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

Memorandum to Clients

June, 2003 | *News and Analysis of Recent Events in the Field of Communications* | No. 03-06

E Pluribus Unum?

6/2/03—Media Ownership D-Day

By: Lee G. Petro
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Twenty months and 500,000 comments later, the Commission adopted its new media ownership rules on June 2, 2003. The FCC acted in response to several court decisions that it claimed undermined the previous local and national television ownership limits. It also claimed that review of those limits was mandated by Congress. A divided Commission adopted new rules which three of the five Commissioners believe will survive judicial scrutiny.

More than two weeks after the Commission voted to adopt the new rules, the text of the rules had yet to be released. The following is a summary of the FCC's action based on press reports and the Commission's public notice released contemporaneously with its vote.

First, the Commission modified the ***Local Television Multiple Ownership*** rule. In 1999, the Commission had relaxed its rules to generally permit the common ownership of two stations in the same DMA, so long as at least eight independently-owned stations (voices) remained in the market, and so long as the commonly-owned stations were not two of the top four rated stations in the DMA.

Under the new local television ownership rules, the eight-remaining stations requirement has been eliminated. Instead, that requirement has been replaced by a three-tier rule:

- In markets with between five and 17 TV stations, a company may own up to two stations, but only one of these stations can be among the top four in ratings.
- In markets with 18 or more TV stations, a company can own up to three TV stations, but only one of these stations can be among the top four in ratings.
- In markets with 11 or fewer TV stations, companies can seek a waiver which would permit the two top-four stations to be commonly owned. The FCC will evaluate on a case-by-case basis whether such station combinations would provide their local communities better service than would be the case if the stations remain under separate ownership.

The Commission will count both commercial and noncommercial stations in counting the number of television stations in the market. In addition, based on statements made by the Commission's staff at the June 2 meeting, it is possible that joint sales agreements between two television stations in the same DMA will also be deemed — either now or in the foreseeable future — attributable interests for purposes of the new rules.

In addition to modifying the local television ownership rules, the Commission also increased the ***National Television Multiple Ownership*** limit from 35% to 45% of the national audience. The national audience share will be calculated by combining the total number of TV households in each market in which the company owns a station. At the same time, the Commission will maintain the UHF Discount which reduces the audience share of a particular station by half if it is a UHF.

The Commission also modified its ***Local Radio Multiple***

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The Scoop Inside

"The circus is in town" - Bob Dylan, "Desolation Row"

Ownership Proceeding Provides Gripping Background Spectacle

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Whatever might be said of the new ownership rules, the internal machinations leading up to those rules have been entertaining, to say the least. It's been a blend of high drama, soap opera, comedy, professional wrestling and politics.

Even before he irrevocably set June 2nd as D-Day for the vote on the mass media ownership rule proposals, Chairman Michael Powell was faced with almost daily sniping by fellow Commissioner Michael Copps. Copps claimed that Powell (or the FCC under Powell's direction) had failed to adequately reach out to the public at meetings throughout the United States to get the view outside of the Beltway. Copps issued his own press releases on the subject, and organized his own public meetings outside of Washington. As the June 2nd date grew nearer, Copps was joined by fellow Democratic Commissioner Jonathan Adelstein, who also demanded additional open-to-the-public panel discussions throughout the country and participated in some of the Copps-organized meetings.

But this was not a purely internecine struggle. Also joining in the fray were Hollywood writers and unions representing broadcast employees complaining that further concentration would result in loss of jobs and the inability of the writers to have opportunities to sell their products.

Whether it was the result of the Copps-Adelstein touring show, or the ramping-up of publicity from trade publications and the general press concerning the Commission's proceeding, or an increase in attention created by the unusual (and unusually public) food fight-like squabbling among the Commissioners, the ownership proceeding gradually became the focus of considerable public discussion. The FCC received thousands upon thousands of e-mails and comments from the general public. All of these, perhaps with the exception of one or two, were opposed to any relaxation in the ownership rules which will allow further concentration.

Facing this daunting deluge as well as a personal request from Copps-Adelstein to delay the June 2nd meeting, Powell decided to move forward. In doing so, Powell enjoyed the support of both Commissioners Martin and Abernathy (also both Republicans). This rebuff to Copps and Adelstein was striking because, traditionally, a Commissioner's request to delay consideration of any particular item for a month or so has been routinely granted. Unlike so many other proceedings, this one seemed to be getting personal, fast.

The Hill then decided to jump with both feet into the public debate leading up to the June 2nd vote. Congressmen and senators on both sides of the aisle, sometimes jointly, urged Powell to delay the June 2nd vote. But at the same time many heavy hitters, including committee chairmen both in the House and the Senate, urged the Chairman and the FCC to move forward with the June 2nd date. For whatever reason, Powell rejected the personal request of Copps/Adelstein and the dire threats from some on the Hill and stayed on track toward the June 2nd vote.

And true to his word, Powell brought the issue to a vote on June 2nd. It was a very bitter day. The two Democrats essentially took off the gloves, claiming that the three Republicans were selling the public down the drain as far as multiple ownership was concerned. Personal feelings unmistakably rose to the surface. Gone was the usual collegiality of five bureaucrats engaging in a common effort. In the end, despite the sound and the fury and the media attention, Powell and his allies, Abernathy and Martin, prevailed over the dissents of Copps and Adelstein

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Focus on FCC Revenue Generation

By: R.J. Quianzon
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This column is usually dedicated to the constant revenue stream flowing into the U.S. Treasury from fines and forfeitures imposed by the FCC. However, over the past month the FCC's lean, mean fining machine has been noticeably less active than in the recent past (the one fine warranting any particular attention is described in a post-script below), so this month we will focus instead on a far more lucrative FCC activity: selling off spectrum occupied by television stations. Most recently, the FCC put Channels 54, 55 and 59 on the auction block and raked in more than $145 million dollars.

Many readers, particularly those with interests in Channels 52 - 59, will recall that after a squabble in the Senate in June last year, Congress gave the FCC specific instructions as to how television Channels 52 - 59 were to be auctioned. The FCC obeyed Congress and has recently completed the second auction of Channels 54, 55 and 59.

The FCC repackaged the television spectrum and offered bidders "new and improved" spectrum that might complement a buyer's need for mobile, fixed and even some types of broadcast services. In repackaging Channel 55, the FCC used a regional map of the country to produce six regional licenses for the New and Improved Channel 55. With inventive names like Northeast, Southeast, Central/Mountain, Great Lakes, Mid-Atlantic and Pacific, the FCC had six new geographically massive licenses for Channel 55 which it catchily re-branded as "D Block Lower 700 MHz licenses".

The only problem was that when the FCC put the Spectrum Formerly Known As TV Channel 55 on the market last August, nobody bought any of it − except for one company which, for the princely sum of $4.5 million, walked away with the Pacific Region. The FCC tried again this June and found a buyer for the remaining five regions. Phone manufacturer and previous spectrum owner Qualcomm paid $38,000,000 for the remaining five licenses. So as the dust settles from the auction, six licenses that cover the nation on spectrum formerly used for TV Channel 55 have been sold for a grand total of 42.5 million dollars.

The FCC took a less drastic approach to selling off Channels 54 and 59. Although the Commission did stick with the re-branding formula (that is, the erstwhile Channels 54 and 59 were re-dubbed "C Block Lower 700 MHz licenses"), the FCC went retail rather than wholesale. Instead of using the bulk sale approach of regional licenses, the Commission divided the nation into 734 discrete units closely corresponding to markets used by cellular phone companies. For example, a bidder interested in only four or five counties in Massachusetts could buy just those counties without having also to acquire the entire Northeast.

Adding to the sizzle, the Channel 54/59 auction package included a "two-for-one" deal. The C block license, in contrast to its 6 MHz D Block (*i.e.,* the Spectrum Formerly Known As Channel 55) counterpart, was a 12 MHz beauty consisting of the spectrum previously used by ***both*** Channels 54 ***and*** 59.

And yet, in the FCC's first attempt to sell these C block two-for-one licenses, one third went unsold. Of those that were sold, the license for Los Angeles went for a mere $5,394,350 - - yes, both Channels 54 and 59 for L.A. and surrounding counties sold for only $5 million. The unsold C Block licenses were chucked into the remainder bin and put up for auction again this June. They sold for far less than the C block licenses which had attracted buyers in the first go-around. The total revenue from the sale of 729 local licenses to transmit on both Channels 54 and 59 was $103 million. (A list of broadcasters who acquired some of this spectrum, and their successful bids for the markets in question, is included below the conclusion of this article on page 10.)

Proud owners of the brand new spectrum have ten years to break it in, with routine renewals. It is anticipated that the owners will use their recent purchases to build a new generation of wireless telephones and computer access. However, the FCC "owner's manual" on this new spectrum comes with a warning that the spectrum is already occupied by current TV stations who must first move out before the new owners can move in. This will undoubtedly result in some interesting opportunities for current residents as well as the new landlords.

Post-script on Fines and Forfeitures In the one enforcement action worthy of note this month, the Enforcement Bureau nicked an AM/FM licensee in Utica, New York for $8,800 for a number of run-of-the-mill EAS-related violations (*i.e.,* failure to have operational EAS equipment installed, failure to log EAS transmissions, failure to transmit monthly EAS tests). The noteworthy aspect of this decision is the licensee's defense. When the Bureau issued its initial

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Ownership rule to adopt a new method for determining the relevant "radio market." Under the current rule, the Commission includes all stations whose city-grade signal contours overlap with the city-grade signal contours of stations that are to be commonly-owned. Since 1997, parties have complained that this contour-based rule leads to anomalous results permitting one party to control most, if not all, of the stations in a local market.

In a move that it hopes will remedy this situation, the Commission will now consider a radio station to be in a particular Arbitron market if it is (a) licensed to a community in the Arbitron "home" market or (b) considered "home" to the market even if licensed to a community in some other market. As with the local television ownership rule, the Commission will include noncommercial stations in the calculation of how many stations are in any particular market.

The Commission will now consider a radio station to be in a particular Arbitron market if it is (a) licensed to a community in the Arbitron "home" market or (b) considered "home" to the market even if licensed to a community in some other market.

For those markets not rated by Arbitron, the FCC will conduct a rule-making to define markets comparable to Arbitron markets. In the meantime, for cases involving such non-Arbitron-rated markets, the FCC will apply a modified contour method. As the Commission has described that modified method, the FCC will exclude from the market any radio station whose transmitter site is more than 92 kilometers (58 miles) from the perimeter of the mutual overlap area.

The Commission also eliminated the radio-television and the broadcast-newspaper cross-ownership rules for markets with more than nine television stations. For smaller markets, the Commission adopted the following rules:

- In markets with between four and eight TV stations, combinations are limited to ***one*** of the following:
  - A daily newspaper; one TV station; and up to half of the radio station limit for that market (*i. e.,* if the radio limit in the market is six, the company can own no more than three) **OR**
  - A daily newspaper; and up to the radio station limit for that market; (*i.e.* no TV stations) **OR**
  - Two TV stations (if permissible under local TV ownership rule) and up to the radio station limit for that market (*i.e.* no daily newspapers).
- For those markets with three or fewer TV stations, no cross-ownership is permitted among TV, radio and newspapers. The Commission will consider a waiver request if the parties can demonstrate that the television station does not serve the area served by the proposed acquisition (*i.e.*, the radio station or the newspaper).

Finally, in recognition that the new rules will impede the future transferability of commonly-owned stations, the Commission will permit the assignment of commonly-owned radio stations in violation of the new rules if the proposed acquiring party is a "small business." Until the new rules are released, it is impossible to know how the Commission will define "small business" in this context.

Further, as detailed elsewhere in this issue, the Media Bureau has announced a freeze on long-form assignment and transfer applications, and some modification applications, pending approval of new application forms reflecting the new ownership limits.

Without question, the new ownership limits will have a significant effect on many broadcasters. Unfortunately, without the final text of the rules themselves in hand, it is difficult, if not impossible, to analyze with precision their likely impact in any particular situation. Moreover, it is equally difficult to assess the likely long-term effect of the new rules because efforts are already being made on Capitol Hill to secure legislation which would reverse or substantially cut back the new rules – and, of course, there is also the prospect of possible judicial reversal at some point down the line, once the new rules are appealed (as appears inevitable).

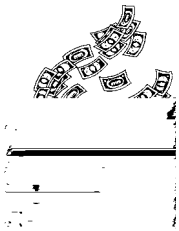
So while the motor turning the merry-go-round has, with the FCC's June 2nd vote, been shut down for the time being, the momentum which was built up over many months of frenzied anticipation is causing the proceeding to continue to spin around. And that in turn makes it difficult to get a firm fix on how things will look if and when the ride stops spinning.

* * *

As noted above, the Commission has yet to release the full text of the new rules as this Memo to Clients is going to press. We will provide a complete evaluation of the new rules once they are released.

Assignment/transfer applications held in abeyance

THE FREEZE IS ON



By: Francisco R. Montero
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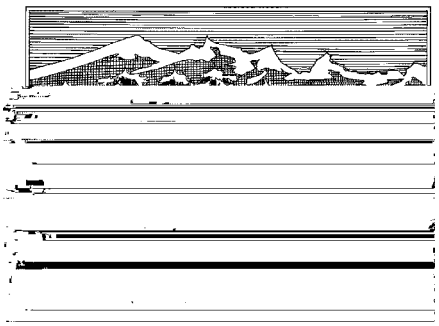
montero@fhhlaw.com

Usually, when the Commission adopts new rules, the effect of the new rules is ***pro***spective and not retroactive. That is, new rules normally only apply to situations which arise ***after*** the rules become effective; situations which were in place prior to that time remain subject to the old rules.

So there were a lot of surprised and disappointed folks when, just as the Commission adopted its new ownership rules, the Media Bureau announced interim processing guidelines for broadcast assignment and transfer applications, as well as certain modification applications, during the transition period commencing with the adoption date of the new rules. The Bureau's guidelines include a freeze on all future ***and pending*** assignments and transfers of broadcast licenses, except those for non-commercial stations and *pro forma* assignments and transfers. The guidelines also establish procedures for handling (1) new applications, (2) pending applications which were filed prior to June 2nd, and (3) petitions and objections filed against already-pending applications.



The freeze arises from the fact that the Commission will need to prepare and approve new application forms to reflect the new multiple ownership rules. And once the FCC has readied new forms, the forms still can't be used until the Office of Management and Budget ("OMB") has also approved them. Accordingly, the Commission has frozen all new broadcast transfer and assignment applications that require the use of FCC Form 314 or 315 until the FCC publishes a *Federal Register* notice that OMB has approved the revised forms. Once that notice is published, parties will be able to file new applications. But they must demonstrate compliance with the new multiple ownership rules or submit a showing that a waiver of the new rules is warranted.

Long-form assignment or transfer of control applications or modification applications that had been filed prior to June 2nd, but which have not yet been granted, will be processed under the new rules. In order to establish compliance with those rules, applicants may amend their pending applications to include new multiple ownership showings; alternatively, they may submit a request for waiver of the new rules. Amendments will not be accepted until the FCC has published a *Federal Register* notice that the OMB has approved the information collection requirements contained in such amendments. The FCC may determine that any such amendment warrants a new public notice for the pending application.

The FCC will continue to allow the filing of short-form *pro forma* assignment and transfer applications on FCC Form 316 and will process new and previously-pending 316's in the normal course.

In informal conversations, the FCC's staff has noted that certain pending applications might be granted even before the new rules have gone into effect or before OMB has approved the FCC's new information collection requirements. In radio, the easiest case would be when a buyer is acquiring one station (or a single AM/FM combo) in an Arbitron-rated market, and the pending application does not require a multiple ownership study, triggered by overlap of same service station contours. In TV, the FCC will apparently be looking at pending applications on a case-by-case basis. In both radio and TV, it appears that if, in the staff's opinion, the application clearly complies with the new rules and would not require an amendment, the staff may be willing to grant it even though the new rules have not gone into effect. We emphasize that this is based on informal discussions with the Commission staff and would be a case-by-case situation.

Finally, because the new ownership rules terminated the interim policy concerning competition and local radio market concentration, the FCC has stated that, as of June 2nd it will no longer "flag" radio sales applications under that policy. And pending petitions to deny and informal objections which challenge transfer or assignment applications solely on grounds of competition and market concentration pursuant to the interim policy will be dismissed as moot. (Pending petitions and objections which raise issues unrelated to competition will be addressed at the time the FCC acts on such applications.)

For many deals in progress, these processing guidelines create a dilemma. Hundreds of station deals which have been signed up are now indefinitely stalled because of the FCC's freeze on processing assignment and transfer appli-

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Be on the lookout

New Postcard Program for Regulatory Fees

By: Anne Goodwin Crump
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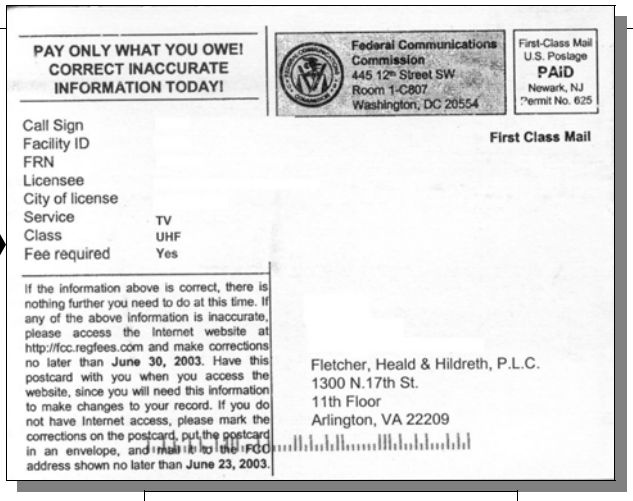
The Commission has recently started a new "postcard" program for broadcast and certain other licensees. Licensees should keep their eyes open for postcards from the Commission which mention payment of regulatory fees. The postcards are designed to make sure that the Commission's records with regard to a particular station are correct so that the Commission can accurately assess regulatory fees for the station. A sample postcard is shown below so you can have an idea of what to be watching for. (Note that, in some instances, the Commission has sent these postcards to the station's contact representative, rather than to the licensee itself. If you have not yet received a postcard, you should check with the FHH attorney with whom you normally work to see if he or she, as your contact rep, has received it.)

The postcards that the Commission is sending out list a station's call sign, Facility ID Number, the FRN associated with the station, the licensee name, the city of license, the service and class, and whether a fee is required. (We have deleted station-specific information from the sample shown in the illustration.) If the information included is correct, the licensee need not take any further action. If any item is incorrect, however, the licensee is requested to access the Commission's Internet website at http://fcc.regfees.com to make corrections. The deadline for such corrections is **June 30, 2003**. In the event that a licensee does not have Internet access, it may mark the corrections on the postcard, place the postcard in an envelope, and mail it back to the Commission. In that case, the deadline is June 28, 2003.

Licensees obviously have every incentive to make sure that the Commission has accurate information to avoid overcharges for regulatory fees. Once the date for making corrections has passed, and the basic information concerning each station is therefore confirmed, the Commission will send out a second postcard to each licensee. That second card will state the specific amount owed for the station. The licensee then will be responsible for remitting that amount by the deadline to be established for the payment of regulatory fees.

What to keep an eye out for



PAY ONLY WHAT YOU OWE!
CORRECT INACCURATE INFORMATION TODAY!

Federal Communications Commission
445 12th Street SW
Room 1-C807
Washington, DC 20554

First-Class Mail
U.S. Postage
PAID
Newark, NJ
Permit No. 625

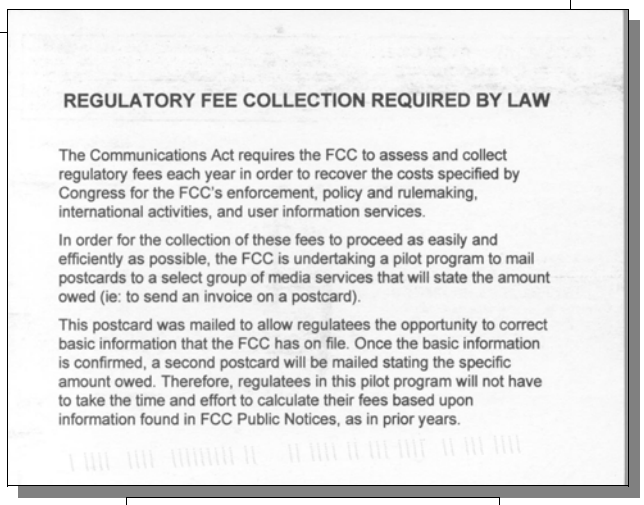
First Class Mail

Call Sign
Facility ID
FRN
Licensee
City of license
Service TV
Class UHF
Fee required Yes

If the information above is correct, there is nothing further you need to do at this time. If any of the above information is inaccurate, please access the Internet website at http://fcc.regfees.com and make corrections no later than **June 30, 2003**. Have this postcard with you when you access the website, since you will need this information to make changes to your record. If you do not have Internet access, please mark the corrections on the postcard, put the postcard in an envelope, and mail it to the FCC address shown no later than **June 23, 2003**.

Fletcher, Heald & Hildreth, P.L.C.
1300 N.17th St.
11th Floor
Arlington, VA 22209

Sample FCC Reg Fee Card (front)



REGULATORY FEE COLLECTION REQUIRED BY LAW

The Communications Act requires the FCC to assess and collect regulatory fees each year in order to recover the costs specified by Congress for the FCC's enforcement, policy and rulemaking, international activities, and user information services.

In order for the collection of these fees to proceed as easily and efficiently as possible, the FCC is undertaking a pilot program to mail postcards to a select group of media services that will state the amount owed (ie: to send an invoice on a postcard).

This postcard was mailed to allow regulatees the opportunity to correct basic information that the FCC has on file. Once the basic information is confirmed, a second postcard will be mailed stating the specific amount owed. Therefore, regulatees in this pilot program will not have to take the time and effort to calculate their fees based upon information found in FCC Public Notices, as in prior years.

Sample FCC Reg Fee Card (back)

Wilkommen, Bienvenu, Welcome . . .

Bob Gurss Joins Fletcher Heald & Hildreth as Of Counsel

Fletcher, Heald & Hildreth, P.L.C. is pleased to announce that ***Robert M. Gurss*** has become Of Counsel to the Firm. Bob is an experienced communications attorney active in the area of public safety communications. In addition to being Of Counsel to FHH, Bob serves as Director of Legal and Governmental Affairs of APCO International, Inc., the largest network of public safety communications professionals in the world. Bob brings a wealth of experience and energy to the firm, and we are pleased to have him join us.

We are confident that you will find Bob a tremendous asset to our team. Bob can be reached at 703-812-0468 and online at gurss@fhhlaw.com.

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But that was not the end of the matter. Not by a long shot.

Immediately following the Commission's vote there was a tremendous uproar on the Hill. Within two days of the vote, Senator McCain called all five commissioners to appear before the Senate Commerce Committee. Chairman Powell and his two Republican counterparts were raked over the coals by Senator McCain and ranking Democratic Senator Ernest Hollings. Hanging tough under a barrage of severely critical questioning, the three argued that they were under direct orders from both the Congress (to change the current rules which have been in place, in many instances, for several decades) as well as the courts (which have consistently rejected the Commission's multiple ownership rules as being without any basis) to move forward with review of the ownership rules, and that's what they had done. In a conciliatory effort, the three did say that that they would welcome any advice that the Congress would give to them about where things should go from here.

While there has been a boatload of second-guessing and Monday morning quarterbacking, it is not clear whether or not anything will really turn out as a result of all the hoopla.

On the House side, Congressman Maurice Hinchey and Bernie Sanders have both urged the House to take up this issue. Moreover, the Senate Anti-Trust Committee, led by Senators Dewine and Kohl, has called for further hearings.

A number of Senators and Congressmen initially claimed that under congressional procedures, they could call for a simple majority vote to undo the June 2nd decision. With chagrin and embarrassment, however, the Hill people were forced to admit that in the 1996 legislation, they exempted the FCC from this possible retaliation.

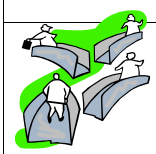
Most people believe that while there is a great feeling of unhappiness on the Hill and rhetoric is not short in demand, at the end of the day, the Congress will do nothing to reverse what the Commission has adopted. While it is always possible that there will be a whirlwind of Congressional activity, with each passing day inertia seems to increase. Congress − as easily distracted an organization as you can find − moves on to the next *issue(s) du jour*. As a result, if the Commission's decision is going to be changed in the short term, that change is more likely to be at the hands of the courts than at the hands of Congress.

Many observers point out that it was Congress's decisions in the 1996 revision of the Communications Act that have led to the consolidations that are now putting Congress's knickers in a twist. In other words, despite the 2003 finger-pointing and bosom-heaving of various members of Congress, it was they and their colleagues who, less than a decade ago, let the genie out of the bottle. Having themselves helped to loose the deregulation spirits into the world, these latterday critics may have trouble convincing anyone that those spirits should now be stuffed back into the bottle. Whether those on the Hill who are the most vocal against the Commission's actions on June 2nd will be able to convince the majority in both houses that something can and should be done is, of course, an open question. The murmur of the volcano is getting quieter each day. Whether there still exists the catalyst which will cause a true eruption is anyone's guess. For now, however, it would appear that Chairman Powell and his two Republican compatriots will weather the storm.

Having themselves helped to loose the deregulation spirits into the world, critics in Congress may have trouble convincing anyone that those spirits should now be stuffed back into the bottle.

Meanwhile, back at the Commission, it remains to be seen whether the June 2nd vote and the proceedings leading up to it, which looked more like a barroom brawl than an agency deliberation, will end up poisoning the continued relationships among the Commissioners. It also remains to be seen whether the in-your-face approach of Copps and Adelstein, and the smack-down laid on them by Powell, will affect their ability to work effectively with the other Commissioners on future matters. Maybe; maybe not. On June 19 Copps and Adelstein issued separate press releases calling on the Commission to stay the effectiveness of the new rules pending Congressional deliberation.

Like sands through the hourglass, so are the days of our FCC . . .



FHH - On the Job, On the Go

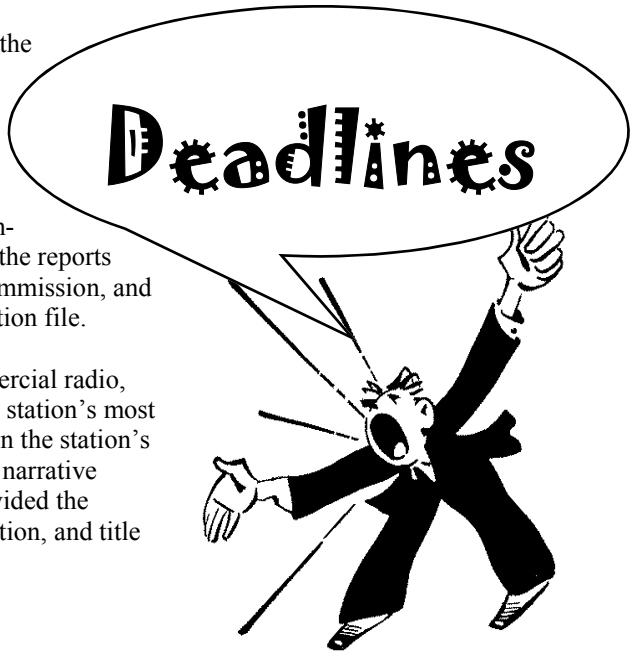
Frank Jazzo has been appointed to the Advisory Board of the Nelson A. Rockefeller College of Public Affairs & Policy of the University at Albany, SUNY.

Frank Montero will be speaking on "Synergies and New Business Opportunities" at the Building and Financing Minority Broadcast Companies conference in Washington, D.C. on July 21, hosted by the Minority Media and Telecommunications Council.

And as previously reported, ***the Franks*** (Jazzo and Montero) will be appearing at the New Mexico Broadcasters convention in Albuquerque beginning June 26th, while ***Vince Curtis*** and ***Frank Jazzo*** will attend the Mississippi Association of Broadcasters Annual Meeting in Biloxi from June 27 to 28.

June 30, 2003

Postcards for Regulatory Fees - All information included the postcards used to calculate regulatory fees must be examined and corrected.



July 10, 2003

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

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

August 1, 2003

Renewal Pre-Filing Announcements - Radio stations located in **Florida**, **Puerto Rico**, and the **Virgin Islands** must begin pre-filing announcements in connection with the license renewal process.

Renewal Applications - All radio stations in **North Carolina** and **South Carolina** must file their license renewal applications.

EEO Public File Reports - All radio and television stations in **California**, **Illinois**, **North Carolina**, **South Carolina**, and **Wisconsin** 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, and the reporting period for the next year will begin as of the following day.

Ownership Reports - All commercial and noncommercial radio and television stations in **California**, **Illinois**, **North Carolina**, **South Carolina**, and **Wisconsin** 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.

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cations. It has been reported that the FCC will not have the new assignment and transfer application forms printed up until the end of July. Thereafter, the new forms will have to be approved by OMB and the approval published in the *Federal Register*. By some estimates, the freeze could last all summer or beyond.

There is an added wrinkle to this unprecedented freeze on assignments and transfers. Many radio stations in the southeastern U.S. will be filing their FCC license renewal applications in the summer and autumn. As we reported in the April 2003 Memo to Clients, the FCC does ***not*** grant the assignment or transfer of a station while that station's license renewal application is pending.

The potential one-two punch of that policy combined with the freeze cannot be ignored by parties currently negotiating purchase or sale agreements. Because of the freeze on ownership-related applications, it is possible, if not nearly certain, that buyers and sellers won't be able to file such applications until some time in the Fall. But if the station's renewal application is then filed while the assignment or transfer application is pending, the sale of that station could be further delayed by the 3-4 months (or longer) it takes the FCC to process the renewal. In short, if you plan to buy or sell a commercial radio station in a state whose radio renewals are due this year (that would include the Carolinas, Florida, Puerto Rico, the Virgin Islands, Georgia and Alabama), depending on the date the freeze is lifted and the station's renewal date, it is highly likely that you will not be able to close on the transaction until 2004 − and possibly several months into 2004 − after the license renewal is granted. You should be sure to factor this into your plans and negotiating strategy.

Red tape in the sunset?

Plan Proposed to Reduce Processing Delays Caused by Consideration of Construction Impact on Historical Properties

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The FCC is seeking public comment on a proposed agreement that would streamline the National Historic Preservation Act review process that has delayed tower construction proposals for years. The existing process has been called a "regulatory muddle" by FCC Chairman Michael Powell.

Under the current process, tower owners and broadcasters who want to locate on towers have had to muddle through red tape required by various federal agencies each of which is required by law to consider, separately from other agencies, the effects of tower construction, antenna location and related projects on historic properties. Those federal agencies include the FCC, the Advisory Council on Historic Preservation ("Council") and the National Conference of State Historic Preservation Officers ("Conference"). In addition, other organizations representing various cultural and/or historical interests become involved in the processes leading up to approval of such projects. The red tape and potential for delay and duplicative efforts has been considerable.

If adopted and implemented, the Draft Agreement would limit the cumbersome bureaucratic process. Projects which do not have any potential historic impact would (in theory) be allowed to move forward

In an effort to promote coordination and to streamline those review processes, the FCC, the Council and the Conference have prepared a proposed agreement, called the Nationwide Programmatic Agreement ("Draft Agreement"). If adopted and implemented, it would (in theory) limit the cumbersome bureaucratic processes only to projects in which the proposed sites impact historic sites. Projects which do not have any potential historic impact would (again, in theory) be allowed to move forward without regulatory delay.

The FCC seeks comment on the provisions of the Draft Agreement, which includes, among other things, proposals governing:

- ☑ Procedures for ensuring compliance with the National Historic Preservation Act's public participation requirements;
- ☑ Methods for establishing the area of potential effects, identifying and evaluating historic sites, and assessing effects;
- ☑ Procedures for submitting projects to the State Historic Preservation Officer and resolution by the Commission;
- ☑ Forms to facilitate the filing of uniform documentation with the State Historic Preservation Officer; and
- ☑ Exclusion of certain undertakings from the review process because such undertakings are unlikely to affect historic properties.

The Draft Agreement is the result of extended negotiations among the FCC, the Council, the Conference and representatives of American Indian tribes, the communications industry and historic preservation consultants. It has been so long in the making that insiders have joked that the early drafts of the document will qualify as historic documents by the time the final agreement is executed.

While the issuance of the Draft Agreement might suggest that the participating agencies were able to come to terms on all points, disagreements apparently continue to exist: footnotes peppered throughout the document reflect conflicting positions, and in its accompanying Notice of Proposed Rule Making the FCC has requested public comment on which positions should prevail. For example, the Commission questions how it should fulfill its obligation to consult on a government-to-government basis with American Indian tribes, what deadlines should apply to submission of information to the relevant agencies, and when and how an applicant's proprietary information will be kept confidential.

The negotiation process which led to the Draft Agreement is similar to the process which in 2001 led to an agreement exempting from historic preservation review most colloca-

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"Official Notices of Violation" describing the EAS-related delicts observed during a station inspection, the licensee submitted responses prepared by a technical "contractor". The contractor, presumably on behalf of the licensee, acknowledged the violations. The Bureau thereupon issued a "Notice of Apparent Liability" ("NAL") hitting the licensee up for a fine of $11,000. Suddenly sensitized to the seeming inadvisability of `fessing up, the licensee responded to the NAL by denying its contractor's earlier admission that the violations occurred. According to the licensee this time around, the contractor's responses "[do] not reflect [the licensee's] official position on this matter." The Bureau, however, was unmoved by the licensee's apparent epiphany, particularly since the licensee simply repudiated the earlier response without providing any additional factual information contradicting the Bureau inspector's initial determination, based on his inspection, that the stations were in fact in violation. So while the Bureau was willing to whack $2,200 off the fine (because the Bureau was willing to accept the licensee's argument that its violations were not "egregious"), the licensee was still stuck with a fine of $8,000.

The moral of this story is that, if you receive a Notice of Violation from the Commission, be sure you are completely confident in the accuracy of any response which is sent to the Commission on your behalf − because you are likely to have to live with that response.

Good Spectrum, Dirt Cheap?

The following is a partial listing of successful bids made by broadcasters for paired 6 MHz blocks of spectrum in the auction completed on June 18:

LIN Television Company
- IN, Elkhart-Goshen - $91,000
- IN, Fort Wayne - $179,000
- IN, Indiana 2 – Kosciusko - $167,000
- IN, Lafayette - $55,000
- IN, Muncie - $45,000
- MI, Battle Creek – $126,000
- MI, Grand Rapids – $447,000
- MI, Kalamazoo - $82,000
- MI, Michigan 8 – Allegan - $22,000
- MI, Michigan 9 – Cass - $225,000
- MI, Muskegon – $266,000
- OH, Ohio 1 – Williams – $135,000
- TX, Waco - $140,000

KM Communications
- IA, Waterloo-Cedar Falls - $107,950
- IA, Iowa 13 – Mitchell - $78,200
- Northern Mariana Islands - $51,000

Banks Broadcasting, Inc.
- ID, Idaho 2 – Idaho - $46,500
- ID, Idaho 4 – Elmore - $124,500
- ID, Idaho 5 – Butte - $86,250

Capitol Broadcasting Company, Inc.
- NC, North Carolina 5 – Anson – $27,000
- NC, North Carolina 9 – Camden - $16,000
- NC, North Carolina 14 – Pitt – $35,000

E-Filing Now Available for Cable and Satellite Copyright Royalty Claims

This year, the Copyright Office is offering an electronic filing option for the filing of 2002 cable and satellite royalty fund claims. The Copyright Office is strongly encouraging claimants to file their claims electronically in order to avoid potential problems with mail delivery. Where claims are filed electronically, the claim does ***not*** need to include the signature of the claimant. These cable and satellite forms will become available on the Copyright Office website on July 1. For more information directly from the source, go to: http://www.copyright.gov/carp/satellite/claims.html (for satellite claims) or http://www.copyright.gov/carp/cable/claims.html (for cable claims). However, if you are not yet comfortable with electronic filing, paper filing is still an option! All claims, whether they are electronic or paper, are due by Thursday, **July 31, 2003**.

(Continued from page 9)

tions of antennas on existing structures. The Draft Agreement incorporates that 2001 agreement.

Parties interested in filing comments on the proposed agreement must do so no later than **August 8, 2003**.

On a related note, the FCC has established an inter-agency liaison program for environmental, historic preservation, and tribal coordination issues. According to an FCC News Release, the program is meant to facilitate "clear and more efficient communication within government on environmental and historic preservation matters affecting the communications industry." In other words, the program directory is a short book of relevant government staffer phone numbers that the right hand in one federal agency can use to call the left hand in another federal agency and find out what he or she is doing with a particular application. If used as intended, this could speed processing for applicants.

FM ALLOTMENTS ADOPTED –5/21/03-6/20/03

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
NM	Bosque Farms	20 m S of Albuquerque	288C2	01-78	None
NM	Grants	40 m W of Albuquerque	244C3	01-78	TBA
FL	Port St. Joe	60 m SW of Tallahassee	270C3	03-21	TBA
FL	Eastpoint	55 m SW of Tallahassee	283A	03-21	TBA
IN	Noblesville	20 m N of Indianapolis	283B	01-143	None
IN	Fishers	15 m N of Indianapolis	230A	01-143	None
TX	Dalhart	70 m NW of Amarillo	261C	03-52	TBA
TX	Kermit	200 m E of El Paso	229A	03-53	TBA
TX	Leakey	50 m W of San Antonio	257A	03-54	TBA
LA	DeQuincy	80 m W of Lafayette	221C3	02-56	None
TX	Estelline	80 m SE of Amarillo	263C3	03-55	TBA
TX	Fort Stockton	200 m W of Austin	263C3	03-68	TBA

FM ALLOTMENTS PROPOSED –5/21/03-6/20/03

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
IN	Sellersburg	8 m N of Louisville	230A	03-98	Cmts - 07/21/03 Reply-08/05/03	1.420
KY	Oak Grove	10 m S of Hopkins-ville	232A	03-132	Cmts - 07/28/03 Reply-08/12/03	1.420

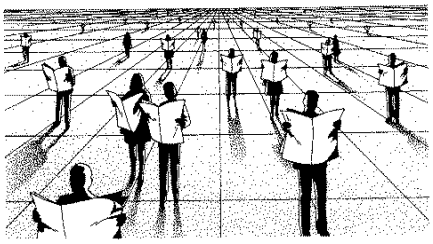
Notice Concerning Listings of FM Allotments

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.

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

Updates on the News

www.FCC.gov – On-line Upgrades The folks in charge of the FCC's website have been busy. If you use the Commission's Electronic Document Management Systems (fondly known to the *cogniscenti* as "EDOCS"), you may have noticed that the query page has been reorganized and redesigned. It now provides two types of searches: "quick" and "advanced". And there's more. Now it links errata to the original documents to which the errata apply − so you have some greater assurance that, if you find a document, you will also be able to determine quickly whether that document was later changed through an erratum. You can find links to EDOCS at www.fcc.gov/resources.html and www.fcc.gov/searchtools.html.



In addition to EDOCS, the Universal Licensing System ("ULS") has been "improved" in a couple of ways. With the new Geographic Information System ("GIS") interface, you can map all licenses found in a ULS License Search (up to a limit of 3,000). And while you're in the ULS, you now have new options for paying ULS fees. A new "Pay Fees" interface allows ULS customers to pay for wireless license applications through the on-line FCC Form 159 directly from the ULS website.

On a less high-tech note, the Commission has also added a "Parents' Place" to its website. Just go to www.fcc.gov/parents. The FCC has collected there a number of links to information on issues relating to broadcasting, cable, telephone and internet, all of which (the FCC assures us) will be of particular interest to parents.

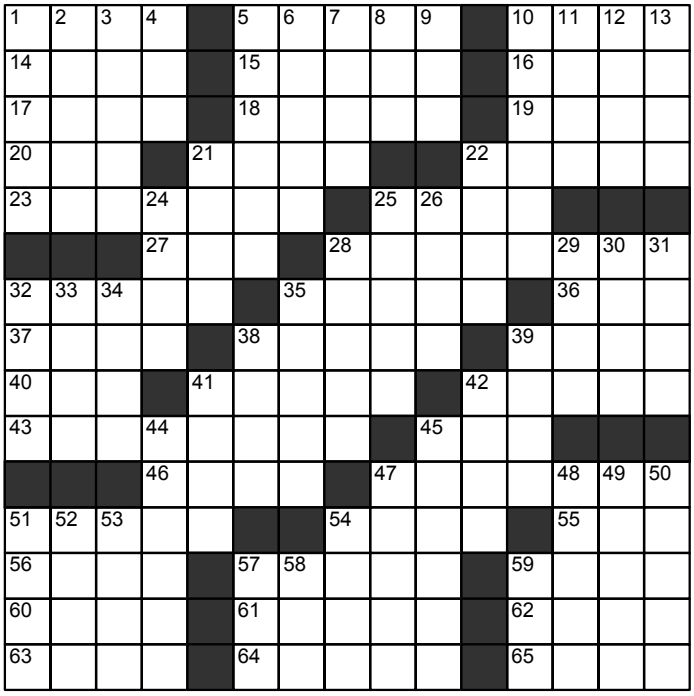
Finally, all you history buffs may enjoy a further addition to the FCC's website which contains a wealth of historical information about television. Check out www.fcc.gov/omd/history.

Give me that old time religion. According to reports in the trade press, Roy Stewart, Chief of the Media Bureau's Office of Broadcast License Policy and long-time Mass Media Bureau Chief, recently attended a state broadcast convention at which he was asked about broadcasters who provide little or no news or public affairs programming. To which Roy reportedly responded, with refreshing and admirable candor, "I think they should have their license taken away." This, of course, is a traditionalist view of the trustee-like responsibilities which are associated with a broadcast license. And while recent experience suggests that some at the FCC may be moving away (or may already have moved away) from that traditionalist view, it is not entirely clear that it will be beneficial, in the long run, for broadcasters to be cut loose from any and all substantive public interest obligations. In that regard we are sure that Roy has the best interests of broadcasters and the public in mind. We applaud him for candidly articulating a view which, while perhaps unpopular in some circles, nevertheless retains vitality in this day and age.

Harry Martin, FCBA President-Elect

Harry Martin has been elected President-elect of the Federal Communications Bar Association. He will take over as President for a one-year term beginning this time next year. Previously, Harry served on the FCBA's Executive Committee, as Co-chair for four standing committees, and as Secretary and Treasurer. The FCBA has over 3,400 members, with chapters based in major cities throughout the country. Its membership consists of the vast majority of attorneys practicing before the FCC, as well as a wide range of others who share a professional, academic and/or personal interest in the continuing development and application of communications law. FHH is proud that our colleagues in the communications bar have recognized Harry's abilities and dedication.

The Magnificent Seven



EDITOR'S NOTE

This month, by happenstance, we have this Page 13 which would otherwise be blank. And next month − July 3, to be exact − we observe the 25th anniversary of an historic event in broadcasting law which continues to reverberate throughout the industry to this day. So a member of our editorial staff constructed this crossword puzzle in recognition of that anniversary.

Inclusion of a crossword puzzle in the Memo to Clients is not without controversy. Some view it as non-essential, of minimal interest to most readers, irrelevant to communications law, generally frivolous and not in keeping with the otherwise serious and professional nature of this publication. Others think that at least some readers may be interested in trying their hand at the puzzle, which is related to an important aspect of communications law and has been designed in the spirit of the event which it commemorates.

The editors are inclined to let the readers decide. We invite your reaction to the puzzle. Email us at office@fhhlaw.com (include "crossword puzzle" in the subject line, please).

ACROSS

1 A statement of an amount owed (e.g., for food and drink) (2nd of the Seven)
5 Organized crime group
10 Heart and ___
14 Was carried
15 Swan Lake character
16 Jamaican citrus fruit
17 Looked at
18 Items used in Scrabble, Mah Jongg, kitchen flooring and roofing
19 Musical symbol
20 Golfer Ernie or overhead transportation
21 Shoe magnate McAn
22 Trapshooting
23 Alphabet components (Fr.)
25 One of Minnesota's 10,000
27 ___ Lingus
28 Portable electric jigsaw
32 Group of sheep (1st of the Seven)
35 Bobby Hart's partner, Tommy ___
36 National Cable MSO (with 10D, 6th of the Seven)
37 Slender
38 Throws up like Wayne and Garth
39 Comical
40 Seth's mom
41 ___ Kinte (early character in Roots) (4th of the Seven)
42 Addams family father
43 Dives
45 ___ Fighters (Grohl et al.)
46 FBI reps.
47 Helena is its capital
51 Pre-1917 Russian rulers
54 Ice cream and ___ (standard birthday fare)
55 Small bird (7th of the Seven)
56 The First ___
57 Hip ___ (Hooch container)
59 Donate
60 Elite race in The Time Machine
61 Use a thurible
62 Sign
63 German city
64 Provide food
65 Pod occupants (3rd of the Seven)

DOWN

1 Fisherman's basket
2 According to ___
3 That is to say
4 Kennedy, Williams, Danson or Kluszewski
5 ___ of pearl (with 45D, 5th of the Seven)
6 Farewell (Sp.)
7 Make a movie
8 Island (Fr.)
9 Two-time loser to DDE
10 All-day ___ (lollipop)(see 36A)
11 Leer at
12 ___'s Gold (1997 Peter Fonda movie)
13 Elevator (Br.)
21 Star ___
22 ___-ball
24 Thumb ___
25 ___ and Other Love Songs (Derek and the Dominos album)
26 Basics
28 Types
29 Confidence game
30 Top-notch
31 Alphabetical ending
32 Turned tail
33 Wash
34 Singles
35 Strategic baseball maneuvers
38 Track down
39 "___ Suit Riot" (Cherry Poppin' Daddies song)
41 Beer containers
42 ___ with the Wind
44 Class clown who started the event
45 WWI plane (see 5D)
47 En ___ (as a group)
48 One at ___
49 ___ Creme (skin care product)
50 Earth-approaching asteroids
51 Bent up
52 Fly single-handedly
53 Long, long time (var.)
54 Isn't able to
57 Party to the event 25 years ago
58 Meadow
59 Republicans

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