

CORRECTED EDITION

Memorandum to Clients

August, 2003

News and Analysis of Recent Events in the Field of Communications

No. 03-08

Trying to reason with the political season

ELECTION 2003

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Much like the hurricane season, the annual election season is once again upon us. So it's time to batten down the hatches and wait for the mighty winds to blow.

It's the same-old same-old for broadcasters nationwide -- unless you're in California, where the total recall process has made lifting the gubernatorial ballot like pumping iron. There, the equal opportunity requirements may make broadcasters feel like Terminator's John Connor running for cover.

The political broadcast rules require stations to provide *federal* candidates reasonable access to their facilities. State and local candidates do *not* have that same right of access. However, the basic premise of the political broadcast rules for state and local candidates is a lot like bringing cupcakes to class in elementary school: You don't have to bring any, but if you do, you have to have enough for everybody. No station licensee is required to permit the use of its facilities by any legally qualified candidate for state or local public office. However, if a licensee permits any such candidate to use its facilities, it must afford equal opportunities to all other candi-

dates for that office to use its facilities. And that candidate may say or show whatever it wants because the licensee cannot censor any of a candidate's broadcast material.

Certain appearances by a candidate do not count as a "use" of broadcast facilities and do not trigger the equal opportunity requirement. For example, appearances in a bona fide news-cast, news interview, news documentary (if the appearance of the candidate is incidental to the presentation of the subject of the documentary), and on-the-spot coverage of bona fide news events do not give rise to equal opportunity obligations.

However, if a candidate's appearance, either by voice or picture, does *not* fall under any of those exceptions, then the appearance may be what the FCC calls a "use", in which case the door would be opened to all other legally qualified candidates who may want equal time. Here's where the rule becomes more like passing out candy on Halloween than cupcakes in school. Once the first use has occurred, a broadcaster sits at his door and waits for other legally qualified candidates to come knocking. Those who knock within one week of the first use are entitled to an equal opportunity for use of the broadcast facilities. And as with trick or treating, there are bound to be a few stragglers. If a person was not a candidate at the time of the first "use," he or she must submit his or her request within one week of the first subsequent use after he or she has become a legally qualified candidate for the office in question.

The licensee needs to keep track of what access it gives, who it gives the access to, and at what cost. Every licensee must keep and permit public inspection of a complete record of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. Unlike other parts of the public inspection file, the licensee does not have to honor telephone requests for photocopies of the political file.

During the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the

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The circus is still in town

Ownership Rules, Month 3: The Beat Goes On

By: Lee G. Petro
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Okay, where were we? At the cliff-hanging conclusion of last month's episode of "All My Ownership Rules", the Commission had released the new rules, but they weren't effective yet, and Congress was making a lot of noise about reversing the rules, and folks were lining up to file appeals but they couldn't because the rules hadn't been published yet, and no one knew exactly when the freeze would be lifted to allow new deals to be filed and processed. . .

Since then?

The rules appeared in the Federal Register on August 5, which was the trigger for both their effectiveness and for setting deadlines for reconsideration and appeals.

The rules technically become effective on September 4. We say "technically" because, if you have an application already pending which needs to be amended to demonstrate compliance with the new rules, you may amend it now – you don't have to wait until September 4 to file the amendment. Similarly, if you have struck a whole new deal to buy or sell one or more stations, you can file a new application to cover that deal. A previously-filed application, amended to show compliance with the new rules, can be granted now – but only if it also complies with the old rules. New applications need not demonstrate compliance with the old rules, since they cannot in any event be acted on for 30 days, at which point the new rules will (theoretically) be in effect – assuming that the new rules haven't been rolled back in the meantime.

For any new applications you will need to use one of the new forms which the FCC has hustled up to conform with the new rules. Copies of the new forms are now available at the FCC's website and through the FCC's CDBS electronic filing system. The new forms include a handy-dandy worksheet to assist the applicant in determining whether the proposed deal complies with the new rules.

Note also that the venerable Form 301, used to apply for new CP's and for modifications to existing stations, has also been modified to encompass the new rules. Among the more significant changes there is that mod applicants will now have to certify specifically that the proposed changes comply with the ownership rules. It used to be that mod applicants simply answered Paragraphs 1 and 11 of the legal portion of the mod application – no more.

Petitions for reconsideration of the new rules must be filed with the Commission on or before September 4. And the Commission has magnanimously increased the applicable page limit – instead of the usual paltry 25 pages per reconsideration petition, the Commission is allowing up to 50 pages this time around.

"Petitions for Review" – *i.e.*, appeals to a Federal court of appeals – are due no later than October 6. If you wanted to be first in line to file an appeal, you're too late. They were already lining up at the courthouses weeks ago. At least two petitions for review have been filed with the U.S. Court of Appeals in D.C., and another has been filed with the U.S. Court of Appeals for the Third Circuit in Philadelphia. When situations like this arise, the courts conduct a kind of lottery to determine where all

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To Tell The Truth - An Oklahoma man who owned two FM stations and one AM station surrendered his interest in all of the stations after the FCC caught him lying. Although details of the misrepresentations are not complete, the FCC provided some hints about what happened. It appears that the man was already the licensee of an AM/FM combination in Oklahoma. Looking to expand his radio empire, he acquired a construction permit for a new FM station in another community. However, when applying to the FCC to assign the construction permit, the man did not fully disclose to the FCC the total amount that he paid for the permit. Not only was this omission made in the written applications before the FCC, but also in oral representations made to FCC staff. To make matters worse, the man then made false statements to the FCC regarding the operational status of his new construction permit. In a settlement agreement which the FCC has made public, the man – voluntarily – agreed to surrender all of his licenses and the FCC agreed not to pursue the man for his misrepresentations to the federal government.

Queen for a Day - Brenda Tanner, of Buffalo, was not pleased when she discovered that the local Infinity Radio station had made her a star by broadcasting a telephone conversation without informing her. Ms. Tanner is a telephone customer service representative for the bankrupt local cable television company who answered a call from some on-air personalities of Infinity's Station WBLK. The station employees engaged Ms. Tanner in a lengthy conversation about the future of the cable company, her job security and assorted other cable matters. Unbeknownst to Ms. Tanner, the entire conversation was being broadcast throughout Buffalo. Neither the FCC nor Ms. Tanner were amused by the stunt and Infinity was hit with a \$4000 fine. Readers are reminded that all parties must consent *prior to* the broadcast – or recording for broadcast – of any telephone conversation.

Password - In a novel development, an FM station is trying to keep material that it already has broadcast a secret. The Oregon station is under investigation by the FCC for allegedly broadcasting indecent material on its station at 3:30 in

the afternoon. The station has responded to the FCC's inquiry and has turned over a recording of the broadcast in question. However, the station wants the recording to be kept a secret and treated as confidential. Under normal circumstances, a station's response to an FCC inquiry becomes public information and may be reviewed by any interested party. In this case, the station claims that the recording has not been disclosed to any outside party since its

broadcast and therefore seeks confidential treatment. The FCC noted the obvious – the station already broadcast the material throughout its listening area at 3:30 in the afternoon – and it refused to grant confidential status to the recording of the broadcast.

Press Your Luck - An unlicensed Brooklyn, New York man was warned to stop his transmissions when the FCC discovered his illegal signal broadcasting at 93.7 MHz. The man advised the FCC that he would stop. A month later, the FCC returned to find that the pirate had merely moved to 88.1 MHz and they warned him again. Again, the man agreed to comply. Yet another month later, the FCC stopped by and discovered that operations simply had been moved yet again, this time to 90.1 MHz. Proving that the third time is the charm, the FCC hit this "moving target" with a \$10,000 Whammy. In tales of less daring pirates, the FCC issued fines last month to one pirate in Naples, Florida and another pirate in Orlando.

What's My Line? - Although programming the information line for the top of all fax pages is normally a technical afterthought, the FCC cited an Ohio company for not having done it properly. As fax machines became a business necessity in the early 1990s, Congress passed a broad law regulating the use of fax machines. Included in that federal law was a requirement that the top or bottom margin of every page sent by a fax machine (or the first page of a fax transmittal) list the transmission date and time, the sender's name and the sender's fax number. The FCC issued a citation to the Ohio company for failing to provide all of the required fax information. The company was also under investigation for sending unsolicited advertisements to fax machines.

Focus on FCC Fines

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Heads Up for FM Translator Applications

As an aftermath of the FM translator filing window last March, several thousand of the short-form applications filed during the window have moved forward in the process: those applicants — all non-mutually exclusive with other applicants — have until August 29 to file their follow-up long-form

applications. In view of this major league influx in new potential FM operations (even if they are low-power translators), all existing FM operators (including existing translators) may want to keep an eye out for proposals which might affect their operations.



(Continued from page 1)

date of a general or special election in which such person is a candidate, a broadcaster cannot charge a legally qualified candidate more than the lowest unit charge of the station for the same class and amount of time for the same period for any ad related to the candidate's campaign.

In even a two- or three-candidate race, these rules can be troublesome. Now consider California this year, where at last count there were more than 130 announced candidates for governor. The potential – actually, the near certainty – of chaos is obvious.

And while you're at it, throw in the fact that those candidates include a movie star, a former child actor whose TV show still appears in syndication, and a famous (well, relatively famous in some circles) comedian. As noted above, a non-exempt recognizable appearance of a candidate on the air may trigger equal time obligations. So would a station airing re-runs of *Diff'rent Strokes* (featuring child actor and two-time kidney transplant recipient turned candidate Gary Coleman) have problems? How about a station airing one of the zillions of Schwarzenegger movies?

At one point it appeared that Ronald Reagan had worked some of the kinks out of this process by forcing the FCC to

determine whether running a candidate's old movies qualified as a "use" which would give rise to equal opportunity rights for other candidates. The FCC first said such a broadcast did constitute a "use", but then it overturned its decision and said such a broadcast did not constitute a use (with certain exceptions). But then, three years later (in 1994), the Commission reversed itself again, stating that it would continue to apply its earlier interpretation. For the time being, then, re-runs *do* trigger equal opportunity problems.

Add to this mix another perplexing twist: as a technical matter, the current governor who is the subject of the recall election is technically *not* himself a candidate as far as California is concerned. Does the governor then qualify as a candidate for FCC purposes? The Commission has taken the position in the past that a person who is subject to recall *is* a candidate under the FCC's rules if the candidates to replace him appear on the same ballot as the recall. The exact nature of the California ballot was up in the air due to a recently filed legal challenge when this article went to press.

Whether or not you are a California broadcaster, you should feel free to call on us at Fletcher Heald & Hildreth for advice and assistance as you slog your way through the impending political season.



(Continued from page 2)

the appeals will be consolidated and heard. Initial reports indicate the Third Circuit, in Philadelphia, won the lottery. Other reports suggest that the case may still end up being heard in D.C. Stay tuned.

As you will recall, when it adopted the Arbitron geographic definition of radio markets for the new rules, the Commission came face-to-face with the fact that not all radio stations are in Arbitron markets. Accordingly, the Commission is also undertaking a new rule making proceeding to try to figure out how to deal with such situations. The notice of proposed rule making was also published in the Federal Register on August 5; comments on the proposal are due on October 6, and reply comments are due on October 21.

What about Congress? Well, Congress went away for its August recess, so nothing has happened on that front lately. But before the recess both the House and the Senate showed surprisingly bipartisan opposition to the new rules. One Senate strategy contemplates the use of the rarely-seen "Congressional veto", a device which is expected to be brought into play the first week of September. Look for high drama on Capitol Hill next month.

Given the uncertainty of the future of the new rules – beset as they are by Congressional displeasure, multiple pending appeals, and a likely tsunami of petitions for reconsideration – what is an applicant, or a potential applicant, to do? Probably the best thing to do will be to forge ahead with whatever deal you may have in the works. If the deal comes together and you can file an application for FCC approval, do so. The worst that could happen would be that the deal might get denied if the new rules are reversed by Congress or the courts. But any such reversal is likely to take time, and the FCC appears to be following Rear Admiral Farragut's direction, moving full speed ahead despite the torpedoes. So there is at least a chance that applications that are filed in the short term may be granted quickly by the Commission, even if Congress or the courts ultimately slam the door shut on the rules. And once granted, those deals could presumably be effectuated, absent some extraordinary development.

In other words, if there is a deal to be done, it probably makes sense to move forward with it on the assumption that the rules will still permit it if and when you're ready to file. Of course, if you have any questions about the new rules, the appeals, the Congressional wrangling or the application process, don't hesitate to give us a call. And in any event, stay tuned for next month's installment . . .

Digital TV heads out to the countryside

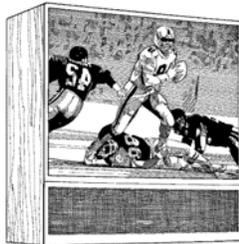
FCC Proposes DTV Rules for Translators and LPTV

By: *Harry C. Martin*
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The FCC has issued a rulemaking notice proposing new rules to govern the DTV transition of TV translator, LPTV and Class A TV stations. The agency's goal is to make over-the-air DTV service generally available in rural America, where most TV translators and many LPTV stations now operate.

For DTV translators the FCC is proposing that:

- Stations be technically capable of retransmitting the complete signals of DTV broadcast stations; and
- Local message insertions be permitted, with the possibility that operators will be able to alter the content or video format of their signals.



For LPTV and Class A TV stations operating in the DTV mode, the FCC is proposing that:

- DTV signals must have video resolution at least comparable to that of an analog TV signal; and
- Remaining DTV capacity would be available for ancillary services such as data transmissions.

For both TV translators and LPTV stations, the FCC is seeking comment on the following additional issues:

- Should the spectrum made available for DTV operations be limited to channels in the core (Channels 2-59, except for Channel 37, which is reserved for radio astronomy), or should Channels 60-69 be made available, at least during the transition, and perhaps permanently where core channels are not available;
- How should the Commission assess the interference potential of TV translator and LPTV stations, *i.e.*, are current contour overlap standards sufficient, or, alternatively, should the agency use the DTV interference

values applicable in evaluating interference from Class A TV stations;

- Should the first round of DTV transition applications be limited to incumbents, with follow-up windows to accommodate new entrants;
- Should the DTV transition deadlines applicable to full-power TV stations apply to TV translators, LPTVs and Class A stations.



This proceeding raises some perplexing issues, such as whether the FCC will impose a nationwide or market-specific "flash/cut" deadline on TV translator and LPTV licensees. Unlike their full-service counterparts, translator and LPTV operators do not have a companion DTV channel which

they can use to build a DTV audience during the transition. If a trigger mechanism is adopted, such as the 85% penetration test which applies to full-service DTV, that would create problems for operators and viewers in rural areas because audiences that depend on translators and LPTVs for over-the-air service would likely be the very people who would constitute most of the 15% without DTV sets. It would be these persons who would lose service when DTV penetration in the larger communities in a market causes the market to reach the 85% threshold, thereby triggering a flash/cut to DTV.

Another interesting item is a proposal to establish an on-channel digital booster station class in the LPTV service.

As of August 20, the deadline for comments in this proceeding had not yet been set.

Wilkommen, Bienvenu, Welcome . . .

Michael Richards Joins Fletcher Heald & Hildreth

Fletcher, Heald & Hildreth, P.L.C. is pleased to announce that **Michael W. Richards** has joined us as an associate attorney. Michael is an experienced communications attorney, and in his pre-law days he enjoyed an extensive and successful career in radio journalism with NPR, ABC and CBS. He received his law degree from the Georgetown University Law Center, and he holds a masters degree in journalism from Columbia University. Michael brings a wealth of experience and energy to the firm, and we are pleased to have him on board.

We are confident that you will find Michael an excellent addition to our team. Michael can be reached at 703-812-0456 and on-line at richards@fhhlaw.com.

Coming soon: *Night of the Living Debts?*



FCC Announces 2003 Regulatory Fees

Payment Deadline is September 24



By: Alison J. Shapiro
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The Commission released its Report and Order on the Assessment and Collection of Regulatory Fees for Fiscal Year 2003. (See below and the next page for a listing of this year's fees.) Here's a surprise: the annual regulatory fees have jumped considerably over last year's rates, which were themselves already considerably higher than the year before.

Regulatory fees are due to be received by the FCC *no later than September 24, 2003*. Any payment not received by the FCC's Fee Office at the Mellon Bank by 11:59 p.m., September 24, 2003, will be assessed a 25% late payment

fee. Fees can also be paid on-line.

Fee payments must be accompanied by a completed FCC Form 159 (Fee Remittance Advice). To fill out that form you will need to know your FCC Registration Number, the EIN of the person or entity making the payment, and the payment type code for the particular fee you are paying.

Please let us know if you have any questions about the regulatory fee process or how much you will owe for your authorizations. We would also be happy to assist you in getting your fees on file with the Commission.

2003 Annual Regulatory Fees

| 2003 Annual Regulatory Fees for Commercial Broadcast Radio Stations | | | | | | |
|---|------------|------------|------------|------------|-----------------------|--------------------------|
| Population Served | AM Class A | AM Class B | AM Class C | AM Class D | FM Classes A, B1 & C3 | FM Classes B, C, C1 & C2 |
| <=25,000 | \$ 600 | \$ 450 | \$ 325 | \$ 400 | \$ 475 | \$ 625 |
| 25,001 - 75,000 | 1,200 | 900 | 475 | 600 | 950 | 1,100 |
| 75,001 - 150,000 | 1,800 | 1,125 | 650 | 1,000 | 1,300 | 2,025 |
| 150,001 - 500,000 | 2,700 | 1,925 | 975 | 1,200 | 2,025 | 2,650 |
| 500,001 - 1,200,000 | 3,900 | 2,925 | 1,625 | 2,000 | 3,200 | 3,900 |
| 1,200,001 - 3,000,000 | 6,000 | 4,500 | 2,450 | 3,200 | 5,225 | 6,250 |
| >3,000,000 | 7,200 | 5,400 | 3,100 | 4,000 | 6,650 | 8,125 |

| 2003 Annual Regulatory Fees for Satellite Television Stations | |
|---|----------|
| All Markets | \$ 1,000 |
| Construction Permits | 515 |
| Earth Stations | 210 |

2003 Annual Regulatory Fees (continued)

2003 Annual Regulatory Fees for Commercial VHF Commercial TV

| | |
|-------------------|-----------|
| Markets 1-10 | \$ 57,650 |
| Markets 11-25 | 43,225 |
| Markets 26-50 | 30,125 |
| Markets 51-100 | 18,075 |
| Remaining Markets | 4,450 |

2003 Annual Regulatory Fees for Commercial UHF TV

| | |
|--|-----------|
| Markets 1-10 | \$ 15,850 |
| Markets 11-25 | 12,875 |
| Markets 26-50 | 8,075 |
| Markets 51-100 | 4,975 |
| Remaining Markets | 1,425 |
| Low Power TV, TV/FM Translators/ Boosters | 365 |
| Broadcast Auxiliary | 10 |

2003 Annual Regulatory for Broadcast Construction Permits

| | |
|-------------------------------------|--------|
| AM Radio Construction Permits | \$ 455 |
| FM Radio Construction Permits | 1,850 |
| VHF Television Construction Permits | 4,625 |
| UHF Television Construction Permits | 8,300 |



September 4, 2003

Petitions for Reconsideration – Petitions for reconsideration of the new broadcast ownership rules (MB Docket No. 03-130) are due September 4. The page limit for these petitions has been increased to 50 (count 'em, 50) pages. The deadline for replies to such petitions has not yet been established, but when it comes around, the page limit for such replies will be 20 pages.

September 24, 2003

Annual Regulatory Fees - All commercial broadcast licensees and permittees, as well as other commercial entities licensed by the Commission must pay regulatory fees. This year, regulatory fees must be paid by September 24.

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.

Renewal Post-Filing Announcements - Radio stations located 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.

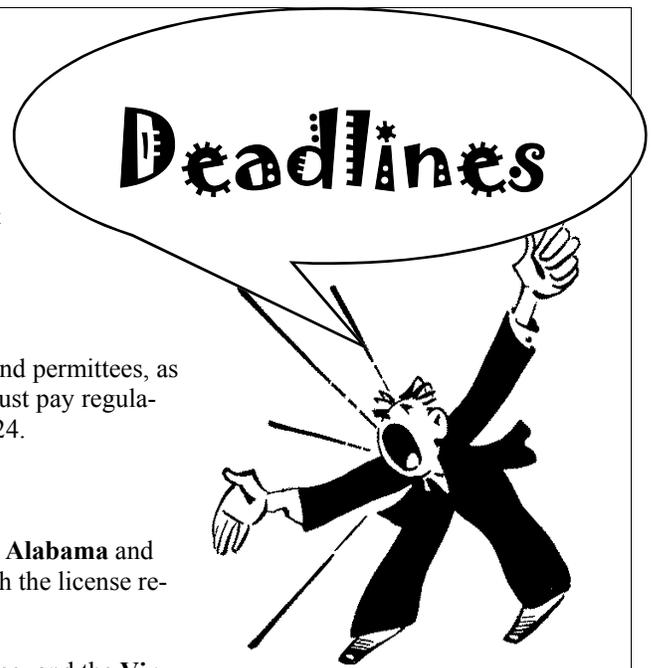
October 6, 2003

Comments on Definition of Non-Arbitron Radio Markets – Comments in response to the separate Notice of Proposed Rule Making (MB Docket No. 02-130) concerning the definition of radio markets not located in any Arbitron survey area are due October 6.

October 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.



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Arbitron market definitions, while-u-wait

FH&H Gets BIA Media Access Pro

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As part of our ongoing efforts to ensure that we have the resources necessary to serve our client's interests efficiently, we have acquired BIA's Media Access Pro. The FCC's new multiple ownership rules are about to become effective, and the Media Access Pro software offers an easy, up-to-date way to secure the Arbitron market information necessary to analyze compliance with the ownership rules. Even if those rules do not ultimately survive, Media Access Pro will assist us in working with our clients by providing detailed data regarding stations, their facilities, their ownership and staff, their formats, their performance and other information. The more we know about stations, the better we can serve our station clients. Feel free to contact the author or your attorney here to take advantage of our access to this valuable new resource.

Deadlines

(Continued from page 8)

October 21, 2003



Reply Comments on Definition of Non-Arbitron Radio Markets – Reply comments concerning the proposed definition of radio markets not located in any Arbitron survey are due October 21.

December 1, 2003

Renewal Pre-Filing Announcements - Radio stations located in **Arkansas, Louisiana and Mississippi** must begin pre-filing announcements in connection with the license renewal process.

Renewal Applications - All radio stations in **Alabama and Georgia** must file their license renewal applications.

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

EEO Public File Reports - All radio and television stations in **Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, and Vermont**. 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 **Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, and Vermont** must file a biennial Ownership Report (FCC Form 323 for commercial stations or Form 323-E for non-commercial stations). All reports filed on FCC Form 323 or 323-E must be filed electronically.



FHH - On the Job, On the Go

Frank Jazzo attended the Arkansas Broadcasters Association Annual Convention in Hot Springs, Arkansas from August 7-9. **Frank** has also been reappointed as Co-Chair of the Federal Communications Bar Association's Mass Media Practice Committee.

Kathleen Victory was a panelist at the Texas Association of Broadcasters Annual Convention on August 20. She covered general FCC issues including EEO, renewals, and the new ownership rules. **Roy Stewart**, Chief of the Office of Broadcast License Policy, also was on the panel.

On September 22 and 23, **Frank Montero** will moderate the Technology and Telecommunications Summit at the Congressional Hispanic Caucus Institute's Issues Conference in Washington, D.C.

Making waves for the high C's

Class C Facilities Still at Risk of Downgrading

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Class C FM stations not operating with the minimum Class C antenna height are still subject to reclassification as Class C0 (C Zero) facilities – as is becoming increasingly clear to a number of licensees. If you hold a full Class C license but operate with less than full Class C facilities, you could be subject to a downgrade in your station's class.

In 2000, the FCC established a new class of FM station -- C0 -- with facilities less than those of full Class C stations. In so doing, however, the Commission allowed all existing Class C stations to keep their full Class C status, even though, because of their lesser facilities, they could have been re-classified as Class C0. However, such under-facilitated stations are subject to a downward re-classification if such re-classification is requested as part of an FM allotment rulemaking or an application to change an allotment.

Once such a request is made by a rulemaking petitioner or

applicant, the FCC notifies the affected licensee through the issuance of a *billet doux* titled "Order to Show Cause", which gives the licensee a limited opportunity to bring its station's facilities up to a full Class C specs. If the station is

Failure to respond to the Order to Show Cause will result in the downward re-classification of the station to Class C0.

upgraded to full Class C facilities during the required time, the station becomes a permanent Class C facility and will not be reclassified. Failure to upgrade, or failure to respond to the Order to Show Cause, will result in the downward re-classification of the station to Class C0.

The Commission has been issuing numerous "Orders To Show Cause" to stations for which reclassification has been requested by an allotment rulemaking petitioner or change-in-allotment applicant. Such proposals could be filed at any time, and without prior notice. If you have a full Class C license but less-than-full Class C antenna height, you may want to give serious thought now, before you are facing any deadlines, to what your options might be should you receive an Order to Show Cause.

BMI and Radio Industry Reach Agreement on '97-'06 Royalties

By: Alison J. Shapiro
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The Radio Music License Committee ("RMLC") and Broadcast Music Inc. (BMI) have reached an agreement on new commercial radio station blanket and per program licenses for the musical works in BMI's repertoire. The agreement settles a rate proceeding begun in 1999 by the RMLC in the federal court in New York. The RMLC represents, directly or indirectly, all commercial U.S. radio stations with the exception of those stations represented by the National Religious Broadcasters Music License Committee.

The agreement covers the 10-year period from 1997 through 2006. Details of the agreements for both blanket and per program licenses, which have been submitted to the BMI rate court, are being mailed to radio sta-

tions throughout the industry in August.

BMI and the RMLC have agreed that the interim license fees due for the period 1997 through 2002 will remain unchanged and will be the final fees due for that period. Fees for the period 2003 through 2006 will be calculated on the basis of a new formula developed during the negotiations. According to BMI and RMLC, the new formula offers the benefits of stability, simplified administration, and set fee levels to BMI and radio stations alike. The agreement also includes a separate fee for the right of RMLC radio stations to use BMI songs in the simultaneous stream of their stations' over-the-air signals through their Internet websites.

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.

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| FM ALLOTMENTS PROPOSED -7/19/03-8/18/03 |
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| State | Community | Approximate Location | Channel | Docket No. | Deadlines for Comments | Type of Proposal (i.e., Drop-in, §1.420, Counterproposal) |
|-------|-------------|----------------------------|---------|------------|-----------------------------------|---|
| TX | Crowell | 50 m W of Wichita Falls | 293C3 | 03-168 | Cmts - 09/15/03 Reply-09/30/03 | Drop-In |
| LA | Florien | 80 m S of Shreveport | 242A | 03-169 | Cmts - 09/15/03 Reply-09/30/03 | Drop-In |
| MI | Harrison | 30 m SE of Cadillac | 280A | 03-176 | Cmts - 09/15/03 Reply-09/30/03 | Drop-In |
| AZ | Ehrenberg | 3 m E of Blythe | 286C2 | 03-174 | Cmts - 09/15/03 Reply-09/30/03 | Drop-In |
| TX | Rising Star | 100 m N of Fort Worth | 290C3 | 03-175 | Cmts - 09/15/03 Reply-09/30/03 | Drop-In |
| LA | Anacoco | 80 m N of Lake Charles | 276C3 | 03-177 | Cmts - 09/15/03 Reply-09/30/03 | Drop-In |
| PA | Erie | 120 NE of Cleveland, OH | 240A | 03-178 | Cmts - 09/15/03 Reply-09/30/03 | Drop-In |
| TX | Quitaque | 40 m W of Plainview | 261C3 | 03-179 | Cmts - 09/15/03 Reply-09/30/03 | Drop-In |
| CA | Greenfield | 50 m SE of Salinas | 254A | 03-180 | Cmts - 09/15/03 Reply-09/30/03 | Drop-In |
| CA | Cambria | 30 m NW of San Luis Obispo | 287A | 03-182 | Cmts - 09/22/03 Reply-10/17/03 | Drop-In |
| OK | Blanchard | 40 m S of Oklahoma City | 247A | 03-181 | Cmts - 09/22/03 Reply-10/17/03 | 1.420 |

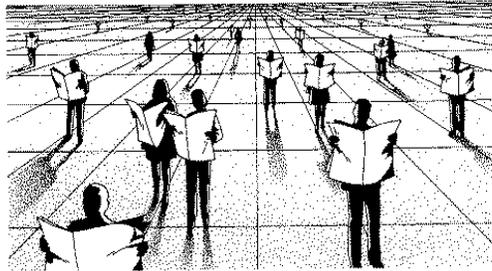
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|---|
| FM ALLOTMENTS ADOPTED -7/17/03-8/18/03 |
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| State | Community | Approximate Location | Channel | Docket or Ref. No. | Availability for Filing |
|-------|---------------|----------------------------|---------|--------------------|-------------------------|
| WA | Basin City | 20 m N of Pasco | 248C2 | 03-25 | None |
| IL | Johnston City | 80 m SE of St. Louis | 297B | 03-13 | None |
| NY | Indian Lake | 80 m N of Albany | 290A | 03-105 | TBA |
| NY | Malta | 10 m S of Saratoga Springs | 289A | 03-105 | None |
| NY | Queensbury | 80 m W of Albany | 240A | 03-105 | None |
| TX | Archer City | 20 m S of Wichita Falls | 248C2 | 03-116 | None |
| WV | Gary | 50 m S of Charleston | 299C3 | 02-316 | None |

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

Updates on the News

Localism – Threat or Menace? We interrupt this “Updates on the News” to bring you the latest from the Ownership Wars. As this issue of the Memo to Clients was heading to the printers, Chairman Powell announced the launch of a “‘Localism in Broadcasting’ Initiative” to “tackle [the question of localism in broadcasting] head on”. While the Chairman continued to defend the new ownership rules and did not concede that those rules might have had any adverse effect on “localism”, the timing of this “initiative” certainly suggests that it may be, at least in part, an effort at damage control in the face of mounting Congressional criticism focusing on the very question of localism – a question, needless to say, which a boatload of commenters attempted to raise *before* the vote on the new ownership rules.



The first item of business identified by the Chairman for this localism initiative? “Speeding the activation of low power FM stations.” Next up, the formation of a “Localism Task Force” which, we are assured by the FCC, will “play a critical role in gathering empirical data and grassroots information on broadcast localism and advising the Commission on concrete steps that can be taken to promote localism”. That will be done through studies, hearings, and recommendations which the Task Force will undertake. And as if that weren’t enough, next month the Commission’s staff is supposed to provide the Commissioners with a draft notice of inquiry “on localism”.

Of course, in the minds of many this seeming effort to craft an effective lock for the barn door comes a couple of months after the horse got out. Commissioner Copps, for one, criticized the localism initiative, pointing out that this is something which the Commission should have undertaken *before* adopting the new rules. In Copps’s view, the Commission has adopted a policy of “ready, fire, aim.”

More on this next month. Now back to the Updates.

New MDS/ITFS Application Search Interface Deployed. If you ever happen to need to track down an MDS or ITFS application, your job has just been simplified. The Commission has set up a search interface which allows you to track down and retrieve data for applications for new or modified authorizations in those services (and amendments to such applications). Just go to <http://wireless.fcc.gov/services/itfs&mds/licensing>. For the time being the only applications available to be searched are for new and modified facilities. Other types of application – renewal,

STA, CP extensions, assignment/transfer – are not available. However, some such applications may be found as attachments to the relevant licenses through an MDS/ITFS License search. If you prefer to work off-line on application searches, you can also download the application file database from: <http://wireless.fcc.gov/cgi-bin/wtb-itfsmdsdata.pl>. But this database, too, is limited to new and mod applications.

Copps Bemoans Commission Inaction. Here’s a switch – a Commissioner complaining about how the FCC has failed to take action. And here we thought that that was a privilege reserved for applicants. . . Early this month Commissioner Copps issued his own press release, loudly titled “FCC Fails to Act on ‘Opie and Anthony’ Outrage as

Complaints Languish One Year Later.” You probably recall that last summer a morning team in New York staged a bit in which participating contestants were supposed to have sex in a church. Following a firestorm of adverse publicity, the announcers were removed from the air, the licensee appeared to have smoothed over the ruffled feathers of many of the folks who had expressed concern about the bit, and life went on. But Copps for one is apparently not satisfied, and seems to think that the Commission can and should start kicking butt and taking names. He was particularly incensed that the Opie and Anthony matter has been pending for a year without any official action by the Commission. If he does manage to jumpstart the process, we would like to know how . . .

Tourist Time If you are planning on visiting Washington soon, you’re in luck. The Commission has completed the work on its lobby entrance (at 445 12th Street, SW), so you won’t have to sneak in the side door anymore. And if you do make it to town, don’t forget to bring your wifi-enabled laptop. The 8th and 12th floors of the FCC and its oh-so-attractive courtyard are all set up for wifi access. You won’t be asked for any ID to get onto the Commission’s wireless network, but “if requested by outside authorities, however, the FCC will provide data from system audit logs to support external investigations of improper Internet use.” Be forewarned.

Junk Fax Rules Postponed Last month we mentioned in this column that the Commission had adopted new rules against the sending of unsolicited commercial faxes. While those new rules were originally slated to take effect this Fall, the Commission has decided to postpone their effectiveness until January 1, 2005.