum-based service with little fear of interruption from other users.

There are millions of radio and televisions in use, and the Commission cannot imagine that all, or even most, of those receivers has any significant capacity for rejecting unwanted signals.

But, as the Commission now observes, a radio receiver's susceptibility to interference is "largely dependent on the interference immunity of the device, particularly with regard to its rejection of undesired radiofrequency (RF) energy and signals." This recognizes a basic truth: while interference may theoretically be created at the transmission end (by, *e.g.*, two transmitters operating too closely to one another), as a practical matter it might be said that interference is really of no consequence unless and until somebody tries to receive one of the signals with a receiver. If the receiver is able to receive the desired signal and ignore the supposedly interfering signal, then concern about theoretical "interference" in the traditional sense diminishes considerably.

But the Commission has, in crafting its traditional transmission-based interference standards, tended to assume that receivers were not particularly refined and had "little tolerance for other signals". The result was a tendency to establish interference standards which were more limiting on the transmission end than might be necessary. And that limiting factor could be said to limit the efficient use of the spectrum.

Currently engaged in a campaign to re-think its regulatory policies in an effort to wring the maximum possible use out of the spectrum, the Commission is now looking at receiver performance as a possible means of improving spectrum efficiency. Among the issues on which the Commission is seeking public comment are:

- Immunity performance and interference tolerance of existing receivers;
- Possibilities for improving the level of receiver immunity in the various radio services;
- Potential positive and negative impacts of receiver standards on innovation and the marketplace;
- Possible approaches by which desire levels of receiver immunity or tolerances could be achieved, including incentives for improving performance, voluntary industry standards, mandatory standards, or a combination of these or other approaches;
- Considerations that should guide the Commission's approach to these matters in the various licensed radio services.

The Commission, in requesting comment in this area, is very clear that it has no present intention of establishing mandatory receiver standards. Rather, it appears to believe that it might fashion some regulatory system in which "market incentives" and "voluntary industry programs" result in desirable guidelines for receiver immunity.

Faced with ever-increasing demands for spectrum for a myriad new, high-tech uses, the Commission is under considerable pressure to try to accommodate those demands. Review of the impact of receiver standards is clearly a reasonable place to look for ways which might help that effort. But if that effort starts to focus on radio and TV broadcast receivers, the Commission may run into a major problem. There are millions of radio and televisions in use, and the Commission cannot imagine that all, or even most, of those receivers has any significant capacity for rejecting unwanted signals. How, then, could the Commission attempt to impose receiver standards without threatening those consumers? And while the on-going shift of broadcasting from analog to digital may provide some basis for believing that broadcast receivers may be improved generally, that process is still years away from

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FCC says Non-DA means Non-DA

Keep Those Non-Directional Antennas Operating in the Round

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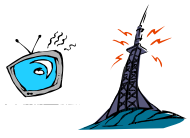
Some questions have recently arisen about whether it is permissible for an FM licensee or permittee with an authorization for a non-directional antenna to add to or change the installation of the antenna on the tower in such a way as to give the signal directional properties. For example, a screen might be erected behind the antenna, or the antenna might be moved to a face of the tower. The short answer to the question is "no."

The Commission has a long-standing policy, which it set out in a Public Notice released back in 1984, that the construction of facilities which are authorized as non-directional should conform as closely as possible to the assumption of perfectly circular horizontal radiation patterns. While the Commission has for years put on blinders when assessing applications which call for side-mounting of antennas, its stated policy prohibits use of any technique or means intentionally to distort the radiation pattern of what is nominally a non-directional antenna. Thus, if a licensee or permittee were to add a screen or make a change to side-mounting in order to change the radiation pattern, the Commission would view this as a change from non-directional to directional operation. This type of modification requires prior Commission approval.

In short, FM licensees and permittees should refrain from adding anything to their towers or moving their antennas on their towers so as to create a directional pattern, unless and until a modification application is approved.



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completion.

This is obviously a subject about which broadcasters can and should offer their views. This is especially so as the Commission increasingly contemplates the sharing of spectrum by all commercial users, including possibly broadcasters. While the Commission is not yet close to lighting the fuse on that particular regulatory bomb, the possibility of some receiver-based regulation could be a preliminary step in that direction. Attention should be paid to this NOI and any actions the FCC takes in connection with it.

Self-Administered Backpat Department

EEO Public File Report Procedure Modified

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In response to a petition filed by Fletcher, Heald & Hildreth, P.L.C. on behalf of state broadcasters associations, the FCC has modified the timing for EEO public file reports. The current EEO rules require stations to place in their public files on the anniversary of their license renewal dates public file reports covering their EEO activity in the prior year. As pointed out in our petition, stations may not have sufficient time before that deadline to collect and review information regarding EEO activities near the end of the prior year. We asked that stations be given ten extra days after a year ends to put the reports in their public files.

Once more, with filing

While the FCC has not yet acted on our petition (which also pointed out other flaws in the new EEO rules), the Commission has established an interim procedure to address this problem. Under that interim procedure, stations may chose to exclude EEO activity in the last ten days of their reporting year from their EEO report. If stations choose to take that approach, they must include the excluded activity in their next year's report.

In addition, the FCC gave stations which had reports due on April 1, 2003 an extra ten days, until April 11, 2003, to place the reports in their public files. This one-time-only extension applies only to reports due on April 1, 2003, and does not apply to future reports.

Speaking of filing . . .

Too much paper got you down?

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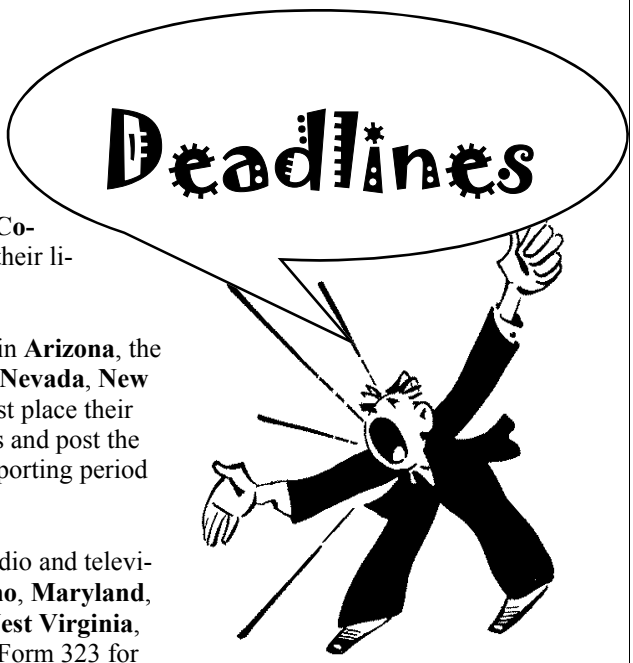
May 2, 2003

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. Per announced FCC policy, the reporting period may end ten days before the report is due.

Ownership Reports - All commercial and noncommercial radio and television stations in the **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.

(Continued from page 2)

The Commission established August 7, 2000 as the cut-off date because that was the date on which the Commission adopted its "relaxed reservation standards" discussed above. Since allotment proceeding initiated after August 7, 2000, could have proposed to reserve channels under the then-new relaxed reservation standards, the Commission will not permit those allotments to be reserved now for NCE use. However, thus far, the Commission has failed to define "initiated", so it is unclear at what point an allotment proceeding must have reached to include it in this brief window. For example, a petition for rulemaking that was filed on August 6, 2000, would seem to be included in this window, even though counterproposals could have been submitted seeking NCE reservation under the August 2000 reservation standards after the August 7, 2000 date.

In light of these new procedures, it would appear that the Commission might finally conduct the long-pending FM auction. However, it is nearly certain that NCE entities will seek reconsideration or judicial review of the new procedures, which would likely delay their implementation. Moreover, further delay may occur as a result of this "brief" window for NCE entities to reserve allotted channels. Thus, despite the FCC's long-awaited action, the prospects for new broadcast auctions in the immediate future are not necessarily bright.

Broadcast Auxiliary Licensees Must File Notification of Construction

It's never over until the paperwork is finished.

Licensees of broadcast auxiliary stations are now required to file a Notification of Construction once construction of any auxiliary station has been completed. If you have recently applied for and received an auxiliary license, or have modified an existing auxiliary authorization, and have not filed the requisite notification of completion of construction, you must now do so. If you would like us to do this filing for you, please contact the attorney with whom or regularly work or Alison Shapiro by email at shapiro@fhhlaw.com.

Quit Carping! Here Come Da udge!

Copyright Arbitration Royalty Panels: The End of An Era?

By: Alison . Shapiro
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Seeking to address chronic problems with the process of resolving copyright royalty fees, the House Judiciary Courts, Internet & Intellectual Property Subcommittee has introduced The Copyright Royalty and Distribution Reform Act of 2003 ("CRDRA"), which proposes to replace the current system of Copyright Arbitration Royalty Panels ("CARP's") with a full-time Copyright Royalty Judge who would have at least 10 years of intellectual property law experience.

The CARP process has been with us for about a decade and is utilized to resolve a wide variety of copyright royalty issues, including determination of songwriters' fees for radio play, cable and satellite compulsory licenses, and even Webcasting fees. During the CARP process broadcast networks, cable channels, content producers, and Webcasters negotiate rates through hearings which can last months. And even when the hearings end, ensuing appeals prolong the uncertainty for months, if not years.

Most recently, the CARP process has been criticized for the burdens which it has placed on nascent Webcasting businesses. The Internet has presented the music industry and artists with marketplace and technology challenges, but holds out promise for greater efficiency in distribution and an opportunity for enhanced competitive environment for artists. Consumers of music stand to reap significant benefits from the efficient, competitive, and legal distribution of digital music over the Internet. But last year's CARP imposition of hefty royalty fees on Webcasters threatened the viability of that enterprise, leading to review of the CARP-imposed fee by the Librarian of Congress (whose say-so trumps the CARP). But even after the Librarian of Congress reviewed the CARP's decision and lowered the royalty rate that Webcasters would have to pay, many observers predicted that the new rate would still drive most Webcasters out of business.

The CRDRA is a reaction to the problems inherent in the CARP process, which is seen by some as too burdensome, expensive and time-consuming.

The CRDRA would replace the CARP with a Copyright Royalty Judge. The Judge would be appointed by the Librarian of Congress, in consultation with the Register of Copyrights, for a five-year term, subject to reappointment by the Librarian. The Judge would be independent of the Copyright Office but could be removed for cause. Appeals of the Judge's decisions would go directly to the U.S. Appeals Court for the District of Columbia Circuit and any decision not appealed within 30 days would be final.

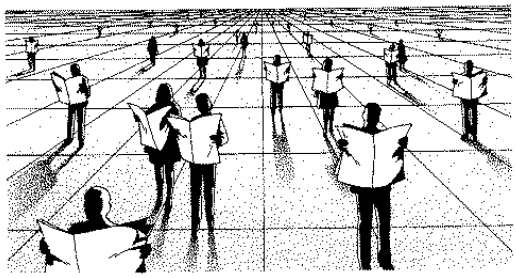
Part of the problem with CARP's is the unbelievable cost of the CARP process. Presiding over a CARP is a three-member panel, who are paid to participate in the process by the parties appearing before them. Over and above that threshold cost, CARP proceeding participants normally present voluminous testimony. By contrast, the new system would permit royalty claims of less than $500 to go directly to the Judge only through written filings, without the cost of hearings or having parties pay the adjudicator. Also, the House's legislation proposes that compensation for the judge would be appropriated through the Copyright Office and would not be the responsibility of the parties. Sources indicate that similar legislation will be introduced by the Senate in the near future.

The CRDRA is still early in the legislative process, and is thus far from enactment. Still, the fact that it was introduced at all reflects no small level of dissatisfaction with the existing CARP system.

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

Updates on the News

New Forms Available. The Commission has announced the availability of two new forms. Just in time for the next round of renewal applications (due to start by June 1) is the new application for license renewal (FCC Form 303-S). The form is available for electronic filing, but because of the intricacies of the federal bureaucracy, electronic filing will not be mandatory until the October 2003 round of renewals. That means that, for the June and August renewals, those Luddites among you may still get your non-Luddite friends to download and print out copies of the form for you to complete and file in hard copy. Come October, however, electronic filing will be *de rigueur*. Note also that the version of the renewal form currently available from the Commission is subject to possible revision in at least some minor respects. That being the case, you are strongly advised to read very carefully the form which you do complete and file.



And more from the form front -- electronic filing of FCC Form 396 (the Broadcast Equal Employment Opportunity Program Report) became mandatory as of April 1, 2003.

Copies of these forms can be downloaded from the FCC.. Check it out at http://www.fcc.gov/formpage.html.

More Electronica. The FCC has itself jumped into the electronic information transfer pool. Earlier this month the Commission announced that the FAA is now transferring data about tower and antenna airspace clearance electronically to the FCC. Back in the day, such clearance data would be shipped between agencies on paper. Upon receipt by the FCC, the FAA's data would be manually entered into the FCC's antenna structure database -- a process which (according to the Commission) took from one-two weeks. It is estimated that the new, improved approach will whack that down to a day. Keep your fingers crossed.

New BAS Coordination Requirement Delayed. As you may recall, last year the Commission adopted new coordination procedures for fixed aural Broadcast Auxiliary Service ("BAS") stations above 944 MHz and for fixed television BAS stations above 2110 MHz. But the practical utility of the coordination program was seriously undermine by the wealth of inaccurate information in the FCC's database of BAS facilities. According to the Society of Broadcast Engineers, almost 30% of all fixed point-to-point BAS license records contain some inaccuracy. While the Commission has been attempting, through public notices, informal correction procedures and the like, to eliminate those errors, that job is still not yet complete. Since the "legacy database inaccuracies" (to use the Commission's felicitous terminology) could "seriously affect the efficacy" (ditto) of the coordination process, the Commission has deferred the effective date of that process to October 16, 2003. Mark your calendars.

(Continued from page 1)

gram to mail postcards specifically stating the amount owed. The postcard will identify the station call sign, address, facility identification number and amount owed. The regulatee will then have the opportunity to correct any mistakes or, if there are none, simply to submit the amount owed. Initially, this process will only apply to the following services: AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/ Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Satellite Television Construction Permits, LPTV Stations, and LPTV Translators/Boosters. Keep an eye out for the postcards, but if you don't get one and you think you should, take a look at the Commission's website, just to be safe.

Finally, the Commission announces a multi-year effort to review, streamline and modernize the fee assessment and collection practices and procedures. Topics to be reviewed include: the process for notifying users about changes in the annual regulatory fee schedule and how it can be improved; the most effective way to disseminate regulatory fee bills; the fee payment process, including proposed improvements to the electronic payment system; and the timing of fee payments, including whether the existing fee payment window should be altered in any way. Of course, any improvements would be implemented after the current regulatory fee cycle.

The comment period provided by the Commission is extremely abbreviated, with comments due on or before April 25, 2003, and reply comments on or before May 5, 2003. If you wish to submit a reply comment on this NPRM, or have any questions regarding regulatory fees, please contact the FH&H attorney with whom you normally work.

FM ALLOTMENTS ADOPTED –3/21/03-4/21/03

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
OK	Buffalo	144 m NW of Oklahoma City	224C2	02-383	TBA
CA	Los Banos	50 m SE of San Jose	284B	02-186	None
CA	Planada	80 m E of San Jose	284B	02-186	None
NM	Santa Clara	20 m NW of Santa Fe	236C1	02-374	None
WY	Laramie	40 m W of Cheyenne	288C2	02-365	None
CO	Timnath	40 m S of Cheyenne, WY	288C2	02-365	None
OK	Valliant	160 m SE of Oklahoma City	234C3	01-216	TBA
OK	Clayton	128 m SE of Oklahoma City	241A	02-240	TBA
TX	Guthrie	100 m E of Lubbock	252A	02-241	TBA
TX	Hebbronville	180 m S of San Antonio	232A	02-242	TBA
TX	Premont	50 m SW of Corpus Christi	287A	02-244	TBA
TX	Roaring Springs	50 m NE of Lubbock	276C3	02-245	TBA
TX	Rocksprings	120 m NW of San Antonio	291A	02-246	TBA
TX	Sanderson	275 m W of Austin	286C2	02-247	TBA
OK	Thomas	65 m W of Oklahoma City	288A	02-249	TBA
AR	Wrightsville	11 m S of Little Rock	299C1	DA03-813	Class Mod.
GA	Hampton	30 m S of Atlanta	300C2	DA03-813	Class Mod.
ID	Driggs	50 m NE of Idaho Falls	271C3	DA03-813	Class Mod.
LA	Lake Charles	140 m W of Baton Rouge	258C0	DA03-813	Class Mod.
MS	Ocean Springs	15 m E of Gulfport	276C1	DA03-813	Class Mod.
NM	Kirtland	160 m NE of Albuquerque	275C0	DA03-813	Class Mod.
OR	Canyon City	180 m E of Salem	233C0	DA03-813	Class Mod.
TX	Brownsville	325 m S of Austin	262C0	DA03-813	Class Mod.
VI	Christiansted	N Central coast of US VI	237B	DA03-813	Channel Mod.

FM ALLOTMENTS PROPOSED –3/21/03-4/21/03

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
TX	Clarendon	56 m SE of Amarillo	237A	03-95	Cmts - 05/27/03 Reply-06/10/03	Drop-In
FL	Okeechobee	30 m W of Port St. Lucie	291A	03-89	Cmts - 05/27/03 Reply-06/10/03	Drop-In
TX	Sonora	140 m NW of San Antonio	237C3	03-88	Cmts - 05/27/03 Reply-06/10/03	Drop-In
CA	Ridgecrest	112 m NE of Los Angeles	252A	03-79	Cmts - 05/12/03 Reply-05/27/03	Drop-In
CA	Wofford Heights	112 m N of Los Angeles	251A	03-91	Cmts - 05/27/03 Reply-06/10/03	Drop-In
AL	Tuscaloosa	80 m NW of Montgomery	239C1	03-77	Cmts - 05/12/03 Reply-05/27/03	1.420
AL	Midfield	8 m SW of Birmingham	239C2	03-77	Cmts - 05/12/03 Reply-05/27/03	1.420
AL	Holly Pond	50 m N of Birmingham	238A, 245C	03-77	Cmts - 05/12/03 Reply-05/27/03	1.420
AL	Hackleburg	70 m NW of Birmingham	238A	03-77	Cmts - 05/12/03 Reply-05/27/03	1.420
AL	Decatur	72 m N of Birmingham	245C	03-77	Cmts - 05/12/03 Reply-05/27/03	1.420
AL	Cordova	28 m NW of Birmingham	237A, 223A	03-77	Cmts - 05/12/03 Reply-05/27/03	1.420
AL	Coaling	43 m SW of Birmingham	237A	03-77	Cmts - 05/12/03 Reply-05/27/03	1.420
AL	Dora	20 m NW of Birmingham	223A	03-77	Cmts - 05/12/03 Reply-05/27/03	1.420
AL	Ashland	55 m E of Birmingham	238A, 252A	03-77	Cmts - 05/12/03 Reply-05/27/03	1.420
AL	Hobson City	60 m E of Birmingham	238A	03-77	Cmts - 05/12/03 Reply-05/27/03	1.420
AL	Sylacauga	55 m SE of Birmingham	252A	03-77	Cmts - 05/12/03 Reply-05/27/03	1.420
GA	Atlanta		253C0	03-77	Cmts - 05/12/03 Reply-05/27/03	1.420

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.