Recent actions by the FCC and Congress have again raised concerns regarding the conversion to digital television service as both bodies consider new options to encourage broadcasters to fully convert to digital service.

Congress has directed that all broadcast stations must convert to digital, and the spectrum presently occupied by NTSC TV Channels 52-69 must be returned to the FCC to be auctioned for use in other services. The deadline set by Congress for the completion of this conversion process is the later of (a) December 31, 2006 or (b) when 85% of the households in a television market are capable of receiving digital television service.

The Media Bureau's Task Force responsible for studying the DTV transition has floated the proposal that the Commission could satisfy the 85% household figure by counting the delivery of digital service by cable and satellite services. The theory is that the threshold could be met because the cable/satellite services deliver the over-the-air television signals through the services' digital systems. Under this analysis, the focus would ***not*** be on the actual coverage of digital over-the-air service, but rather on whether there is a digital signals-7.5oated

It went once, it went twice–but now it's back again

Return of the Auction

290 FM Channels on the Block . . . Again

It's baaaaaaack. The FM auction initially announced almost four years ago (in September, 2000), but postponed first from February, 2001 to May, 2001, and then to December, 2001, and then indefinitely, is now back on the calendar for November 3, 2004.

Originally, this auction – which bears the designation FM Auction No. 37 – involved the proposed sale of 351 channels in the commercial portion of the FM band. The listing of channels has been reduced to 290 in the current version of the auction. A complete list of the channels now on the auction block is posted on the FHH website at http://www.fhhlaw.com/articles_fm_auctions_37.asp.

As with most everything the FCC does, the upcoming spectrum auction is subject to a number of procedural steps. Anyone who may be interested in bidding on any of the available channels should be sure to review the Commission's recent public notice announcing the auction in order to become acclimated to the auction processes. A copy of the public notice is available on the FCC's website at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-04-1020A1.pdf.

The first step in the long road to Auction No. 37 is the issuance of that public notice, which lists the channels up for sale. Each channel listing includes the channel number, its community of license, its reference coordinates, and the amount of the "upfront payment" and "minimum opening bid" which the Commission presently expects to insist on when the time comes to file and bid for the channel(s). Anyone who believes that the amount of "upfront payment" listed for any particular channel is too high or too low may submit comments to the Commission (by May 6) or reply comments (by May 13). Commenters may also address other aspects of the auction process described in the public notice. Comments must be filed electronically.

The Commission is proposing to use the "single stage, simultaneous multiple round auction" approach which it has used in the past. In this format, the Commission conducts the auction in consecutive "rounds", with all channels being available to be bid upon in all rounds. In order to bid on a particular channel, a bidder must have made an "upfront payment" large enough to ensure sufficient "bidding units" to cover the minimum opening bid for that channel. If a bidder wishes to bid on more than one channel in a given round, the bidder must have paid an aggregate upfront payment to cover an aggregate number of "bidding units" equal to or greater than the aggregate "upfront payments" for the to-be-bid-for channels. While a bidder must maintain a minimum level of bidding "activity" in each round, that does not mean that the bidder has to bid in every round on all channels in which it is interested. To the contrary, the FCC anticipates that bidders may jump around among channels from one round to the next in a variety of ways.

This format affords considerable opportunity for strategic bidding. Let's look at a couple of examples.

First, the simplest case. In your Form 175 you specify only one channel that you want to apply for, and the upfront payment for that channel is $10,000. You submit an upfront payment in that amount. When the auction starts, you can ***only*** bid on that one channel, since that is the only one you specified in the Form 175.

(Continued on page 16)

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Focus on FCC Fines

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Talk Dirty To Me -- As reported in the update on indecency (*see* story on Page 8), the Commission continued to issue substantial fines for the broadcast of indecent material.

FCC Agents Burning the Midnight Oil -- Broadcasters should be aware that FCC agents come out after dark - - and further caution, as noted below, the agents aren't afraid of the daylight, either. In a recent Tennessee case, the FCC revealed that an FCC agent was monitoring an AM station near the witching hour came upon a cauldron of trouble. The FCC agent monitored the station near midnight on several evenings and concluded that, contrary to the terms of the station's license, it was not reducing its power at sunset. Since overpower operation at nighttime can cause significant interference to other stations, the Commission has historically tended to be vigilant about enforcing nighttime limits. That vigilance obviously includes assigning Commission agents to stake-outs. In this instance it was apparently clear that the AM station had not reduced its power after the sunset, leading the FCC to propose whacking the station with a $4000 fine. Crying out for mercy, the station provided financial statements to prove that the fine would hurt. The FCC was not merciful and declined to reduce the forfeiture.

Several FCC agents from the Tampa office did not want to wait until nighttime to fine an AM station in St. Petersburg. After receiving a tip that there were lighting problems on an AM tower, FCC agents marched over to the tower in the middle of the day. Because the fence and gate around the antenna were not locked, the agents were able to walk right up to the tower to see if the lights worked. The lights were triggered by a light sensor at the base of the tower. The agents simply covered the light sensor on the tower and waited for the tower lights to come on. The lights never came on. Just to be sure, the FCC agents returned the next day and tried the lights again. No lights for the agents but a $12,000 fine for the station, which covered not only the fact that the tower lights didn't work, but also the fact that the tower gate was unlocked, permitting the agents (and anyone else, for that matter) free and easy access to the tower.

Not only does time of day not matter to the agents, but the actual day is of little consequence to FCC agents. On September 11, 2002, FCC raided a rural Missouri AM station while its programming and engineering staff were attending a memorial at a local firehouse. The engineering staff had directly attached line feeds from the fire house to the transmitter in order to broadcast the memorial service. In doing so, the engineers left the tower's gate unlocked. FCC Agents arrived during the service, made note of the unlocked gate and proposed fining the station for failure to maintain a locked area around the tower. The station appealed to Washington, stating that but for the direct feed from the firehouse, the gates are always locked. Staff in Washington was more sympathetic than the FCC field agents and they dismissed the fine.

Public Files -- As reported in previous issues of this newsletter (October 2003), the FCC is opening up public files and sending out fines. In the extreme instance of a Hawaii station, FCC agents fined the station $8,000 for having no public file whatsoever. The station stated that all of the required information was in its filing cabinets, but that nobody had ever asked for a public file before, so they never kept one. The FCC agents were not impressed. At the other end of the spectrum, a Florida station was fined for having all but one item in its public file. The station dutifully produced its public file for FCC agents upon request. However the agents noticed that a single quarterly "issues/programs" list was not in the file. This and an EAS violation resulted in a $3500 fine. Readers are reminded that by the tenth day of each calendar quarter, they should place a new issues/programs list in their public files to cover the previous three months. Compliance with the issues/programs requirement − and all other public file requirements − is especially important in view of the fact that the license renewal application requires each licensee to indicate whether or not it has complied with all of those requirements. And as reported in these pages last year, renewal applicants who truthfully respond that they might have missed a quarterly report here or there have been routinely hit with $3000 fines.

If you have any questions about what your local public inspection file is supposed to contain, you should contact the FHH attorney with whom you normally work. He or she can provide you with guidelines and advice to help you in your compliance efforts.

Up, up and away

FCC Proposes 2004 Regulatory Fees

By: Alison J. Miller
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The Commission has released its Notice of Proposed Rulemaking on the Assessment and Collection of Regulatory Fees for Fiscal Year 2004. And while the fees for some classes of licenses will actually ***fall*** if the proposed 2004 fees are adopted, it should surprise no one to learn that the majority of broadcast licensee reg fees are proposed to go up for 2004. The proposed fees (which would be due for payment later this year) are set out below and on the next page.

The big winners under the proposed fees would be folks holding commercial UHF TV construction permits. Reg fees for such permits would plummet by more than 30% (from $8,300 in 2003 to a paltry $5,675 in 2004). By contrast, the big losers would be commercial UHF licensees in Markets 11-25, who would be looking at an increase of more than 25% (from $12,875 in 2003 to $16,175 in 2004). Commercial UHF stations in all other markets would increase as well, but far more modestly, with increases in the 11-15% range. Reg fees for commercial VHF stations would remain relatively stable, with some markets increasing in the 4-5% range and others decreasing in the same approximate range.

On the radio side, fees for Class A and B AM stations would not change from last year. But fees for other AM stations, and for all classes of FM stations, would increase in all markets in the general range of 10%.

While the payment window has not yet been set, in all likelihood regulatory fees will due to be received by the FCC in late September. Again, late-filing fee payors will be assessed a 25% late payment fee.

As usual, 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 (FRN), the taxpayer identification number (TIN or EIN) of the person or entity making the payment, and the payment type code for the particular fee you are paying. Fees can be paid on-line again this year. And, of course, non-profit licensees are exempt from reg fee obligations

Comments on the Commission's proposed regulatory fees are due to be filed with the FCC by April 30. We expect the Commission to release its Report and Order with the final regulatory fee amounts this summer. Once the Commission releases its Report and Order, we would be happy to assist you in getting your fees on file with the Commission. The *proposed* 2004 regulatory fees are as follows:

PROPOSED FY 2004 RADIO STATION REGULATORY FEES
(USD)

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	350	425	525	675
25,001 -75,000	1,200	900	525	625	1,050	1,175
75,001 -150,000	1,800	1,125	700	1,075	1,450	2,200
150,001- 500,000	2,700	1,925	1,050	1,275	2,225	2,875
500,001 -1,200,000	3,900	2,925	1,750	2,125	3,550	4,225
1,200,001- 3,000,000	6,000	4,500	2,625	3,400	5,775	6,750
>3,000,000	7,200	5,400	3,325	4,250	7,350	8,775
AM Radio Construction Permits (New stations only)			465			
FM Radio Construction Permits (New stations only)			1,650			

Proposed FY2004 Television Station Regulatory Fees (USD)	
VHF TV	
Markets 1-10	60,350
Markets 11-25	41,450
Markets 26-50	29,150
Markets 51-100	17,550
Remaining Markets	4,050
Construction Permits	4,650
UHF TV	
Markets 1-10	17,775
Markets 11-25	16,175
Markets 26-50	9,300
Markets 51-100	5,550
Remaining Markets	1,650
Construction Permits	5,675
Satellite Television Stations	
All Markets	1,050
Construction Permits	515

Proposed FY2004 Regulatory Fees for Miscellaneous Broadcast-Related Authorizations (USD)	
Low Power TV, TV/FM Translators/Boosters	385
Broadcast Auxiliary	10
Earth Stations	200

FHH - On the Job, On the Go

Frank Jazzo will be conducting political broadcasting seminars for the Alaska Broadcasters Association in Fairbanks and Anchorage on May 3, and in Juneau on May 4. Then, wending his way south, Frank will be participating in an FCC Update panel and a DTV Roundtable at the joint 2004 Mississippi Association of Broadcasters and Louisiana Association of Broadcasters Convention at Sea, May 27-31.

On May 10, **Frank Montero** will attend the next public meeting of the FCC's Federal Advisory Committee on Diversity for Communications in the Digital Age. The meeting will be held at the Commission Meeting Room at the FCC's Headquarters in Washington and will be open to the public. It will also be webcast on the FCC's web site. Frank was appointed to the Commission by Chairman Powell in the summer of 2003.

Liliana Ward will be addressing the Puerto Rico Broadcasters Association on EEO, political broadcast, FCC enforcement activities and other FCC topics, in Rincon, Puerto Rico on April 30.

FCC tunes out static from primary station licensees

FM Translators Get FCC Thumbs Up Despite Interference Claims

By: Stephen T. Lovelady
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The FCC has, once again, sided with an applicant for a new FM translator construction permit in a dispute over predicted interference with an existing full-service FM station. In a decision released on March 25, 2004, the full Commission gave its stamp of approval to the Media Bureau's methods, allowing a new FM translator applicant to theoretically "prove" that interference to an existing second-adjacent channel FM station will be relatively small and occur only in unpopulated areas. The Commission specifically endorsed use of the undesired-to-desired signal strength ratio interference prediction methodology (the "U/D Method") to show lack of interference. This decision affirmed the Commission's approach as previously articulated in a decision in 2002.

As discussed in prior issues, the Commission has been busy reviewing thousands of FM translator applications that were filed in August 2003. Under the current translator rules, the Commission is normally supposed to reject any application that involves overlap of the proposed FM translator's predicted interference contour with an existing FM station's protected contour − since translators are treated as a "secondary service" which is not supposed to interfere with primary services such as full-service stations. However, the FCC's rules contain an exception that allows acceptance of an interfering translator application if the translator applicant can demonstrate that no actual interference will occur due to interfering terrain, lack of population in the interference area, or other factors.

In the recent case, the applicant proposed building an FM translator a scant 1.2 km from the site of a second adjacent full-service FM station. The proposed FM translator station's 100 dBu predicted interference contour fell entirely within the 60 dBu protected contour of the full-service FM station, which would ordinarily lead to the fairly obvious conclusion that the translator would be interfering with the full-service station.

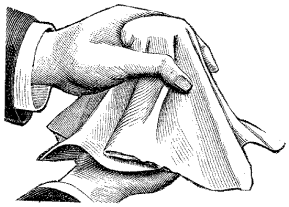
However, the translator applicant demonstrated, using the U/D Method, that its proposed actual area of interference within the full-service station's protected contour would be relatively small and unpopulated. The FCC's staff agreed, and approved the application. Rejecting the full-service station's application for review of the staff's decision, the Commission specifically endorsed the U/D Method as an acceptable way to predict interference, or the lack thereof.

The Commission's seeming willingness to tolerate translator-caused interference poses interesting conundrums. To full-service broadcasters, this trend is having a harmful overall effect on full-service operations because no matter how you slice it, a translator operating in relatively close proximity to a full service station on a co- or adjacent channel will, as a matter of basic physics, cause some interference with the primary station's signal. Some broadcasters liken this phenomenon to "poking holes" in the full-service station's protected service area − and while the harm caused by one or two relatively minor holes may not seem all that urgent, the cumulative effect of multiple such holes can wreak havoc on the primary station's signal.

Translator operators, on the other hand, understandably take the alternate view that, if there are no listeners in the supposed interference area, then there is no interference. It's a variation on the philosophical question of whether a tree falling in the deep forest makes any noise if there's no one around to listen.

And as far as the Commission is concerned, it all reduces to a frame of reference problem: should the FCC view the matter from the full-service perspective, or from the translator perspective? One could, of course, fashion a very strong argument that the full-service perspective should govern. After all, the Commission's licensing priorities have established full-service stations as "primary", which strongly suggests that they are to be protected from ***any*** "secondary" threat, no matter how seemingly slight. But for the time being, at least, it appears that the Commission is looking at the situation through the eyes of the translator operator, and is thus finding no problem.

But before FM translator applicants break out the champagne to celebrate their apparent victory, they should take heed of the rest of the FCC's recent opinion, which emphasizes that "actual" interference with a full-service FM station, if it occurs after the FM translator station is on-the-air, will ***not*** be tolerated. Any such interference ***must*** be eliminated or the new FM translator station must cease operations. Therefore, even if an FM translator station applicant wins a battle to build its proposed facilities based upon a theoretical lack of interference, the new FM translator could be shut down if it causes actual interference to a full-service station.



Do you promise not to tell?

Mysteries of the FCC Revealed!!

Recent policy changes cloaked in secrecy

By: Liliana E. Ward
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When you deal with the FCC, you must be comfortable with the idea of following the rules − rules about towers and naughty words and ownership reports and regulatory fees. And everyone knows that the FCC has rules, policies and procedures that it has to follow − rules about processing applications and providing information and granting or denying various requests. But, while many rules are written down and formalized and predictable (or at least reasonably so), some policies and procedures, apparently, are not. In recent weeks, we have learned from "reliable sources" that the FCC has changed a few of its operating policies. No Public Notices, no fanfare. In all three of the examples below, we found out about the change because of a rumor.

In the past, the FCC contacted licensees who had failed to file their renewal applications by their deadline, just as a reminder. But under a recently adopted policy shift, they decided they wouldn't bother.

New policy number one: You can't get reg fee information from the Commission's staff anymore.

Historically, when a licensee has had any doubt about whether its regulatory fees had been paid, the licensee (or its lawyer) normally just called upon FCC staff to check the Commission's own records and provide the relevant information, if any was available. This information was especially helpful to licensees in the refinancing or assignment process, when lenders often require the licensee to provide assurances that all debts to the FCC have been paid. Up until a couple of months ago, such requests were cheerfully fulfilled by the staff. But then, all of a sudden, requests were met with the following statement:

> During an interim period, the Office of the Managing Director performed due diligence research activities for Media license applications. In dialogue with offices within the FCC, it became clear that the FCC is not responsible for performing this research, and the research should be properly performed against the applicant's records than from the FCC records. In addition, the FCC is under strict budgetary limitations this year. As both a result of budgetary reductions, and as a result of our determinations, the FCC will no longer perform this research.

Oh. So now we know.

New policy number 2: The Commission will not call you to let you know your renewal application has not been filed. It will simply issue a cancellation notice.

The filing of a renewal application prior to the expiration of a license, even if it is filed after the deadline for renewal applications, keeps the license alive while the FCC is processing the application. However, the filing of a renewal application *after* the expiration of your license requires the licensee to obtain a special temporary authorization to keep operating the station while the renewal is pending. In the past, FCC staff thoughtfully contacted licensees who had failed to file their renewal applications by their application deadline, just as a reminder that they should be sure to file their application before their license expired. But under a recently adopted policy shift, they decided they wouldn't bother. They will just issue license cancellation notices instead without prior notice.

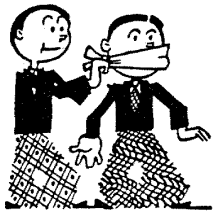
Oh. So now we know.

New policy number 3: The Commission is "flagging" applications again, but they aren't telling anybody.

In reviewing applications, the Commission has apparently decided in recent months to resume "flagging" applications for competition issues. However, the new flagging is not like the old flagging. The old flagging involved the issuance of a public notice informing the world that an application had been flagged, and inviting comment on the issue. The new flagging takes place internally, using the old 50-70 benchmark. While this will obviously result in delay, the Commission has decided not to put it out on public notice asking for additional comments. According to "reliable sources," if an application is flagged, not even the applicants will receive any notification unless they are asked to provide additional information.

Oh. So now we know.

We'll let you know if we hear anything else.



Commission on the offensive, of coarse!!!

FCC Continues Expansion of Indecency Enforcement Policies

By: Harry F. Cole
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Life on the indecency front has been relatively quiet in recent weeks − the crucial word being "relatively". Back in the day, mid-six figure forfeitures, significant relaxation of the standards governing indecency complaints, and FCC inquiries not triggered by any complaint might have attracted some attention. But in the wake of *L'affaire Janet Jackson* and nearly $1 million in fines imposed on Clear Channel (not to mention a deafening amount of saber-rattling by Congress and the FCC), a small handful of fines barely amounting to half a million dollars looks like a walk in the park, even if major regulatory policy shifts lurk between the lines.

The recent decisions reflect the Commission's still-developing policy on indecency enforcement. In particular, the FCC now appears willing to accept from complainants less than detailed descriptions of the alleged indecency, and the Commission has started to assess forfeitures based on the number of separate, individual indecent remarks. Further, the Commission has demonstrated its willingness to investigate programming by stations which have not themselves been the subject of any complaints. Each of these developments on its own expands the potential liability faced by a broadcaster on the wrong end of an indecency charge.

These decisions reflect the FCC's continued determination to discourage, through aggressive enforcement, the broadcast of "indecency", however the FCC may choose to define that term. Broadcasters should continue to pay heed to these developments.

In a case involving the "Mancow Morning Madness" show, the FCC received a complaint which alleged that, on March 20, 2000, the show's on-air staff and an interviewee had "talked in graphic detail" about a sexual practice identified as "fisting". The precise nature and extent of the discussion was not described by the complainant. A second complaint alleged that, during the May 15, 2000 program, a host and three female interviewees engaged in a discussion about whether the interviewees "spit or swallowed", a discussion which, according to the complainant, involved "both euphemistic and direct conversation about oral sex". Neither complainant provided a tape of the allegedly indecent material, and neither provided any further detail concerning that material.

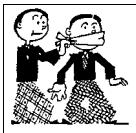
The Commission asked the licensee to respond to the complaints, and the licensee advised the Commission that, with respect to both matters, no tape of the program was made and neither the licensee nor the show's performers were able to state whether the material as alleged was in fact broadcast. So the FCC had virtually no detailed information before it concerning precisely what, if anything, had been said on the air − all the FCC knew for sure was that two complainants believed that some broadcast material apparently involving sexual activity had been offensive.

Nevertheless, the Commission determined that the licensee had broadcast indecency and should be fined $14,000 for the violation.

This case is disturbing because, historically, the Commission has required that a complainant provide at least "a full or partial tape or transcript or significant excerpts of the program" to which the complaint is directed. The goal was to assure that both the Commission and the accused licensee are given a very clear idea of the precise content which the complainant found objectionable. But in the recent Mancow case, the FCC appears to have abandoned that requirement, or at least watered it down so much as to make it largely meaningless.

As a result of this decision, it will be much easier for a complainant to start the enforcement process, and it will be commensurately more difficult for a licensee to defend against that process. A complainant can get in the door with relatively vague and general descriptions of discussions which the complainant found offensive, and the Commission appears ready to treat the complainant's opinion as the final word ***unless*** the target licensee is in a position to flat-out deny that any discussion ever occurred. While the licensee might acknowledge that some such programming occurred, but then dispute the "offensiveness" of the programming, the licensee would then be running the risk that the Commission would conclude that the "did not/did too" argument between licensee and complainant could be resolved only through a

(Continued on page 9)



(Continued from page 8)

hearing. And hearings are generally good things to avoid if at all possible.

So the Commission appears to have lowered the bar for indecency complaints.

In a separate case, the Commission also raised the potential forfeitures which broadcasters face. The FCC did this not by increasing the amount of the standard fine or even the maximum fine. Rather, it tinkered with the manner by which it calculates the number of indecency events warranting forfeiture.

Historically, the Commission has treated a multi-party discussion of indecent material as a single indecency violation, irrespective of how many separate "indecent" remarks may have been made during that discussion, and irrespective of how many different individuals made such remarks. But in assessing Clear Channel a $495,000 fine for some material aired during the Howard Stern show, the Commission took a different tack. There the Commission treated the "separate utterances" of each individual participating in the discussion as "separate violations", an approach which effectively doubled the fine (since in that case there were two participants to the discussion).

This is change in approach could drive indecency forfeitures considerably higher than they already are, whether or not Congress raises the maximum allowable fine. After all, most material which the FCC has held to be indecent in past decisions has involved programs with multiple participants – often a host, a co-host or side-kick, a guest interviewee, callers, etc.

And finally, also in this last Clear Channel/Howard Stern decision, the Commission took it upon itself to initiate an investigation into possible indecency by stations and and a licensee which had not been the subject of a triggering complaint. In the Clear Channel case the complaint was directed to programming heard on a Clear Channel station. At the conclusion of the decision, the FCC held that the programming was indeed indecent, and it fined Clear Channel accordingly. But then out of the blue, it said "the Commission is aware that the 'Howard Stern Show' originates and is broadcast over stations owned by Infinity Broadcasting Corporation. We instruct the Enforcement Bureau to initiate an investigation into Infinity's broadcast of the April 9, 2003, 'Howard Stern Show' at issue in this case."

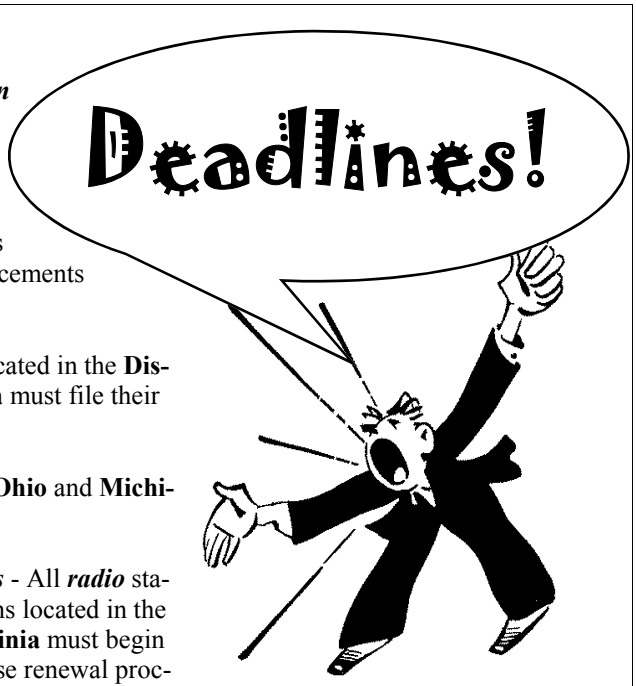
This highlights the extraordinary potential reach of the Commission's indecency policy. While Infinity may indeed have broadcast the same program as Clear Channel, the fact is that the FCC did not have any reason to believe that any audience member of any Infinity station had found that programming to be offensive or indecent. But the Commission still felt that it could and should investigate Infinity's broadcast. This marks yet another potentially dangerous expansion of the Commission's indecency enforcement policies. The aftershocks of the indecency earthquake are still being felt. And while the decisions described here may seem relative minor in comparison to the hue and cry which occurred in the immediate aftermath of the Super Bowl, these decisions are still of major importance. This is particularly so because they reflect the FCC's continued determination to discourage, through aggressive enforcement, the broadcast of "indecency", however the FCC may choose to define that term. Broadcasters should continue to pay heed to these developments.

Meanwhile, it should be noted that the National Association of Broadcasters is seeking to demonstrate to the FCC and Congress that the broadcast industry is able to "self-police" in this area. At a "Summit on Responsible Broadcasting" convened by the NAB in Washington, NAB executives made clear their intent to develop an industry code of conduct establishing programming standards. The goal appears to be to head off further legislation or regulation. Chairman Powell, who spoke at the Summit, suggested that the Commission would be favorably impressed by such self-regulation, although he stopped well short of promising that the Commission would back off its enforcement efforts if such self-policing were to be implemented. Still, the message of the Summit seemed to be that self-regulation by the industry would be viewed with favor by Congress and the Commission, and the NAB appears intent upon exploring that avenue.

While such an approach may make sense from a business perspective, it ignores the First Amendment interests which are plainly threatened by the FCC's increasingly scattershot approach to indecency enforcement. A coalition of various groups, including broadcasters and others, has filed a petition for reconsideration of the FCC's March, 2004 "Golden Globe" decision (relative to Bono's use of the phrase "fucking brilliant"). That petition squarely challenges the FCC's indecency juggernaut as an unconstitutional expansion of the agency's intrusion into program content.

The beat goes on. Stay tuned.

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.

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.

(Continued from page 1)

fact that the Commission has not bothered to resolve the longstanding and important issue of how the must-carry system will work with respect to digital television signals, a basic issue whose resolution could influence the conversion substantially. And the FCC has yet to set final DTV tuner/receiver standards, another important piece of the conversion puzzle. And the final dates for digital conversion are still up in the air. So while it might be easy to blame broadcasters, they are certainly not the only ones responsible for the current situation.

While the various suggestions for accelerating the digital conversion at the apparent expense of broadcasters may be discouraging, there is one bright side. At least all parties appear to acknowledge that the December 2006 date will not be met. The only question is how much will broadcasters be made to suffer as a result of that collective failure.

Now Available!!

FHH's Primer on Compliance with FCC Requirements Governing

THE BROADCAST OF INDECENCY

(updated through March, 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.

Dude, where's my transmitter site?

FCC Lets Geographically-Challenged Permittee Off The Hook

By: Anne Goodwin Crump
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The Commission has found that an Arizona station was not guilty of misrepresentation or subject to automatic forfeiture of its construction permit when it built a new station at an incorrect location shortly before the construction permit was to expire and then filed a license application saying that the facility had been constructed properly. The Commission did assess a $4,000 fine, however, for operating at the wrong location.

In this case, the permittee had a permit which specified a particular transmitter site − let's call it The Authorized Site. The station was to be built in Arizona, but the permittee was located in the Midwest. So the permittee relied on local contractors and on-site representatives to confirm that the site on which the station was built was, in fact, at the coordinates specified in the CP − that is, at The Authorized Site.

Merely throwing some facility up right before the deadline is not likely to save the permit unless the FCC can be convinced that the permittee thought in good faith that it was building in accordance with its permit.

As it turns out, though, the tower was constructed about 900 feet from The Authorized Site, far enough away to change the geographic co-ordinates and require a modification application. But the permittee didn't file such a modification application. Instead, two weeks before the station's permit was to expire, the permittee filed its license application, stating that the station had been constructed in accordance with its CP, *i.e.*, at The Authorized Site. The FCC granted the license application on December 20, 2000.

Shortly thereafter, a petitioner sought reconsideration of that grant, pointing out that the station was built somewhere other that at The Authorized Site. The Petitioner suggested that the permittee knew about the discrepancy but filed its license application anyway because the permittee knew that it was too late to apply for and obtain a modification of the permit to specify the actual site at which the station was built. That argument was based on the petitioner's observation that the original CP was set to expire and could not be extended. Because of that time pressure and the threat of the loss of the permit, the petitioner claimed, the permittee had a clear motive to submit false information about the site in its license application. And, the argument went, if the permittee had lied to the Commission, then the permittee's basic qualifications to be a licensee were clearly in question. The petitioner also argued that, since it was now acknowledged that the station had not been built at The Authorized Site prior to expiration of the original construction permit, the permit must be deemed to have expired and the permittee should be forced to turn the station off.

In response, the permittee admitted that it had been negligent in supervising construction of the station but claimed that it didn't know that the station had been built at the wrong location until the objector had raised the issue. The permittee also immediately filed a modification application (which was granted) and a new covering license application.

Perhaps the most significant aspect of this case is that the Commission found that the CP ***was***, in fact, subject to automatic forfeiture pursuant to its rules because the station had not been constructed at its authorized site prior to expiration of the permit. Nonetheless, the FCC found that, under the circumstances, loss of the permit would be too harsh a sanction.

In so doing, the Commission took into consideration the fact that, aside from the slight discrepancy in location, the facilities had been built in accordance with the CP: the tower was the correct height above ground, the antenna was as specified, and it was mounted at the proper height on the tower (although the site change caused a slight change in height above average terrain). Further, the station gained no coverage advantage by the slight move. The FCC also found that the permittee had not intentionally submitted false information and therefore was not guilty of misrepresentation. Still, the Commission found that the permittee was responsible for its own negligent supervision and for the improper construction undertaken by its contractors, and it assessed a $4,000 fine accordingly.

A lesson to learn from this case is that, in a less sympathetic case involving a greater discrepancy, construction at an incorrect site shortly before expiration of a CP could easily lead to loss of that permit. Merely throwing some facility up right before the deadline is not likely to save the permit unless the Commission can be convinced that the permittee thought in good faith that it was building in accordance with its permit. This case also again illustrates that admitting fault and begging for mercy from the Commission can be an effective and successful strategy.

Proposed Noncommercial Reservations

Last fall the Commission invited proposals to reserve vacant FM channels for noncommercial use. This past month a number of those proposals have been set out in notices of proposed rule making. Since the proposals would not alter the basic distribution of allotted FM channels, we are not including them in the usual monthly list of proposed channel changes. However, since the possible change in status of these channels — from commercial to noncommercial — may be of interest to our readers, we are providing an additional table, below, separately listing such proposals. Consistent with our standard practice in providing information concerning allotment proposals, not included in this listing are proposals in which one of this firm's clients has expressed an interest, or for which the firm is otherwise unavailable for representation. Note that these channels were among those originally scheduled to be sold in Auction 37 (*see* story on Page 2); they have been pulled from the auction in light of their proposed noncommercial reservation.

Proposed Noncommercial Reservations - 3/20/04-4/21/04

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments
AL	Anniston	68.4 miles E of Birmingham	261C3	04-79	Cmts - 05/17/04 Reply-06/1/04
AL	St. Florian	48.5 miles NW of Decatur	274A	04-80	Cmts - 05/17/04 Reply-06/1/04
AZ	Patagonia	47 miles S of Tucson	251A	04-81	Cmts - 05/17/04 Reply-06/1/04
AZ	Pima	88.2 miles NE of Tucson	296A	04-82	Cmts - 05/17/04 Reply-06/1/04
AZ	Somerton	9.3 miles S of Yuma	260C3	04-83	Cmts - 05/17/04 Reply-06/1/04
AZ	Willcox	74.4 miles E of Tucson	223C3	04-84	Cmts - 05/17/04 Reply-06/1/04
CA	Sutter Creek	44.5 miles NE of Stockton	298A	04-85	Cmts - 05/17/04 Reply-06/1/04
CA	Westley	16.2 miles SW of Modesto	238A	04-86	Cmts - 05/17/04 Reply-06/1/04
FL	Live Oak	62.4 miles NW of Gainesville	259A	04-90	Cmts - 05/17/04 Reply-06/1/04
IA	Asbury	5.3 miles S of Dubuque	238A	04-91	Cmts - 05/17/04 Reply-06/1/04
IA	Keosauqua	70.6 miles SW of Iowa City	271C3	04-92	Cmts - 05/17/04 Reply-06/1/04
IA	Moville	22.4 miles E of Sioux City	246A	04-93	Cmts - 05/17/04 Reply-06/1/04
IA	Rudd	58.3 miles N of Waterloo	268A	04-94	Cmts - 05/17/04 Reply-06/1/04
ID	Weiser	54.3 miles N of Nampa	280C1	04-95	Cmts - 05/17/04 Reply-06/1/04
MA	West Tisbury	8.7 miles NW of Edgartown	282A	04-113	Cmts - 06/7/04 Reply-06/22/04
MO	Huntsville	36.7 miles N of Columbia	278C2	04-115	Cmts - 06/7/04 Reply-06/22/04
MO	Laurie	61.7 miles SW of Columbia	265C3	04-116	Cmts - 06/7/04 Reply-06/22/04
MO	Madison	37 miles N of Columbia	247C3	04-117	Cmts - 06/7/04 Reply-06/22/04

Proposed Noncommercial Reservations - 3/20/04-4/21/04 (*continued*)

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments
NC	Dillsboro	49 miles SW of Asheville	237A	04-118	Cmts - 06/7/04 Reply-06/22/04
ND	Berthhold	123 miles N of Bismarck	264C	04-119	Cmts - 06/7/04 Reply-06/22/04
NY	Amherst	12.26 miles N of Buffalo	221A	04-120	Cmts - 06/7/04 Reply-06/22/04
OK	Cordell	30 miles SW of Weatherford	229A	04-121	Cmts - 06/7/04 Reply-06/22/04
OK	Weatherford	86.7 miles N of Lawton	286A	04-122	Cmts - 06/7/04 Reply-06/22/04
OK	Wynnewood	43.6 miles S of Norman	283A	04-123	Cmts - 06/7/04 Reply-06/22/04
OR	Dallas	19.7 miles SW of Salem	252C3	04-124	Cmts - 06/7/04 Reply-06/22/04
OR	Madras	41.6 miles N of Bend	227C3	04-125	Cmts - 06/7/04 Reply-06/22/04
IL	Canton	31.3 miles SW of Peoria	252A	04-97	Cmts - 05/27/04 Reply-06/11/04
IL	Cedarville	39.4 miles W of Rockford	258A	04-98	Cmts - 05/27/04 Reply-06/11/04
IL	Clifton	43 miles S of Joliet	297A	04-99	Cmts - 05/27/04 Reply-06/11/04
IL	Freeport	48.5 miles W of Rockport	295A	04-100	Cmts - 05/27/04 Reply-06/11/04
IL	Pinckneyville	70.4 miles S of St. Louis, MO	282A	04-101	Cmts - 05/27/04 Reply-06/11/04
IN	Farmersburg	92.6 miles SW of Indianapolis	242A	04-102	Cmts - 05/27/04 Reply-06/11/04
IN	Fowler	33.7 miles W of Lafayette	291A	04-103	Cmts - 05/27/04 Reply-06/11/04
IN	Madison	37.2 miles N of Columbia	266A	04-104	Cmts - 05/27/04 Reply-06/11/04
KS	Council Grove	60.9 miles SW of Topeka	281C3	04-106	Cmts - 05/27/04 Reply-06/11/04
KY	Smith Mills	112.16 miles NW of Bowling Green	233A	04-107	Cmts - 05/27/04 Reply-06/11/04
LA	Golden Meadow	42.9 miles SW of New Orleans	289C2	04-108	Cmts - 05/27/04 Reply-06/11/04
LA	Homer	53.8 miles N of Shreveport	272A	04-109	Cmts - 05/27/04 Reply-06/11/04
LA	Ringgold	34.9 miles S of Shreveport	253C3	04-110	Cmts - 05/27/04 Reply-06/11/04
PA	Liberty	11.5 miles S of Pittsburgh	298A	04-127	Cmts - 06/10/04 Reply-06/25/04

Proposed Noncommercial Reservations - 3/20/04-4/21/04 (*continued*)

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments
PA	Susquehanna	27.52 miles S of Binghamton, NY	227A	04-128	Cmts - 06/10/04 Reply-06/25/04
SC	Barnwell	47 miles SE of Augusta	256C3	04-129	Cmts - 06/10/04 Reply-06/25/04
TX	Burnet	45 miles NW of Austin	240A	04-130	Cmts - 06/10/04 Reply-06/25/04
TX	Denver City	77 miles SW of Lubbock	248C2	04-131	Cmts - 06/10/04 Reply-06/25/04
TX	Van Alstyne	16.2 miles N of McKinney	260A	04-132	Cmts - 06/10/04 Reply-06/25/04
UT	Fountain Green	42.7 miles S of Provo	260A	04-133	Cmts - 06/10/04 Reply-06/25/04
UT	Toquerville	151 miles NE of Las Vegas	280C	04-134	Cmts - 06/10/04 Reply-06/25/04
VA	Shenandoah	21 miles NE of Harrisonburg	296A	04-135	Cmts - 06/10/04 Reply-06/25/04
WI	Augusta	21 miles S of Eau Claire	268C3	04-136	Cmts - 06/10/04 Reply-06/25/04
WI	Hayward	106 miles N of Eau Claire	232C2	04-137	Cmts - 06/10/04 Reply-06/25/04
WV	St. Marys	78.3 miles N of Charleston	287A	04-138	Cmts - 06/10/04 Reply-06/25/04

FM ALLOTMENTS PROPOSED –3/20/04-4/21/04

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
AL	Fort Rucker	80 miles S of Montgomery	280C3	04-146	Cmts - 06/7/04 Reply-06/22/04	1.420 (i)
AL	Slocomb	98.6 miles S of Montgomery	263C3	04-146	Cmts - 06/7/04 Reply-06/22/04	1.420 (i)
NJ	Burlington	5.6 miles SW of Levittown, PA	248B	04-150	Cmts - 06/10/04 Reply-06/25/04	1.420 (i)

Notice Concerning Listings of FM Allotments

Consistent with our past practice, Fletcher, Heald & Hildreth PLC provides these advisories on a periodic basis to alert clients both to FM channels for which applications may eventually be filed, and also to changes (both proposed and adopted) in the FM Table of Allotments which might present opportunities for further changes in other communities. Not included in this advisory are those windows, proposed allotments and proposed channel substitutions in which one of this firm's clients has expressed an interest, or for which the firm is otherwise unavailable for representation. If you are interested in applying for a channel, or if you wish us to keep track of applications filed for allocations in your area, please notify the FHH attorney with whom you normally work.

FM ALLOTMENTS ADOPTED –3/20/04-4/21/04

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
AL	Linden	65 miles S of Tuscaloosa	253C1	03-162	None
AL	Marion	42.4 miles S of Tuscaloosa	275C2	03-162	None
AL	Littleville	47.6 miles W of Decatur	278A	04-12	None
AZ	Dewey-Humboldt	14.6 miles S of Prescott	248C	02-73	None
AZ	Globe	89.4 miles NW of Phoenix	231C2	02-73	None
AZ	Safford	98 miles NE of Tucson	232C2	02-73	None
TX	Encinal	36.5 miles N of Laredo	286A	02-349	TBA
TX	Encinal	36.5 miles N of Laredo	259A	01-152	TBA
TX	Sheffield	60 miles E of Fort Stockton	224C2	02-350	TBA
OK	Erick	108.2 miles NW of Lawton	259C2	01-218	TBA
TX	Annona	75 miles N of Longview	263A	01-189	TBA
OK	Haworth	12.6 miles S of Idabel	294A	01-182	TBA
AZ	Chino Valley	54 miles SW of Flagstaff	232C3	02-12	None
AZ	Gilbert	25 miles S of Phoenix	280C1	02-12	None
TX	Orange Grove	39.7 miles NW of Corpus Christi	269C2	02-260	None
GA	Ambrose	79 miles E of Albany	250A	03-246	None
IL	Okawville	79.6 miles S of St. Louis, MO	271B1	03-196	None

(Continued from page 2)

Second, a slight variation. In your Form 175, you specify two channels, each of which has an upfront payment of $10,000. If you submit an upfront payment of $20,000, you would be able to bid on both channels in each round of the auction. In fact, you would ***have*** to bid on both in each round, since your "maximum eligibility" would be 20,000 bidding units (based on your total upfront payment of $20,000), and the rules require that in each round you must be "active" (*i.e.*, either place a bid or be the standing high bidder from the preceding round) in markets whose upfront payments equal your maximum eligibility. Since you would be able to bid in only two markets (since those are the only ones listed in your Form 175), and since those two upfront payments for those two markets equal your maximum eligibility, you would have to bid in both markets during each round, or risk losing eligibility.

While a bidder must maintain a minimum level of bidding "activity" in each round, . . . the FCC anticipates that bidders may jump around among channels from one round to the next in a variety of ways.

A third example may help clarify this. Suppose in your Form 175 you specify a total of 15 channels, ten of which have upfront payments of $10,000 each, four of which have upfront payments of $50,000 each, and one of which has an upfront payment of $200,000. You submit an upfront payment of only $200,000, which gives you "maximum eligibility" of 200,000 bidding units.

During each round of the auction you would have to be "active" with respect to markets totaling in the aggregate $200,000. Thus, you could bid on the $200,000 channel. Or you could bid on all four of the $50,000 channels. Or you could bid on 10 of the $10,000 channels and two of the $50,000. As long as you are "active" in each round in markets having an aggregate upfront value of $200,000, you remain able to bid, in the next round, with respect to any of the channels you specified in your application, even if you did not place any bids on any of those channels in earlier rounds.

In this last example, in the first two rounds you might elect to bid on the $200,000 channel alone. Since a bid in that market would exhaust your maximum eligibility, you would not be able to bid on any other markets during those rounds. But let's say that, by the end of round 2, you feel that the $200,000 channel is being priced beyond your limits by other bidders. In rounds 3-5, you might then decide to bid on the four $50,000 markets. Since such bids would again exhaust your 200,000 bidding units, you would not be able to bid on any of the other markets (*i.e.*, any of the $10,000 markets, or the $200,000 market) during that round. But let's then say that one of the $50,000 markets gets priced out of your league by other bidders. In round 6, you could then continue to bid on the other three $50,000 markets, but also place bids in five of the $10,000 markets -- meaning that you would be "active" in markets having an aggregate value of $200,000, representing your maximum eligibility.

By the time you get to round 7, you may have determined that the price for the $200,000 channel, which you stopped bidding on after round 2, really isn't all that high. At that point, as long as you are not the high bidder in any other market you're bidding on, you could jump back in and bid on the $200,000 channel, even though you had not been active there since round 2. But since the $200,000 value of that market would exhaust your maximum eligibility, you would not be able to bid in any other markets during that round.

The various "activity rules", "eligibility" considerations, "stopping rules", limitations on bid withdrawals and the like are all open for comment (although it's probably unlikely that the comments will cause the FCC to change its approach much). Again, we encourage you to review the public notice for further guidance in these areas from the Commission.

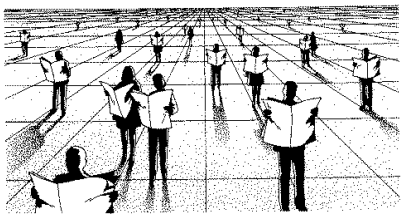
Once the comment period closes, the Commission will consider any comments filed and will then issue a final listing of the channels and related information. The Commission will also conduct a seminar on the auction process. Following that, it will announce a "short-form application (FCC Form 175) filing window" period during which prospective bidders will be able to identify the channel(s) they wish to bid on. The next step is the submission of upfront payments (which must be made by wire transfer). The Commission will then conduct a "mock auction" for auction participants who want to test drive the auction software. After that comes the real auction.

Folks who may be interested in participating in the auction have much to study and think about. If you would like further information about the auction, or if you would like to discuss how best to approach the opportunities presented by the auction, you should contact the FHH attorney with whom you normally work.

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

Updates on the News

Brrrrrrr If you've recently experienced a sudden chill, it may not just be your imagination. We have heard repeated reports that at least two freezes are under consideration at the Commission. One would freeze the FM channel allotment process, the other would freeze the existing DTV table and outstanding authorizations. The precise metes and bounds of any freeze that might be imposed have obviously not been announced − we're talking about rumors here (and the FCC finds that freezes work best if they come as a surprise to one and all). The goal of the FM freeze would presumably be to stabilize the FM table in connection with the upcoming Auction 37 (*see* story on Page 2). The goal of the DTV freeze would be to stabilize the DTV landscape in order to encourage the prompt conversion of all analog operations to digital, consistent with the Congressionally-mandated schedule. We don't know for sure that any freeze will be ordered, and we don't know when that might happen, but if you have any plans to file proposals for new FM channel allotments or technical DTV rearrangements, you may want to get them filed sooner rather than later.



Overhaul of FM allotment process proposed Coincidentally, the FCC *has* announced that it is looking at a petition for rule making which proposes a number of fairly sweeping changes in the FM allotment process. The petitioners propose, for example, that changes in community of allotment be permitted through the application process, rather through rule making − a change which could dramatically alter the ability of creative allotment jockeys to achieve a variety of upgrades and move-ins. The petition also proposes that, under some circumstances, the FCC should allow the removal of a community's only "local" service, and should provide for the weeding out of seemingly undesirable ("non-viable") allotments. The petition is posted online at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516082360. Note that the FCC has ***not*** issued a notice of proposed rule making in this matter yet, so any changes along the lines proposed are likely at least a year away, if they're going to happen at all.

IBOC NPRM/NOI Continuing its efforts to drag the radio industry into the digital age, the Commission has unleashed a Further Notice of Proposed Rule Making and Notice of Inquiry addressing a number of questions relating to digital audio broadcasting. Topics under the microscope include digital AM transmission at night, the types of digital services (AM or FM) which should be permitted, how public interest consideration should be applied to digital services, etc. Comments are due on June 14, reply comments on July 14.

NCE DTV channels up for grabs If you have always longed to be an educational licensee on a digital TV channel in Devils Lake, ND or Hobbs, NM, here's your chance. Channels *25 at Devils Lake and *47 at Hobbs are now available for filing. The filing window closes on **May 24, 2004**. If more than one applicant applies, the winner will be determined through the FCC's noncommercial selection process (unless that process gets trashed by the courts in the meantime).

The FCC's Rules − better with age? If you, like so many of us, dashed out and bought your copy of the latest edition of the FCC's rules, good for you − but don't throw out last year's version just yet. This year's rules (which include revisions as of October 1, 2003) have just been released by the Government Printing Office. The only problem is, they contain the "new" ownership rules which were released by the FCC in July, 2003. While those rules were indeed adopted by the Commission last summer, their effectiveness has been stayed since September, 2003. In other words, the "new" ownership rules reflected in the latest edition of the rules are ***not*** in effect as of right now and, depending on what the U.S. Court of Appeals for the Third Circuit does, they may never be in effect. So for the time being, hang onto last year's edition of the rules so that you can have ready access to the ownership rules which are currently being applied.

Ascertainment on the come-back trail? At least one trade publication has reported that, in trying to pour some meaning into the oft-mentioned-but-seldom-defined term "public interest obligations of broadcasters", Chairman Powell may be considering a return to "ascertainment". For you youngsters who joined the broadcasting industry since 1982, "ascertainment" was the short-hand name for an elaborate range of busy-work chores which the FCC made broadcasters complete on an on-going basis. Boiled down to its basics, ascertainment required that broadcasters contact representatives of various components of their respective communities, determine from those representatives the needs and interests of the public (at least as far as the representatives could tell), record those needs and interests on a piece of paper somewhere, and then attempt to address those needs and interests in appropriately "responsive" programming. Ascertainment, long a subject of criticism (and occasional ridicule), was among the first load of regulatory cargo jettisoned at the beginning of deregulation in the early 1980s. It's difficult to perceive what, if anything, has changed since then to warrant a return to ascertainment, but presumably the FCC will let us all know.