

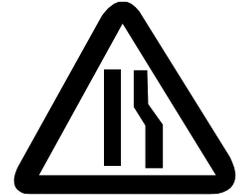
Memorandum to Clients

July, 2003

News and Analysis of Recent Events in the Field of Communications

No. 03-07

E Pluribus Unum, Redux



The Morning After: A Closer Look at The Impact of the New Ownership Rules

On the TV Side: The time to plan is now

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

On the Radio Side: What needs to be done now

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

Now that the dust has cleared, temporarily, with respect to the new ownership rules, it is useful to review what the next few months will entail for the television markets.

On a day-to-day level, perhaps the most significant aspect was that the Commission decision not to attribute television joint sales agreements ("JSA's") for television ownership rules, even though it will attribute JSA's under the new radio ownership rules. The Commission did not distinguish the two services, but rather distinguished the two divergent procedural paths to adopting the new rules. That just means that, at some point in the ownership proceeding, the Commission had indicated that it was contemplating making radio JSA's attributable; thus, the public had had an opportunity to comment on that possibility. By contrast, the Commission had not articulated, and the public had not had an opportunity to consider and comment on, any equivalent proposal on the TV side. But don't worry - this minor hole is likely to be filled soon: the Commission has pledged to initiate a new rulemaking in the future to address the attribution of television JSA's. As for pending applications, the Commission will require the

(Continued on page 5)

We survived the pre-release frenzy leading up to the new ownership rules. We waited patiently for the actual rules (and huge accompanying report and order) to be released. And now, at long last, we have a chance to pick over the plate which the FCC has served us, digesting the various components with some caution, anxious to see exactly what effect they may have on our systems. The meaty part of the FCC's Order outlining the new media ownership rules feeds radio broadcasters a new radio market measurement, attributable joint sales agreements ("JSA's"), and an unpalatable helping of between-the-lines temporary yet potentially lengthy delays for processing assignment and modification applications.

Radio Market Measurement. At first glance you might think there's not much of a serving relative to radio ownership: after all, the numerical limits on local radio ownership remain the same (e.g., a maximum of eight stations - no more than five in a given service - may be owned or controlled by a single entity in markets with 45 or more stations). But the methodology for defining a radio market has changed. The FCC has replaced the signal contour method of defining local radio markets with a geographic market approach assigned by Arbitron.

This is a major change. Under the old contour method, the notion of "market" was fluid, to say the least. The relevant market for any particular deal depended on the particular contours of the particular stations owned and proposed to be owned by the buyer. That gave rise to considerable flexibility for buyers, who were able to some degree to manipulate the scope of the relevant market to their advantage.

That option is being flushed down the drain, replaced by the far more static (but far-from-absolutely-etched-in-stone) Arbitron definition of markets. Under the new regime, the Commission is effectively riding on the coattails of Arbitron and BIA, whose market definitions will now be deemed definitive for FCC purposes.

(Continued on page 4)

The Scoop Inside

It Ain't Over 'Til It's Over ..... 2
Focus on FCC Fines ..... 3
Non-MX FM Translator Applications Move Ahead ..... 5
Deadlines ..... 6
Study Oks LPFM 3rd Adjacent Interference ..... 7
Updates ..... 8
FM Allotments ..... 9-10



*The circus is still in town*

## It Ain't Over 'Til It's Over, The Fat Lady Hasn't Sung, We Have Not Yet Begun To Fight . . .

By: Vincent J. Curtis, Jr.  
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Contrary to our report last month, members of the Congress (both in the Senate and in the House) believe that they have several opportunities to overturn the Commission's recent Report & Order dealing with multiple ownership issues. Whether they will be successful in the end will have to be seen.

On the Senate side, eight Senators, led by Byron Dorgan, filed a jointly supported "Resolution of Disapproval" under the Congressional Review Act. If that Resolution gets sufficient votes in the Senate and also wins approval in the House, the effect could be the reversal of the Commission's June 2 order *without* the need to obtain the President's signature. Over 30 Senators have already signed on to the Resolution. Co-sponsors included Republicans Lott, Collins and Snowe.

Dorgan still hopes that the Senate Commerce Committee, chaired by Republican John McCain, will take up this issue in a timely manner. There is a time limit running against Dorgan's efforts: he has until September to get his bill on the floor for action by the Senate.

In supporting the Dorgan action, Lott, the former Senate Majority Leader, indicated that he was upset with the public position of certain members of the House (and particularly Commerce Committee Chair Billy Tauzin and sub-Committee Chair Fred Upton) who seemed unwilling even to discuss the issues. The Dorgan move, if successful, would allow the resolution's proponents to circumvent the Commerce Committees in both Houses – a move which would take the control issue away from Tauzin.

On a second front, opponents of the Commission's June 2 action have also set their sights on the House Appropriations Committee, which is preparing fiscal year 2004 appropriations for the FCC. Despite pleas from Tauzin and Upton, the Appropriations Committee, with a surprisingly strong vote supported by at least 5 Republican members, voted out of Committee an appropriations bill which would prevent the FCC from using any funds to enforce its 45% national television ownership cap. (Attempts to include a complete reversal of the June 2 order were defeated.) That appropriations bill is now heading to the floor of the House; it will also have to get approval in the Senate. Assuming both happen, the bill faces a possible veto by the President. Whether the President is willing to veto a spending bill over this issue is not known at this time.

Again, apparently the attitude of Tauzin to draw a line in the sand caused the Republicans on the Committee to support this limitation. Republican Chairman Frank Wolf was adamant in his unhappiness with Tauzin's public attitude.

Meanwhile, back at the Commission, Commissioners Copps and Adelstein, never ones to give up, have called on their colleagues to stay the effectiveness of the new ownership rules in view of the on-going legislative efforts to derail it.

Will the Senate go along with the Dorgan resolution? Will the House join in? Will the House and the Senate put strings on the FCC's budget? Will the President step in – and if so, on which side? Will Copps and Adelstein get the one extra Commission vote they need to stop the new rules in their tracks? Stay tuned. . .

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**Get your EAS in gear** - All readers should be aware that the FCC has just shuffled some cards in the bureaucratic deck to elevate the importance of EAS compliance, which was already subject to unusually rigorous enforcement. As this column has been reporting, FCC agents have continued their growing trend of inspecting EAS equipment and logs at stations around the nation. The FCC is punishing broadcasters with fines in excess of \$10,000 for some EAS violations. Readers are urged to review the FCC's EAS rules and handbook to ensure that they are in compliance (links to both are available at our website: [www.fhhlaw.com](http://www.fhhlaw.com)).

An upstate New York broadcaster with three stations received a proposed \$11,000 fine from the FCC for failing to test its EAS system. Although the stations were receiving monthly and weekly tests from one assigned EAS source, broadcasters should have two assigned sources. The stations were not receiving test signals from the second source and were not recording the lack of signal in their test logs. This fine was reduced to \$8,800 and shows that the FCC is concerned with proper EAS record keeping in logs and full compliance with the rules.

A South Carolina AM station must pay a \$4,000 fine for EAS violations even though it had equipment and was testing the EAS system. FCC Rule 11.51(j) allows co-owned and co-located stations with a combined studio or control facility to share an EAS encoder. The owner of the AM station had sold its co-located FM counterpart two years earlier. However, as is commonplace in these situations, the AM and FM stations continued to operate co-located with a combined facility using one EAS encoder. But read the rule above again: the stations must be both co-located **AND co-owned**. Although the proper equipment was in place and proper testing was being conducted, the two stations were not co-owned and two separate EAS units were required. The cost to the AM station is \$ 4,000 plus the price of a new EAS encoder.

Finally on the EAS front, the FCC has set up a new unit for handling EAS and Homeland Security Matters. In an effort to centralize policy, response and procedures, the FCC has established an Office of Homeland Security in its Enforcement Bureau. Usually responsible for investigating and fining broadcasters, tower owners and other citizens, the Enforcement Bureau will now take on the additional role of coordinating homeland security efforts.

**A Picture is Worth 10,000 Bucks** - An agent from the FCC's

Kansas City office had a look at a tower in Iowa and decided that the black coaxial cable on all three legs of the tower obscured the view of paint on the tower. The agent notified the tower owner that a \$10,000 fine was on tap for failure to maintain good visibility. The tower owner disputed the fine and sent photos of the tower to the FCC offices in Washington. Washington staff had a look at the photos, concluded that the black coax did not obscure the tower paint, and that, to the contrary, the tower was adequately visible. Result: the \$10,000 fine was cancelled.

## Focus on FCC Fines

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**\$10,000 Bill for Motel** -The FCC proposed fining a New Jersey seaside motel \$10,000 for improperly broadcasting on maritime frequencies. One evening the U. S. Coast Guard reported interference on marine channel 16 near the New Jersey Shore. Within a few

hours FCC agents swept into town with a directional finder and made their way to the front desk of the Beach Motel. It appears that several years ago the motel acquired a Radio Shack marine radio and had it sitting at the front desk to monitor boat traffic. The radio's microphone had been wedged between the radio console and the front desk counter and was constantly transmitting from the motel. Although certain marine radios (similar to CB radios) are not required to be licensed by the FCC when used on ships, if those same radios are used on land, an FCC license is required. The FCC proposed fining the motel \$10,000 for not licensing the radio for use at in its lobby. The fine was eventually eliminated after lengthy pleas from the motel owner.

**Commissioner Copps: "Give 'Em an F"** - Evoking (albeit inadvertently) Country Joe McDonald's call for audience participation at Woodstock, Democratic Commissioner Michael Copps gave the Commission an "F" for its failure on the indecency front. Copps continues his cry for more government regulation of television and radio programs. Citing a "palpable and rising anger of the American people" over the content of prime-time television, the former Clinton appointee to the Commerce Department indicated that the FCC should look into expanding the definition of indecency to include violence. More government involvement with programming and oversight of broadcasters is the solution proposed by Copps, who is "convinced . . . that the moment is at hand when the people's righteous anger can be turned into a righteous policy." The FCC is comprised of three Republicans and two Democrats, with the majority usually tracking the political party of the White House. Copps's term is set to expire in June 2005.



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But a preliminary problem is that Arbitron has defined only 287 markets, which represent only 60 percent of the commercial radio stations, 30 percent of counties and 78 percent of the population above the age of 12. That leaves a whole bunch of folks with no presumptive radio market, and those folks must rely on the old contour-overlap methodology until a new rulemaking proceeding – initiated by the Commission when it adopted the new rules in June – creates boundaries for non-Arbitron Metro radio markets. (Please contact us if you would like to participate in the rulemaking and present the FCC with your two-cents worth on how non-Arbitron Metro markets should be bounded.)

How does all this affect you? It depends.

***If you are in an Arbitron Metro market.*** This is easy. All radio stations licensed to communities in an Arbitron market are counted in the market. So are stations licensed to other markets but listed by Arbitron as "home" to the market. These "home" radio stations usually are either licensed to a community within the Arbitron Metro or are determined by Arbitron to compete with the radio stations located in the Arbitron Metro.

An example of how this works: If a licensee is in an Arbitron Metro market with 45 or more radio stations, then that licensee may own up to eight of those 45 stations in that Arbitron Market, only five of which may be in one class, AM or FM. The numerical limits are no different than the former local radio ownership limits. Only the boundary of the market changes.

***If you are not within an Arbitron Metro market,*** then you have to follow an interim procedure for non-Arbitron markets in which the FCC applies a modified contour method for counting the number of stations in the market.

There are two significant modifications to the signal contour methodology being used on an interim basis until some permanent method is adopted. Number One: The FCC will exclude from the market stations commonly owned with the applicant station. This is designed to prevent a party from piggy-backing on its own stations in order to bump the relevant market into a higher ownership tier, thus enabling that owner to hold more stations. Number Two: 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. In FCC theory, this will alleviate some of the distortions in market size that can occur when a large

signal contour that is part of a proposed combination overlaps the contours of distant radio stations and thereby brings them into the market.

Parties proposing a radio station combination involving one or more stations whose communities of license are not located within an Arbitron Metro boundary must show compliance with the local radio ownership rule using the interim contour-overlap methodology.

The FCC's new radio ownership rules will undoubtedly result in situations where current ownership arrangements exceed ownership limits. The FCC has grandfathered owners of these station clusters, but prohibited sale of the clusters unless they are sold to small businesses.

Another major new wrinkle is that the Commission will, for market-size purposes, now count both commercial and noncommercial stations in the market. Previously, the Commission ignored noncommercial stations. The FCC determined that the current rule improperly ignores the impact that noncommercial stations can have on competition for listeners in radio markets.

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*Another major new wrinkle is that the Commission will, for market-size purposes, now count both commercial and noncommercial stations in the market.*

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The unpalatable delay to pending applications mentioned at the onset of this article refers to those assignment and modification applications that were filed under the old market definition and now must be evaluated by the FCC

under the new market definition, as outlined above. With few exceptions these applications are being held by the FCC staff until those applications can be amended to demonstrate compliance with the new rules.

***Joint Sales Agreements.*** Under the old rules, JSA's did not count as attributable interests under the Commission's attribution rules. That meant that radio stations subject to JSA's did not count toward the number of stations the brokering licensee was permitted to own in a local market. The FCC has determined that it will now count the brokered station toward the brokering licensee's permissible ownership totals under the revised local ownership rules. Where an entity (a) owns or has an attributable interest in one or more stations in a local radio market and (b) has a JSA with another station in that market pursuant to which the entity controls more than 15 percent of the brokered station's advertising time per week, the JSA station will be counted toward the brokering station's ownership caps. JSA's will ***not*** be attributable when a party does not own any stations or have an attributable interest in stations in the local market in which the brokered station is located.

(Continued on page 5)



## Non-MX FM Translator Applications Move Ahead

By Alison J. Shapiro  
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As you may recall, last March the FCC opened a window for the filing of new FM translator applications. Initial reports indicated that 13,000 or more applications were filed during that window.

On June 30, 2003, the Commission released a Public Notice accepting for filing non-mutually exclusive FM translator applications. The listed applications are not mutually exclusive with any other applications, and thus may be processed and, ideally, granted, in relatively short order. The Public Notice is the first step in that process.

Applicants with applications included on the list must act by **August 29, 2003**, in order to pursue their proposals. On or before August 29, applicants must prepare and file a complete FCC Form 349, including all required technical showings. (Recall that the applications which were filed in

March required little more than a statement reflecting an interest in obtaining a particular frequency in a particular community; no further details, e.g., specific transmitter site or equipment, were required at that time.) If the applicant is a commercial broadcaster, the application must be accompanied by the requisite filing fee and a completed FCC Form 159.

We understand that the August 29, 2003, filing deadline will be strictly enforced, and late filings will not be accepted. If you have one or more singleton applications on the list and intend to pursue them, you should be sure to take appropriate steps to complete the application and file the necessary applications by the deadline. If you need help filing your electronic FCC Form 349, please feel free to give us a call.

*(Continued from page 4)*

And now for some JSA deadlines:

- T Parties with existing, attributable JSA's in Arbitron Metros under the new rules are required to file a copy of the JSA with the FCC within 60 days of the effective date of the Order. That date has not yet been determined, but we will let you know when it is.
- T JSA's involving stations located outside of Arbitron Metros must be filed within 60 days of the effective date of the decision in the pending rulemaking. We will let you know that date, too, although it is likely to be months away – probably well into 2004.
- T FCC forms are being modified to require applicants to file attributable JSA's at the time an application is filed, regardless of whether the markets implicated by the application are located in Arbitron Metros.
- T Licensees with in-market JSA's entered into prior to the adoption of the Order that now exceed ownership limits because of those JSA's have two years from the effective date of the Order (again, that date is not yet determined) to terminate the agreements or otherwise come into compliance with the new local radio ownership rules.

The new rules have implications for all radio broadcasters. Please contact us if you would like assistance in determining just how the rules will impact your station and your future plans for the station.



*(Continued from page 1)*

applicants to submit an amendment to demonstrate compliance with the new ownership rules. If the applicant does not submit an amendment, the pending application as originally filed will be treated under the new ownership rules. As we reported in last month's Memo to Clients, the Commission extended the freeze on most assignment/transfer applications until such time as the new FCC Forms have been adopted.

Television broadcasters who are inclined to strategic thinking might now focus on their current markets and anticipate the developments that might occur. For example, if you are interested in acquiring other stations in your DMA, perhaps to fill in an underserved area, you will need to (1) determine how many licensed stations there are in your DMA, (2) determine where your station's relative position in the Nielsen rating reports, and (3) determine your targeted acquisition's relative position in the Nielsen ratings. One other consideration would be the surrounding DMA's: does any station (for our purposes here, let's call that an "out-of-DMA station") in any surrounding DMA serve portions of your DMA? If so, the acquisition of that out-of-DMA station would be evaluated for local multiple ownership purposes without **regard to the** existing in-DMA station.

We will, of course, continue to keep you updated on the status of the freeze, and the opportunity to file applications once the freeze is lifted.

**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.

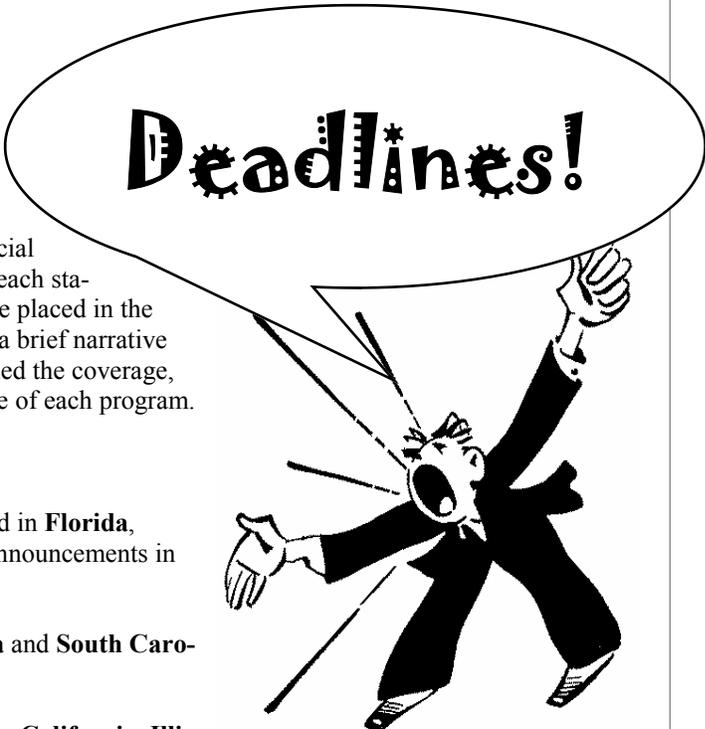
**October 1, 2003**

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

**Renewal Applications** - All radio stations in **Florida, Puerto Rico, and the Virgin Islands** must file their license renewal applications.

**EEO Public File Reports** - All radio and television stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, the Virgin Islands, and Washington** 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 **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, the Virgin Islands, and Washington** 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.



**Deadlines!**

## Congressionally-Mandated Study OKs LPFM Third Adjacent Interference

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In December, 2000, the Congress, as part of an appropriations bill dealing with the District of Columbia, required that the FCC prescribe third adjacent channel spacing requirements for low power FM (LPFM) stations. As a result, most then-pending LPFM applications were dismissed by the Commission because of the third adjacency issue.

At the same time, Congress instructed the Commission to conduct an experimental program to test whether or not LPFM stations would in fact interfere with existing FM stations if LPFM stations were not subject to third adjacent channel spacing requirements. The Commission retained the MITRE Corporation to handle the heavy lifting in terms of compiling and analyzing relevant data.

The report by MITRE has now been completed and the Commission has asked for Comments on the report. More than 700 (count 'em, 700) hundred pages long, it's not light reading. You can access the report on the FCC's website by going to the ECFS search page at:

[http://gullfoss2.fcc.gov/prod/ecfs/comsrch\\_v2.cgi](http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi)

In upper left hand box (labeled "Proceeding"), type 99-25, then submit the search by clicking the "Retrieve Document List" button toward the bottom of the page. You will then be given a list of documents filed in that docket (*i.e.*, 99-25). The document titled "Report" is included there, with several links, each enabling you to access a different portion of the report (because of the report's length, the Commission

broke it up into multiple parts for easier on-line access).

Parties interested in commenting on the report have until September 12, 2002 to do so. Once the Comments are received and reviewed, the Commission is to report back to Congress.

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*The report is bad news  
for full service stations  
who are  
concerned about the  
potential impact of  
third-adjacent  
interference*

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As part of the report, MITRE has recommended, based on certain measurements and analyses requirements, that existing third adjacent channel distance restrictions should be waived to allow LPFM stations to operate at locations that meet all other FM requirements. This is good news for LPFM applicants, who would be likely to find more nooks and crannies in the spectrum into which to squeeze themselves as long as they don't have to worry about third-

adjacent stations. It's bad news for full service stations who are concerned about the potential impact of third-adjacent interference (although the report's conclusions may allay those concerns).

The Commission has designated this a "permit-but-disclosed" proceeding. That means that parties are able to meet with the Commissioners or their staff to make oral presentations, but must submit a written presentation with the Commission's Secretary following such meetings.

If you wish to file Comments or wish to learn anything more concerning this proceeding, please contact our office.



**FHH - On the Job,  
On the Go**

On August 6, **Frank Montero** and **Liliana Ward** be in San Juan, Puerto Rico giving a day-long presentation on the radio license renewal process for stations in Puerto Rico, Florida and the Virgin Islands. The presentation is sponsored by the Puerto Rico Radio Broadcasters Association.

**Jennifer Wagner** has been named vice-chair of the FCBA's National Telecommunications Moot Court Competition Committee. The Committee, in conjunction with Catholic University Law School, sponsors a competition each Spring in Washington for law students interested in communications law. Also on the FCBA front, **Lee Petro** has been named Co-Chair of the FCBA's Continuing Legal Education Committee.

**Gene Lawson** recently participated in the 24<sup>th</sup> annual Advanced Estate Planning and Administration Seminar at The Tides Inn in Irvington, Virginia. This year's major topics of interest included emerging issues relating to distributions from retirement plans, estate planning techniques using Employee Stock Ownership Plans), and drafting one's estate plan to influence the behavior of beneficiaries. Also on the agenda were changes in the estate tax under discussion in Congress, as well as estate planning with clients of diminished capacity. Gene is available to discuss any of these, or other, business matters at 703-812-0404 or lawson@fhhlaw.com.

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

## Updates on the News

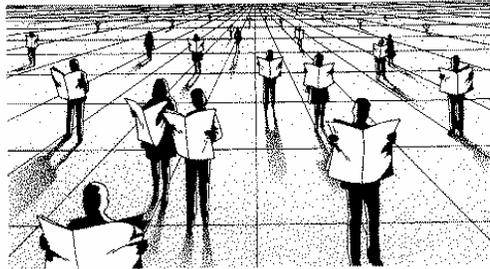
**You can't tell the players, or their teams, without a program.** With the vigor and creativity of a late 1990's telecom company trying to cloak itself in a new identity, the FCC has taken to re-naming its various operating units. This month, the Enforcement Bureau's Technical and Public Safety Division got the new moniker "Spectrum Enforcement Division". Be sure to revise your Christmas card lists.

And in the same vein, Kenneth Ferree, Chief of the Media Bureau, announced a "new economic research initiative" which will "emphasize independent market analysis and forward thinking research on how media markets operate today and how they will operate in the future."

Tapped to head up the program is Jerry Duvall, who thereby sheds the title of "Chief Economist" of the Media Bureau and ascends to the seemingly higher rank of "Director of Media Economic Research". Meanwhile, Tracy Waldon, formerly an Industry Economist in the Wireline Competition Bureau will take over as Media Bureau Chief Economist. In view of the obvious emphasis on market competition which dripped off almost every page in the recent ownership rule revisions, it is probably an understatement to say that these two gentlemen are likely to be influential.

**Proposal to eliminate directional AM conundrum.** Let's say you're a directional AM station, and you realize one day that you can't keep your station within its authorized parameters. What do you do? Well, you might turn to Section 73.62 of the rules, which specifies that you have 24 hours in which to identify any excessive monitoring point field strengths and another three hours to take corrective action. Or, on the other hand, you could skip over that section and check out Section 73.1350(d)(2), which appears to require you, under those circumstances, to

cease operation within three minutes unless you reduce power enough to eliminate excess radiation. Hmmm – stay on the air for 24 hours and try to fix it, or turn the darn thing off in three minutes? Fortunately for us all, the Commission has issued a Notice of Proposed Rulemaking (MB Docket No. 03-151) identifying this, er, apparent inconsistency. The FCC proposes to retain both rules, but will clarify them to indicate that the three-minute rule of 73.1350(d)(2) involves only certain dire circumstances. Comments on the proposal may be filed by August 29, and reply comments by September 18.



**Broadcast telephone promos may not be barred by telemarketing limitations.** Exercising its authority under the Telephone Consumer Protection Act, the Commission in July adopted a voluminous decision imposing serious limitations on telemarketing, or "unsolicited advertising". Buried in that decision was a brief, and welcome, reference to broadcasters who sometimes generate "pre-recorded [telephone] messages . . . that encourage telephone subscribers to tune in at a particular time for a chance to win a prize or similar opportunity."

The Commission decided that, since the purpose of such messages is "merely to invite a consumer to listen or view a broadcast", they don't constitute "unsolicited advertisements" and are not subject to the restrictions of the telemarketing rules. However, the FCC did warn that messages that are "part of an overall marketing campaign to encourage the purchase of goods or services or that describe the availability or quality of any goods or services" will be treated as "advertisements" under the telemarketing rules. Now you know.

**Welcome aboard.** We happily announce that, on July 6, **Anne Goodwin Crump** gave birth to **Virginia Gee**. Mother and daughter are doing fine.

### MEMO TO CLIENTS NOW AVAILABLE BY EMAIL!

For those of you interested in reducing the amount of paper on your desk, the FHH Memo to Clients is now available via email! If you are interested in receiving the Memo to Clients by email, please let us know by email addressed to [office@fhhlaw.com](mailto:office@fhhlaw.com). Same great content, much less paper. Interested in looking at back issues of the Memo to Clients? Visit our *new* and *improved* website at [www.fhhlaw.com](http://www.fhhlaw.com).

<b>FM ALLOTMENTS PROPOSED -6/21/03-7/18/03</b>
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State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, \$1.420, Counterproposal)
PA	Avoca	10 m S of Scranton	276A	03-140	Cmts - 08/14/03 Reply-08/29/03	1.420
PA	Freeland	40 m S of Scranton	253B	03-140	Cmts - 08/14/03 Reply-08/29/03	1.420
PA	Wilkes-Barre	20 m S of Scranton	225B	03-132	Cmts - 08/14/03 Reply-08/29/03	1.420
TX	Newcastle	100 m NW of Dallas	263A	03-148	Cmts - 08/22/03 Reply-09/8/03	Drop-In
TX	Grapeland	150 m SE of Dallas	280A	03-149	Cmts - 08/22/03 Reply-09/8/03	Drop-In
AR	Cove	80 m N of Texarkana	232A	03-143	Cmts - 08/22/03 Reply-09/8/03	Drop-In
CO	Gunnison	50 m S of Aspen	299C3	03-144	Cmts - 08/22/03 Reply-09/8/03	Drop-In
CA	Ridgecrest	80 m E of Bakersfield	229A	03-145	Cmts - 08/22/03 Reply-09/8/03	Drop-In
TX	Robert Lee	60 m SW of Colorado City	289A	03-146	Cmts - 08/22/03 Reply-09/8/03	Drop-In
AZ	Corona de Tucson	30 m S of Tucson	267C3	03-141	Cmts - 08/25/03 Reply-09/9/03	1.420
TX	Bangs	70 m SE of Colorado City	250C3	03-153	Cmts - 08/25/03 Reply-09/9/03	Drop-In
CO	De Beque	30 m NE of Grand Junction	273C3	03-154	Cmts - 08/25/03 Reply-09/9/03	Drop-In
NY	Montauk	100 m E of New York	261A	03-155	Cmts - 08/25/03 Reply-09/9/03	Drop-In
GA	Tallapoosa	50 m W of Atlanta	255A	03-161	Cmts - 09/05/03 Reply-09/22/03	Drop-In
AL	Marion	60 m W of Montgomery	275C2	03-162	Cmts - 09/05/03 Reply-09/22/03	1.420
AZ	Camp Verde	50 m S of Flagstaff	282C	03-160	Cmts - 09/05/03 Reply-09/22/03	1.420
WV	Marmet	10 m S of Charleston	227A	03-164	Cmts - 09/05/03 Reply-09/22/03	1.420
AZ	Fortuna Foothills	80 m N of Phoenix	240A	03-163	Cmts - 09/05/03 Reply-09/22/03	1.420
AZ	Wellton	120 m SW of Phoenix	248A	03-163	Cmts - 09/05/03 Reply-09/22/03	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.*

**FM ALLOTMENTS ADOPTED –6/21/03-7/18/03**

<b>State</b>	<b>Community</b>	<b>Approximate Location</b>	<b>Channel</b>	<b>Docket or Ref. No.</b>	<b>Availability for Filing</b>
<b>TX</b>	Sonora	120 m NW of San Antonio	237C3	03-88	TBA
<b>GA</b>	Meigs	50 m N of Tallahassee, FL	222A	03-58	None
<b>NJ</b>	Pennsauken	10 m E of Philadelphia, PA	300A	02-382	None
<b>NC</b>	Old Fort	20 m E of Asheville	260C	01-175	None
<b>NC</b>	Fletcher	15 m S. of Asheville	282A	01-175	None
<b>CA</b>	Ridgecrest	80 m E of Bakersfield	252A	03-79	TBA
<b>TX</b>	George West	90 m S of San Antonio	250A	03-86	TBA
<b>OK</b>	Glenpool	20 m S. of Tulsa	231C1	02-15	None
<b>VA</b>	Midlothian	15 m E of Richmond	255B1	03-47	None
<b>VA</b>	South Hill	60 m E of Danville	270A	03-47	None
<b>NC</b>	Reidsville	20 m S. of Danville	271C0	03-47	None