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Memorandum to Clients

June, 2004 | *News and Analysis of Recent Events in the Field of Communications* | No. 04-06

FCC sets the dates

THE FREEZE IS ON AS THE FM AUCTION APPROACHES

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The FCC is moving forward with its plans for auctioning off 290 vacant non-reserved (*i.e.*, commercial) FM allotments. The bidding is scheduled to start on November 3, but a wide range of steps must be taken between now and then – and the FCC is currently in the process of taking those steps. But before anyone gets too excited about any particular channel on the auction block, extreme due diligence is in order: the Commission has repeatedly made clear that all channels are being sold off on an "as is, where is" basis, and the buyer has the obligation to assure itself that the channel is in fact suited for the buyer's purposes.

The Auction Nitty-gritty

First, the schedule. The important dates to focus on if you plan to participate in the auction are as follows:

Auction Seminar	**7/22/04**
Short-Form Application Filing Window Opens	**7/22/04 – noon, ET**
Short-Form Application Filing Window Closes	**8/6/04 – 6:00 p.m. ET**
Upfront Payments (via wire transfer)	**9/24/04 – 6:00 p.m. ET**
Mock Auction	**10/29/04**
Auction Begins	**11/3/04**

Obviously, the last listed date – marking the beginning of the auction – is important. But unless an appropriate short-form (FCC Form 175) application listing the channel(s) to be bid on is filed by the August 6, 2004 deadline (by 6:00 p.m. ET), and unless the necessary upfront payment covering the channel(s) to be bid on is received by the Commission by the September 24, 2004 deadline (by 6:00 p.m. ET), the Commission will not save you a seat in the bidders' section.

Anyone with any possible interest in participating in the auction should be sure to familiarize himself or herself with the application form and the bidding process as soon as possible. The FCC's explanatory public notice runs 38 single-spaced pages, not including attachments. Copies of that notice may be obtained at the FCC's website (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-04-1699A1.pdf). The public

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Late Breaking News!!!

Court Remands Ownership Proceeding

At press time, the U.S. Court of Appeals for the 3rd Circuit issued its long-awaited decision in the Media Ownership proceeding. ***The Court left in effect its previously-issued stay of the rules adopted by the FCC in 2003 – as a result, no change in the current status quo is expected for the foreseeable future.***

The Court ***upheld*** the FCC's decisions to: lift the Newspaper/Broadcast Cross-Ownership rule; prohibit common ownership of the top four television stations in a local market; utilize Arbitron market definitions for local radio markets; limit the transfer of grandfathered radio clusters; and attribute radio JSA's under the ownership rules. The Court ***remanded*** for further FCC consideration the FCC's calculations of the maximum numbers of radio stations, television stations and media interests (newspapers, television and radio) that may be commonly-owned in a local market.

We will provide a more detailed analysis of the Court's 218 pages of opinions (which include a majority opinion and a dissent) shortly.

FCC Proposes Unlicensed Operations On Vacant Television Channels

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The FCC has released a controversial Notice of Proposed Rulemaking (NPRM) which could open the door for use of unlicensed devices in the vacant TV channels in each market. Typically an off-the-air TV at a given location can receive a picture on only a small fraction of the 68 possible channels. The FCC wants to make the unused channels in each area available to unlicensed transmitters.

An earlier stage of this proceeding drew strong opposition from broadcasters, who fear interference from unlicensed devices. They are especially concerned about the adverse effects such interference could have during the imminent transition to digital TV, which entails adding and dropping channels. Other opponents included users of two-way radio service in the TV bands, including some public safety entities.

By contrast, support for the proposal came largely from wireless Internet providers who merely endorsed access to more spectrum.

The FCC is proposing to address broadcasters' interference concerns differently for low-power "personal/portable" unlicensed devices, like Wi-Fi laptop cards and home networks, and higher power "fixed/access" equipment of the kind used for wireless Internet access links to fixed locations.

Personal/portable devices would have to receive and comply with a "control signal" that identifies vacant channels in the local area. The control signal could emanate from a DTV station, an analog TV station (in the vertical blanking interval), an FM station (in a subcarrier), a licensed wireless provider, or a fixed/access unlicensed device. It would have to update channel availability at least daily, to allow for changes during the DTV transition. An unlicensed device unable to receive the control signal would not be permitted to transmit. Unlicensed device power would be limited to 100 milliwatts and antenna gain to 6 dBi. Each device would have to transmit an identifying signal periodically, in order to help locate a unit that causes interference.

The NPRM offers little other specific information on the all-important control signal, but invites comment on the details. It contemplates that TV broadcasters might provide the control signal in return for payment from unlicensed device manufacturers or service providers. Because providing the control signal through a DTV station requires unlicensed devices to incorporate receivers for the DTV signal, the station could provide for-pay services, such as sports and stock market information, to unlicensed users.

Fixed/access devices would be allowed one watt of power. Antenna gains over 6 dBi would be permitted, but at reduced output power. These devices would have to protect TV operations by (1) identifying vacant channels using a built-in GPS receiver and database of occupied TV channels; or (2) requiring professional installation by someone who consults a database of occupied channels for that location; or (3) responding to an enhanced control signal that indicates channel availability in various parts of the service area. Fixed units too would have to transmit an ID signal. The NPRM asks whether, in addition, all fixed units should be registered in a coordination database.

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Focus on FCC Fines

By: R.J. Quianzon
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Let's Makes a Deal (or the Commission Gets the Dirt Out) - As reported by much of the general media, the FCC and Clear Channel have cut a deal to eliminate hundreds of complaints and fines against Clear Channel stations. The FCC put a $1.75 million price tag on the offer to terminate pending indecency investigations against Clear Channel and Clear Channel started writing a check.

FCC Chairman Michael Powell repeatedly touted this as the largest enforcement payment ever extracted by the FCC from broadcasters, even though it exceeded the 1995 indecency fine against Infinity (for multiple Howard Stern programs) by a mere $50,000. Chairman Powell also appeared to derive considerable satisfaction from the fact that Clear Channel had admitted that some of its programs did in fact constitute violations of the law (*but see below*). Clear Channel CEO John Hogan noted that the settlement allows Clear Channel to move on with its business and be finished with the indecency complaints. True to form, FCC Commissioner Michael Copps did not agree to the settlement and called for a full-scale investigation into each and every indecency complaint.

As part of the settlement agreement, Clear Channel is obliged to immediately conduct training for all on-air and programming staff relative to programming standards, and to refresh such training every twelve months. Moreover, Clear Channel has agreed that in the future it will fire any employee who is found to have violated the FCC's obscenity or indecency rules in the event that the FCC issues an order finding the station in violation of those rules.

But let's not shed too many tears for Clear Channel because it did not walk away from the table empty-handed by any means. Under the terms of the Consent Decree to which it agreed, Clear Channel has succeeded in cleansing itself not just of the particular indecency violations which have already been the subject of FCC action (whether by notices of apparent liability, inquiries, complaints, etc.), but also of ***any and all*** possible allegations of indecency arising from ***any*** Clear Channel broadcast prior to June 9, 2004. And when we say "cleansing", we mean "cleansing", as in scrubbing completely clean. The facts that complaints were filed and inquiries and notices of apparent liability (NALs) and forfeiture orders were issued have essentially been wiped from the record, as if they didn't happen.

Oh sure, in one clause of the Consent Decree Clear Channel does appear to admit having broadcast indecency, but it is a carefully worded admission which may not really amount to all that much. Clear Channel has merely admitted that the broadcast material "at issue in the NALs and certain of the broadcast material at issue in the Inquiries is indecent . . . assuming construction of this terms as it is construed by the Commission as of the date hereof." So Clear Channel is really only saying that, if you accept the FCC's definition of indecency, then some of the broadcasts in question were indecent. That's hardly an unequivocal admission, particularly in view of the fact that one longstanding criticism of the FCC's indecency enforcement activity has been that the FCC has never bothered to provide any consistent, discernible and reliable definition of indecency. So it's not clear what the "admission" really means.

And Clear Channel's admission does not by any means reflect surrender: the admission is, by its own terms, contingent on the FCC holding up its end of the bargain by getting off Clear Channel's back relative to all programming prior to June 9. Should the FCC renege on that promise (whether on the FCC's own motion or by the intervention of any court), then "Clear Channel shall not . . . be deemed to have made any admission concerning any material broadcast on any Clear Channel Station."

The Consent Decree obviously serves the interests of both the FCC and Clear Channel. For the Commission, it creates the impression of a successful "get tough" attitude against indecency, an attitude which appears to have led to payment of $1.75 million into the government's coffers and an "admission" of guilt (and accompanying promise never to do it again) by a wrong-doer. But the wrong-doer really hasn't admitted much and, while the wrong-doer is paying the fine, it's also paying to avoid potential fines which would, in all likelihood, vastly exceed the $1.75 million being paid. So Clear Channel is getting off relatively cheaply – plus, it's getting an absolutely clean bill of health as of June 9. If you had 1,000+ stations, wouldn't that deal look good to you?

FCC Giveth and Taketh Away - The day after the Clear Channel settlement was publicly announced, the FCC announced a $27,500 fine issued to a Clear Channel station in Washington, D.C., but then simultaneously issued a second order rescinding the fine on something of a technicality. In

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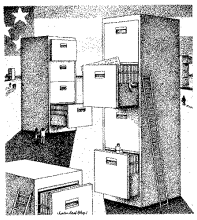

They're baaaaaaack . . .

Annual Employment Reports Re-born

For The Time Being, Reports Need Not Be Filed, But Underlying Records Must Be Maintained

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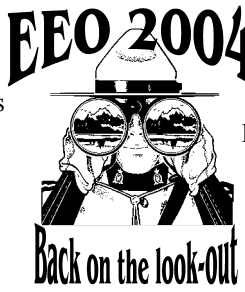
The Commission has adopted the new annual employment report forms for broadcasters and MVPDs. The new Forms 395-A and 395-B replace similarly labeled forms whose use was called into question by a couple of federal appeals court cases in 1998 and 2001. The "new" forms adopted within the last month are essentially identical to the older versions of the form (although the Commission indicates that it may revise the form at some undisclosed future time). They call for disclosure of the detailed racial and ethnic breakdown of the reporting entity's employment profile.

The FCC believes that the flaws in its EEO program which led to the earlier adverse court rulings have been addressed. As a result, affected licensees and program distributors must now compile the information necessary to complete those forms − but, oddly enough, the Commission is still not yet requiring that such forms be filed.



Historically, the Commission required broadcast licensees to submit annual reports reflecting the racial and ethnic composition of their employees. While the Commission almost never took any independent action based on those reports, a number of organizations reviewed the reports and filed petitions to deny or other complaints about licensees whose EEO profiles appeared − to the petitioning organizations, at least − to reflect possible violations of EEO rules. Thus arose a confluence of the Commission's repeatedly-expressed interest in EEO generally and the willingness and ability of private organizations to invoke that interest by claiming EEO violations based on perceived shortfalls supposedly reflected in annual reports.

A number of observers in the broadcast industry expressed concern that this confluence constituted pressure on them, by the government, to engage in race-based recruitment and hiring. After all, if the FCC was requiring reporting of racial and ethnic hiring, and if petitioners were using those reports to attempt to goad the agency into taking action adverse to the licensees' interest, it could easily be concluded that, to avoid any threat, a licensee need only take steps to assure that its employment profile included some adequate number of minority individuals. And that kind of subtle pressure could be deemed unconstitutional "reverse discrimination".

That argument was credited to a significant degree by the federal appeals court, which noted the overwhelming authority wielded by the FCC over broadcast licensees − most obviously, the agency holds the power to deny license renewal, *i.e.*, the power of life and death. Accordingly, the court questioned whether the annual reporting requirement was constitutional.

After several years of further deliberation, the FCC has now concluded that that requirement ***is*** constitutional. But that conclusion was reached with a lot of fine print.

Perhaps most importantly, the Commission now states unequivocally that the collection of employment profile information from individual licensees will ***not*** be used "to screen renewal applications or to assess compliance with our EEO regulations". According to the Commission, the employment data are being collected "for the purpose of compiling trend reports and reports to Congress". This is apparently intended to convince the court (should any party seek further judicial review) that, because a licensee's individual data will supposedly not be considered in connection with license renewal, licensees should not feel any pressure to hire based on racial or ethnic considerations in order to achieve an employment profile acceptable to the FCC.

A number of parties have urged that, if the Commission really is interested only in general "trend reports", it should suffice if individual licensee reports are filed anonymously, so that any individual licensee's data cannot be identified with the reporting licensee. That way, the argument goes, there would be no risk at all that the FCC's records could be mined by prospective petitioners to deny in search of ammunition to use in a license challenge. In response to that suggestion, the FCC suggests that some individual reports might not be complete, and that the agency would thus have to reach out to the filing party to assure the completeness of the data. It also suggests that it needs to know about the source of the data so that the Commission can generate "trend data based on markets, size of stations, services, or other criteria that could not be reconstructed from totally anonymous forms".

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The Feds come knock, knock, knockin'

EEO AUDITS BEGIN

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The FCC has followed through on its promise/threat which it made in when it adopted its current Equal Employment Opportunity (EEO) rules. As reported in last month's Memo to Clients, the Commission had indicated recently it intended to do, it has indeed begun its first audit of stations' compliance with the EEO rules. Following its common practice of releasing important documents on the Friday before a holiday, the Commission released the public notice of this action on May 28, 2004, the Friday before Memorial Day. The timing also was interesting in that the letters were released shortly after former Commissioner Gloria Tristani, now with the Office of Communications of the Church of Christ, publicly rebuked the Commission for not having started any EEO audits yet.

As described in the public notice, the audit process begins with the issuance by the Commission of a letter of inquiry, asking the licensee to which it is addressed to provide a range of information about its historical hiring practices. The May 28, 2004 public notice included samples of such letters, as well as a listing of the radio and television stations and multichannel video distributors which had been selected to receive inquiries in the first audit. Stations apparently were chosen by use of a numerical pattern based upon an alphabetical listing of call letters.

Some considerable confusion has been created, however, because a substantial number of stations ***not*** included on the list of stations selected have in fact received EEO audit letters from the Commission. We have been informed by members of the Commission's EEO staff that ***only*** those stations listed in the public notice were intended to receive the letters, and anyone not on that list ***need NOT respond***. It appears that, once the FCC computer got started on its pattern of selecting call signs, it just kept on spitting out labels even after it was supposed to stop . . . which would not have been a problem, except that the FCC staff then kept putting labels on letters and sending them out even though the previously established number to be sent had been exceeded. While we have been told that no response at all is necessary for those stations who have mistakenly received a letter, we believe that anyone who is ***not*** on the published list but who ***did*** happen to receive an inquiry letter should, as a matter of prudence, send a letter to the Commission to reflect that no information is being sent based upon the information provided by the Commission's staff. We also note that, if the Commission keeps the same pattern of choosing stations for the next audit, those stations incorrectly receiving letters this time may be the subjects of inquiry next time.

> ***Only*** *those stations listed in the FCC's public notice were intended to receive the letters, and anyone not on that list* ***need NOT respond****, although anyone in these circumstances who elects not to respond should, as a matter of prudence, send a letter to the FCC explaining that election..*

Those who did correctly receive the audit letters must respond by June 28 and must provide considerable documentation to demonstrate compliance with the EEO rules. The request for information applies not only to the particular station to which the letter is addressed but also to any other stations within the same employment unit. The paperwork to be provided goes well beyond the documents which would be required to be in each station's public inspection file. It therefore would be advisable for all stations to review carefully the items that are requested so that they can take appropriate steps to comply with the EEO rules and be sure to keep the proper documentation on hand in order to be prepared for potential selection for the next audit.

Specifically, the Commission's letter asks for the following information and paperwork:

1. copies of the two most recent EEO public file reports (or the last one, if the station had been required to complete only one as of May 28, 2004);

2. dated copies of all advertisements, letters, e-mails, faxes, and other communications announcing the position, including copies of all job announcements sent to organizations requesting notification of job openings;

3. documentation to demonstrate actual performance of recruitment and outreach initiatives, including a listing of station personnel involved;

4. a description of any pending or resolved complaints alleging unlawful discrimination and filed during the current license term before any body having competent jurisdiction;

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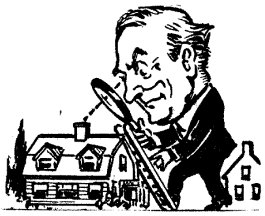

Trying to count digital vs. analog heads

Commission Seeks Data To Assess Impact Of Final DTV Conversion

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The economy may have its ups and downs, foreign policy may change, but when you take away people's television reception – now that's a political problem that hits home. And with the long-anticipated conversion to digital TV broadcasting just around the corner, politicians and policy-makers want to estimate the potential fallout and figure out possible ways to mitigate the loss of reception to people who have resisted the pull of cable and DBS. To that end the Commission has issued a public notice soliciting answers to a wide range of questions relating to television viewing. The goal is the development of the endgame which will be necessary to complete the conversion to DTV.

That conversion has been an established goal for more than a decade, and legislators, regulators, the affected industries and the public have had boatloads of time to contemplate the conversion process. But as with many such adventures, it has been difficult to script out with precision and certainty exactly how the last leg of the journey will be accomplished as a practical matter. With increasing pressure to drive the public and everyone else over the line into the Promised Land, the Commission and Congress have been inspired to take a serious look at precisely how the final, flash-cut conversion to DTV (and the corresponding termination of the NTSC analog service which has been the standard for more than half a century) will really affect the public.

The FCC is looking for solutions to the ultimate question of how best to mitigate the effects of the loss of television service to analog over-the-air viewers

And that is why the FCC is now seeking comments on "options for minimizing the disruption to consumers when the switch to digital broadcasting occurs." The FCC wants facts and figures so it can determine the parameters of any potential problems. The particular questions posed by the Commission:

- How many homes rely solely on over-the-air television signals, rather than cable or DBS – and why do they not subscribe to such services?
- How many of these over-the-air-only homes have digital-ready TV sets?
- How many homes have cable or DBS, but have not hooked up the service on all of their TVs, so some rooms still get only over-the-air television?
- What are the age, race, ethnicity, education level and income of those in households that rely solely on over-the-air signals?
- What (if any) geographic characteristics determine whether over-the-air viewing is more heavily concentrated in certain regions or in urban as opposed to rural areas?

Next, the FCC is looking for solutions to the ultimate question of how best to mitigate the effects of the loss of television service to analog over-the-air viewers. Components of that ultimate question include:

- Will market forces simply encourage people to purchase converter boxes or new, digital-ready TV sets?
- Can cable or DBS providers make it attractive to hook-up sets in customer homes that are not now connected to the service?
- Would spectrum auction winners who stand to gain bandwidth once analog stations are off the air be willing to subsidize or give away converter boxes to speed up the transition?
- Is governmental action necessary to ensure that consumers do not find themselves suddenly without any signals, or will the market create solutions?
- Would governmental or market-driven solutions work best? And how will/should they be funded?

The Commission intends to use this information as the basis not only for its own policies and rules, but also for legislative recommendations to Congress. And once this issue hits Capitol Hill, the old adage that "all politics is local" will, no doubt, take on new meaning, as the adoption of new digital technology may be seen as threatening the birthright of four generations of Americans to get their visual diversions at home with nothing more than an old, well-worn set of rabbit ears.

If you'd like to bring your views home to the Commission, please let us know. Comments are due by July 12, 2004. Reply comments are due by August 5, 2004.

A new "Zap-ple" Doctrine?

FCC Revising Broadcast RF Radiation Rules

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The FCC expects to issue an order this Fall revising some of the radiofrequency (RF) radiation rules applicable to broadcast stations. The order will be issued in a rulemaking proceeding the FCC commenced last Summer. In that proceeding, the FCC is considering: modifications to some of its RF evaluation and measurement procedures; addition of more specific definitions regarding "occupational" exposure; and elimination of inconsistencies in the RF radiation rules. The proposed rule changes affecting broadcast stations include revised procedures for determining whether a station is excluded from the requirement to evaluate RF radiation, a revised definition of the people to which "occupational/controlled" exposure limits apply, and revised procedures for use of "spatial averaging" to show compliance with exposure limits.

More specific definition of "occupational" exposure is one of the changes under consideration.

Exclusion From Routine RF Evaluation. All broadcast stations currently are required to perform routine RF evaluations at certain times. The only proposed change would affect LPFM stations (since they operate at a maximum power of 100 watts). The FCC is considering excluding from the routine evaluation requirement those LPFM stations which have a "separation distance" of at least 3 meters between any portion of the radiating structure of the transmitting antenna and any area accessible to the general public or workers not meeting the criteria for the higher "occupational/controlled" RF exposure limits. The FCC also has asked whether it should have a different "separation distance" for 10 watt LPFM stations.

For experimental broadcast stations, LPTV stations, TV translators, TV Boosters, FM translators and FM boosters, the rules currently require routine RF evaluations if the power is greater than 100 watts. The FCC has proposed to require, in addition, routine RF evaluations for these stations which operate with 100 watts or less power if the "distance separation" is less than 3 meters. In this connection the FCC has asked whether it should adopt different "distance separations" for different frequencies for these stations.

For ITFS stations, the FCC requires routine RF evaluations for building-mounted antennas with power greater than 1640 watts and non-building-mounted antennas with power greater than 1640 watts *and* height above ground of less than 10 meters. The FCC proposes to require routine RF evaluations whenever the "separation distance" is less than 3 meters (regardless of power) or the "separation distance" is less than 10 meters and the power is 100 watts or greater.

Definition For "Occupational/Controlled" Exposure Limits. The RF radiation rules contain two sets of exposure limits. Higher "occupational/controlled" exposure limits apply to workers who are "fully aware" of the potential for exposure and can "exercise control" over their exposure. These higher limits also apply to "transient individuals" (*i.e.*, those who pass through a controlled area subject to the higher limits) if they are made aware of the potential for exposure.

For individuals meeting the "occupational/controlled" criteria, the FCC proposes to define "fully aware" as having received written and verbal information concerning the potential for RF exposure and training regarding appropriate work practices for controlling or mitigating exposure. Additionally, the term "exercise control" would be defined as the ability to reduce or avoid exposure by administrative or engineering work practices (as personal protective equipment or time-averaging exposure).

For "transient individuals," a person would be deemed "aware" if she or he has received written and/or verbal information concerning the potential for RF exposure; such awareness could be established through appropriate use of signs.

Lower "general population/uncontrolled" limits apply to the general public and workers which do not meet the criteria for the higher limits. The FCC emphasized that broadcast licensees and applicants are responsible for compliance with both "occupational/controlled" and "general population/uncontrolled" RF exposure limits. The FCC also emphasized that "occupational/controlled" limits especially apply when workers have access to areas close to antennas where public access is restricted.

Spatial-Averaging. "Spatial-averaging" is an RF radiation measurement technique used to determine the amount of RF exposure at a particular spot by averaging the electric and magnetic fields (squared) over an area equivalent

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Tax certificates, distress sale policy advocated

FCC DIVERSITY ADVISORY COMMITTEE ADOPTS INTERIM REPORTS AND RECOMMENDATIONS

The FCC Advisory Committee on Diversity for Communications in the Digital Age has adopted a wide range of resolutions and recommendations aimed at increasing capital and promoting transactional and employment opportunities for minorities and women in telecommunications and related industries. FHH's Frank Montero, who is an appointed member of the Committee, presented the recommendations of the Financial Issues Subcommittee.

The Subcommittee introduced several resolutions, including one stating that tax-based incentives (such as the former tax certificate program) would open opportunities for socially and economically disadvantaged persons, including minorities and women. Recognizing that any restoration of such a program would require legislative action, the Committee also adopted resolutions urging the Commission to consider ways to use its own rules to promote opportunity.

Those recommendations included: retaining and possibly expanding the Commission's Distress Sale Policy; creating incentives within FCC ownership and licensing rules; and considering a Supplier Diversity Program that might provide auction credits to companies that do business with diverse entities. The Committee also recommended that the Commission adopt a rule specifically prohibiting intentional discrimination on the basis of race, color, national origin, or gender in the purchase or sale of any FCC-licensed facility, and a controversial resolution urging the Commission to reconsider its prohibition on reversionary interests and security interests in FCC licenses, in an effort to free up capital from seller financing and institutional lenders and investors.

The Committee also accepted a report on best practices for media and telecommunications companies to promote workplace diversity. The Report, entitled "*Workplace Diversity: A Global Necessity and an Ongoing Commitment*", surveyed leading companies engaged in diversity initiatives in an effort to examine the range of efforts used by companies to keep pace with changing worker and consumer demographics in the 21st Century.

The ultimate fate of the Committee's suggestions is difficult to predict because they could, if effectuated, embroil the Commission in controversy relating to the constitutionality of "reverse discrimination". The Committee's suggestions are generally couched in non-racial, non-ethnic terms (*e.g.*, "socially and economically disadvantaged persons"), which would normally eliminate any concern about discrimination. Some critics, however, claim that such language is supposedly just a thin disguise for "minorities", and may attack any policies on that basis. Historically, the Commission's minority and female ownership programs have been the subject of conflicting court decisions, a fact which might encourage critics to take any re-formulated policies to court.

For the time being, though, it is clear where the Committee stands on these issues. The next step will be for the Commission to weigh in, if it chooses to do so.

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But even the Commission itself is apparently not entirely persuaded by its own justifications. It acknowledges that, if employment data are submitted in a manner which permits the identification of the source of the data, "third party access" to those data could arguably "leave broadcast licensees vulnerable to complaints or lawsuits and induce them to change their hiring patterns to forestall such charges". Accordingly, the Commission has asked for more public comment on that consideration.

And because of that remaining loose end, the Commission has decided ***not*** to require the actual submission of any reports for the time being. That means that, while affected licensees are now required to maintain adequate records to permit the preparation of such reports starting with pay periods from July through September, 2004, licensees will ***not*** have to file any reports just now. However, should the day come when reports are required to be filed, the Commission will then expect reporting licensees to be able to provide complete data commencing as of July, 2004.

So the bottom line is that, for the time being, broadcasters and multichannel video programming distributors should obtain copies of the blank annual employment report form (FCC Form 395-A for MVPD's, Form 395-B for broadcasters) and maintain sufficient records to allow them to provide the information called for that form as of July, 2004, and thereafter. But don't file the form just yet − the Commission will let you know when, where and how at some future point. And stay tuned, because a number of state broadcast associations have already sought judicial review of the newly-reinstated requirement.

Time to file for 2003 distant carriage royalties

Cable and Satellite Royalty Claims By E-Filing Available

By: Alison J. Miller
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A television broadcast station seeking to claim cable copyright royalties earned during 2003 must submit a Cable Copyright Claim Form to the U.S. Copyright Office by Monday, August 2, 2004. Eligibility for the royalties continues to be based on carriage of the station's programming outside of its local service area. As a general matter, a licensee is eligible to receive royalties if its station's programs were carried on "distant" cable systems. "Distant" cable systems are those that are: (1) outside your station's Designated Market Area ("DMA"); ***AND*** (2) at least 35 miles from the station's city of license; ***AND*** (3) outside the station's predicted Grade B contour.

This year, the Copyright Office is offering an electronic filing option for the filing of 2003 cable and satellite royalty fund claims. The Copyright Office is strongly encouraging claimants to file their claims electronically in order to avoid potential problems with mail delivery. Where claims are filed electronically, the claim does not need to include the signature of the claimant. Forms to be used in making claims for cable and satellite royalties will become available on the Copyright Office website on July 1. However, if you are not yet comfortable with electronic filing, paper filing is still an option.

All claims, whether they are electronic or paper, are due by Monday, August 2, 2004.

(Continued from page 5)

5. a description of the responsibilities of each level of management to ensure enforcement of EEO policies and a description of how employees and job applicants have been informed of the licensee's EEO policies and program;

6. a description of the employment unit's efforts (a) to analyze its EEO recruitment program to ensure that it is effective and (b) to address any problems found as a result of that analysis;

7. a description of the employment unit's efforts to examine pay, benefits, seniority practices, promotions, and selection techniques and tests to ensure that they provide equal opportunity and do not have a discriminatory effect; and

8. for religious broadcasters, an indication that employees are subject to a religious qualification and applicable data concerning the EEO program.

For many employment units, especially smaller ones, Items 5 through 7 listed above are likeliest to cause the most difficulty. In many instances, the types of activities described are likely to be performed on an on-going, informal basis. It therefore is important that small to mid-sized companies be aware that this information may be requested, so that they may undertake appropriate, formalized activities in order to be ready with a response should they receive an audit letter.

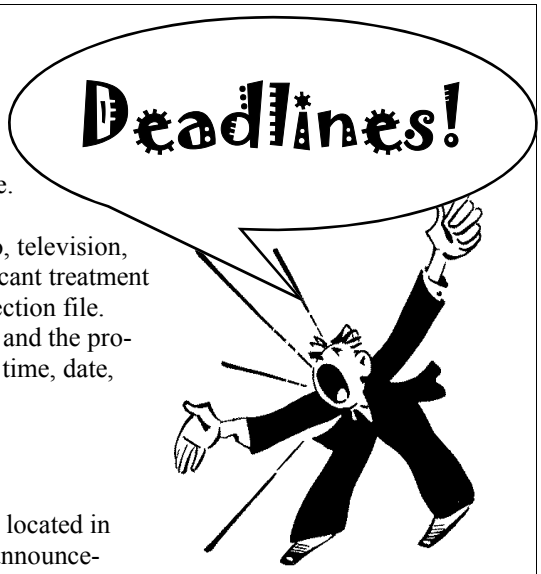
A group of state broadcast associations sought a stay of the audit letters and any need to respond to them. This group argued that the letters went beyond the audit authority delegated by the Commission in that it was sent to too many stations and requested documents and information not in stations' public inspection files. The petitioners also argued and that the letters appear to prejudge issues raised in petitions for reconsideration of the EEO rules which have not yet been addressed by the Commission.

The stay was denied by the Media Bureau on June 21.

In the meantime, stations included on the list of those to be audited would be prudent to go ahead and gather the substantial information required in order to avoid having to put together a hasty and last-minute response. Such rushed efforts can lead to inconsistencies and errors in what is submitted to the Commission, which can then raise further questions best avoided.

The FCC's EEO enforcement activities have been on hiatus for several years, but the times, they are a-changin'. It appears from the audits – and the announcement of the impending re-birth of the annual employment report (*see* related story on Page 4) – that the Commission believes that it has pretty much worked out the bugs which caused the courts to reject important elements of its EEO program on two separate occasions in recent years. Whether the FCC's belief in that regard is correct remains to be seen. For the time being, though, the Commission is charging ahead, its EEO banner held high.

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.

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.

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

Radio and Television Renewal Post-Filing Announcements - All *radio* stations located in **Illinois** and **Wisconsin** and all *television* stations located in **North Carolina** and **South Carolina** 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 **California**, **Illinois**, **North Carolina**, **South Carolina**, and **Wisconsin** 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 **Illinois** and **Wisconsin**, and all commercial and noncommercial *television* stations located in **North Carolina** and **South Carolina** 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.

August 6, 2004

FM Auction No. 37 - Short form applications on FCC Form 175 must be filed by 6:00 p.m. EDT for all those interested in participating in the auction for vacant FM allotments as listed. Applicants may begin filing applications on July 22, 2004, at 12:00 noon EDT.

September 24, 2004

FM Auction No. 37 - Applicants to participate in the auction must submit a sufficient upfront payment by 6:00 p.m. EDT.

Open Sesame?

Protect Your FCC Passwords

Guard Against Unauthorized Access (or Worse) To Your Accounts On The FCC Website

By: Donald J. Evans
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When Ali Baba chanced upon the code words "open sesame," it immediately gave him access to the untold riches accumulated by the forty thieves over many years. While your untold riches are probably not stored in a cave, they may well be sitting in an FCC database. As the FCC transitioned most of its filings to electronic modes, it also began issuing passcodes to be associated with each filer's FRN (FCC Registration Number). Most of the time these passcodes are just added to the long list of passcodes we are all now forced to maintain for our bank accounts, our kids' homework assignments, our frequent flyer programs, and everything else we access over the internet. The name of FLUFFY, your pet beagle, now probably opens more restricted accounts than your average KGB operative's encryption machine. FCC passcodes are no laughing matter, however.

Recently, a client discovered that the former manager of its licensed properties had used his knowledge of the company's passcodes to enter the FCC database and associate several of the stations' call signs with his own FRN. The manager's leavetaking from the licensee had not been a congenial one – in fact, it was so uncongenial that litigation had ensued. The licensee only discovered the switch in the FRNs when it was entering routine updates of its FRN information and suddenly was denied access to its own station information. Fortunately, the reprobate manager had not attempted to actually transfer the licenses into his own name, perhaps because that would have been announced in an FCC public notice.

The matter was eventually straightened out, but it serves as a strong warning signal to licensees to be as protective of their FCC passcodes as they would be of the keys to their offices or transmitter sites. Employees are often trusted with the FCC passcodes as part of their normal job routines. Nine times out of ten this is not a problem. But the severance of the employment relationship, like a divorce, can cause people to behave vindictively and, occasionally, irrationally.

As a matter of routine prudence, we suggest that you give the passcodes to your FCC attorney. An attorney is bound by the canons of ethics (with disbarment as a penalty) not to misuse the client's information, so there is no fear that an attorney would abuse the information even if you later change attorneys. At the same time, the attorney serves as a safe repository for the passcodes which may become lost or misplaced as personnel changes occur among in-house staff.

As an additional precaution, you may wish to have your attorney change the passcodes for your FRN when you terminate a key employee with access to these codes. Usually this will be unnecessary, but in a few instances, as we have seen, a former employee can cause mischief which takes time and money to straighten out.

(Continued from page 7)

to the area normally occupied by a standing human body. The FCC believes that there has been confusion about when the use of spatial-averaging is appropriate. It expressed concerns about situations where a localized ("spatial peak") field intensity exceeds the exposure limits very near an antenna (which is potentially accessible to workers or the public) despite the fact that the "spatially-averaged" measurement over the area indicates compliance with exposure limits. The concern is that localized "hot spots" could lead to exposure in the body of a nearby person that exceeds the partial-body limits while not exceeding the whole-body limit. The FCC is seeking comments on how to ensure compliance in such situations and, in particular, when reliance on "spatial-averaging" is appropriate. Comments filed in the rulemaking suggested that "spatial peak" measurements alone may be sufficient to show compliance with exposure limits. The FCC is also seeking comments on procedures and techniques for whole-body spatial averaging, including the positioning of the observer relative to the antenna.

Look for a future article on any revisions the FCC may eventually adopt.

The FCC continues to be concerned about RF exposure for both the general public and technical workers (engineers, equipment installers, meter readers, etc.) at antenna sites. It recently fined two stations for failing to have adequate fences barring general access to antennas and to areas of RF exposure exceeding exposure limits. Lest anyone view RF considerations as being of minimum consequence, recall that the only technical showing required of a broadcast license renewal applicant relates to compliance with RF standards.

(Continued from page 1)

notice describes not only the filing requirements, but also a number of important considerations, including the prohibition against collusion among applicants and the eligibility requirements for "bidding credits".

And on the subject of "bidding credits", the Minority Media and Telecommunications Council (MMTC) has asked the Commission to enforce the eligibility standards for such credits carefully. The MMTC views this auction as "the last, best chance for minorities to acquire a significant number of new FM facilities". The FCC has not publicly responded to MMTC's request, but we can be assured that MMTC will not be shy about crying "foul" if it believes that any bidder is playing inappropriately fast and loose with "bidding credits".

The Channels

If you need a list of the channels which will be available for bidding, go to http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-04-1699A2.pdf. But be advised that the Commission has made clear that the potential bidder has the obligation to research the channels to confirm that any particular channel is something that they really want to bid on. In essence, the FCC is treating the channels in much the same manner as the operator of a yard sale treats the merchandise for sale – or in the same manner as a shady used car dealer who is unsure of the provenance of the vehicles on his lot.

The FCC is treating the available channels in much the same manner as yard sale operators or shady used car dealers treat the merchandise they offer for sale.

Of course, prospective bidders are normally expected to undertake "due diligence" investigation of the channels for which they plan to bid. But prospective bidders might not normally expect that the Commission would list for sale channels which may be short-spaced, or may be subject to unusual power limitations, or may already be subject to limitations imposed by nearby stations which have upgraded themselves pursuant to Section 73.315, or may be so hemmed in by other co- and adjacent channels that they offer no practical possibility of relocation. Other factors which may affect the desirability of particular channels include possible short-spacings with Canadian allotments. And one consulting engineer has advised us that three of the listed channels show up in the Commission's CDBS database as reserved for noncommercial use, while one allotment can't be found in CDBS and one seems to specify the wrong channel.

When these matters have been called to the Commission's attention, the reaction has been generally one of "caveat emptor" – let the buyer beware. The FCC is clearly making no promises that the auctioned channels will fulfill the successful bidder's every dream. It appears that the only thing the FCC is promising is that it will gladly accept the successful bidder's payment.

So if you are interested in bidding on any channels, you should be sure to take a very close technical look at them to confirm that they will be suitable for your needs. The FCC does ***not*** offer a 30-day-no-questions-asked return policy, nor are any of the channels subject to your state's local "lemon laws".

The Freeze

Meanwhile, in order to stabilize the allotment list until the auction is over, the Commission has frozen, as of June 7, 2004, the filing of both petitions to amend the FM Table of Allotments ***and*** rule making counterproposals that propose a change in channel, class or reference coordinates of any of the 290 channels which are subject to the upcoming auction. During the window for Short-Form (FCC Form 175) Applications – *i.e.*, from July 22-August 6 – the Commission will ***not*** accept ***any*** application for construction permits for minor changes to any commercial or noncommercial station. Once the window for Short-Form (FCC Form 175) applications closes – *i.e.*, as of August 6 – the freeze on rule making proposals will extend to all petitions and counterproposals which propose a change in or do not fully protect preferred site coordinates specified in any Form 175 application that is filed during the window.

The upcoming auction represents the first significant opportunity in more than a decade to file for vacant FM channels. For that reason alone it should not be ignored. But neither should the potential pitfalls and booby traps which are built into the auction process.

(Continued from page 2)

The NPRM proposes to exclude TV channels 2-4, 37, and 52-69 due to various interference concerns, and individual channels 14-20 in markets where they are used for public safety communications. It discusses at length the appropriate technical criteria for protecting other TV channels.

Comments in response to the NPRM are currently due by September 1, 2004; reply comments are currently due by October 1, 2004.

We'll think about making that grant final when Mr. Green arrives. . .

Changes in FCC Policies Cast Shadow On "Finality" Of Application Grants

By: Gina Beck
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In May, the FCC announced new procedures for debt collection that condition all grants of benefit and authorization on the payment of any debts owed to the FCC, including past delinquent fees. The rules state that applications will not be granted if there are outstanding debts; potentially more troubling, if for some reason a grant is made in error, it is subject to rescission if the FCC later determines that a debt (for example, a regulatory fee) was overdue at the time of the grant. While grants are already currently conditioned upon payment of application fees and current regulatory fees, the addition of more conditions is troubling because of a recent change in Commission policy.

FHH has filed a petition expressing our concern about the seemingly perpetual purgatory created by the Commission's policies.

As reported in the April 2004 edition of the Memo to Clients, the FCC has discontinued its policy of providing payment status updates for individual licensees upon request. Historically, FHH attorneys have routinely inquired about payment status as part of their "due diligence" efforts in conjunction with closings in order to confirm the finality of all grants. Without the ability to do this, and with the added rescission pitfalls contained in this amendment, the ability to certify for our clients that a grant is "final" is far from certain. Because of the shadow of uncertainty that such a "cloud of possible rescission" would cast on opinion letters for parties wishing to consummate transactions, FHH has filed a Petition for Reconsideration with the FCC. The Petition expresses our concern about the seemingly perpetual purgatory created by the Commission's policies. It also calls for the reinstatement of the payment inquiry policy or the creation of an online database to allow attorneys and their clients access to this critical payment information.

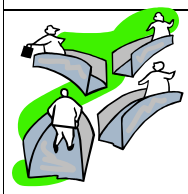
FHH Member Harry C. Martin Assumes Presidency of FCBA

In June, FHH's own Harry C. Martin was sworn in as President of the Federal Communications Bar Association. Harry specializes in mass media law, with his time divided between regulatory and transactional matters.

Harry served as President-Elect of the FCBA last year. His term as President extends through June, 2005. He has previously served in a number of official positions with the Association and has been an enthusiastic and active participant in its activities for decades. Among his accomplishments are the re-drafting of the FCBA's Investment Policy Statement, the initiation of the Association's 401(k) plan, and the organization and moderation of many continuing legal education programs.

Harry also writes monthly columns for *Broadcast Engineering* magazine (a gig he has held for more than 20 years) and for *Radio* magazine, and regularly appears as a panelist at the twice-yearly "Kagan Radio Summit".

Harry is a graduate of the University of Virginia and the George Washington University School of Law (with honors). He has served on the board of directors of the University of Virginia Club of Washington and as Washington regional co-chair for UVA's Jefferson Scholarship Program.



FHH - On the Job, On the Go

Frank Jazzo has been reappointed to another term as Co-Chair of the Federal Communications Bar Association's Mass Media Practice Committee.

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February, the FCC had voted to fine an AMFM station (*i.e.*, a station in the Clear Channel organization) in Washington, D.C., for a drive-time description of what purported to be a product demonstration of a genitalia enlargement device. However, the decision to fine the station occurred *after* the license at issue had been renewed ***and*** more than a year after the alleged violation. As a result, under the FCC's interpretation of the relevant "statute of limitations", the Commission was barred from imposing a fine in this case. A few weeks later, the FCC voted again to cancel its previous vote. This technicality clearly annoyed a majority of the five FCC Commissioners as three of them issued separate statements to express their frustration for the bureaucratic bungle which apparently delayed agency consideration of the alleged violation until it was too late for the Commission to take action. However, since this potential violation would presumably have been included in those swept away through the miracle of the settlement process, the fact that this one may not have been subject to a fine in any event appears to be of limited significance. Indeed, neither the original decision to fine (adopted in February) nor the decision to rescind that fine (adopted in April) was announced until June, simultaneously with the announcement of the Clear Channel settlement.

Let's Make a Deal II – Clear Channel was not the only licensee availing itself of the "Consent Decree" option recently. A licensee with a dozen AM and FM stations struck a deal with the Commission. The licensee had already been fined $85,000 for various technical violations noted during inspections beginning in 1999, and when the licensee didn't pay, the FCC took him to court and obtained judgments against him. In October, 2003, the Commission formally notified the licensee that its licenses might be designated for a hearing to explore the licensee's basic qualifications to remain a licensee – in other words, it appears that the FCC was threatening to yank all the licensee's tickets. That inspired the licensee to sit down with the Commission to work something out. And sure enough, a deal was cut.

The deal is far less licensee-friendly than was Clear Channel's (report above). Here, the licensee agreed to surrender for cancellation four AM licenses it holds, and also to sell an AM and an FM and use the proceeds to pay all of the outstanding fines. The licensee gets to keep the remaining six stations, as long as the licensee is able to certify (in the next couple of months) that each station is in compliance with all rules and the specifications of all licenses. If the licensee can't make that certification with respect to any station, then that station's license must be surrendered for cancellation. Oh, and the licensee has to make certifications of complete compliance every six months thereafter (although a failure to so certify may not automatically lead to cancellation of the underlying license).

So this is not the sweet deal that Clear Channel got. But from the licensee's perspective, it still may have been preferable to the possibility of an expensive hearing which could have resulted in the loss of all his stations.

The lesson here is that, if a licensee gets caught in violations, the Commission is apparently willing to negotiate some resolution without resorting to a hearing. The ultimate outcome of such negotiations will likely depend on a wide variety of factors unique to each case, as the divergent outcomes of this case and the Clear Channel case (described above) suggests.

"The 99th Caller Wins" really means, er, the 99th Caller - In the latest case involving radio station contests (*see* the December edition of this column about a cinema ticket contest) the FCC fined a Washington state FM licensee $4,000 for not taking caller number 99 in an on-air contest. The station told the FCC that in a few instances, they announced a contest in which (a) a certain numbered caller would win but (b) the call volume fell short of the designated number of callers. When such a short fall occurred, the prize was awarded to the next eligible callers. (It is not clear why the station did not re-announce the contest to increase call volume.) In any event, the Commission's rules are clear: licensee-conducted contests must be conducted as announced. The FCC, which can count, concluded that the contest had clearly not been conducted as announced – since the winner was not the numbered caller which been designated when the phones were opened for contestants – and the Commission accordingly counted up to 4,000 in dollars when issuing the station a fine.

The case came to the FCC's attention when a confidential complaint was filed in which the person alleged that the station was instructing its staff to award prizes to callers that sounded like women who were older than 18. The complaint to the FCC described the station as rampantly rigging the contests. The FCC did not need to address the alleged "rampant rigging" as the station admitted that it was ending the call-in contests early.

This case should remind clients that the FCC takes contests and the rules of contests very seriously. Not only is there a sizable pool of disappointed listeners who can file complaints with the FCC but, as may have been the case here, frustrated employees (or disgruntled former employees) can also report the activity to the FCC. As we have noted in connection with previous contest-related fines – such as the local take-off on "Who Wants to be a Millionaire", in which the prize turned out to be *not* one million dollars, but one million Italian liras, worth considerably less – satisfying a complaining listener does ***not*** necessarily satisfy the FCC. That is, the FCC continues to pursue the station regardless

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of whether the person who filed the complaint later withdraws the complaint. Licensees should be familiar with the FCC's contest rules located at Section 73.1216.

Don't Over-expose Yourself - Eighteen months ago the FCC began actively enforcing its radiofrequency (RF) exposure rules and established a standard $10,000 fine for violating those rules. That regulatory agenda is still active. A station which had more than double the maximum permissible exposure limits in a public area recently got zapped with a $10,000 fine. The station claimed that its tower was at a remote location where the public would not routinely enter. The Commission, however, was not convinced, particularly when, during their visit to the tower site, FCC inspectors noted ATV tracks, garbage and campfire rings at the location. The station claimed that these could have been left at the site by engineers and technicians. In a testament to the Commission's confidence in the universe of technical folks who work on broadcast transmitters (or perhaps the notion that such folks are just not the partying type), the FCC countered that the trash included beer and wine bottles which were not likely "left by workers who service transmission facilities". The Commission whacked the station with the maximum fine.

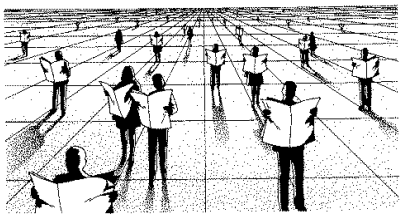
Recent Antenna Fines : *$13,600 to a Baptist church in Louisiana*, for not locking its fence and for public file violations; *$10,000 to a Missouri tower owner,* for having broken red obstruction lighting and failing to notify the FAA; *$10,000 to a Florida broadcaster,* for failing to light its towers at night; *$1,000 to an Indiana broadcaster,* for failing to properly paint its antenna (the original $10,000 fine was reduced to $1,000 due to financial distress).

FCC Ups Maximum Forfeiture Levels – We can forget about Alan Greenspan and the Fed, at least as far as their assessment of inflation is concerned. The FCC, acting pursuant to the Debt Collection Improvement Act of 1996, has taken it upon itself to increase its maximum monetary forfeiture penalties to reflect inflation. The new levels for broadcasters: $32,500 per violation or per day of a continuing violation, with the amount for a continuing violation not to exceed $325,000. That's up from $27,500 per violation and a $275,000 cap for continuing violations. The new levels take effect 30 days after those levels are published in the Federal Register. Note that these changes affect only the maximum fines, not the base fines for various violations. Note also that there is legislation pending which would increase the maximum fines for indecency-related violations up to $275,000 per violation. While that legislation had been stalled in the Senate for a couple of months, it came back to life in June. Still, the maximum indecency fine approved by the Senate — $275,000 — is considerably lower than that already approved by the House ($500,000), necessitating further Congressional action.

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

Updates on the News

LPFM Activity on the Hill? Offering a variation on the traditional goal of the medical community ("First, do no harm"), Senator John McCain has co-sponsored a bill to promote LPFM licensing which says, in effect, "Third do no harm". The "third" here refers, of course, to third adjacent frequency interference which, depending on who you talk to, LPFM stations may or may not cause to full-service stations. The debate about the nature and extent of possible third adjacent interference has raged for years, and has been a significant factor in the delayed arrival of LPFM service in many communities. As we reported in articles in last July and March, the FCC commissioned an independent study to try to determine whether third adjacent LPFM interference really would be a problem. The initial answer came back in the negative, much to the delight of LPFM supporters − but then LPFM foes challenged the validity of the study, and the Commission has made little progress since. McCain's legislation is presumably intended to eliminate any logjam at the FCC by establishing, as a matter of Congressional dictate, that concerns about possible third adjacent interference from LPFM stations can and should largely be ignored in the interest of advancing the spread of LPFM service. McCain's bill arrives against the backdrop of considerable Congressional unease about the extent of consolidation in the radio market. That unease may explain why there appears to be such support for LPFM, which may be optimistically viewed as a panacea to consolidation, even though the technical and regulatory limitations on LPFM service suggest that it would be no more than a small band-aid.



Auxiliary Coordination for Conventions Established. As it pretty much always does when large scale, high interest events (think Olympics, conventions, Papal visits, etc.) pop up, the Commission has designated a single point of contact for coordinating auxiliary broadcast frequency usage in the area surrounding Boston (site of the Democratic National

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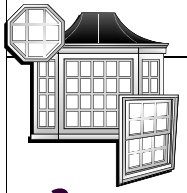
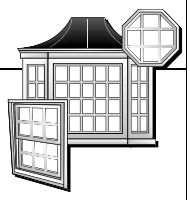
Convention) from July 26 through July 29, and New York City (site of the Republican National Convention) from August 30 through September 2. The "designated area" within which coordination of mandated is defined as a circle drawn around the city, with a 100 kilometer radius for terrestrial stations and a 150 kilometer radius for any mobile operations aboard aircraft. All Part 74, 78 and 101 licensees sharing spectrum available under the Commission's auxiliary broadcast rules and operating in these designated areas are covered by this action. All short-term auxiliary broadcast use, ***without exception***, must be coordinated in advance through the "Frequency Coordinating Committee for the 2004 Political Conventions" (dubbed "POLCOMM2004" by the FCC) and its coordinator, Louis Libin. Frequency coordination forms are available through POLCOMM2004's website at www.polcomm2004.org. Completed forms may be submitted to Mr. Libin by fax or email.

Monterey Pop? Grab a dog named Charley, aim for Eden then head east, pass by Cannery Row, and there you are: Monterey, California, the cozy fishing community made famous first by John Steinbeck, then by the Monterey Pop Festival, and now by the Commission's FCC Localism Task Force, which will be migrating into town for its next hearing on broadcast localism. Call your travel agent and mark your calendars for Wednesday, July 21, 2004. The hearing will be held at the Monterey Conference Center in the Steinbeck Forum. Further details will be released later.

On-Line Listings On Tap for FCC E-mail Addresses. How about a big Memo to Clients shout-out to our own Mitch Lazarus, who may have done us all a favor recently. As you may recall, a year or two ago the Commission revised its system of addressing for e-mails to its staff. In an effort to standardize the addressing format, the FCC shifted to a format of "firstname.lastname@fcc.gov". While simple and elegant in theory, that approach has proven somewhat less useful in practice because some staffmembers have chosen to use their full formal first name, while others understandably use a shortened, often more familiar first name. The result is that there is no reliable way to determine a Commission staffmember's correct e-mail address. Frustrated by this situation, Mitch − a man of action if ever there was one − contacted the Managing Director's office with a suggestion: why not simply establish e-mail addresses for all plausible versions of each name? Alternatively, Mitch suggested that the Commission at least provide the correct e-mail address in the agency's on-line directory (at www.fcc.gov). In a matter of weeks, the Managing Director's office notified Mitch that it plans to add staff e-mail addresses to the on-line directory. They're shooting to have those addresses available by October 31, 2004.

And we thought Al Gore was responsible . . . The FCC has set up an exhibit in its lobby, and a new web site accessible through the FCC homepage, dedicated to the history of the Internet. In a public notice touting the exhibit, the Commission proudly states that the FCC "first indicated its interest in the emerging integration of computers and communications" in 1966, and that in three extended proceedings it "established the distinction that remains today between regulated telecommunications services and unregulated information services." Presumably, the latter − which would include what we have come to know as the Internet − was outside the FCC's grasp, since it was, as the FCC says, "unregulated". But then the Commission's public notice crows loudly that "the FCC played an important role in carving out a deregulatory environment in which the Internet could flourish." So it appears that the FCC is taking credit for an "important role" in the development of the Internet on the basis of the fact that the FCC did not do anything that might have interfered with that development. In that case, we'd like credit, too.





NCE Settlement/Amendment Window Announced

As we reported in last month's Memo to Clients, the Commission's process for selecting among mutually exclusive applicants for noncommercial authorizations has been affirmed by the U.S. Court of Appeals for the D. C. Circuit. Wasting no time, the Commission since announced a window period during which certain pending noncommercial applicants will be permitted to amend their applications to resolve all technical conflicts. They will also be permitted to enter into settlement agreements looking to resolve conflicts; such agreements will not be subject to the usual cap on reimbursement. That is, during the window the affected applicants may accept payments in excess of their legitimate and prudent application expenses in return for the dismissal of their applications.

The amendment/settlement window will be open until ***August 13, 2004.*** After that, any remaining mutually exclusive applications will be subject to the recently-affirmed selection process.

A listing of the NCE applications subject to this window opportunity may be found at the FCC's website at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-04-1692A2.pdf.

Watch out and listen up

Reminder: Video Providers Must Make Emergency Information Available To All

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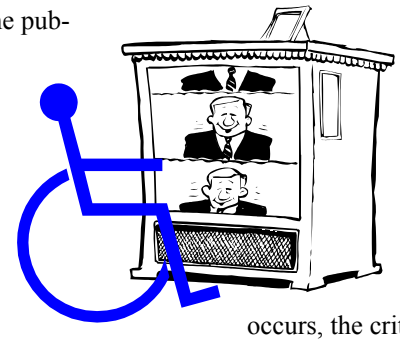
We've all heard the old adage that ignorance is no excuse under the law. And when the FCC goes to the trouble of issuing a public notice reminding everyone of its rules, one's ability to plead ignorance is reduced even further. So listen up.

In response to complaints received from the public, the Commission recently issued a public notice reminding providers of video programming (*e.g.*, television broadcasters, cable operators and satellite video providers) of two previously released rules intended to make emergency information accessible to persons with visual and hearing disabilities.



First, under rules which became effective in August 2000, the audio portion of televised emergency information must be presented in visual form, such as closed captioning, open captioning, crawls or scrolls that appear on the screen. The tricky part is that if emergency information is presented in any way other than closed captioning, it should not hide or block any closed captioning that is also being provided. Similarly, closed captioning should not obscure visual emergency information provided in any other format. Consumers have complained that critical visual information, such as lists of school closings, is occasionally blocked on their screens by other information.

Second, under rules which became effective in February 2001, the video portion of televised newscasts (regularly scheduled news programs or ***news flash*** interruptions of regular programming) must be orally described in the main audio portion of the programming. If the emergency information is provided during regular programming by just a crawl without interruption of the regular programming, a tone must sound to alert persons unable to see the crawl to tune to another source for emergency information.

Examples of emergency events to which these rules apply include, but are not limited to, weather conditions (tornadoes, floods, icing conditions, etc.), widespread fires, civil disorders and the like. (The FCC recently concluded that the Washington, D.C. sniper attacks constituted an emergency event.) When an emergency occurs, the critical emergency information that must be made available to persons with either sight or hearing disabilities, includes details about geographic areas affected by the emergency, evacuation orders and routes, approved shelter locations, and the like.

For more information, readers should review 47 CFR Part 79 for the general requirements of closed captioning and aural description of video programming. In particular, Section 79.2 contains the emergency information rules referred to above. The Public Notice reminding video providers of these rules was dated May 28, 2004 (DA 04-1595) and is available on the FCC's website (www.fcc.gov). The FCC's website also features a page (www.fcc.gov/cgb/consumerfacts/emergencyvideo.html) which describes not only the rules and but also the procedures the public can use for filing a complaint about apparent violations.

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 PROPOSED –5/20/04-6/21/04

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
AL	Maplesville	50.2 miles NW of Montgomery	292A	03-5	Cmts - 08/09/04 Reply-08/24/04	Drop-in
CO	Creede	161 miles SW of Pueblo	261C2	04-194	Cmts - 08/09/04 Reply-08/24/04	Drop-in
FL	Cross City	54.2 miles W of Gainesville	249C3	04-195	Cmts - 07/19/04 Reply-08/03/04	1.420 (i)
FL	Key Largo	49.2 miles SW of Miami	237C3	04-196	Cmts - 07/19/04 Reply-08/03/04	1.420 (i)
ID	McCall	90.2 miles N of Boise	228C3	04-197	Cmts - 07/19/04 Reply-08/03/04	1.420 (i)
ID	McCall	90.2 miles N of Boise	238C3	04-198	Cmts - 07/19/04 Reply-08/03/04	1.420 (i)
ID	McCall	90.2 miles N of Boise	275C3	04-199	Cmts - 07/19/04 Reply-08/03/04	1.420 (i)
ID	McCall	90.2 miles N of Boise	293C3	04-200	Cmts - 07/19/04 Reply-08/03/04	1.420 (i)
AL	Shorter	22.3 miles S of Montgomery	300A	04-201	Cmts - 07/19/04 Reply-08/03/04	Drop-in
WI	Tomahawk	123.8 miles NW of Appleton	265C3	04-202	Cmts - 07/19/04 Reply-08/03/04	Drop-in
NE	Broken Bow	207 miles NW of Lincoln	237C3	04-203	Cmts - 07/19/04 Reply-08/03/04	1.420 (i)
NE	Maxwell	265 miles W of Lincoln	253C1	04-203	Cmts - 07/19/04 Reply-08/03/04	1.420 (i)
FL	Islamorada	17.3 miles SW of Key Largo	283C2	04-205	Cmts - 07/19/04 Reply-08/03/04	Drop-in
NV	Pioche	180 miles NE of Las Vegas	268C1	04-205	Cmts - 07/19/04 Reply-08/03/04	Drop-in
GA	Calhoun	63.2 miles N of Atlanta	233A	04-204	Cmts - 07/19/04 Reply-08/03/04	Drop-in
NM	Clayton	126.1 miles NW of Amarillo, TX	248C1	04-220	Cmts - 08/02/04 Reply-08/17/04	Drop-in
NC	Sylva	47.6 miles SW of Asheville	281A	04-217	Cmts - 08/02/04 Reply-08/17/04	Drop-in
FL	Shalimar	23 miles E of Pensacola	227C2	04-219	Cmts - 08/02/04 Reply-08/17/04	Drop-in
NM	Pecos	20.5 miles S of Santa Fe	264C3	04-218	Cmts - 08/09/04 Reply-08/24/04	1.420 (i)
AL	Boligee	46.5 miles SW of Tuscaloosa	297A	04-213	Cmts - 08/02/04 Reply-08/17/04	Drop-in
WY	Jackson	86.8 miles E of Idaho Falls, ID	249A	04-214	Cmts - 08/02/04 Reply-08/17/04	Drop-in
TX	Matargorda	105.5 miles S of Pasadena	252A	04-215	Cmts - 08/02/04 Reply-08/17/04	Drop-in
MS	Vaiden	76.7 miles N of Jackson	271A	04-216	Cmts - 08/02/04 Reply-08/17/04	Drop-in

FM ALLOTMENTS ADOPTED –5/20/04-6/21/04

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
KY	Bowling Green	61.2 miles N of Nashville, TN	236C0	04-42	None
NC	Creedmoor	18 miles NE of Durham	260C3	03-232	None
NC	Gatesville	47.8 miles S of Norfolk, VA	257A	03-232	None
NC	Nashville	10.8 miles W of Rocky Mount	257A	03-232	None
ND	Arthur	32.3 miles NW of Fargo	280C1	03-208	None
ND	Hazleton	41.2 miles S of Bismarck	277C	03-208	None
CO	Dinosaur	182 miles E of Provo	261C1	02-290	TBA
CO	Rangley	197 miles SE of Provo	295C1	02-290	TBA
ID	Franklin	55.6 miles N of Ogden, UT	255C3	02-290	TBA
UT	Beaver	151 miles SW of Provo	259A	02-290	TBA
UT	Coalville	35.8 miles N of Salt Lake City	248C	02-290	TBA
UT	Manilla	143 miles NE of Provo	228A	02-290	TBA
UT	Elsinore	113 miles S of Provo	249C	02-290	TBA
UT	Monroe	117 miles SW of Provo	264C2	02-290	TBA
UT	Nephi	38.8 miles S of Provo	256C	02-290	TBA
UT	Richfield	106.4 miles S of Provo	229C	02-290	TBA
UT	Smithfield	43 miles N of Ogden	244C1	02-290	TBA
WY	Fort Bridger	108.4 miles E of Ogden	280C	02-290	TBA
WY	Green River	172 miles E of Ogden, UT	250C2	02-290	TBA
WY	Lyman	114 miles NE of Ogden	284C	02-290	TBA
WY	Rocksprings	189 miles E of Ogden, UT	259C	02-290	TBA
WY	Wamsutter	213 miles NW of Fort Collins, CO	282C	02-290	TBA
WY	Saratoga	134 miles NW of Fort Collins, CO	258A	02-290	TBA