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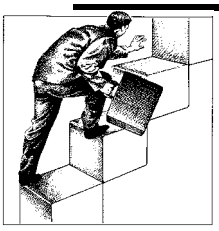
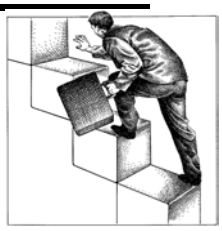
Memorandum to Clients

May, 2004 | *News and Analysis of Recent Events in the Field of Communications* | No. 04-05



Stairway to heaven?

MSTV Proposes Five-Step Plan to DTV Judgment Day



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The Association for Maximum Service Television, Inc. (MSTV), which represents over 500 local television stations on technical issues, recently submitted to the FCC a multi-step plan for moving all television stations to permanent digital channels in the smaller permanent television band at Channels 2-51 (the "core"). The goals of the plan are to (i) allow stations to select their final DTV channel where possible, (ii) protect existing service to the fullest extent possible, (iii) promote a joint industry-FCC effort, with the industry taking the lead and the FCC issuing licenses and resolving conflicts, and (iv) encourage an orderly transition minimizing disruption to existing DTV operations.

An ambitious attempt to take this raging bull by the horns and wrestle it into a workable situation within a reasonable time frame.

With the current deadline for completion of the conversion of broadcast television to digital fast approaching, many industry observers have expressed concern about the somewhat chaotic nature of the conversion process to date. At some point in the not too distant future, each television licensee will have to pick one channel on which to continue to operate in digital mode. But the ability of licensees to make a rational, informed decision about what that channel should be has been hampered considerably by the fact that the television band continues to be subject to changes which could affect the desirability of any particular channel.

The MSTV proposal is an ambitious attempt to take this raging bull by the horns and wrestle it into a workable situation within a reasonable time frame.

The five steps of the plan follow.

Step 1 - Correcting FCC DTV Database: A primary gripe about the current TV channel allotment plan is that it is virtually impossible to know precisely what stations are authorized, or are likely to be authorized, to operate on what channels with what facilities. MSTV observes that not only is the FCC's DTV database inaccurate, but there are actually several such DTV databases. Also, a number of international coordination and interference issues, involving Canada and Mexico, have yet to be resolved. All of these factors inject uncertainty into the "Is-That-Your-Final-Channel" question. In MSTV's view, Step One should be to establish a single, reliable database.

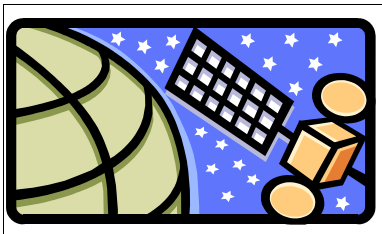
MSTV proposes to achieve that goal by immediately freezing any new requests for DTV channel changes, allotments or modifications of DTV facilities which would expand existing service area or increase interference. (Under MSTV's plan, proposals for such changes which are pending as of the institution of the freeze would not be affected – so if you have any thoughts about seeking some such change, it would probably be wise to get it on file as soon as possible.)

MSTV anticipates that, once the freeze is in place (and in their view, that could be at any moment), the Commission would open a limited window for stations to review the existing database(s) and request corrections. Meanwhile, the Commission would intensify its efforts to resolve all outstanding international coordination and interference issues, so that stations affected by such considerations would have the same opportunity as other DTV stations to maximize their facilities.

(Continued on page 12)

The Scoop Inside

NAB Looks for Limits on Satellite "Localism" .. 2
Focus on FCC Fines 3
Copyright Offices Issues Recordkeeping Rules for Streaming 4
EEO Audits in the Works? 5
Nextel Offers to Move Broadcast Auxiliaries Out of the 1990-1995 MHz Band 6
Congress May Tinker with EchoStar's Two-Dish Delivery 7
FCC Considers Allowing Unlicensed Devices in TV Band 7
Court Upholds FCC NCE Comparative Point System 8
Less than Minimum Daily Schedule May Lead to Share-Time for NCE's 9
Deadlines 10
FCC Adds Communities to Station's Cable Market Based on DTV Coverage 11
FM Allotments 15
Updates 16
ISBA Elects Directors and Officers 17



Space oddity?

NAB Looks for Limits on Satellite "Localism"

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As satellite-delivered radio services make increased headway in the marketplace, they are attempting to provide more and more locally-oriented programming, presumably to attract listeners away from conventional, terrestrial radio broadcast stations. But the satellite services' ability to do so has thus far been limited by past promises made to the FCC by satellite proponents.

And the National Association of Broadcasters (NAB) wants to keep it that way.

In April the NAB filed a formal petition asking the FCC to declare that:

1. Satellite Digital Audio Radio Service (SDARS) licensees (read: XM Radio, Inc. and Sirius Satellite Radio, Inc.) should be prohibited from delivering programming content that could be played differently on receivers at different locations; and
2. SDARS licensees should be prohibited from broadcasting nationally any locally-oriented services (read: local weather, sports, traffic, advertisements, etc.).

According to the NAB, SDARS licensees are currently developing the technology to do number 1 above. Such technology could potentially allow XM or Sirius to broadcast information to all of its customers' receivers, and then play locally-oriented material selected out of that nationally distributed content based upon Global Positioning Devices embedded into each individual radio receiver, or based upon the subscriber's unique customer number.

And both XM and Sirius are ***already*** doing what the NAB wants to prohibit in number 2 above. As of mid-May 2004, XM Radio has been broadcasting continuous local weather and traffic reports for 16 metropolitan markets (with plans to expand to 21 later this year) to customers nationwide. According to Sirius's website, it now offers nine channels of weather and traffic covering twenty metropolitan areas.

What's wrong with giving listeners what they want? Plenty, says the NAB.

Back in the early 1990's, when the FCC was considering authorization of SDARS, its proponents repeatedly told the FCC that they had no intention of offering local service to their customers. In fact, potential SDARS licensees touted the ***nationwide*** nature of their programming as a reason for the FCC to allocate scarce and precious spectrum to a satellite-delivered radio service in the first place. The FCC was at the time apparently convinced that there was no way for satellite radio broadcasters to compete with existing local AM and FM stations, and the FCC didn't even consider the study that the NAB commissioned at the time, which purported to show how harmful competition would be to the existing local stations. So SDARS was created by the FCC to complement existing local AM and FM stations, not to compete with them.

Because those early pie-in-the-sky notions have since been belied by present-day reality, the NAB wants the FCC to stop XM and Sirius what they are doing now (nationwide distribution of major-market traffic and weather to all subscribers) and prohibit them from developing or implementing new technology to deliver such information in the future.

(Continued on page 14)

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Focus on FCC Fines

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FCC punishes non-profit companies. The FCC has imposed a $13,000 fine on a New Jersey FM operator for failing to operate from its licensed location and for failing to maintain EAS equipment. FCC agents inspected the Asbury Park station and found that the transmitting antenna was at neither the height nor the location specified in the station's license. In addition, there was no EAS equipment to be found at the station. The station pleaded with the FCC to reduce the fine because it was a small non-commercial entity with limited financial resources – it even submitted a bank statement to support its pleas of poverty. The FCC showed no mercy, finding the single bank statement unpersuasive of an inability to pay.

Another non-profit group in the Bronx, New York, was hit with a $10,000 fine. The New York company was spanked for operating on 96.1 MHz without a license. FCC agents received complaints about interference and tracked the offending signal to the roof of a building in the Bronx. The agents were met by a clergyman who showed the equipment to the agents. The agents warned the operator that a license – from the FCC, not from any spiritual authority – was needed for the operations. For several more months the FCC continued to receive complaints. The FCC showed no forgiveness to the clergy and demanded that $10,000 be rendered unto it.

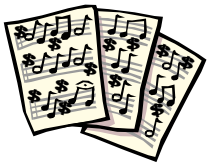
FCC pardons low-income companies. By contrast, the FCC did show compassion for two AM operators in Tennessee and West Virginia. FCC agents inspected these stations and proposed fines of $8000 to the Tennessee station and $22,000 to the West Virginia station. The fines were for EAS violations and a laundry list of operational violations. However, both of these stations provided copies of tax returns which indicated that paying the fines would create a hardship. In considering claims of financial hardship, the FCC tends to ignore assets (such as the bank statement referred to above) and net profit of a company. Instead, the FCC focuses intently on gross revenues. In one instance, the FCC determined that a fine which was almost 8% of a station's gross revenues was not excessive. Clients should be aware that the FCC considers a station's gross revenues as the best indicator of hardship and leaves the licensee's expenses out of the equation.

Main studios should have people. The FCC found three different stations in Colorado and Missouri to be in violation of the rules and policies related to main studios. The FCC requires licensees to maintain a full-time staff and managerial presence at a main studio during regular business hours. The bare minimum staff includes one full-time management-level employee and one other full-time employee who may or may not be management-level. While the management-level person need not be "chained to his or her desk" at the studio – that is, the person may leave the office frequently – the studio must be staffed at all times during regular business hours.

In one of the main studio violations, FCC agents called station corporate headquarters in another state after being unable to locate the main studio. Corporate headquarters admitted to the FCC agents that the closest staffed studio was actually 160 miles away. In another instance, FCC agents called a station manager who admitted that nobody was at the studio but that he could be there in 20 minutes. The manager told the FCC agents that nobody usually worked at the location listed as the main studio, although some staff members supposedly tried to stop by a couple of times a day. In the third case, FCC agents showed up at a studio and found only a sign on the door saying that the main studio was unstaffed and an appointment was necessary for the studio to open. The name and telephone number of the general manager was provided on the sign. Clients should always ensure that their main studios are properly staffed and open during regular business hours.

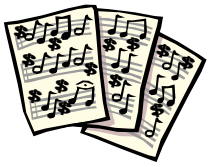
Not surprisingly, the FCC also cited these three stations for various operational and public file violations. In combination, the FCC hit these stations with $42,000 in fines (which is the equivalent of two employees at $10 an hour employed through the year).

The FCC won't be ignored. The FCC fined an Ohio station $13,000 for more than a dozen violations including failure to respond to Commission communications. The FCC made the station's failure to respond to FCC correspondence the most prominent violation. The FCC noted that it sent a half-dozen notices and letters to the licensee and the licensee responded only to the first letter and to the last letter, which proposed the $11,000 fine. As noted in previous issues of this column, FCC agents becomes significantly less merciful when licensees refuse to answer them. All clients should ensure that they promptly advise their counsel of any correspondence from the FCC.



I write the songs?

Copyright Office Issues Notice and Recordkeeping Rules for Streaming



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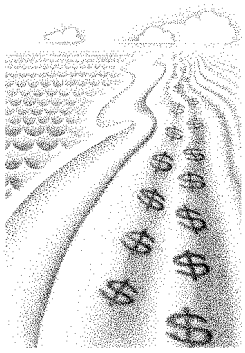
After years of delay, the Copyright Office (CO) has issued *interim* notice and recordkeeping regulations for those webcasters taking of advantage of the statutory license which enables them to stream music on the internet. The recordkeeping rules, adopted March 11, went into effect on April 12, 2004. These rules apply only to webcasters' use of sound recordings ***on or after*** the effective date.

Despite a variety of persuasive arguments, it has been resolved that streaming activities trigger copyright liability. As a result, when a recorded song is streamed in an internet transmission, the owners of the copyrights in that recording are entitled to royalties. The CO oversees the overall copyright process, including the collection and distribution of royalties – but it can't implement that process unless it knows which copyrighted works are being transmitted and under what circumstances. To assure full and proper accounting for all royalty obligations, the CO has ordered streamers to keep track of such information pursuant to specific rules and guidelines spelled out in the March order.



Those rules and guidelines require streamers to record the following information:

Name of Service – The name of service is the full legal name of the service making the transmissions – in other words, the streamer.

Transmission Category – Because the various statutory licenses have different royalty structures, and because many services can and do operate under more than one license, it is necessary to identify the "category" under which the performance of a sound recording is made. The CO has defined a total of 11 separate and distinct categories, including, for example, "eligible nonsubscription transmission other than broadcast simulcasts and transmissions of non-music programming" and "eligible nonsubscription transmission by a noncommercial broadcaster operating under an agreement published in the Federal Register pursuant to the Small Webcaster Settlement Act". We can provide a complete list of the categories upon request. Streaming services must use their category codes to identify each sound recording performed.

Featured Artist – Each streaming service must provide the name of the featured artist for each sound recording it transmits during the relevant reporting period. If the featured artist is an individual or entity, such as a band, the full name must be reported.

Sound Recording Title – The title of the song must be accurately reported. It is not acceptable merely to report the name of the album from which the song recording is taken.

Sound Recording Identification: Album Title, Marketing Label or International Standard Recording Code (ISRC) – The ISRC is the unique identifier that identifies each version of a sound recording. It is imbedded in promotional and commercially-released sound recordings and can be read by currently available software. A streaming service may report the ISRC of a sound recording in lieu of the Sound Recording Title, Album Title and Marketing Label. For those services that do not report the ISRC for a sound recording, the Album Title and Marketing Label ***must*** be reported.

Total Performances, Aggregate Tuning Hours, Channel or Program Name, Play Frequency or Actual Total Performances – Streaming services must provide the total number of performances of each sound recording during the relevant reporting period.

For the period beginning with the effective date of the interim regulations, services must maintain records for each sound recording streamed for a period of no less than two weeks (two periods of seven consecutive days) for each quarter of the calendar year. The two weeks reported need not be consecutive, although a service may choose that option. Likewise, each weekly period does not have to begin on a Sunday – it can begin on any day of the week and then run for a total of seven consecutive days. The two weeks chosen should reflect the programming typically offered by the service during the calendar quarter. The first reporting period began on April 1, 2004 (1st calendar quarter), which marked the first period under the *interim* regulations.

(Continued on page 9)

Hire ground?

EEO Audits In The Works?

FCC Eyes EEO CPA's

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It has been a little over a year since the Commission's new-and-improved EEO rules took effect. Dutiful licensees everywhere have presumably been trying their best to document their recruiting, interviewing and hiring processes – even those who have had no hires. Those hard-working licensees are also looking for opportunities to meet, and document, their Prong 3 outreach "menu" requirements – job fairs, internships, and scholarships galore!

But all these efforts have been undertaken without the benefit of critical feedback from the FCC, since these efforts are reported to the FCC only at renewal time. But wait - some interim scrutiny may be at hand. The Commission has promised to begin random EEO audits and investigations to actually look at some of the paper they are requiring everyone to create.

Such audits are a little late, at least in the opinion of the Office of Communications of the United Church of Christ (whose Managing Director is former FCC Commissioner Gloria Tristani). It has been reported that the OC-UCC is upset that so many licenses have been renewed without an EEO investigation. In March, 2003, when the rules were launched, the Commission pledged to audit about 5% of all licensees for EEO compliance. As of thisApril, however, no audits have been undertaken.

Once they start – and a number of sources at the Commission insist they will start soon – we can only hope that the auditors are able to recognize good faith efforts when they see them, since the rules and policies do not provide much guidance in a number of respects.

First, there is no required format for the public file reports. While this is not a bad thing, it does give rise to the possibility that a format adopted in good faith by a licensee may, for one reason or another, be deemed less than acceptable by an auditor. Ideally, particularly in view of the novelty of the audit process, the auditors should be willing to accept the licensee's first attempt at compliance as an opportunity for guidance rather than a basis for punishment.

Second, the definition of market size, which in some cases determines how many outreach "menu" items a licensee must complete, is in flux. The 1999 OMB community definitions, which are used to calculate the FCC's EEO market definitions, have been updated to reflect revised population terminology. Unfortunately, the format for the OMB community definitions has also changed – so dramatically, in fact, that those definitions are no longer useful ***at all*** for determining EEO market definitions for FCC purposes. The Commission's staff has informally advised us that (a) it recognizes this problem, and (b) the subject of market size definition will likely be addressed when pending petitions for reconsideration of the new EEO rules are resolved. Ideally, in the meantime auditors will take that uncertainty into account when determining whether outreach efforts have been adequate.

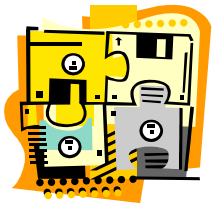
We can only hope that the auditors are able to recognize good faith efforts when they see them, since the rules and policies do not provide much guidance in a number of respects.

Third, the menu items themselves are vague. Words like "participation" and "co-sponsorship" are not yet well-defined. Licensees must use good faith efforts to meet the requirements and hope that they are adequate. Again, early audits will ideally yield guidelines and not reprimand.

For now, licensees should make solid, good faith efforts to satisfy the Commission's requirements. EEO public file reports should be placed in the station's local public inspection file ***and*** posted on the station's website (if the station has a website). A responsible station official should be made responsible for EEO compliance activities – and that person should be notified that he or she has been chosen for this responsibility. Since that official must be identified in the EEO report to be filed with the station's renewal application, it is important that that official be familiar both with the EEO rules and with the station's efforts to comply with them.

Of course, all licensees should recruit openly for all new hires and maintain detailed records of the hiring process. And finally, it is smart to try to complete menu item activities at regular intervals (one a year for those who need two and one every 6 months for those who need four).

If you need any help with your EEO compliance, or are unsure of what the requirements are for your particular employment unit, please feel free to contact us.



Pickin' up the pieces?

Nextel Offers to Move Broadcast Auxiliaries Out of the 1990-1995 MHz Band . . . For a Price

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Last November, the FCC affirmed that broadcast auxiliary users (mostly TV pick-ups with a few STLs and relays) would have to clear out of the 1990 - 2025 MHz neighborhood. The FCC was "razing" the neighborhood and kicking out the broadcasters in order to make room for redevelopment of that neighborhood by the up and coming mobile satellite service.

Lo and behold, who should show up at the FCC's door but Nextel, a big-time mobile phone operator, with its own big-time redevelopment plans. Nextel made the owner – the FCC – an offer for part of the new neighborhood: if the FCC gives Nextel a 5 MHz piece (1990-1995 MHz) of this newly gentrified spectrum , Nextel will pay for the broadcasters to move out.

But Nextel did not come alone with its offer. It convinced the National Association of Broadcasters (NAB) and the Association for Maximum Service Television, Inc. (MSTV) to join in in trying to sell the idea to the FCC.

Nextel to FCC: if the FCC gives Nextel a 5 MHz piece of this newly gentrified spectrum , Nextel will pay for the broadcasters to move out.

In 1997, the FCC decided that it would make the 1990-2025 MHz band available to mobile satellite service licensees. Previously, many television stations used this part of the spectrum for remote pick-ups or electronic news gathering services. The FCC decided that the broadcasters would have to relocate out of the 1990-2025 MHz band to make way for the new mobile satellite service licensees. However, to protect the broadcast users, the FCC established a two-phase relocation procedure in which the satellite licensee would need to reimburse the broadcaster for moving expenses. In November 2003, the FCC revisited this decision and decided that the broadcasters were not moving out quickly enough. The FCC eliminated the two-phase system and ordered the broadcasters to vacate the spectrum quickly. Broadcasters were still permitted to try to recover their relocation costs from the satellite licensees.

Since the November decision, Nextel hatched its plan to pay broadcasters to move, so long as Nextel is allowed to take a piece of the spectrum. Nextel is trying to accomplish this same feat with 800 MHz spectrum, which is currently peppered with walkie-talkies and vehicle radios in ambulances, police cars, taxicabs and thousands of other operations. Nextel spent the better portion of the 1990s and very large sums of money to buy these licenses around the country. However, Nextel did not buy all of them. For the past few years, Nextel has been trying to convince the FCC that it should give Nextel a large portion of this frequency in exchange for moving the remaining cabs, ambulances and other licensees elsewhere on the spectrum. Nextel has met with some success in convincing numerous cab, ambulance and other operators that this idea is good. Arm-in-arm with the current licensees, Nextel has proposed this "Consensus Plan" to the FCC. Nextel's competitors view the idea as a scam that will net Nextel billions of dollars in free spectrum. Some reports have suggested that Nextel may be making some headway on its plan with the Commission, but other reports suggest otherwise. This is clearly a high stakes poker game, with the players keeping their cards close to their vests and, very possibly, bluffing from time to time.

Anticipating success with the 800 MHz Consensus Plan, Nextel is now trying to apply the principle to the 1990-1995 MHz band. Nextel has reached agreement with NAB and MSTV to seek the FCC's blessing on its latest proposal. NAB and MSTV disclose that a conservative estimate of the relocation costs which Nextel would shoulder is more than $500 million. The advantage for broadcasters would be that their costs would be covered and the relocation would occur relatively quickly. By contrast, without the Nextel deal broadcast could face a more prolonged relocation process for which they themselves might have to foot the bill. Of course, affected broadcasters could attempt to negotiate individual deals with whichever satellite service provider should be reimbursing the costs of any particular move, but such negotiations would have to be undertaken and completed prior to a rapidly approaching deadline. Nextel has committed to the plan and is offering a centralized source of reimbursement to individual broadcasters: for broadcasters, the Nextel deal provides one-stop-shopping.

Clients who are operating auxiliary services in the 1990-2025 MHz band should be well underway in planning to relocate these facilities. Clients should bear in mind that if the Nextel proposal is accepted, they may have a central clearing house from which they may be reimbursed for these expenses. Otherwise, they may have to pursue reimbursement from individual licensees or risk no recovery at all.

Recovering the satellites?

Congress May Tinker With EchoStar's Two-Dish Delivery

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EchoStar's Dish Network DBS system now relegates many local television stations off to the side – or, at least, off to a different satellite operating in a different orbital position. This forces subscribers to install second satellite dishes to receive the stations on that second satellite. Many subscribers simply do not wish to order up a second dish – even though Echostar will pay for it.

The stations usually sent off into second-dish Siberia are those with smaller audience shares. These include many religious and foreign language stations. Many have complained of difficulty building and maintaining audiences when significant numbers of viewers (*i.e.*, the folks who aren't willing to decorate their homes with a second dish) are unable to receive a signal.

But now Congress may weigh in with legislation which would put a stop to EchoStar's two-dish approach.

The proposal, which has as of this writing only passed its first legislative hurdle, would require EchoStar to make *all local* channels available for reception on the *same* dish. That might mean that all local stations would be relegated to the second dish if EchoStar chose to put them there. EchoStar's DBS competitor, DirecTV, does not require a second dish to receive complete local-into-local packages.

> *The proposal would require EchoStar to make all local channels available for reception on the same dish.*

Now that the one-dish proposal has been approved in a House subcommittee, the measure moves onto the full Energy and Commerce Committee, which is expected to take up the single dish amendment in a few weeks en route to the House floor. The NAB has been lobbying for this proposal, which has arisen in connection with Congress's consideration of possible extension of the Satellite Home Viewer Improvement Act (SHVIA) for another five years.

EchoStar chief, Charlie Ergen, who has battled broadcasters – including the Spanish language giant, Univision, on this same issue before the FCC – has complained that a single dish rule will cost his company $100 million in compliance costs.

Fixing a hole?

FCC Considers Allowing Unlicensed Devices In TV Band

By: Lee G. Petro
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The Commission has adopted a Notice of Proposed Rulemaking (NPRM) seeking comments on the development of new rules to permit unlicensed wireless broadband services to utilize the television spectrum. This follows up on a Notice of Inquiry initiated last year by the Commission regarding this same issue.

Not surprisingly, in Round 1, television licensees expressed grave concern about the potential for interference caused by the unlicensed devices operating in the TV band. Most of the concern centered on the ability of the Commission to develop rules that would ensure that such unlicensed devices would not impair the reception of television signals. Equally important is the potential impact that these unlicensed devices may have on the transition from analog to digital. Commissioners Adelstein and Martin both raised this concern when adopting the NPRM, and specifically called for comments on this matter.

The text of the NPRM has not been released as of this writing, and the dates for comments have yet to be established. However, it appears that the Commission is contemplating two types of unlicensed services: (1) low-power, mobile devices such as PDA and LAN cards for laptops, and (2) higher-powered fixed unlicensed devices for wireless broadband internet services. The Commission has proposed interference avoidance requirements for both types of services, and the Commission will be looking at comments evaluating these requirements.

As you can imagine, we strongly suggest that television operators watch this proceeding closely. We will advise you once the dates for comments have been set.

How will I know?

Court Upholds FCC NCE Comparative Point System

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Local ownership still matters – at least when applicants compete for increasingly scarce noncommercial educational construction permits. A May 11 decision by the U.S. Court of Appeals for the D.C. Circuit upheld the FCC's "point system" that evaluates competing noncommercial applications based on three factors: technical prowess, local control or proposed use of a station in a statewide educational network.

The FCC's comparative criteria for noncommercial CP applicants have been in a state of suspended animation for years as the Commission struggled to formulate some coherent and rational way of comparing applicants. Finally, the Commission came up with its simplified point system, which tends to favor local educational institutions over nationwide non-educational organizations, such as some religious broadcasters.

So it should come as no surprise that a religious broadcaster with a nationwide chain of NCE stations challenged the point system, claiming that it unfairly favored NPR, PBS, and other secular programmers. The American Family Association (AFA), which brought the appeal, complained that it could not prevail under the NCE point system because NPR and PBS stations tend to be either locally owned or part of statewide educational networks.

AFA's legal arguments were two-fold: first, the point system is illegal because it is irrational and, second, the system discriminates against religious broadcasters in violation of Constitutional guarantees of free speech, free religion, and equal protection.

The court found no merit in either of these arguments. First, it held that the FCC had made a rational choice, based on the evidence before it, in choosing an NCE regime that favored local ownership and statewide educational networks. The key focus was on the local nature of the applicant or its status as a qualifying statewide educational network. The court noted that local applicants and statewide educational networks, whether secular or religious, get the same number of bonus points. AFA's problem when competing for NCE licenses is that it fits neither category. For these same reasons, the FCC did not unconstitutionally discriminate against AFA because neither its religious viewpoint nor its religious nature made a difference under the FCC point system. What mattered was the fact that it is a centralized organization which holds licenses nationwide, rather than a local organization or a statewide educational network.

A disappointed NCE applicant may succeed in the future on claims that the local or national nature of programming – rather than ownership – is the true rational measure.

Although a major victory for the NCE point system, the Court's decision left open the possibility of future challenges to the new system once the FCC begins to implement it. On procedural grounds, the Court declined to rule on whether the prevalence of NPR and PBS programming on locally-owned public stations and some statewide educational networks should make those stations less than "local" in the eyes in the FCC and, therefore, potentially ineligible for local ownership points. It similarly declined to rule on a petition from the State of Oregon which argued that points should be given ***not*** simply for local ownership, but for locally originated programming.

The case's outcome suggests that unless a disappointed NCE applicant succeeds in the future on claims that the local or national nature of programming – rather than ownership – is the true rational measure, the FCC point system stands. All things considered, it means that local and statewide will win more points than centralized and national in an otherwise neck-and-neck competition for scarce NCE authorizations.

Perhaps the most immediate result of this decision will be the anticipated thawing of the longstanding freeze on mutually exclusive NCE applications. With a cloud of uncertainty hanging over the manner in which it resolved such proceedings, the FCC has placed on hold all MX NCE situations. Now that that cloud appears to have been cleared away, we should look for the staff to dust off those old applications and start to process them through the system.

All day and all of the night?

Less Than Minimum Daily Operating Schedule May Lead to FCC-Imposed Share-Time for NCE's

By: Michael Richards
703-812-0456
richards@fhhlaw.com

Summertime, and the livin' is easy. Especially for non-commercial educational FM licensees, who may think it okay to kick back and throttle down in view of a dearth of staff or student volunteers to keep the stations humming, or a lack of listeners on campuses which have been deserted for less academic environs.

But don't let the summer lull put your license at risk! FCC rules require that non-commercial educational FM stations maintain a daily broadcast schedule of at least 12 hours a day every day of the year (unless the licensee can satisfy the Commission that special temporary authority to operate on a more abbreviated schedule is warranted). A station that misses the mark could be forced to share its frequency with other non-commercial outfits looking for a frequency. The risk is especially high these days as (a) that part of the FM band reserved for non-commercial stations is full in many areas of the country and (b) we are currently in a renewal cycle during which stations are exposed to challenge.

The Piscataway, New Jersey school board recently discovered this fact the hard way – when the FCC ordered a hearing to determine how to divide the broadcast day between the incumbent station, which is licensed to the local school board, and a challenging applicant in another part of the state which applied for a new construction permit to use the same frequency. The two sides are free to negotiate a time-sharing plan, but unless they are able to reach some negotiated arrangement, the FCC will dictate who gets to use the spectrum when.

Incumbent noncommercial licensees may derive some comfort from the fact that their exposure to this kind of competitive challenge arises only at renewal time. Those licensees who have already received their renewal grants may breathe easy; those whose renewals are looming on the horizon should pay attention.

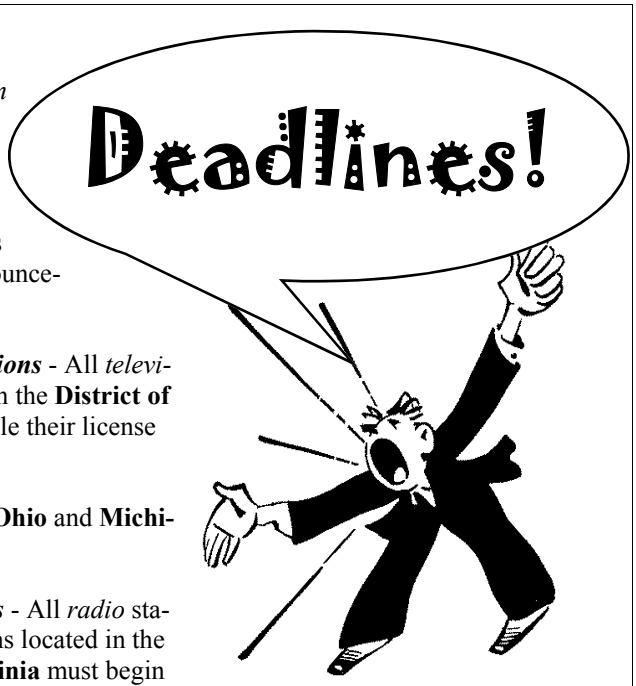
Precisely how the Piscataway situation will be resolved is not at all clear, since this is the first time in recent memory that such a case has arisen. The important lesson here is that if an NCE licensee does not want to share its channel, it must find a way to keep its station operating for at least the minimum 12 hours a day. The FCC does not care if it's summer vacation or winter high season. Anything less than 12 hours may mean that you could end up sharing your frequency.

(Continued from page 4)

Okay, so you dutifully keep the records as required. Who, then, do you report these records to? That has yet to be determined. The CO has not yet announced the details (*e.g.*, the form to be used, the deadline(s) for submitting the information, where the information is to be submitted, etc.) concerning how the information is to be reported. It has not yet even designated the entity to report to, although webcasters will likely be reporting to SoundExchange. According to the CO, they're working on these details and will release this information in the future. In the meantime, webcasters must maintain their recordkeeping efforts, holding onto those record in their own files until the CO issues further instructions.

In addition to adopting these reporting and recordkeeping requirements, the Copyright Office is also requiring that webcasters file updated notices of intent, along with the $20.00 filing fee, with the Copyright Office by July 1, 2004. If you have any questions about these *interim* reporting and recordkeeping requirements or you would like assistance in filing your updated notice of intent, please contact the attorney with whom you regularly work at 703-812-0400 or contact Ali Miller via email at miller@fhhlaw.com.

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 **Illinois** and **Wisconsin** must begin pre-filing announcements in connection with the license renewal process.

Television/Class A/LPTV/TV Translator Renewal Applications - All *television*, *Class A TV*, *LPTV*, and *TV translator* 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.

July 10, 2004

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

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

August 1, 2004

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

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

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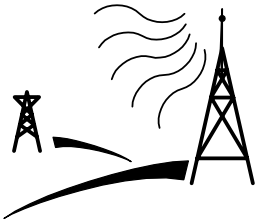
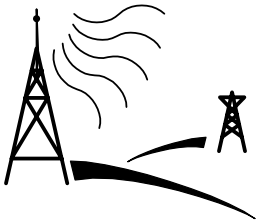


Further on up the road?

FCC Adds Communities to Station's Cable Market Based on DTV Signal Coverage



By: Paul J. Feldman
703-812-0403
feldman@fhhlaw.com

The FCC has issued an Order expanding the must carry market of a stand-alone DTV station, based largely on evidence that the station's DTV signal covers communities that were not covered by its prior analog signal. While it is unlikely that the FCC will in the near future take a similar approach for stations operating with both analog and digital signals, this Order is encouraging for stations that are considering turning in their analog authorization.

Commercial TV stations have must-carry rights in markets that generally track their Nielsen designated market areas (DMA). Stations may file a petition with the FCC seeking to add communities outside of their DMA to their must-carry market, based on four criteria:

- history of carriage of the station on the cable system in the target communities;
- whether the station broadcasts programming specifically addressing local issues of importance to the target community and/or covers the community with a Grade A or Grade B signal;
- whether other stations carried on the cable system in the target communities broadcast local programming directed to the target communities;
- evidence of viewership of the station in cable and noncable homes in the target communities.

The FCC also considers evidence regarding geographic proximity and economic relationship between the station's community of license and the target communities.

In its DTV Must-Carry Report and Order in 2001, the FCC stated that it would consider DTV signal coverage in market modifications filed during the DTV transition, but it suggested that it assumed that DTV signal coverage, as a general matter, closely tracked a station's analog coverage area. However, broadcasters quickly realized that DTV

(Continued on page 14)

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Television/Class A/LPTV/TV Translator Renewal Applications - All *television*, *Class A TV*, *LPTV*, and *TV translator* stations located in the **North Carolina** and **South Carolina** must file their license renewal applications.

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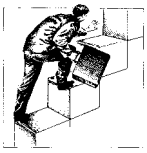

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The initial goal would be to develop a preliminary revised DTV database by the end of this summer which would reflect all DTV eligible stations and their protected service areas and populations, including "replicating" and "maximized" service data. ("Replicating" service is the DTV service allotted to a station in the initial DTV Table in 1998. "Maximized" service is a station's currently authorized DTV service when it is greater than the station's "replicating" service. Under the MSTV proposal, stations which have not yet built either replicating or maximized facilities would be required to submit a certification of their intent to build such facilities; failure to construct would then be subject to enforcement action.)

The ultimate goal would be to adopt a final DTV database by early 2005 which would form the basis for all final DTV channel selections.

The extraordinary efforts MSTV proposes may be necessary to assure that the final steps in DTV conversion are taken through a sensible process designed to produce a stable, workable and efficient result.

Step 2 - First Round of Channel Selections: Once the final database is in place, final channel selections would be made in two rounds. The purpose of the first round would be to identify channel selections which do not raise interference issues.

In the first round, stations with two in-core channels (one each for their NTSC and DTV operations) would select which of the two they wish to use for final DTV purposes. If the DTV channel were selected, rights to the NTSC channel would be relinquished. If the NTSC channel were selected, rights to the DTV channel would ***not*** be relinquished immediately, in order to allow the licensee to evaluate digital operation on the NTSC channel.

Also in the first round, stations with both NTSC and DTV channels outside the core would specify three permanent channels of their choice, protecting in-core channels of stations with one out-of-core channel.

MSTV anticipates that first round selections would be completed by June, 2005.

Step 3 - Provisional Authorizations: The FCC would then issue provisional authorizations based on the first round of channel selections. Stations receiving these authorizations would relinquish rights to all other channels, which would become available for the second round of channel selections. MSTV expects the majority of stations will at this time receive their channel of choice.

Provisional authorizations would be issued at this time to:

- ☘ stations which chose to keep their in-core DTV channels;
- ☘ stations which chose to move their permanent DTV operations to their in-core NTSC channels, as long as they would: (a) not cause additional interference to stations which chose to stay on their in-core DTV channels; (b) provide service to the greater of their NTSC Grade B areas and populations or their maximized DTV service areas and populations, and (c) provide protection to in-core channels of stations with one out-of-core channel, and
- ☘ stations with two out-of core channels which could be accommodated on one of their three channel preferences without causing additional interference to stations which chose to stay on their in-core DTV channels and the in-core channels of stations with one out-of-core channel.

MSTV envisions getting to this point by October, 2005.

Step 4 - Second Round Of Channel Selections: At this point, there may still be some stations which have not yet received a channel or which find their selection from the first round to be unacceptable. Those stations would participate in a second round of channel selections.

Initially, stations with both NTSC and DTV in-core channels which chose their NTSC channels in the first round but were not issued provisional authorizations because of losses to their replicating or maximized service areas or populations could notify the FCC that they wish to retain their NTSC channels notwithstanding the service loss. They would thereby relinquish their DTV channels. Stations not filing notifications would be deemed to have selected their DTV channel, thereby relinquishing their NTSC channel. MSTV proposes that this process be completed in December, 2005.

In January, 2006, stations with one out-of-core channel and stations with two low VHF channels (*i.e.*, Channels 2-6) would be permitted to request a third channel (The "low VHF" folks are included here because of concerns that noise and ionospheric propagation may cause digital TV screens operating on low VHF channels to go blank or freeze.) Stations with two out-of-core channels whose preferences were not accommodated in the first round due to interference issues would be allowed to select three new channels, taking into account the December, 2005 decisions described in the preceding paragraph.

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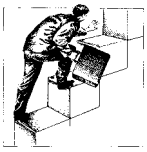

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Step 5 - Final DTV Table: All of the foregoing would set the table for resolution of any conflicts in channel requests and issued licenses, resulting in a final DTV Table of Allotments in 2006. MSTV proposes that the following criteria be used to resolve remaining channel conflicts: (a) length of time station has been operating on DTV; (b) population served by the station's digital signal and the percentage of the replication population served; (c) whether one or both channels are in the low VHF band; (d) whether coordination with Canada or Mexico is a problem; and (e) whether there are zoning, environmental, or other problems.

Once a final DTV Table is adopted, future changes in height, power, location, or channel would be allowed subject to the existing DTV-to-DTV mileage separation standards applicable to new DTV allotments.

*We understand that it is extremely likely that the FCC **will** announce a freeze shortly. Any station contemplating a DTV modification should act immediately or risk losing the opportunity to do so for the foreseeable future.*

MSTV further proposes procedures for stations to use PSIP encoding technology to select the channel on which their signal is viewed on DTV sets. Each station would have the exclusive right to transmit a code triggering the station's historic channel number or, if it prefers, its transitional DTV channel or final DTV channel. Where conflicts exist, a station choosing its historic channel would prevail over a station choosing its transitional or final DTV channel. A station choosing its transitional DTV channel would prevail over a station choosing its final DTV channel. A station would not be able to block another station from using one of the channels it chose not to use. Similarly, MSTV asks that cable and satellite systems not be permitted to strip the PSIP channel coding from the signal.

The MSTV plan is an ambitious one, but it appears that the extraordinary efforts MSTV proposes may be necessary to assure that the final steps in DTV conversion are taken through a sensible process designed to produce a stable, workable and efficient result.

We understand that the FCC may not ask for public comments on the MSTV plan. Rather, the Commission may simply choose to utilize that plan as an outline for the future and act accordingly. This doesn't mean that interested members of the public are forbidden to express their views on the plan; it simply means that there is no deadline for such comments and no guarantee that the Commission will hold off on acting in the meantime. Anyone wishing to file comments on the plan should contact the FHH attorney with whom they work immediately.

We also understand that it is extremely likely that the FCC ***will*** announce a freeze shortly. Any station wishing to apply for a DTV channel change, a new DTV allotment, or a modification to its DTV facilities which would expand its existing service area or cause an increase in interference should act immediately to get the proposal on file or risk losing the opportunity to do so for the foreseeable future.

Other DTV Activity

Elsewhere on the DTV front, a couple of developments deserve attention:

A TV station with analog operations in the Channel 60-69 band and an in-core DTV channel has asked for authorization to cease analog operations, surrender its license for its analog channel prior to the end of the DTV transition, and operate as a digital-only station on its DTV channel. The FCC has previously said it will consider requests from stations on Channels 60-69 to voluntarily vacate their NTSC channels prior to the end of the transition.

The FCC has also granted a noncommercial TV station a second six-month deferral of the DTV simulcasting requirement deadline so that the station may continue to broadcast the PBS HD signal while it acquires and installs additional multiplexing equipment. The station stated that it had encountered problems simultaneously transmitting the HD signal, the standard definition digital signal to be used for simulcasting, and a data stream with educational content. The licensee expects that those problems will be fixed by the additional equipment. The FCC did not want the station to remove the HD signal in order to air the standard definition simulcasting signal.

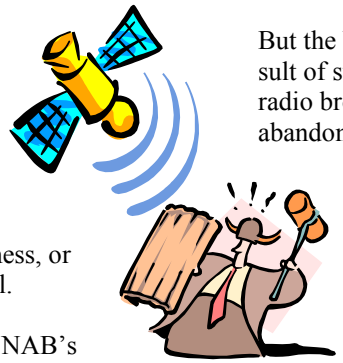
The FCC emphasized that simulcasting waivers do not affect the rules regarding the minimum hours of digital operation. Stations currently must air a digital signal for an amount of time which is at least 75% of the time they provide an analog signal. In addition, a digital signal must be aired during prime time hours. The minimum digital operation requirement increases on April 1, 2005 to an amount of time equal to the time an analog signal is provided.

The FCC further stated that both commercial and noncommercial stations granted extensions of time to construct their DTV facilities must comply with the minimum digital operation requirement in effect at the time they commence digital operations.

Also, see the related story about must-carry market definitions and DTV on page 11.

(Continued from page 2)

To bolster its arguments, the NAB looks into the future . . . and sees disaster looming. According to the NAB's petition, allowing SDARS licensees to continue along their present path of offering local service in any form will cause "either a loss of service [to AM and FM over-the-air listeners] or a need to find greater efficiencies in operations through increased consolidation." In other words, watch out: your friendly local broadcaster will either go out of business, or sell his or her station to Clear Channel.



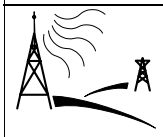
The FCC has invited responses to the NAB's petition. Comments are due on or before June 4, with replies due on or before June 21.

A review of the comments which have already been filed suggests considerable support for the SDARS and considerable animosity toward the NAB's position. Several commenters criticized broadcasters for- what the commenters referred to as canned programming, blathering, and excessive numbers of commercials. Some suggested that the Commission should encourage broadcasters to provide better local service so that they could compete more effectively with the satellite version of "localism".

Of course, broadcasters have always been able to tout the definitively "local" nature of their service, as opposed to the (presumably) less localized satellite service. But the weight of that argument appears to be lessening, particularly as the satellite services work to develop viable means by which they can offer similarly "local" programming. And if the "local" programming (*e.g.*, traffic and weather) available on satellite is essentially the same as is available on broadcast stations, that important distinction will disappear. And that appears to be the NAB's primary fear.

But the NAB's concerns may be too myopic. If, as a result of such industry-wide phenomena as consolidation, radio broadcasting is perceived by the public as having abandoned its local roots, then broadcasters may themselves be losing their claim to the high ground. Should that happen, other attributes of the two competing services (*i.e.,* SDARS v. broadcasters) will presumably determine which will prevail in the marketplace. The most obvious of those attributes will likely be the overall content of the programming and the fact that one service is available for free, while the other requires a monthly subscription fee. From a number of the comments already filed, it appears that the fact that over-the-air broadcasting is available for free may not be all that important to the listener if the subscription fee allows the listener to avoid excessive commercials and programming which the audience perceives as "blather".

While it is surely premature to declare terrestrial radio broadcasting doomed, the inroads which satellite services have made and appear intent upon making cannot be ignored. The NAB's effort to forestall the advance of satellite service is appropriate, but it should be only one part of the broadcasting industry's response to the threat. If broadcasting is to survive this competitive attack from outer space, the radio industry should be focusing on how to assure that its programming is and remains preferable to that of the satellite services.



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signals often cover a much greater area.

The recent case involved a station in Atlantic City, New Jersey which had turned in its analog authorization and was operating its stand-alone DTV facilities under an STA (since its antenna is lower on the tower than the height authorized in its permit). The station petitioned the FCC to add numerous communities to its must-carry market. Some of the target communities are significantly closer to the station (25-45 miles) than others, and those closer communities are covered by the station's predicted 41dBu signal contour, which the FCC considers to be the equivalent of an analog Grade B signal.

In partially granting the petition to add the closer communities to the station's must-carry market, it appears the FCC has for the first time fulfilled its promise to use digital signal coverage in evaluating cable TV markets. The cable operator had opposed the petition, and had argued that the signal coverage should be ignored since so few homes had DTV sets. The Commission ignored that argument.

It should be noted that the FCC did not rely solely on DTV signal coverage in adding communities to the station's market. The Order pointed to the close geographic proximity to the station of the communities added, as well as evidence of economic relationship between the community of license and the added communities. In addition, the FCC noted that the cable operator was carrying the signal of a non-commercial station that was on the same tower as the petitioning station. Nevertheless, this decision may have been intended to encourage stations to turn in their analog authorizations, and should provide some comfort and incentive regarding cable carriage for stations contemplating such a move. Broadcasters may want to discuss with their communications counsel the cable carriage implications for their individual situations.

FM ALLOTMENTS ADOPTED –4/22/04-5/20/04

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
TX	Iowa Park	82.5 miles N of Denton	265C3	04-162	None
TX	O'Donnell	41.6 miles S of Lubbock	249A	01-271	TBA
TX	Roaring Springs	73.8 miles NE of Lubbock	249A	01-271	TBA

FM ALLOTMENTS PROPOSED –4/22/04-5/20/04

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
TX	Iowa Park	11.4 miles NW of Wichita Falls	265C3	04-161	Cmts - 06/18/04 Reply-07/05/04	1.420 (i)
OH	Mount Sterling	26.7 miles E of Columbus	272A	04-162	Cmts - 06/18/04 Reply-07/05/04	1.420 (i)
SD	Rosebud	173.2 miles SE of Rapid City	257C	04-170	Cmts - 06/25/04 Reply-07/12/04	Drop-in
TX	El Indio	88.7 miles NW of Laredo	236A	04-169	Cmts - 06/24/04 Reply-07/09/04	Drop-in
WA	Waitsburg	18.5 miles Nof Walla Walla	272A	04-168	Cmts - 06/25/04 Reply-07/12/04	Drop-in
CA	Corning	106.7 miles N of Sacramento	264B	04-164	Cmts - 06/25/04 Reply-07/12/04	1.420 (i)
CA	Quincy	102.0 miles N of Sacramento	265A	04-164	Cmts - 06/25/04 Reply-07/12/04	1.420 (i)

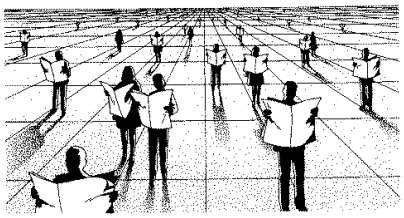
Notice Concerning Listings of FM Allotments

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.

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

Updates on the News

Localism Task Force – Next Stop, Rapid City In late May the Commission's Localism Task Force stampeded into South Dakota, home of Mt. Rushmore and, uh, Mt. Rushmore − wait, we already mentioned that − and probably lots of other interesting places. Chairman Powell and Commissioners Copps and Adelstein were slated to hear testimony from members of the public for three and a half hours on May 26 in Rapid City. The localism meeting was to be but one of a series of events conducted by the Commission in the Dakotas during the last week of May. Those included consumer forums, community meetings and workshops, as well as hearings on a variety of regulatory issues. The Localism Task Force has previously taken its road show to San Antonio, Texas and Charlotte, North Carolina. Perhaps coincidentally, South Dakota is Commissioner Adelstein's home state.



Indecency Juggernaut Slows The awesome anti-indecency effort, which at one point a couple of months ago seemed to be completely unstoppable, appears to be losing momentum. This may be a result of more serious matters distracting our Federal officials, or it may be that at least some of those officials recognize that, while it may be easy to "tsk tsk" about "dirty words", it is far more difficult to conceive, articulate and implement a formal regulatory framework which is consistent with the First Amendment. And the zeal of some promoters of anti-indecency measures may have been considerably tempered when longtime children's TV activist Peggy Charren slammed the March, 2004 Golden Globe decision (involving Bono's use of an adverb in questionable taste) as tantamount to "ruling out quality programming". Since the FCC's regulation of indecency has long been based on the notion that such regulation is necessary to protect children, this criticism from a highly-respected advocate of children may have caused some to begin to re-think their positions. By mid-May, trade press reports were already circulating that the chances of any new indecency legislation out of the Congress were dimming. And House Energy and Commerce Committee Chair Joe Barton announced that his committee may start looking at trying to impose some anti-indecency legislation directed against cable operators.

In the debates spawned by *L'affaire Jackson* at the Super Bowl, broadcasters frequently pointed to the incongruity of imposing indecency limitations on broadcasters but not on cable operators. So Rep. Barton's statement suggests that the broadcasters' arguments may have made some headway. The problem − as has often been pointed out in the debates over the last several months − is that the courts have determined that, because of its nature, cable is different from broadcasting and, thus, not necessarily subject to the same regulatory limitations. Suffice it to say that, if cable is bundled with broadcasting in some indecency legislation, the likelihood that such a controversial bill will be stalled for a long time is relatively high.

For those of you keeping track, the full House has passed a broadcast indecency bill. A Senate bill has been voted out of committee, but has not reached the Senate floor. The Senate bill differs in a number of important respects from the House bill, so even if the Senate were to vote on it − and such a vote does not appear imminent − a conference would be necessary to resolve the differences.

Violence inquiry in the works Acting at the behest of members of the House Commerce Committee, Chairman Power has reportedly ordered the Media Bureau to start work on an inquiry into the impact of TV violence on children. House leaders have requested that such an inquiry be completed, and a report submitted to Congress, by the end of 2004. Congressional calls for investigations of violence in the media are a cyclical tradition extending back decades. Historically, such calls have tended to generate a preliminary flurry of apparent activity which then peters out as Congress, with powers of concentration equivalent to those of a thoroughbred horse in a burning barn, gets distracted by other pressing issues. Moreover, the notion that a meaningful study of the myriad, and infinitely complex, issues relating to "violence" (however that might be defined) could be concluded in, at most, six or seven months is – how can we say this politely? – unrealistic.

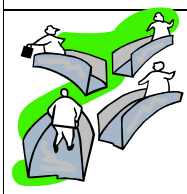
When is a commercial not a commercial? When it's an enhanced underwriting announcement broadcast on a noncommercial station. Such announcements are permitted as long as they do not rise to the level of "commercial" announcements. Precisely where the line between commercial and noncommercial lies is not always entirely clear, and commercial broadcasters have occasionally claimed that some of their noncommercial compadres have crossed that line impermissibly. In May a large commercial group owner raised the noise level on this issue considerably by alleging that a noncommercial LPFM station in Jonesboro, Arkansas has been broadcasting spots. This could be the beginning of a more extensive effort by commercial licen-

(Continued on page 17)

Independent Spanish Broadcasters Association Elects Board of Directors and Officers

The Independent Spanish Broadcasters Association (ISBA) elected its first Board of Directors and officers at the Association's constitutional meeting in Las Vegas in April. The meeting was attended by representatives of many of the nation's independent Spanish-language broadcasting and media companies, and featured welcoming remarks by FCC Commissioner Jonathan Adelstein. FHH's own Frank Montero, who has served as ISBA's Acting Executive Director since its formation last year, was elected to the Board of Directors and was appointed Chair of the Public Affairs and Advocacy Committee.

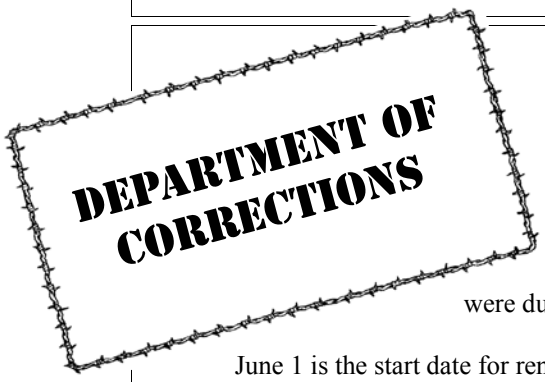
ISBA was formed by independent Spanish language networks, broadcast companies, financial institutions, and other service providers to the Spanish media industry. The Association is open to all TV and radio broadcasting and media companies addressing the growing Hispanic market in the United States, regardless of ownership. However, the primary membership focus is independently owned, non-publicly traded, Spanish language broadcasting companies.



FHH - On the Job, On the Go

The SUNY University at Albany School of Business newsletter ran an alumni profile of **Frank Jazzo** in its Spring 2004 edition.

We welcome the arrival of **Gina Beck**, who has just completed her second year of law school at American University in Washington, D.C. Gina, who hopes to enter the field of communications law when she graduates next year, will be working with us as a summer intern.



Nostra culpa, nostra maxima culpa

In the Deadlines listing in the April, 2004, issue of the Memo to Clients, we mistakenly indicated that **Ohio** and **Michigan** radio stations should begin their renewal pre-filing announcements on June 1. In fact, renewal applications for radio licensees in those states are due on June 1 (as we had also stated in the April, 2004 "Deadlines"), and their pre-filing announcements were due to begin two months earlier.

June 1 is the start date for renewal pre-filing announcements for radio stations in **Illinois** and **Wisconsin** and for television stations in **North Carolina** and **South Carolina** (all of whose renewal applications are due to be filed by August 1).

The Deadlines listing this month has been emended to reflect these corrections.

(Continued from page 16)

sees to try to rope in "commercial" practices on the noncommercial side. If you are a noncommercial licensee who broadcasts enhanced underwriting announcements, you may want to take a close look at your announcements to make sure that they can withstand FCC scrutiny should a complaint be filed about them.

For the birds? And finally, how about a big Memo to Clients "howdy" to Avatar Environmental Services of West Chester, Pennsylvania, which has been retained by the FCC as a biological consultant. The FCC expects Avatar, among other things, to enable it "more effectively to assess the impact of communications towers on migratory birds".