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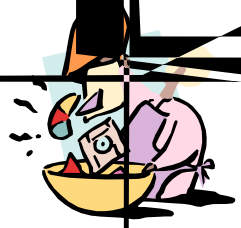
Memorandum to Clients

March, 2004 | *News and Analysis of Recent Events in the Field of Communications* | No. 03

Flagging is back, UHF discount is still around . . .

Update on Ownership: The Stew Continues to Bubble



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Even though the 3rd Circuit has heard the arguments about the Commission's July, 2003, changes to the ownership rules and is now cogitating on those arguments, that doesn't mean that the fun is over. No, siree. Instead, we at *MTC* were in the cooking mode, and couldn't resist cooking up a hearty dish. There are three main ingredients: a bowl of leftovers, a dash of cowboy rulemaking at the FCC, and a smidgen of Congressional activity. The result? This month's Chef's Special: Ownership Stew.

Ownership Stew: Mix a bowl of leftovers, a dash of cowboy rulemaking at the FCC, and a smidgen of Congressional activity.

First, the Leftovers. After the Commission released the new ownership rules in July, 2003, the Media Bureau abandoned the old "flagging" policy relating to assignments or transfers that would result in one licensee controlling 50% of a market's revenues, or two parties controlling 70%. The new rules were meant to eliminate the need for such concerns. However, it has been confirmed by a number of sources that the Media Bureau's staff has reinstituted the flagging policy, albeit with a little tweaking.

Now, the Bureau will ***not*** flag deals that involve the assignment of an existing monop…, er, cluster to another group. In other words, if the net effect of the proposed transaction will not alter the level of control exercised by any single entity in the market, the FCC should not have a problem with it. But the staff ***will*** apparently put the brakes on deals in which an existing market player is acquiring additional stations in the market or a new entrant is buying two or more clusters in the same market. That is, if the overall control profile of the market would change, the Commission will want to take a closer look.

This appears to be a reversal of the Bureau's former policy announced over four months ago. In that policy, the staff informally urged long-pending, flagged applicants to dismiss the applications which were subject to a flag, and then to resubmit them right away, at which time they would be processed promptly and without regard to the factors which had led to their being flagged in the first place. Presumably the new flagging policy will stay in effect until there is a final resolution of the new ownership rules.

Next, the Dash of Rulemaking Surprise. During the 3rd Circuit oral arguments, a question was raised with respect to the UHF Discount policy, which was retained by the Commission in the June 2003 Ownership proceeding. For those not in the know, the UHF Discount is a device originally designed to ease the perceived disadvantages suffered by UHF operators trying to compete with VHF operators. In counting households reached for purposes of calculating compliance with the national ownership audience cap, only 50% of the households reached by UHF stations are tallied. In that way, it is possible to own significantly more UHF stations than VHF stations and still be under the national cap.

Since Congress had just lowered the national audience cap (see below) from 45% to 39%, the Media Bureau released a public notice seeking comment on whether the legislation served as an affirmation of the Commission's decision to re-

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The Scoop Inside

Third-adjacent protection from LPFM's on the way out?

FCC Tilts Toward LPFM In Long-Running Debate On Potential Third-Adjacent Interference Question

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In a February 19, 2004, report to Congress, the FCC recommended the elimination of the third-adjacent distance requirements that are currently holding back hundreds of low power FM (LPFM) applications. If Congress accepts those recommendations, the fledgling LPFM industry may soon begin to flourish, much to the chagrin of some full-power stations and networks.

As a concept, LPFM radio sounds so simple. It is localism in its purest form. They are just cute little, itty-bitty noncommercial radio stations − serving neighborhoods, churches, schools and the like. But nothing is ever that simple. To hear full service broadcasters tell it, proliferation of LPFM stations creates a serious risk of destructive interference. To hear LPFM proponents tell it, those supposed fears are just a smokescreen created to help "Big Media" keep its jackbooted foot on the throat of the little guy.

In January 2000, the Commission authorized the licensing of LPFM stations and imposed minimum distance separation requirements for LPFM stations consistent with current FM protection standards with respect to existing stations operating on the same and the two immediately adjacent channels. The first applications were filed in May of 2000; nevertheless, the creation of this class of small stations drew fire from existing broadcasters, led by the NAB and NPR who expressed concern about interference. In response, and after determining that LPFM stations would not cause unacceptable interference to stations operating on third-adjacent channels, the Commission adopted complaint and license modification procedures to ensure that significant third-adjacent channel interference problems would be resolved expeditiously.

Succumbing to industry pressure, however, Congress then stepped in, enacting legislation *requiring* third-adjacent channel minimum distance separation requirements for LPFM and mandating that the Commission conduct an experimental program to determine whether LPFM stations would cause interference to existing radio broadcast stations if the LPFM stations were licensed *without* third-adjacent channel protection requirements.

In July, 2001, the Commission selected the MITRE Corporation (MITRE) to conduct the required LPFM experimental program and field tests. Once the tests were completed, MITRE's report concluded that LPFM-induced third-adjacent channel interference occurred only when the test receiver was in close proximity to LPFM transmitters. It therefore followed that, if reasonable transmitter emissions standards were established, third-adjacent channel interference would have relatively little impact on full power FM stations.

After reviewing the MITRE report and comments from 24 parties (18 of which supported elimination of the third-adjacent standard), the Commission concluded in February that there was no public interest reason to retain the third-adjacent minimum distance separation requirement for LPFM stations. As a result, the FCC recommended that Congress re-address the issue and modify the statute to eliminate the third-adjacent separation requirements for LPFM stations.

Without a crystal ball, there is no way to know how Congress will treat LPFM. LPFM applicants are hopeful that their pending applications will begin to move, especially in light of Sen. McCain's (R-AZ) support for the change. But all is not

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Focus on FCC Fines

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As discussed elsewhere in this month's edition of *Memorandum to Clients*, all five FCC Commissioners are feverishly attempting to "clean up" the broadcast airwaves (*see article on page 6*). To that end, the FCC is going through pending files and hitting broadcasters with the maximum fines for indecency violations. Although Congress is working to increase the maximum fine for broadcasters (*see article on page 8*), the current maximum fine remains $27,500 per incident. Two broadcasters were in the FCC's cross-hairs this month:

Infinity – Infinity's Detroit station WKRK was hit with two maximum fines during March. At the beginning of the month, the FCC reaffirmed its December decision to fine the station for a half-hour drive-time show in which listeners called-in to describe vulgar sexual acts. The FCC transcripts indicate that all of the callers were male and several of the descriptions involved domestic violence as a facet of the sexual acts. Unanimously, the FCC upheld its previous decision and fined Infinity $27,500 for the January 2002 broadcast.

The FCC has announced that it intends to fine the same Detroit station another $27,500 for a July 2001 Howard Stern broadcast. However, the decision to issue this fine was not unanimous. Democratic Commissioner Michael Copps, who has long advocated revoking licenses for indecency violations, did not support the $27,500 fine, declaring that more serious action was necessary. The Howard Stern broadcast discussed several vulgar sexual acts and provided listeners with descriptions of sexual acts with which they may not have been familiar (including a "blumpkin"). Although Infinity told the FCC that the descriptions were non-descriptive and based on innuendo, the FCC was emphatic that there was no non-sexual meaning that a listener could possibly have attributed to the descriptions.

The FCC also went after an Infinity station in Florida for indecent broadcasts from 1999. Finding that a live broadcast of a rap/hip-hop song which included repeated reference to oral sex was indecent, the FCC has affirmed that Infinity should be hit with a $7000 fine. As with many other instances, Infinity claimed that the references to oral sex were not inescapable. The FCC responded by noting that one of the phrases describing oral sex (*i.e.*, "eating pussy") "has but one meaning in common parlance" and that Infinity is unable to provide any alternate meaning for the phrase. As with the Howard Stern fine noted above, the Commissioners voted 4 to 1 to impose the $7,000 fine. Commissioner Copps did not support the fine, suggesting instead that a significant fine or a license revocation was applicable to the case.

Clear Channel -- Clear Channel faces nearly a quarter-million dollar fine for March 2003 broadcasts from its Washington, Richmond and Delaware stations. The fines are for graphic discussions of sexual activities. The discussions arose in connection with the acknowledgement of the birthday of a pornography star. However, this was not simply an instance of a morning show personalities getting out of control. While the graphic discussion did take place during the morning drive time, the stations chose to re-broadcast the discussions as promotional spots twice more during the day. The promos ended up tripling the fines.

The FCC also has proposed slapping Clear Channel with an additional $55,000 fine for May 2002 broadcasts from two Florida stations. The FCC determined that the stations broadcast a graphic description of sexual activities in an effort to "pander to, titillate and shock listeners." Clear Channel argued that the broadcasts were not offensive because they consisted mainly of sounds of a woman moaning, which is not in and of itself explicit. The FCC countered that when taken in context with the repeated discussions and depictions of oral sex, the woman's moaning and the descriptions clearly were offensive. In both Clear Channel cases, the FCC voted 4 to 1 in favor of the fines, with Commissioner Copps again voting against the fines in favor of a larger fine or licenses revocation.

Widow fined $12,000 for husband's station – The FCC declared that enough time had passed since her husband's death, for a grieving widow to have familiarized herself with the FCC's LPTV rules. In light of the widow's decision to continue operating the station after her husband's death, the FCC fined her for not operating the station correctly. The FCC inspected the Phoenix LPTV station and found that, although EAS equipment had been ordered prior to the FCC raid, it had not yet been delivered to the station. In addition, the FCC determined that the station did not have a main studio within the station's predicted Grade B contour. The FCC announced that the widow's efforts prior to the raid merited a reduction in the fine and only fined her $12,000, rather than the maximum $15,000.

Unconsented broadcast of phone calls cost $4,000 each – In two separate instances, a South Carolina and a Massachusetts station were fined $4,000 each for violating FCC rules on

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Post-Closing Tip:

Don't Forget to Update ASR Information

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If you purchased a television or radio station lately, you know that there are literally hundreds of details to handle after the closing. One item that is sometimes overlooked by the new owner of a station is the updating of the station's Antenna Structure Registration (ASR) to reflect the new owner's name, address and emergency contact information. Such updating is required to assure compliance with the Commission's rules. Perhaps surprisingly, the ASR information is ***not*** automatically updated when you (or your attorney) notify the FCC that the purchase has been consummated.

Of course, not every tower must be registered with the FCC. Generally, only towers located near airports or over 200 feet (60.96 meters) in height must be registered. A tower owner must post the tower's ASR registration number at the tower's base so that anyone can quickly identify and contact the owner if there is a problem with the tower (such as malfunctioning lights, etc.). If you are the owner of a registered tower, you are required to keep the contact information in the FCC's database current. You can do this quickly and easily through the FCC's website. The FCC does not charge a filing fee for such updates. If you know the registration number for a tower, you can find the current ownership information on file by searching the FCC's website at www.fcc.gov. Just click "e-filing" at the top of the home page, then "Antenna Structure Registration" and "Search for Registrations," and enter the registration number.

As the constant stream of fines and forfeitures reported in these pages every month demonstrates, the FCC has been extremely active lately in its enforcement efforts. Failure to maintain accurate ownership information in the Antenna Structure Registration database is frequently discovered, and cited as an additional violation, when FCC field inspectors discover physical violations at tower sites such as fencing, lighting, signage, and painting problems. Checking and keeping your ownership information up to date and accurate in the FCC's Antenna Structure database is an easy way to avoid citation for additional violations. If you have recently acquired one or more stations, you may wish to doublecheck the status of the ASR's for those stations' towers. And if you plan to acquire one or more stations in the foreseeable future, you may want to make a note to remind yourself to include updating ASR's as one more routine post-closing chore.

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tain the UHF Discount. Coupled with the release of the public notice, the FCC's General Counsel sent a letter to the 3rd Circuit, seeking to hold the Court's consideration of challenges to the UHF Discount in abeyance until the new rulemaking proceeding is completed.

The only problem with this approach was that at least two of the five Commissioners were apparently unaware that the new rulemaking proceeding was to take place or that the General Counsel was sending his letter to the Court. In a public notice, Commissioners Copps and Adelstein pondered whether these actions were "an attempt to avoid a substantive court decision on the apparent weakness and inconsistency in the June 2nd media ownership order" (which they both opposed).

Finally, the smidgen of Congress. On January 23, 2004, the President signed into law a massive bill that contained two tiny provisions affecting our little world. First, the bill rolled back the national television ownership cap to 39% from the 45% limit that was contained in the July, 2003 ownership rules. Second, the bill effectively doubled the time for periodic regulatory reviews by replacing "biennial" review requirements with "quadrennial" reviews.

And an additional *potential* ingredient for the ownership stew lurks, oddly enough, in the Senate version of the legislation dealing with broadcast indecency. That provision of the Senate indecency bill would require the General Accounting Office to consider the effect of the horizontal and vertical media consolidation on the level and degree of indecent broadcasting. And the bill would suspend the effectiveness of the new media rules until that report is submitted to Congress for its consideration. In the meantime, the old rules would be in place. As of press time, the Senate had yet to vote on the bill. And, since the House ***did*** vote out an indecency bill which did ***not*** include any provisions relating to the ownership rules, it is not at all clear that such a provision would be embraced by both the House and Senate and then signed into law by the President.

Now that all the ingredients have been assembled, we will have to let them simmer for several months, stirring occasionally – unless something else happens to turn the heat way up, in which case we might all get burned. Stay tuned.

It's almost April — do you know when your LUC kicks in?

The Political Season Is Heating Up

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As they roll through the political season, broadcasters should be sure to consult their local and state election officials to verify all election dates and obtain information on party caucuses to determine when and if the lowest unit charge (LUC) window applies. Bear in mind that LUC windows will soon be opening for the following states where Presidential primaries have not yet been held: Alabama, Arkansas, Idaho, Indiana, Kentucky, Montana, Nebraska, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, South Dakota, and West Virginia. (See box, below, for the dates of the primaries in each of these states.) The LUC window for primaries opens 45 days prior to the primary.

The general election will be held Tuesday, November 2, 2004. The LUC window for the general election will open 60 days prior to the election, that is, on Friday, September 3, 2004.

Your sales staff should be sure to mark their calendars to show the LUC periods which apply in your market.

On a separate election-related matter, broadcasters may have heard allegations that some organizations are sponsoring "illegal" campaign ads opposing the President's re-election campaign in 17 states. In early March the Republican National Committee sent letters to some 250 television stations alleging that the "MoveOn.org Voter Fund" was violating federal election laws by using "soft money" to pay for ads which attack or oppose re-election of the President. "MoveOn.org Voter Fund" is a so-called "Section 527" organization which is subject to certain limitations under the election laws. As the GOP sees it, MoveOn.org has exceeded those limits, and the GOP has thus taken it upon itself to so notify television stations, presumably in the hope that stations, not wishing to find themselves in violation of the election laws by airing the MoveOn.org spots, will pull those spots. MoveOn.org, of course, disputes the GOP's claims.

At least for the time being, the FEC's regulatory activities are directed to political advertisers and not to the broadcast stations on which they advertise.

It is not at all clear whether either side in this particular set-to is completely right or completely wrong. Each side claims that the Federal Election Commission's decisions generally support that side's view of the law and the facts. Unfortunately, the FEC has not yet addressed this particular situation involving these parties and the spots in question. As a result, both sides are lobbing their respective self-serving interpretations back and forth at one another, and broadcasters are left in the middle.

The good news is that, at least for the time being, the FEC's regulatory activities are directed to political advertisers and not to the broadcast stations on which they advertise. Thus, whichever side turns out to be correct with respect to the FEC's interpretation of election law, it is unlikely that broadcasters will be penalized.

Clip and Save!!

Upcoming Presidential Primary Dates

The following are the dates of upcoming Presidential primaries. The LUC period for stations in the listed states begins 45 days prior to the primary date.

STATE	PRIMARY DATE	STATE	PRIMARY DATE
Alabama	June 1	New Jersey	June 8
Arkansas	May 18	New Mexico	June 1
Idaho	May 25	North Carolina	May 4
Indiana	May 4	Oregon	May 18
Kentucky	May 18	Pennsylvania	April 27
Montana	June 8	South Dakota	June 1
Nebraska	May 11	West Virginia	May 11

FCC blows the whistle, er . . . puts the screws on, er . . . goes off half-cocked, er, . . .

FCC Broadens Definition of "Indecency", Announces New Enforcement Actions Against "Profanity"

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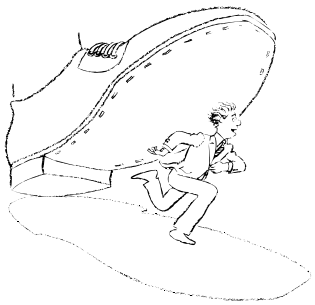
Just when you might have thought that things on the indecency front couldn't be more screwed . . ., er, messed up, sure enough − the Commission has taken a huge step away from the carefully limited approach which the Supreme Court demanded in its 1978 *Pacifica* decision. As a result, broadcasters are now on notice that virtually ***any*** use of the word "fuck" in ***any*** form and in ***any*** context is likely to be found to be indecent.

Moreover, the Commission has declared that it will, in the future, punish the broadcast of language which is "profane", whether or not the language fits within the FCC's working definition of "indecent". The Commission has indicated that, for its purposes, "profanity" is "vulgar, irreverent, or coarse language".



These developments are set forth in four decisions released simultaneously on March 18. In the most sweeping of those four, the Commission reversed last Fall's determination by the Enforcement Bureau that the exclamation "This is fucking brilliant" by Bono upon winning a Golden Globe award was not indecent.

The dramatic scope of the Commission's change of course here cannot be overstated.

With respect to the indecency component of the Commission's decisions, as we discussed at some length in last month's *Memo to Clients*, the Commission's previous indecency policy entailed a two-step analysis. First, the Commission checked to see whether the language at issue involved sexual or excretory organs or activities. If so, the Commission proceeded to the second step, in which the Commission considered the "full context" of the material. In particular, the FCC supposedly focused on: (a) the explicitness or graphic nature of the description; (b) whether the material "dwells on or repeats at length descriptions of sexual or excretory organs or activities"; and (c) whether the material appears to pander or is used to titillate or shock. Applying that analysis to Bono's exultant, extemporaneous exclamation, the Enforcement Bureau concluded that that exclamation was not indecent.

The Commission, responding to intense political pressure, has now concluded otherwise. According to the Commission, the "'F-Word'" is "one of the most vulgar, graphic and explicit descriptions of sexual activity in the English language", a word whose "use invariably invokes a coarse sexual image." The FCC further finds that its use by Bono was "shocking and gratuitous", and that it was not shown to have any "political, scientific or other independent value of use" which might "mitigate its offensiveness". The Commission expresses particular concern that such "isolated and gratuitous" uses of such language "would likely lead to more use of the offensive language", which would jeopardize "the well-being of the nation's children" who would be exposed to "the most objectionable, most offensive language".

So, in the Commission's "analysis", the actual context of Bono's remark appears to be almost entirely irrelevant. The fact that it was a one-time, impromptu exclamation which had no sexual, titillating, pandering component at all is not important. Rather, the Commission has chosen to focus on the fact that the Commission views the word "fuck" (and all of its variations) to be indecent, period.

Whether this new approach can withstand constitutional challenge (if one is brought) is questionable. In the seminal, er, landmark *Pacifica* case in 1978, the Supreme Court upheld the FCC's authority to prohibit the broadcast of certain language in some narrow circumstances. But that decision was emphatically narrow. Justice Stevens, writing for a bare majority of the Court, stressed that the Court had "not decided that an occasional expletive in either setting would justify any sanction." The Commission's latest "Golden Globe" decision appears to ignore that cautionary admonition.

Even more problematical is the Commission's sudden embrace of the notion of "profanity" as a basis for additional limitations on broadcast content. As the FCC acknowledges, "profanity" has historically been viewed as a term with religious connotations. The Commission itself seemed to equate "profanity" with "blasphemy" in earlier decisions.

Not anymore.

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The Commission found a dictionary in which profanity is defined as "vulgar, irreverent, or coarse language". The Commission also exhumed a 1972 decision from a federal appeals court in Chicago which referred to profanity as

> certain of those personally reviling epithets naturally tending to provoke violent resentment or denoting language so grossly offensive to members of the public who actually hear it as to amount to a nuisance.

And sure enough, the Commission concluded that Bono's use of the word "fucking" was in fact "profane". Moreover, the FCC warned that it will analyze "other potentially profane words or phrases on a case-by-case basis".

Where, then, does the law of indecency now stand?

First and foremost, licensees should be aware that the broadcast of the word "fuck" in any of its forms and in any context will likely be determined to be "indecent" and "profane" and therefore in violation of the Commission's rules. While we may be able to imagine some uses of that term which might be defended, the tenor of the FCC's March decisions strongly suggests that any such defense will fall on deaf ears.

Second, other language similarly associated with sexual or excretory organs or activities may be subject to the same treatment. Obvious examples would be "shit" or "asshole". Less obvious examples which could be swept into the indecency/profanity net include "screw", "piss", "suck", "blow", "cock", "pussy", and so on, ad infinitum. And even less obvious examples include the myriad expressions which, while completely innocent on their face, may be subject to some second meaning or innuendo which, in the minds of the Commissioners, convert their innocence into vulgarity. Remember, the fact that the words or phrases are not actually used in any perceptible sexual or excretory sense is irrelevant − Bono's particular use of "fucking" as an intensifying adverb does not appear on its face to have had anything to do with sex.

Third and perhaps most ominous, the law of indecency is now the law of indecency ***and*** profanity. And while the Commission has provided the broadcast industry at least a minimal (very minimal) set of parameters by which to identify "indecency" − for example, to be "indecent" language must involve descriptions or depictions of sexual or excretory organs or activities − it has provided no such parameters for "profanity". All we know is that if the language is "vulgar, irreverent or coarse" and might "provoke violent resentment", then it may well be "profane". And if it's profane, then it should not be broadcast.

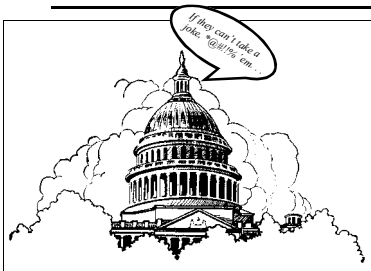
That is especially troubling because it opens up a broad range of potentially prohibited speech. Take racial or ethnic epithets, as an obvious example. Few would disagree that such language is vulgar, coarse and, to many, extremely offensive. Indeed, many mainstream media decline to use the word "nigger" − opting instead for the term "the N-word" − because of the opprobrium associated with that term and all that it suggests.

If language is "vulgar, irreverent or coarse" and might "provoke violent resentment", then it may well be "profane". And if it's profane, then it should not be broadcast.

But on what basis is the Commission to decide just what words are so "vulgar, irreverent or coarse" as to justify prohibition? The FCC has provided no clue. As a result, broadcasters are left to guess, and if they guess wrong, they risk a forfeiture or worse at the Commission.

One additional observation is warranted about the Commission's latest effort to stamp out "indecent" and "profane" material from the airwaves. Historically, the FCC's attention has been directed to radio broadcasts − Howard Stern, Pacifica, Bubba, Mancow, Elliot, the list goes on. Curiously, the Commission has seldom if ever raised so much as an eyebrow about the sexual content of many mainstream television shows aired during the 6:00 a.m. − 10:00 p.m. period when indecency (and, now, profanity) is prohibited. The most noteworthy TV-related case to date appears to be the Golden Globes show featuring Bono's notorious (and, as we now know, indecent and profane) remark. But evening sitcoms and dramas and afternoon soap operas are rife with sex-related language and activity − and, of course, let's not forget the increasingly frequent ads for various sex-related drugs. It is not clear whether the FCC's current crusade against the indecent and profane will extend to the television side of broadcasting, but if the Commission wishes to be consistent and even-handed, it will be difficult to ignore television.

All of which is simply to say that the broadcast industry is now facing a serious dilemma. Caution is appropriate. But so, too, should be concern about whether the FCC's new twists on its old policies impose unconstitutional burdens on broadcasters. While much which the FCC now seeks to penalize may be vulgar and offensive to many, there are doubtless many others who find such programming acceptable and maybe even preferable. As Justice John Harlan observed, one man's vulgarity is another's lyric. While the Commission appears intent upon penalizing vulgarity, it has failed to give broadcasters effective guidelines for discerning the vulgar from the lyrical.



Meanwhile, over on Capitol Hill . . .

Congress: Upping the Indecency Ante?

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While the FCC was busy re-modeling its indecency policy to include a "profanity" component, Congress was also hard at work attempting to craft new indecency provisions in the U.S. Code. As of press time, the full House had passed a bill while the Senate Commerce Committee had sent a bill to the Senate floor where it is presently awaiting action.

The House bill started out as a simple affair which would have increased the maximum fine for indecency ten-fold (to $275,000) per incident, with an overall maximum of $3,000,000. By the time it got out of committee and was approved by a majority of the House, however, the per incident cap had increased to $500,000, and the bill had acquired considerably more baggage, including provisions:

- requiring the FCC to consider, in determining the amount of forfeiture for any particular indecency violation, such factors as:
  - whether the programming was live or recorded, scripted or unscripted;
  - whether the licensee had a reasonable opportunity to review any recorded or scripted material, or had a reasonable basis to believe that live or unscripted material would contain obscene, indecent or profane content;
  - if the licensee originated live or unscripted programming, whether a time delay mechanism was implemented;
  - the size of the program's audience;
  - whether the programming was part of a children's television program;
  - the licensee's ability to pay, including consideration of the size of the licensee and the size of the licensee's market.
- exempting from fines any licensee which broadcasts indecency provided by a network where the licensee is not owned or controlled by the network and where the licensee did not have either a reasonable opportunity to review the programming in advance (for recorded or scripted programming) or a reasonable basis to conclude that the programming would contain indecent content (for live or unscripted programming)
- requiring the FCC to issue an NAL in response to allegations of indecency within 180 days of the receipt of the allegations or, if no action is warranted by the allegations, to so notify the complainant within 180 days;
- requiring the FCC to issue a forfeiture order, or to advise the complainant that no such order will be issued, if the fine has not been paid or a settlement entered into by the licensee within 270 days of the issuance of the NAL;
- authorizing the Commission to require licensees which are found to have broadcast indecency to broadcast PSA's serving the educational and informational needs of children;
- mandating that indecency violations be deemed "serious violations" for purposes of license renewal evaluation. A finding that a renewal applicant has committed "serious violations" permits the FCC to deny renewal or to impose conditions on the license;
- requiring the Commission to initiate a license revocation hearing for any station licensee which has been issued three or more indecency NAL's during a given license term, unless any indecency penalty is under review or has been reversed by a court of competent jurisdiction;
- requiring the Commission to provide an annual report to Congress on indecency enforcement, including the number of complaints received, the number of programs to which the complaints relate, the number of complaints which were dismissed or denied, the number of complaints still pending at year's end, and the number of notices of violation issued (including detailed information about each such proceeding).

Politicians appear to have identified indecency as an issue of considerable interest to their constituents.

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Get-together in Las Vegas

ISBA To Hold Constitutional Meeting

2004 Political Initiatives Also on the Agenda

If you plan to be in Vegas for the NAB in April, you might want to pencil into your calendar the first constitutional meeting of the Independent Spanish Broadcasters Association (ISBA), which will be held on Wednesday, April 21, at 9:00 a.m. in the Las Vegas Convention Center Room N261. ISBA was created late last year, with FHH's own Frank Montero at the helm as acting Executive Director.

ISBA was formed by independent Spanish language networks, broadcast companies, financial institutions, and other service providers to the Spanish media industry. It is intended to give a voice to independent Spanish language broadcasters in their effort to increase opportunities for capital formation, acquisitions and advertising revenue. ISBA's primary membership focus is independently-owned, non-publicly traded, Spanish language broadcasting companies, and it is open to both Latino and non-Latino broadcasters interested in the growing Hispanic market in the U.S.

The Las Vegas meeting will include election of a Board of Directors and officers. Additionally, members will identify policy initiatives to be pursued by the Association in 2004.

If you would like information about ISBA, how to become a member or the upcoming meeting, check out its new website – www.spanishbroadcasters.com – or contact Frank Montero at 703-812-0480 or montero@fhhlaw.com.

FHH - On the Job, On the Go

On March 25 **Frank Montero** gave a presentation to the Congressional Hispanic Caucus at their monthly "Business Meeting". He spoke about his activities as a member of the FCC's Advisory Committee on Diversity for Communications in the Digital Age.

Las Vegas, here we come! If you're going to the NAB Convention in April, keep an eye out for **Frank Jazzo**, **Scott Johnson**, **Frank Montero**, **Ed O'Neill**, **Lee Petro**, **Jim Riley**, **Kathleen Victory**, and **Howard Weiss**. They will all be staying at the Belagio. **Kathleen** will be appearing on a panel at the ABA/FCBA "Representing Your Local Broadcaster" program on Sunday, April 18. **Frank J.** will participate on a legal session panel on "Political Advertising: New Rules for 2004" on Monday, April 19, from 2:30-3:45 p.m. **Frank M.** will be hosting and speaking to the first constitutional meeting of the Independent Spanish Broadcasters Association on Wednesday, April 21, at 9:00 a.m.

And from April 29-May 2, **Frank M.** (a travelin' guy if ever there was one) will be attending and speaking at the Puerto Rico Broadcasters Convention in Mayaguez.

(Continued from page 2)

rosy. Sen. Gregg (R-N.H.) criticized the MITRE report as "flawed", containing "several technical and methodological errors." Some full-power broadcasters, with NAB at the helm, still complain that LPFM should be held to the third-adjacent distance separation standard to avoid harmful interference; they also criticize the MITRE report's methodology. LPFM proponents, on the other hand, insist that the MITRE report is definitive proof that the interference complaints are unfounded and that the only thing that larger stations fear is competition.

For the time being, though, it appears that the fans of LPFM have prevailed, although whether (and if so, when) their success will be translated into favorable action on pending LPFM applications is not entirely clear.

Now Available!!

FHH's Primer on Compliance with FCC Requirements Governing

THE BROADCAST OF INDECENCY

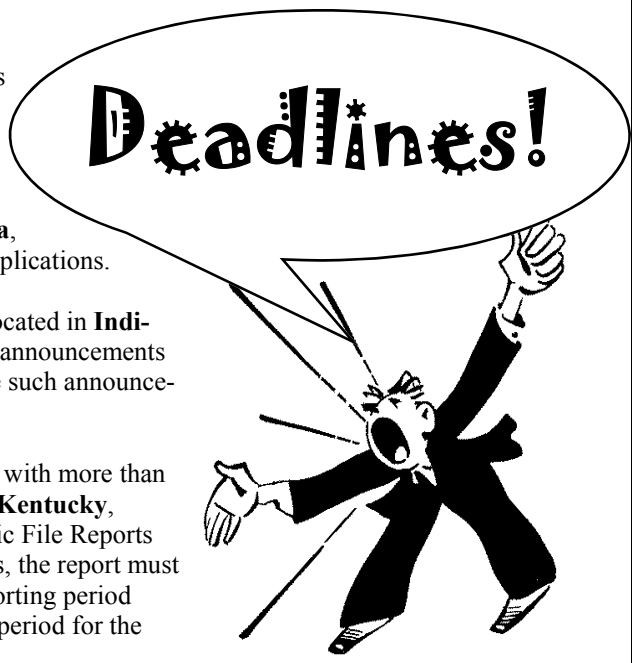
(updated as of March 19, 2004)

A handy compilation of useful information to help the broadcaster navigate the rough waters of indecency enforcement.

For a copy (at a modest fee), contact the FHH attorney with whom you normally work.

April 1, 2004

Television Renewal Pre-Filing Announcements - ***Television*** stations located in the **District of Columbia**, **Maryland**, **Virginia**, and **West Virginia** must begin pre-filing announcements in connection with the license renewal process.



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

Renewal Applications - All ***radio*** stations located in **Indiana**, **Kentucky**, and **Tennessee** must file their license renewal applications.

Renewal Post-Filing Announcements - All ***radio*** stations located in **Indiana**, **Kentucky**, and **Tennessee** must begin their post-filing announcements in connection with the license renewal process, and continue such announcements on April 1 and 16, May 1 and 16, and June 1 and 16.

EEO Public File Reports - All ***radio and television*** stations with more than five (5) full-time employees located in **Delaware**, **Indiana**, **Kentucky**, **Pennsylvania**, **Tennessee**, and **Texas** must place EEO Public File Reports in their public inspection files. For all stations with websites, the report must be posted there as well. 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 on the following day.

Ownership Reports - All commercial and noncommercial ***radio*** stations in **Indiana**, **Kentucky**, and **Tennessee** must file a biennial Ownership Report (FCC Form 323 for commercial stations or Form 323-E for noncommercial stations). All reports filed on FCC Form 323 or 323-E must be filed electronically.

DTV Simulcasting - DTV licensees and permittees must simulcast 75 percent of the video programming of the analog channel on the DTV channel. This requirement supersedes the allowance for operation with a reduced schedule.

April 10, 2004

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

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

June 1, 2004

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

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

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

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Applying in time avoids a fine

FCC Gets Tough on Late-Filed Renewal Applications

By: Michael Richards
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Dawdling at renewal time is becoming more costly these days. The FCC plans to fine broadcasters who file their renewal applications late − even if the applications arrive at the FCC well before the station's license expires. No more Mr. Nice Guy − the Commission wants your papers on time!

As you know, applications for license renewal are due four months ***before*** the license actually expires. Historically, if you failed to file a timely renewal application, the Commission would send you a gentle reminder during that four-month interim period, alerting you that you really were required to file for renewal. According to the staff of the Commission's Audio Division, however, those gentle reminders are a thing of the past. Now you are expected to know when your license expires and to get your renewal application in before then, or face the consequences.

What are those consequences? Well, if you miss the deadline for renewal applications but still get an application on file ***before*** the license expiration date, you could get hit with a fine for failing to meet the renewal application deadline. But under those circumstances you would still be permitted to continue to operate your station, because the Communications Act specifically provides that, as long as you have a license renewal application on file, the underlying license is deemed to be in effect until the Commission acts on your application.

*If you don't file for renewal until **after** the license has actually expired, you will be subject to a fine for late filing **PLUS** you will be required to apply for a special temporary authorization (STA).*

If you don't get around to filing until ***after*** the license has actually expired, you will be subject to a fine for late filing ***PLUS*** you will be required to apply for a special temporary authorization (STA) to permit your continued operation while the FCC processes your late-filed renewal application. In other words, after your license expires, you will be required to file applications both for renewal ***and*** for an STA to continue to operate in the meantime. This of course means extra fees − for the STA application. And if you continue to operate your station after license expiration but without an STA to cover such operation, you will be liable for potential fines for unauthorized operation.

The lesson here: file early or file more often and pay more for the privilege!

(Continued from page 10)

Radio Renewal Applications - All ***radio*** stations located in **Ohio** and **Michigan** must file their license renewal applications.

Radio and Television Renewal Post-Filing Announcements - All ***radio*** stations located in **Ohio** and **Michigan** and all ***television*** stations located in the **District of Columbia**, **Maryland**, **Virginia**, and **West Virginia** must begin their post-filing announcements in connection with the license renewal process, and continue such announcements on June 1 and 16, July 1 and 16, and August 1 and 16.

EEO Public File Reports - All ***radio and television*** stations with more than five (5) full-time employees located in **Arizona**, the **District of Columbia**, **Idaho**, **Maryland**, **Michigan**, **Ohio**, **Nevada**, **New Mexico**, **Utah**, **Virginia**, **West Virginia**, and **Wyoming** must place EEO Public File Reports in their public inspection files. For all stations with websites, the report must be posted there as well. 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 on the following day.

Radio and Television Ownership Reports - All commercial and noncommercial ***radio*** stations in **Ohio** and **Michigan**, and all commercial and noncommercial ***television*** stations located in the **District of Columbia**, **Maryland**, **Virginia**, and **West Virginia** 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.

Just drop them a line . . .

Dual Antenna IBOC Authorizations: Available for the Asking

Just a year ago the Commission authorized radio broadcasters to commence digital in-band-on-channel (IBOC) operation without prior authorization, so long as they submitted an appropriate notification within 10 days of the commencement of such operation. This month, the Commission has taken another step to encourage use of IBOC technology by embracing an NAB proposal to allow IBOC operators to use separate antennas for digital and analog signals. Such operation, however, is ***not*** subject to the "start-now-notify-later" approach; rather, use of separate antennas requires a special temporary authorization (STA) which must be obtained before the operation begins.

As we reported in the December, 2003 *Memo to Clients*, after IBOC was initially authorized (on a single antenna basis only), it was determined that use of a dual antenna approach could decrease the cost of IBOC operation considerably. The NAB assembled an *ad hoc* group which conducted some tests and submitted the results to the Commission in July, 2003. The NAB proposed that dual antenna operation be permitted, subject to the following criteria:

- The digital transmission must use a licensed auxiliary antenna;
- The auxiliary antenna must be within three seconds of latitude and longitude of the main antenna; and
- The HAAT of the auxiliary antennas must be between 70 and 100 percent of the HAAT of the main antenna.

The Commission sought public comment on the NAB's report and related proposals last December. Acting in response to the NAB report and the comments it received, the Commission has announced that dual antenna operation will be permitted as long as an appropriate request for STA is submitted and granted in advance.

The STA request must be filed at least 10 days prior to the planned date of commencement of IBOC transmissions. The proposed digital antenna system must satisfy the NAB criteria listed above. In addition, the STA request must contain the following information:

- The date that operation is planned to commence;
- A certification that the IBOC facilities conform to iBiquity hybrid specifications. The specs for iBiquity's hybrid IBOC system (known as "HD Radio") were set out in Appendix C to the FCC's IBOC order released in 2002;
- The name and telephone number of a technical representative the FCC can call in the event of interference;
- The transmitter power output for the analog and digitial transmitters;
- A certification that the analog ERP remains as authorized;
- A certification that the IBOC operation would not cause human exposure levels of radiofrequency radiation in excess of the levels specified in the FCC's rules. Stations which cannot so certify must submit an environmental assessment pursuant to Section 1.1311 of the rules, and may not commence interim IBOC operation until that assessment has been ruled upon by the Commission;
- The geographic coordinates, elevation data, and license file number for the auxiliary antenna to be employed for digital transmissions; and
- For systems employing interleaved antenna bays, a certification that adequate filtering and/or isolation equipment has been installed to prevent spurious emissions in excess of the limits specified in Section 73.317. Note that the interleaved system must first be licensed as an auxiliary antenna.

Although the STA need not refer to the content of the programming in the analog and digital modes, the Commission requires that the same main channel programming be transmitted in both modes. Note also that STA requests must be accompanied by a certification pursuant to the Anti-Drug Abuse Act of 1988, and commercial operators

(Continued on page 13)

No more CARP-ing?

Congress Proposes New Approach To Calculating Streaming Royalties\

By: Alison J. Miller
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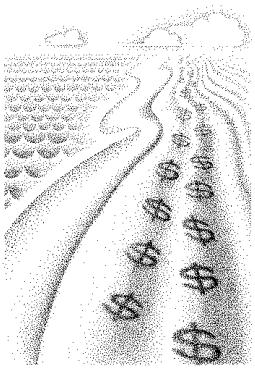
In March the U.S. House of Representatives passed the Copyright Royalty and Distribution Act of 2003. This legislation, if enacted, would replace Copyright Arbitration Royalty Panels (or as they are known to the *cognoscenti*, CARP's) with a process relying on full-time Copyright Royalty Judges (CRJ's).

As you may know, under the Copyright Act's various compulsory licenses, certain industries may use copyrighted works without the copyright owners' permission as long as they pay prescribed royalties to the Copyright Office, which then distributes the royalties to the copyright owners. Such statutory licenses are in place for the cable, satellite, digital recording, and webcasting industries.



Under the current system, CARP's decide the royalty rates and terms that webcasters pay. The CARP process is prohibitively expensive, often costing participants hundreds of thousands of dollars. Essentially, if copyright holders (or their representatives) and those wishing to use copyrighted material cannot agree among themselves on royalties, a CARP − consisting of three arbitrators from the private sector − is convened. The CARP presides over a trial-type proceeding in which the competing interests offer up evidence in support of their own positions while they attempt to discredit the positions of their adversaries. Anyone who has participated in any two-party litigation can appreciate the exponentially greater complications inherent in litigation which can include dozens of adverse parties, each arguing against the others. At the conclusion, the CARP announces royalty rates and procedures which apply to everybody, including folks who did not participate in the CARP proceeding. The result is an extraordinarily cumbersome and expensive process which leaves many webcasters who cannot afford to participate effectively voiceless.

In recent years, the CARP system has come under vicious attack. The rates and terms set by one CARP in 2002 for internet webcasting were so intensely criticized by all sides that they were ultimately rejected by the Librarian of Congress altogether.

The proposed CRJ system would put royalty rate determinations into the hands of specialized judges who could sit individually or in panels. The House bill specifically provides for a "small claims"-type proceeding in which a single CRJ may resolve disagreements between parties based solely on an initial pleading from the first party, an opposition pleading from the second, and a reply from the first − no witnesses, no piles of evidence, no courtroom drama/tedium (with boatloads of lawyers' meters ticking away). This process, which would be available when the contested amount is $10,000 or less, would obviously eliminate the system that webcasters say excludes them from the process of determining the amount of money they pay to copyright holders for broadcasting music on the internet. Participation in the new system would be far less costly than the current system: interested participants would have to pay only $150.00 to argue a royalty case before the CRJ. Finally, the little guys would have the opportunity to present their own cases and thus gain a voice in the process.

Before the new system becomes law, a similar bill must be passed by the Senate and signed by the President. This process could take a couple of months, but current indications suggest that the prospects for enactment are promising.

(Continued from page 12)
must submit an application fee and accompanying Form 159.

The Commission will consider in a future rule making proceeding the possibility of permitting dual antenna use through the notification procedure (as distinct from the STA process). For now, though, if you want to use a dual antenna IBOC transmission system, STA is the only way to go.

And readers who are (a) planning to go the NAB Convention in April and (b) seriously into the technical side of IBOC, may want to note in their calendars that on Tuesday, April 20, at 9:30 a.m. in the Las Vegas Convention Center Room N-110, a paper on IBOC RF Measurements will be presented as part of the "Radio RF and Transmission Developments" session.

When is a viewer not a viewer?

Broadcaster Concern Expressed About Possible SHVIA Changes

By: Anne Goodwin Crump
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A new digital white area provision proposed to be added to the reauthorization of the Satellite Home Viewer Improvement Act (SHVIA) could cost broadcasters 35 percent of the viewers, according to NAB spokesman Andrew Reinsdorf at a recent satellite conference.

The new provision, first proposed by EchoStar, would allow DBS operators to provide digital signals in local markets where over-the-air digital signals are unavailable. One of the main problems with this proposal for broadcasters is that, currently, 35 percent of over-the-air viewers are served by translators that repeat a primary station's signal across that station's DMA. As of now, however, the Commission has not authorized any digital operations for translators or put in place in rules for translator conversion to digital operation. A rule making proceeding to address these issues is pending, but nothing has been decided at this time. Because of this issue, among others, Reinsdorf suggested that a straight reauthorization of SHVIA would be preferable to a rewritten act, which could open the door for unfavorable changes.

From the DBS side, Kim Bayliss, a lobbyist representing the Satellite Broadcasting & Communications Association (SBCA), said that the main issue is parity with cable. She noted that there are a number of issues related to local programming which put DBS at a disadvantage relative to cable. For example, while cable is allowed to bring in distant network signals when no network is available in a market, a DBS operator would not necessarily be able to do so because local viewers might get a Grade B signal even if outside the DMA. Accordingly to Bayliss, DBS operators are simply looking for a level playing field, along with the authority to provide superstations like WGN-TV to their viewers.

Eloise Gore of the FCC pointed out that cable also cannot simply carry superstations in the same manner as it does local stations. Saying that she was speaking for herself only, she noted that cable pays more to carry the superstations, and it is subject to the network nonduplication and syndicated exclusivity rules that allow broadcasters to require that repetitious programming be blacked out in certain situations.

All of the panelists at the meeting agreed that the provision of local-into-local service is a benefit for both DBS operators and broadcasters. Bayliss and Reinsdorf said that their respective organizations view the SHVIA reauthorization process as an opportunity to strengthen the partnership between the DBS and broadcast industries. It remains to be seen, however, whether all of the nice talk and co-operative attitudes will continue once Congress begins consideration of the reauthorization legislation in earnest.

Hey, Kids!!! It's an

Indecency Trivia Contest

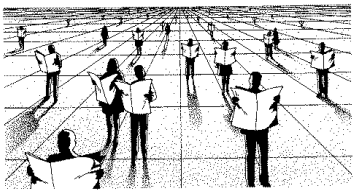
Think you know your indecency trivia? The first person correctly answering all of the following questions will be appropriately recognized in the next issue of *MTC*. Email your answers to cole@fhhlaw.com. No prizes, but plenty of bragging rights.

- What common food product was central to an indecency complaint raised against an Oak Park, Illinois station in 1973?
- What Ivy League institution was the licensee of the station cited for indecency for broadcasting a live call-in program titled "The Vegetable Report"?
- How many complaints did the FCC receive about the mid-day broadcast of the George Carlin monologue "Filthy Words", which featured repeated use of the seven words "you definitely wouldn't say, ever" on the radio, and which led to the 1978 *Pacifica* decision by the Supreme Court?
- Which of the Carlin "seven dirty words" was/were specifically identified by Justice Stevens in his majority opinion in the *Pacifica* case?
- Dr. Johnny Fever was taken off the air in Los Angeles for saying a particular word on the air. What was that word, and where did the Doctor end up after that?

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

Updates on the News

Broadcast localism, where the buffalo roam. All you localism groupies, book your tickets now − next stop, Rapid City, South Dakota, where the next broadcast localism confab will get down to business on May 26. Details of the hearing have not yet been released. After Rapid City, the Magical Localism Tour will move on to California, Maine and Washington, D.C. Dates for those last three stops have not been set.



Keep your cancelled checks. Word has leaked out of the Commission that its personnel will no longer provide "due diligence" reviews to confirm whether a broadcaster has historically paid its regulatory fees. Often, when a station is sold, the buyer expects confirmation (usually as part of an "opinion letter" from counsel) that all necessary fees, including reg fees, have been paid up by the seller prior to closing. In order to provide that confirmation, D.C. counsel would ask the FCC's staff to review their files on the station. No longer. It appears that, because of personnel reorganization within the Commission and related budgetary constraints, the FCC will no longer provide such file review. As a result, licensees are left to their own devices to maintain records sufficient to establish that they have paid their fees. Cancelled checks would provide such a record, as would credit card statements (for those of you who pay electronically). As a practical matter, the non-availability of this information from the Commission makes it next to impossible for counsel to offer an independent opinion about the status of regulatory fee payment, since such payment is often undertaken by the licensee without counsel's involvement. Because of that, parties should not routinely expect counsel to address regulatory fee payment status in opinion letters to be exchanged at closing.

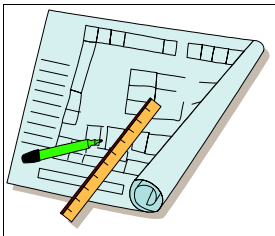
AM applications whacked. In January, the Commission opened a window for new and major change AM applications. The unofficial word on the street is that about 1300 applications were filed, but that more than 200 of those have been or will be dismissed because they failed to comply with the basic filing requirements. Significantly, when the Commission announced the dismissal of some 215 applications on March 19, it noted that all timely and complete Form 301 Tech Box submissions (which were required to be filed in conjunction with the Form 175 applications) are now available on CDBS. The Commission also recommended that applicants still on file commence preparation of their complete Form 301 applications. These may be indications that singleton applications may be moving forward sooner rather than later.

FM applications in 2004? We keep hearing that the Audio Division staff is gearing up to open a window for new FM applications later this year, possibly as early as September. Of course, we have heard about such a window a couple of times before, most notably in 2001, and it hasn't happened yet. Still, our sources insist that 2004 is the year. We'll keep you posted.

(Continued from page 8)

On the Senate side, the bill also started out as a cute little effort to increase the maximum indecency forfeitures. As approved by the Committee, however, it would authorize the Commission to initiate license revocation proceedings based on indecency violations. As with the House version, the Senate bill would allow the Commission to consider various factors (*e.g.*, source and nature of the programming, size of the audience) in determining the licensee's degree of culpability. The Senate Committee would also impose deadlines for FCC action, and would require the Commission to report annually to Congress with respect to indecency-related enforcement activities. Senator Hollings also introduced an amendment which would require the Commission to investigate the potentially harmful effects of violent video programming on children. And yet another amendment would require the General Accounting Office to conduct a study to determine whether consolidation of broadcast ownership is related to the seeming increase in indecent programming. An interesting aspect of that last amendment is that the FCC would be prohibited from implementing the ownership rules it released last July until the GAO's report is completed and submitted.

Obviously, there are major differences between the approach passed by the full House and the approach proposed by the Senate Commerce Committee. As of this writing, it is unclear when the full Senate may vote on the Committee's bill, and it is even less clear when both houses may convene to work out any differences between their two bills. While it is possible that the FCC's recently-announced get-tough attitude with broadcasters may lead Congress to believe that no further Congressional action is necessary just now, we wouldn't bet on that. The question of indecency hit a national nerve with the Super Bowl show, and politicians appear to have identified that issue as one of considerable interest to their constituents. It is likely that we will be seeing more Congressional action in this area in the foreseeable future.



September 11: the aftermath

Commission Council Provides Blueprint for Media Security

By: Michael Richards
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chards@fhhlaw.com

The FCC's Media Security and Reliability Council (MSRC) wound down its two-year mission in March, and it's take-home message was clear: Be Prepared. Confronting the daunting specter of potential, devastating catastrophes − both natural and man-made − the Counsel offered an extensive list of suggested preparations which the media can take to assure their continued ability to serve the public in the face of disaster.

Broadcasters, of course, are at the front lines of informing the public, and the MSRC's first two-year mission was to create a "blueprint for action". This blueprint includes 19 best practices "to strengthen emergency communications and promote the physical redundancy of broadcast and satellite facilities," 26 best practices for ensuring "effective delivery of emergency information" and 58 best practices for "physical security and restoration of media facilities." Broadcasters interested in doing it by the numbers can download a copy of the MSRC readiness guide by clicking the link at http://www.fcc.gov/MSRC/.

With the planning phase now complete, the FCC has chartered a second round MSRC, or "MSRC II" as it's called in bureaucratese. MSRC II is led by Hearst-Argyle Television CEO David Barrett, who says his mission is to get the troops in line. The main goal of MSRC II is to encourage broadcasters and other regulated mass communicators to adopt MSRC's best practices − including improved coordination with local authorities responsible for public safety.

The membership list of the MSRC reads like a Who's Who in U.S. media: the heads of the NAB, the commercial networks, NPR and PBS, major group owners, major tower companies, satellite broadcasters . . . the list goes on. As a result, when the MSRC speaks, it will not be, and should not be, ignored. You can access a slick two-page MSRC-produced summary guide on "How to Prepare for Emergencies" at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-244522A1.pdf. To review the full list of the MSRC's recommendations, go to the http://www.fcc.gov/MSRC and click on the link to "Comprehensive Best Practices Recommendations".

In view of the global tensions which presently abound, not to mention the constant threat of unexpected natural disasters, traditional considerations of the public interest, convenience and necessity dictate that broadcasters give serious thought to implementing the MSRC's recommendations. And if altruistic notions of public service are not sufficient motivation, recall the drubbing that Clear Channel received on Capitol Hill when local officials were unable to reach anyone at any of Clear Channel's stations in a community which was endangered by a hazardous substance leak.

We live in dangerous times. The MSRC's goal is to assure optimal reliability, robustness and security of communications services to the public notwithstanding the dangers around us.

(Continued from page 3)

broadcasting phone calls. The South Carolina station was fined for calling its competitor's receptionist and asking to speak with a listener that it had sent to the competitor's lobby. Although the bulk of the conversation took place with the consenting listener, the station was fined for broadcasting the receptionist's portion of the call without notifying the receptionist that the call would be broadcast or obtaining consent for the broadcast.

In the Massachusetts case, a Northampton station called an Amherst station and broadcast a brief conversation between the stations. A few days later, the Amherst station sent an e-mail stating that if the calling station donated $1000 to charity, issued an on-air and published apology, and didn't discuss the phone call, they would not report the incident to the FCC. The Northhampton station refused to meet these demands and the Amherst station, as promised, notified the FCC of the violation. The FCC fined the calling station $4000 and, while noting that it was aware of the demands made prior to the reporting of the call, lauded the Amherst station for filing the complaint and being a participant in FCC enforcement proceedings. Although the calling station told the FCC that the other station was blackmailing it, the FCC pointed out that the station wasn't seeking money for itself, just an apology and a donation to charity.

Lest our readers think that the FCC is ignoring its other enforcement activities, thousands of dollars in other fines were proposed or ordered in the last month. Of particular interest, the FCC continues to sweep into areas and conduct antenna inspections. Referring to its efforts as a "field-wide targeted tower safety compliance program", the FCC fined stations in Gulfport, Mississippi, Woodstock, Virginia, and St. Thomas, Virgin Islands for tower and antenna violations.

FM ALLOTMENTS ADOPTED –2/17/04-3/19/04

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
OH	Caledonia	44 miles S of Columbus	240A	03-7	None
GA	Dawson	22 miles W of Albany	251C3	04-362	None
GA	Pinehurst	44.9 miles S of Macon	252A	04-362	None
SC	Quinby	4 miles N of Florence	237A	03-35	TBA
CO	Wheat Ridge	9.5 miles NW of Denver	227C0	03-57	None
CO	Westcliffe	58.8 miles SW of Pueblo	249A	03-57	None

FM ALLOTMENTS PROPOSED –2/17/04-3/19/04

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
IL	Lemont	24 miles SW of Chicago	228A	04-34	Cmts - 04/26/04 Reply-05/11/04	1.420
IL	Joliet	36.4 miles SW of Chicago	244A	04-34	Cmts - 04/26/04 Reply-05/11/04	1.420
GA	Dawson	22 miles W of Albany	251C3	04-362	Cmts - 04/19/04 Reply-05/04/04	1.420
GA	Pinehurst	44.9 miles S of Macon	252A	04-362	Cmts - 04/19/04 Reply-05/04/04	1.420
KY	Bowling Green	61.2 miles NE of Nashville	236C0	04-42	Cmts - 04/19/04 Reply-05/04/04	1.420
KY	Glasgow	25.0 miles E of Bowling Green	287C3	04-42	Cmts - 04/19/04 Reply-05/04/04	1.420
GA	Dexter	49.2 miles S of Macon	276A	04-69	Cmts - 05/06/04 Reply-05/2104	1.420
MA	Easthampton	10 miles of West Springfield	288A	04-67	Cmts - 05/03/04 Reply-05/18/04	1.420
NY	Malta	20 miles N of Albany	289B1	04-67	Cmts - 05/03/04 Reply-05/18/04	1.420
NC	Bethel	15 miles N of Greenville, NC	255C3	04-72	Cmts - 05/10/04 Reply-05/25/04	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.