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Memorandum to Clients

August, 2004 | *News and Analysis of Recent Events in the Field of Communications* | No. 04-08

From CONELRAD to EBS to EAS to ???

FCC Looks To Overhaul Emergency Alert System

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In response to concerns raised by numerous citizens, organizations, and federal, state, and local government agencies, the FCC has issued a Notice of Proposed Rulemaking (NPRM) proposing an overhaul of the Emergency Alert System (EAS), which could include substantial changes to the existing system or even abandonment of that system in favor of a more comprehensive and advanced warning system.

The EAS is the latest version of a broadcast-based warning system first established, under the "CONELRAD" name (short for "control of electronic radiation"), more than 50 years ago. In 1963 CONELRAD was replaced by the Emergency Broadcast System (EBS), which in turn was replaced by the EAS in 1994. Throughout its half-century of existence, the system has been based on a "down the chain" approach in which participating broadcast stations (and, since 1994, cable operators) receive notifications of emergencies from a limited number of primary stations. Originally established for national emergencies, it was expanded to include local and state emergencies in 1976.

The FCC seeks comments regarding whether a new public/private partnership should be created to ensure the effective delivery of emergency information to the public.

The national-level operation of EAS is controlled by the FCC, in conjunction with the Federal Emergency Management Agency (FEMA) and the National Weather Service (NWS). The FCC handles the technical end of things, assuring that the system is up and running; FEMA, on behalf of the President, is authorized to activate the system for national alerts. Not surprisingly, the NWS originates approximately 80% of all EAS alerts. Many EAS participants also directly monitor NWS transmissions and relay notice of impending emergencies over EAS. Additionally, state and local emergency management personnel have developed their own plans which are implemented in combination with the established EAS system.

EAS is a "trickle down" distribution system. FEMA has designated 34 radio stations as regional Primary Entry Point (PEP) stations, to which it distributes national level EAS messages. The U.S. is divided into 550 EAS local areas, each containing a main EAS source, known as the Local Primary One (LP-1). Each LP-1 monitors its regional PEP station for national level messages and serves as the point of contact for local authorities and the NWS to activate EAS.

The LP-1 stations are in turn monitored by over 14,000 broadcast stations and 10,000 cable systems. These other stations and cable systems are required to broadcast national level messages, but may decide whether to carry state and local messages. These downstream participants are required also to monitor a second designated station to prevent a failure at one station from stopping an EAS message from propagating through the system. Initiating an EAS message – at the national, state or local level – requires the participant to enter certain codes in EAS equipment. The EAS equipment automatically interrupts regular programming.

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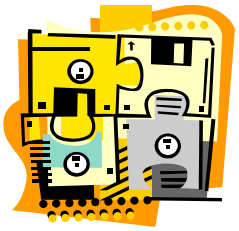
The Scoop Inside



Nextel has its checkbook out . . .

FCC Sends Eviction Notice to Auxiliary Services Licensees

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Mainstream media have been reporting the details of a plan by the FCC to allow Nextel to move 800 MHz radio/walkie-talkie users. While the nitty-gritty of life in such non-broadcast services may not normally be grist for our broadcast readers, this is different: buried in the FCC decision is also a plan to allow certain broadcast auxiliary services to be moved by Nextel, with Nextel picking up the tab for the costs of the relocation.

Nextel, a nationwide mobile phone operator, recently made news when it received unanimous backing from the FCC to evict some of its neighbors in the 800 MHz spectrum band as long as Nextel reimbursed those neighbors for their moving costs. The neighbors are located in those portions of the 800 MHz band that serve two-way radios used by, for example, cabs, delivery companies, ambulances, police departments and the like.

As noted in our May issue, the NAB, MSTV and Nextel seized upon the 800 MHz idea and asked the FCC to apply the same procedures to move Broadcast Auxiliary Services (remote pick-ups, a few STL's and intercity relays) operating in the 2 GHz band. The 2 GHz band is near current mobile phone operations of other nationwide providers, and a small portion of the 2 GHz band (1990-2025 MHz) has been a large problem over the past several years. Under a previous FCC reshuffling, broadcasters had to move their auxiliary operations to make room for satellite services in the same area of the spectrum. The FCC originally adopted a relocation plan to try to clear broadcasters from this spectrum, but the relocations have been sporadic and slow.

Nextel swooped into the 2 GHz fray and offered to pick up the cost of all of the clearing process, a cost the FCC admits could run as high as half a billion dollars. However, in exchange for removing all of the current licensees, Nextel also insisted that it be licensed on part of the frequency that it is clearing. And the FCC agreed: the Commission will license 5 MHz of spectrum at 1990 - 1995 MHz to Nextel in exchange for Nextel cleaning out all broadcasters in the 1990 - 2025 MHz spectrum.

Specifically, the FCC has given Nextel two and a half years to move all of the broadcasters out of this 2 GHz spectrum. Even though Nextel seeks to use only a sliver of frequency, it must complete the relocation of ***all*** broadcasters operating in the 1990 MHz - 2025 MHz range. The relocation will occur in two phases over the transition period and Nextel will be allowed to choose which broadcasters will be moved in each phase. The first stage will require Nextel to relocate broadcasters in markets where Nextel knows that it will be operating. In the remaining markets, Nextel must relocate all other broadcasters using this 2 GHz, regardless of whether Nextel will be operating in that market. All of this is to be completed in 30 months, with Nextel filing annual progress reports.

Although the FCC relied upon the NAB and MSTV's $512 million cost estimate for relocating these broadcast auxiliary services, this is not a blank check for broadcasters. The FCC requires broadcasters and Nextel to enter into good faith negotiations regarding the relocations. Nextel and stage-one broadcasters (*i.e.*, broadcasters in markets where Nextel will operate) have until May 31, 2005, to reach agreement; Nextel has until March 31, 2006, to reach agreement with stage-two broadcasters (*i.e.*, everyone else).

Most importantly, before any of this frequency relocating may take place, Nextel

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Focus on FCC Fines

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Location, location, location (oh yeah, and staff, too) - The FCC recently issued large fines to commercial and non-commercial radio stations for violations of FCC policies regarding station staffing. In addition, one of the NCE stations was fined for not maintaining a main studio in the required location. Readers are reminded that the FCC requires each licensee to maintain a meaningful management and staff presence at its station's main studio, and transmitter control personnel must have the ability to control the transmitter at all times.

An NCE FM station in Kansas was hit with a $10,000 fine for problems with its main studio and staffing. The station located its main studio outside of the FCC-required parameters for a studio (generally, a main studio must be (a) within the community of license, (b) within 25 miles of the reference coordinates of the community of license, or (c) within the principal community contour of any station licensed to the community). Aware that it was operating in violation of the rules, the station sent the FCC a letter asking for a waiver. Although the FCC granted a waiver of the rule, it fined the station $7,000 for violating the main studio and staffing rules prior to the grant of the waiver. The Commission also hit the licensee up for another $3,000 for failing to respond fully to the letter of inquiry sent by the Enforcement Bureau as a result of the licensee's admission in its waiver request.

A Massachusetts FM station was fined $17,000 when an FCC agent showed up at the station's main studio and it wasn't staffed. The FCC agent called the station manager, who advised the agent that the main studio hadn't been staffed for several years. In response to the FCC inquiry about the situation, the station submitted an affidavit that stated that staff made "regularly scheduled visits" to the main studio. Not impressed, the FCC slapped the station with a $7,000 fine for the staffing violation. An additional $10,000 fine was issued for not properly maintaining the station's public file – this violation was apparent to FCC staff when the off-site general manager came to a meeting at the main studio with the public file tucked under his arm because it was kept off site.

A Maryland station was whacked $18,000 for main studio staffing problems and two other violations. Here an FCC agent went to the main studio in the middle of the day, only to find it locked. The agent waited outside of the studio for nearly three hours, then left. Apparently during those three hours, with nothing else to do, the agent inspected the station's tower and discovered fencing problems. The agent returned to the studio a few days later and again found it unoccupied, but did find a note. The note directed visitors with questions to go down the street to where a maintenance man lived. The FCC found the lack of staffing and the mere note directing the public to someone's home fell short of compliance with the staffing requirement.

Finally, an Iowa college was admonished for personnel problems. Although a $13,000 fine was proposed, a plea of financial hardship eliminated the fine. The FM station did not staff its transmitter site and it did not have studio controls for transmitter monitoring or control. The station had a simple "on/off" switch for the transmitter. Moreover, the station advised the FCC that "the station runs unattended" and was staffed only at night. The FCC was particularly bothered by the fact that transmitter control personnel did not have the capability to turn the transmitter off at all times.

Emmis and FCC cut a deal on indecency - Facing several investigations into allegations of broadcast indecency and a generally unfavorable climate for those who air such material, Emmis Communications reached a settlement with the FCC. Emmis will pay the government $300,000 and has adopted a compliance plan which requires employee training, standards for dealing with employees who have had complaints filed against them, and immediate termination of an offending employee if the FCC determines material to be offensive. As a footnote, although Emmis was punished for material that it had broadcast, Pacifica Foundation – a party to the landmark Seven Dirty Words case – was fined $3,000 for material that it did not broadcast: the station failed to conduct EAS testing and properly follow EAS procedure.

Failure to update tower ownership – We have previously reminded our readers of the importance of updating tower ownership records once a station acquisition is completed. That is, if the assets that are being sold include a tower which is registered with the Commission, it is important to let the Antenna Survey folks at the Commission know once the tower has changed hands. (Such updating is easily accomplished on-line at the FCC's website.) A company which bought a California FM lock, stock and tower found out the hard way what happens when you don't update your records: a $3,000 fine.

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FCC Opens Inquiry Into Televised Violence

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At the urging of Congress, the FCC has released a Notice of Inquiry (NOI) seeking comment on a wide-range of issues pertaining to violence on television and the impact it has on children. In so doing, the FCC is wading into an alluring but murky sea ripped with vicious cross-currents of definitional imprecision and empirical uncertainty. And lurking still deeper are fundamental questions about the propriety (not to mention the likely effectiveness) of the FCC's assumption of the role of Federal Nanny.

Among other things, the NOI seeks answers to the following questions:

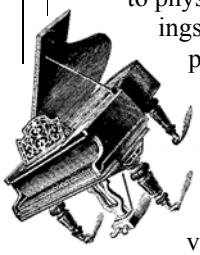
- How much violent programming is being broadcast;
- What are the short and long-term effects of viewing violent programming on children;
- What specific kinds of programming should be the primary focus of future policymaking (*i.e.*, all violence or "just excessive or gratuitous" violence);
- Are the ratings systems currently in place and the V-chip successful; and
- What are the legal obligations of either Congress or the Commission to regulate violent programming?

The NOI cites reports by the National Cable & Telecommunications Association, Federal Trade Commission (FTC), U.S. Surgeon General, Parents Television Council and other similar sources which indicate that as much as 50% of television programming contains some form of "violence", with instances of "violence" increasing throughout prime time ***and*** the "family hour" (*i.e.*, 8:00-9:00 p.m.). The NOI also notes that cartoons include one "high risk" incident of violence per episode.

The apparent increases in "violence" are said to be troubling because of various studies or reports which suggest that "deleterious effects" may result from "exposure" to "violence". For example, some studies indicate a link between (a) aggressive and anti-social behavior in children and (b) exposure to televised "violence". An FTC report cited by the FCC determined not only that there is a correlation between exposure to "violent" programming and displaying aggressive behavior, but also that there is an overall *acceptance* of "violent" behavior. A report of the Surgeon General supports this conclusion over the short term, but acknowledges that the information about long-term effects remains inconclusive. But at least one of the studies indicates that the effects of exposure to televised "violence" may last into adulthood.

Faced with this tantalizing but inconclusive mix of data and hypothesis, and prodded by an election-year Congress bent on burnishing its do-good image, the FCC has now picked up the ball and is preparing to run – er, more like inch ahead gingerly – with it.

The deliberate pace initially set by the FCC is understandable in view of the vast definitional problems inherent in the inquiry. What, after all, constitutes "violence"? The *National TV Violence Study* defines violence as "any overt depiction of a credible threat of physical force or the actual use of such force intended to physically harm an animate being or group of beings". Well, frankly, that would encompass most programming on television, including comedies, cartoons and many sporting events. But how to narrow the definition in a workable and effective fashion? Should Roadrunner cartoons (featuring the full Acme catalog of destructive devices) be viewed as ultra-violent, or are they just cartoons? How about Three Stooges shows?



One suggestion advanced by the Commission is that regulation be limited to "violence" which is "gratuitous or excessive". That may seem to provide the beginnings of a workable standard, but even that might sweep too broadly – how, for instance, would certain forms of comedy (such as "slapstick", which by definition involves one person hitting another with a stick) fare?

And even if a basic definition of "violence" can be agreed upon, other related issues must be addressed. Are detrimental effects of viewing violent programming more substantial when children see the consequences of violent behavior such as physical and emo-

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tional pain? And in the alternative, if programs don't show the carnage and the wreckage, does that diminish the negative effects? The NOI notes the findings of a 1997 report which concluded that, in some instances, some form of violence may be necessary in order accurately to portray historical events or artistic creativity. In other words, the unique context of each presentation may need to be considered in the assessment of each program which might be deemed too "violent". The FCC is seeking comment on this definitional aspect of the problem as well.

Additionally, the Commission is looking to tie down more tightly the nature of the harm which any content-based regulation would be designed to correct. While it is all well and good for social scientists to speak in terms of "deleterious effects" in the context of particular studies or situations, any rules adopted by the Commission will be applied to all broadcast stations. The Commission can and should properly be concerned that any such regulatory steps in fact be designed to solve (or at least ameliorate) a problem actually caused, or demonstrably exacerbated, by the folks who would be subject to the regulation. Hence, the NOI solicits information which might tie down more tightly the empirical nature and extent of any connection between "violence" and documentable detrimental effects.

The NOI may just be a face-saving device by which the FCC can claim that it is attacking the evil of "violence".

Another area of interest to the Commission is the effectiveness, or lack thereof, of the steps which have already been taken to stem "violence". In particular, the FCC questions whether the ratings system and the V-chip are doing their intended job. The answer may be a foregone conclusion in view of one study which indicates widespread inaccurate ratings, widespread lack of confidence in the ratings system, and widespread ignorance of the V-chip and how to use it. Still, anyone with any hard information on this topic is invited to let the FCC know.

Since the FCC elected to issue only an NOI, as opposed to a notice of proposed rulemaking (NPRM), it is premature to be worrying about precisely what rules the Commission might impose here. The Commission ***cannot*** adopt new rules without first issuing an NPRM. When the FCC opts for an NOI, it normally does so because it is uncertain of how it may wish to proceed, and it wishes first to gather more information about the subject matter before offering up any proposals for new regulations. Thus, the fact that we are dealing only with an NOI means that, even if the Commission were to decide to adopt new rules, such action would still be in the relatively distant future. Nevertheless, perhaps signaling how it may wish to proceed, the Commission does suggest in the NOI that a "safe harbor" approach might be useful. Under such an approach, "violence" (however that term might ultimately be defined) would be akin to "indecency", and would be prohibited between 6:00 a.m. and 10:00 p.m., or some other equivalent "safe harbor" period.

The FCC's decision to issue an NOI, rather than an NPRM, may also signal that this proceeding is really more for show than for substance. As indicated above, Congress has lately been making a lot of noise about televised violence, the suggestion being that the FCC should do something about it. The NOI might thus be just a political necessity, an action – any action – designed to give the FCC the ability to say that it is indeed looking into the issue and may ultimately impose some new regulations.

For the time being, it is impossible to tell whether the NOI is the first in a quick succession of steps that will lead to new rules within a relatively short time, or whether it is just a stop-gap action designed to create the impression of activity until Congressional interest in "violence" cools and Congress gets distracted by some other issue *du jour*.

If the current concern about "violence" sounds familiar, it may be because that concern parallels similar concern about "indecency". Both concepts involve generalized perceptions that certain programming is somehow bad and may have undesirable social or cultural effects. And both concepts afford elected officials a swell issue about which to rail before friendly audiences. But both concepts also suffer major definitional problems. Both also suffer from a lack of precision concerning the intended purpose of the regulation. And the idea that the FCC should regulate any kind of programming in order to "protect" children raises serious questions of whether it is appropriate, or smart, or constitutionally permitted, to allow federal bureaucrats to make decisions which many would view as being the primary responsibility of parents, not the government.

Significantly, the current regulation of indecency arose in response to Congressional calls for regulation of sex and violence on television in the early 1970s. In response, the FCC adopted its policy on indecency, which has nothing to do with violence, and very little to do with "sex", and has been enforced for the last quarter century or so primarily against radio, not television. Observers back then believed that the FCC was not inclined to take on "violence". The NOI may be an indication that the Commission is now willing to do so. But the NOI may also just be a face-saving device by which the FCC can claim that it is attacking the evil of "violence" so that Congress can in turn say that Congress has indeed gotten the FCC moving in that area. Time will tell which is the more accurate assessment.

Tick, tick, tick, tick, tick . . .

DTV Transition Timetable Comes Into Focus

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The Commission has taken two major steps in the long, long, long march towards an HDTV world. First, the Commission has imposed a freeze on almost all means of modifying the DTV Table of Allotments. Second, the Commission has released the Channel Election and Replication dates and procedures, although at publication time, the Commission had yet to release the new DTV rules which will govern the final conversion process.

The Freeze: As of August 3, 2004, the Commission will not permit any changes to stations assigned Channels 2-51 on the DTV Table of Allotments, either through a petition for rulemaking or through an application to change a station's service area beyond that which has previously been authorized in the DTV Table, prior construction permit authorizations, and/or applications which were on file as of August 3, 2004.

The end point of the DTV conversion process is coming increasingly into focus, and it's looking like that end point is now less than two years away.

Moreover, licensees assigned Channels 2-51 in the NTSC Table of Allotments are prohibited from filing (a) petitions to change NTSC channels or communities of license, or (b) minor modification applications that would increase the NTSC service area beyond that which has been previously approved or specified in a pending application on file as of August 3, 2004.

The freeze will likely be in place until the final DTV Table of Allotments is adopted by the FCC, which, as matters now stand, is likely to happen in late 2006.

DTV Transition Dates: The Commission also adopted its channel election and replication/maximization procedures, as well as new deadlines for the conversion to DTV facilities. Essentially, the Commission has established a three-round channel election process, preceded by a cleaning up of the Commission's records. The following are the relevant dates:

- ***Present - October 1, 2004*** – Licensees must review the technical database and confirm that the information contained therein is accurate. If there are any changes, the Commission should be informed.

- ***October 2004*** – The Commission will issue a Table of Station Information that will provide the DTV service populations that will guide the DTV election process;

- ***November 2004*** – Stations ***must*** file certification that the FCC database is correct, and they must ***also*** certify their intent to replicate or maximize on their post-transition channel;

- ***December 2004*** (Round One Elections) – In this first round of channel elections, licensees with two in-core (2-51) channels will elect which channel they will use for permanent DTV operation, and licensees with one in-core channel and one out-of-core channel will elect whether they will use their in-core channel.

- ***July 2005*** (Round Two Elections) – In this second round, licensees without a current in-core channel will elect an in-core channel from those remaining after Round 1.

- ***January 2006*** (Round Three Elections) – In this third round, licensees still without an in-core channel (*i.e*, due to conflicts between elections) will make their final election.

- ***August 2006*** – The Commission will release the final DTV Table of Allotments for comment.

To date the Commission has not released the full text of the new rules and policies which will govern the conversion process. Until that order is released, we cannot be sure how the Commission will resolve conflicts among channel elections during the various rounds, and after the final round. Also, the Order should explain the "maximization" certifications that are due to be filed in November 2004.

Replication and Maximization Deadlines: Generally, each DTV licensee will be permitted to replicate its current analog service area and to maximize that service area so long as the station's service area does not exceed that of the station in the market with the largest service area. The anticipated timetable:

- ***July 1, 2005*** – The top-four network affiliates in the top 100 markets that tentatively plan to remain on their current digital channel must construct their full authorized facilities. Licensees in this category that do not plan to stay on their current digital channel must still provide DTV service to at least 100% of the analog population coverage.

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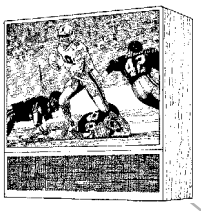

Send in the clones?

FCC Okays DVR Technology

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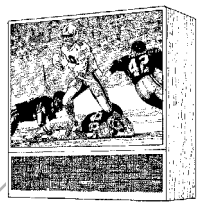
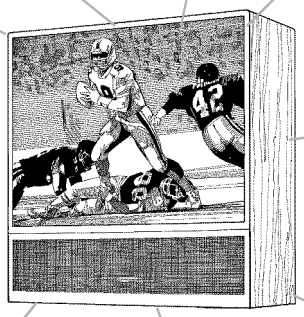


TiVo and its progeny are more than just digital VCRs, now that the FCC has approved broadcast flag-related digital copy protections. Digital recording can now become the centerpoint of a friends and family mini-retransmission network. And the FCC says that that's okay, even when the original broadcasts are also digital – and the reproduction is, therefore, next to perfect.

Cable and DBS providers are now incorporating TiVo or TiVo-like devices into their digital systems – so the market for digitally recording television content is taking off just like the VCR market two decades ago.



The FCC is allowing subscribers to TiVo now, possibly similar services later, to establish a pre-defined group of other such devices that may share digital recordings. TiVo's broadcast copy protection system is one of several technologies approved by the FCC this month for use at the heart of a friends and family sharing network. TiVo typically limits such a network to ten playback devices, but will allow subscribers with a bona fide need to have more access. In its Order, the FCC approved other Broadcast Flag compliant technologies that could be incorporated into digital devices that similarly share digitally recorded television content.

FCC approval this month came despite protests from the Motion Picture Association of America and the National Football League. But the FCC said that the limited nature of TiVo's proposal will effectively prevent the indiscriminate redistribution which the objectors fear.

The problems perceived by MPAA and NFL are not minor issues. MPAA is particularly concerned that digital technology permits quick and easy reproduction of content with virtually no degradation. MPAA fears increased content piracy, the bane of MPAA's existence. And the NFL is troubled by the fact that digital recordings of sports events (like, say, NFL games) can be transmitted nearly simultaneously to pretty much anywhere – even to locations which are subject to league-imposed blackouts. So viewers who might not otherwise be able to receive telecasts of an event might get around that restriction by obtaining a (very) slightly time-delayed digital recording.

The FCC acknowledges these potential dangers, but believes that the limitations it is imposing on digital networking will keep wrong-doers in check. And should TiVo devices – or any other digital broadcast content sharing technology gaining FCC approval – fail to protect programmers from indiscriminate redistribution of digital broadcast content, then the Commission says the remedy will be to file a complaint with the Commission or bring a copyright infringement action. Any broadcaster producing its own local programming will have these remedies available.

The bottom line: as the nation moves into digital broadcasting, local broadcasters must also become content police, acting to prevent others from illegitimately stripping value from their local programming investments.

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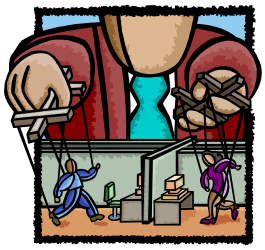
- ***July 1, 2006*** – All other commercial and noncommercial licensees that tentatively plan to remain on their current digital channel must construct their full authorized facilities. Licensees in this category that do not plan to stay on their current digital channel must serve at least 80% of the analog population coverage.

Those licensees that intend to move to a new digital channel, ***and*** meet the deadlines, will be able to carry-over their maximized service areas to their new digital channels.

Other Matters:

The Commission will also require broadcasters to include the PSIP information in their digital broadcast signals, which will permit closed captioning, V-chip and channel numbering information to be provided. The Commission has also committed to open a new proceeding to consider the adoption of rules to permit distributed transmission technology, and, in the meantime, will review proposals on a case-by-case basis.

While the information released thus far provides a fairly clear path for the DTV Transition, the devil will be in the details. Until the FCC releases its full decision and accompanying rules, it is impossible to determine what, if any, serious problems lie ahead for the television industry as a whole, or for any particular licensees. The most that can be said at this point is that the end point of the DTV conversion process is coming increasingly into focus, and it's looking like that end point is now less than two years away.



Next step in FCC review of broadcast ownership rules

Commission Turns Critical Eye to TV Joint Sales Agreements

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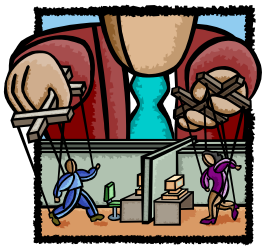


The FCC has opened a proceeding to examine whether television joint sales agreements (JSA's) should be treated as attributable interests within a local market. If JSA's are treated in this manner, an entity that is a party to a JSA will be treated as owning all of the stations which are encompassed within the JSA, and the multiple ownership rules will be applied accordingly. The Commission decided last year that radio JSA's *do* confer sufficient influence over stations to be treated as attributable interests, although the modified ownership rules adopted at the time of that decision remain on hold after a court appeal. Nonetheless, the Commission has stated that it sees no reason to distinguish between radio and television JSA's.

The Commission had initially re-examined the issue of attribution of joint sales agreements in connection with its general attribution rule making proceeding in 1999. At that time, the Commission distinguished between JSA's and local marketing agreements or time brokerage agreements (LMA's) and concluded that JSA's should not be considered to be attributable interests. The Commission at that time reasoned that, while LMA's are contracts that affect programming and may affect personnel, advertising, physical facilities, and other core operations of stations, JSA's affect primarily the sale of advertising time. Consequently, the Commission concluded that JSA's did not confer sufficient influence over station operations to be considered as attributable interests.

Last year, however, in connection with the local ownership rule making proceeding, the Commission re-examined its conclusions with regard to radio JSA's. At that time it noted that its recent determinations with regard to attribution had focused on relationships that not only could lead to control of the licensee but also could lead to influence over a licensee's actions. Such interests would include those through which the holder is likely to be able to induce a licensee to take actions to protect the interests of the holder. Using this rationale, the Commission found JSA's to have the potential to convey sufficient influence over station operations to raise competitive concerns. Accordingly, the Commission determined that, where a party owns or has an attributable interest in one or more stations in a market, joint advertising sales of another station in that market for more than 15 percent of the brokered station's advertising time per week will result in counting the brokered station toward the brokering licensee's local ownership limits. This decision was upheld by the U.S. Court of Appeals for the Third Circuit in its June decision with regard to the FCC's modified ownership rules, although all of those rules remain subject to a stay issued by the Court last September. Under the June decision the stay remains in effect.

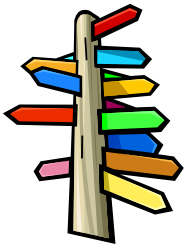
> *The Commission is interested in determining . . . whether the broker typically gets involved in station operations, including programming and finances. For example, does a JSA often involve shared services agreements?*

The Commission did not specifically address television JSA's in its 2003 multiple ownership decision, however, but stated that it would leave that decision for another day. That other day has now arrived, and the FCC is examining whether it should apply the same reasoning and reach the same conclusion with regard to television JSA's as it did with radio JSA's. It has tentatively concluded that it ***should*** do so.

In so deciding, the Commission noted that it is the active party in the JSA that bears the primary market risk with regard to the success of the programming aired on the station. The FCC concluded that when a licensee receives a fixed sum regardless of the success of a program, it has less incentive actively to participate in programming matters and core station operations.

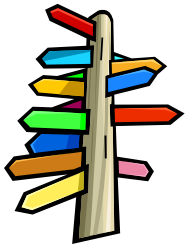
The Commission is seeking comments on its tentative conclusions. In particular, it wishes to know precisely how television JSA arrangements typically are structured and operate. It has asked whether there is a difference in radio and television markets that would justify treating radio and television JSA's differently. The Commission also is interested in determining the nature of the terms and conditions other than advertising terms typically associated with JSA's and whether the broker typically gets involved in station operations, including programming and finances. For example, does a JSA often involve shared services agreements? The Commission further has asked for an explanation of the benefits and

(Continued on page 14)



Find yourself lost in translation? Check out these

Recent Developments on the FM Translator Front



By: Stephen T. Lovelady
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Informal conversations with insiders at the Commission indicate a trend toward liberalizing the grant of translator/booster station applications, at least when the issue is interference (both actual and theoretical). Those informal contacts are consistent with two recent unrelated decisions in which the FCC granted construction permits/licenses for new translator stations.

What is It—a Booster or a Translator? In the first decision, distinctions between FM booster and translator stations were resolved in favor of the applicant. The applicant, San Mateo County Community College District (San Mateo), wanted to construct a new FM translator station in Concord, California. Its application was initially dismissed by the FCC's staff, because San Mateo proposed broadcasting on the same frequency as San Mateo's primary FM station. The staff classified the application as one for a booster station. Under FCC rules, booster stations are allowed to serve ***only*** areas within the primary station's protected contour. Since San Mateo's proposed translator/booster's 60 dBu (*i.e.*, 1 mV/m) service contour extended beyond the primary station's protected contour, the application was dismissed.

On reconsideration, the Chief of the FCC's Audio Division reversed his staff's position—reinstating San Mateo's application and granting it a construction permit. According to the latter ruling, nothing in the FCC's rules prohibits a translator from operating on the same frequency (or amplitude) as the incoming signal from the primary radio station. The result of this ruling is to allow a translator station to be licensed to operate on the same frequency (or amplitude) as the primary stations that it is rebroadcasting. Operators who may have hesitated in the past to apply for a translator to operate on the same channel as the primary station whose signal they wish to rebroadcast, should re-evaluate their options as a result of this opinion.

Translator Interference—You're Not Qualified to Complain! So you think a newly constructed translator is interfering with your station's signal—what should you do? It may seem logical to send your engineer out for a drive around town and then submit a detailed report to the FCC showing where he or she discovers interference occurring. That's what the Santa Monica Community College District ("Santa Monica") did when a new translator station started broadcasting another station's programming on a channel first adjacent to Santa Monica's full-service station. The FCC's rules clearly state that a translator station "will not be permitted to continue to operate if it causes actual interference to . . . the direct reception by the public of off-the-air signals of any broadcast station." But the full Commission recently held that Santa Monica's evidence did not meet the requirement that a bona fide listener to the station must complain about interference.

A complainant is "disinterested" when he or she is a person without a legal stake in the outcome of the proceeding in which interference is alleged.

While the information gathered by Santa Monica's engineer may indeed have provided slam-dunk evidence of interference, that interference was pretty much the equivalent of a noise made by a tree falling in an unpopulated forest. Sure, we may all agree that, theoretically, some noise, or interference, occurs. But as far as the FCC is concerned, it isn't really "interference" unless some listeners complain. And unfortunately for Santa Monica, over and above the observations of Santa Monica's engineer, the Commission did not receive any actual listener complaints. In a footnote, the Commissioners expressly approved the staff's practice of requiring any complainant to be "disinterested". According to the Commission a complainant is "disinterested" when he or she is a person without a legal stake in the outcome of the proceeding in which interference is alleged. In other words, the testimony of principals or employees of stations doesn't count when interference is at issue.

Even before the offending translator station was ever constructed, Santa Monica tried to show that Santa Monica has historically received money from "subscribers" with addresses located within the proposed theoretical service contours of the translator. The idea was to establish that Santa Monica has listeners in that interference area, whether or not they might choose to complain. The Commission rejected this approach, too, noting that such evidence was not proof that the "subscribers" were in fact

(Continued on page 10)

Casino City rolls the dice in court

On-line Gambling Portal Sues DOJ for Trying to Quash Ads

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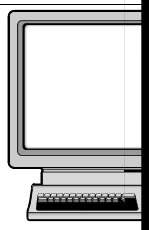


An issue that has been simmering along for some time may come to a full boil with the filing of a lawsuit by Casino City, a portal for on-line gambling, against the Department of Justice claiming First Amendment violations. Arguing that its sites do not themselves offer gambling, the company contends that the DOJ has violated Casino City's First Amendment rights by discouraging advertising through the somewhat heavy-handed tactic of threatening to prosecute anyone who would air such ads. And, in fact, the DOJ did write to the NAB and other industry groups over a year ago threatening to take action against entities that were providing ads which, in the DOJ's view, were facilitating illegal conduct, *i.e.*, on-line gambling. The Commission itself has taken the position that if it receives complaints it will treat such advertisements as violations, notwithstanding the Supreme Court ruling several years ago which afforded First Amendment protection to advertisements for casino gambling.

A number of critics have questioned whether or not D really has the law on their side. Their position is that t Wire Act does not apply to internet gambling. They point to the fact that that was one of the reasons there have been attempts on the Hill to have legislation directly responding to internet gambling.

To date the NAB has made no comment. Needless to say, licensees are very concerned that if they would ta such advertisements, it could result in at least a fine, i not a threat to their licenses. The law suit filed by Casino City points to a number of situations where partie have backed out of running ads because of the DOJ po tion.

We will keep you advised as this action proceeds before the courts.

(Continued from page 9)

listening to Santa Monica's broadcasts from those addresses, or even listening to the station at all. For everyone's future benefit, the Commissioners clarified what qualifies as convincing evidence of interference: (1) name and specific address of actual listeners; (2) demonstration that the address falls within the 60 dBu contour of the proposed translator (for FM stations), such as plotting the address on a contour map of the translator; (3) evidence that a real live person in fact listens to the station from the address given; and (4) evidence that the grant of authorization to a new translator will result in interference with the "desired" station at that address. All of the above four items must be submitted in an objection to a proposed translator construction permit in order to avoid rejection out of hand.

We Heard it Through the Grapevine. Sources at the FCC lead us to believe that the staff leans toward granting most FM Translator applications over claims of second- or third-adjacent channel interference. Co-channel and first-adjacent channel interference claims are taken more seriously, within the guidelines established above, but the tendency is to rule in favor of the applicant and at least let the station get on the air to see if real interference occurs. The rub for translator applicants is that they can always be bumped off the air if someone can back up actual interference complaints by disinterested listeners. The staff is still working through the mounds of FM translator applications received in the last open-window application period, so expect this topic to continue to be the subject of disputes for the foreseeable future.

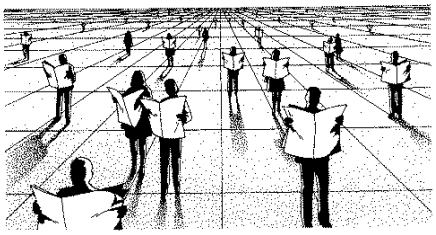
All is Not Lost, Full-Service Broadcasters. In case we have given the impression that translator station operators get their way at the FCC all of the time, consider, if you will, the case of a hapless translator station licensee in rural Utah. In response to a complaint to the Enforcement Bureau's Denver Office, agents determined that the translator operator was rebroadcasting the programming of the wrong station, and thereby illegally extending that primary station's signal way beyond the reach of that station's authorized contour. The same company was the licensee of the translator, the primary station for which the translator was licensed to provide "fill-in" coverage, and the primary station on the other side of town that was actually being rebroadcast on the translator. The offending company's engineer admitted that translator was rebroadcasting the signal of the wrong station. A $4,000 fine was proposed, but that was ultimately reduced to $3,200, since the licensee had a record of good behavior in the past. So even translator operators must comply with the terms of their FCC authorizations, or pay the penalty.

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

Updates on the News

In memoriam We note with sadness the death of Wally Johnson, who served 37 years at the FCC, the last seven as the Chief of the (then) Broadcast Bureau. Wally was a highly respected engineer as well as a capable administrator who oversaw the Bureau in the 1970s. After leaving the Commission, he served as Executive Director of the Association for Broadcast Engineering Standards and was a partner in the consulting firm of Moffett, Larson and Johnson.

AM singleton list, hot off the presses On August 26 the Commission released the first of several long-awaited AM singleton lists, identifying AM new and major change applications filed last January which are not mutually exclusive with other such applications. The applications on the list are now clear for the next step in the process, *i.e.,* preparation and filing of long-form Form 301 applications. Those will be due on or before October 29. After that, the Commission will review each application to determine whether it is acceptable, and at some point down the line the Commission will a public notice listing applications found to be acceptable for filing. That notice will start a 10-day period during which petitions to deny may be filed, after which the applications will theoretically be ready for grant, once any snags are cleared up. We expect the process to take at least several more months, and possibly considerably longer, as AM applications can be complicated to process. Still, the issuance of the singleton list is an important milestone in the process.



Third Circuit recon In the long-running broadcast ownership proceeding, the FCC has trotted back into the U.S. Court of Appeals for the Third Circuit and asked the court to reconsider limited portions of its June ruling which affirmed many aspects of the Commission's June, 2003 ownership decision but reversed and remanded other aspects. Ordinarily, the chances for success on a petition for rehearing are slim and none, but given the broad and divergent nature of the court's opinion, the FCC may feel there is more hope here. In any event, the filing of the rehearing petition puts off for several months (well beyond Election Day) the time by which the FCC (and the White House) have to decide whether to seek Supreme Court review of the whole Third Circuit decision. Presumably that will prevent this particular issue from becoming a center of attention during the upcoming presidential campaign.

Buffy, Will/Grace complaints re-buffed – actors not in buff In the continuing battle of good and evil, the FCC has come down on the side of "Buffy the Vampire Slayer" and "Will and Grace" in denying complaints filed by the Parents Television Council (PTC) and Americans for Decency (AFD). The PTC complained about a Buffy episode in which Buffy and Spike (if you're familiar with the show, presumably you know who Spike is; if you don't, it's too complicated to explain here) fought each other and then engaged in what appeared to sexual intercourse. According to the FCC, the scene merely depicted "Buffy kissing and straddling Spike" and was "non-explicit". As a result, the FCC could "not conclude that it was calculated to pander to, titillate or shock the audience." While the FCC's full decision did not mention anything about Buffy's costume in the scene, the FCC's news release describing the decision noted that "there was no nudity".

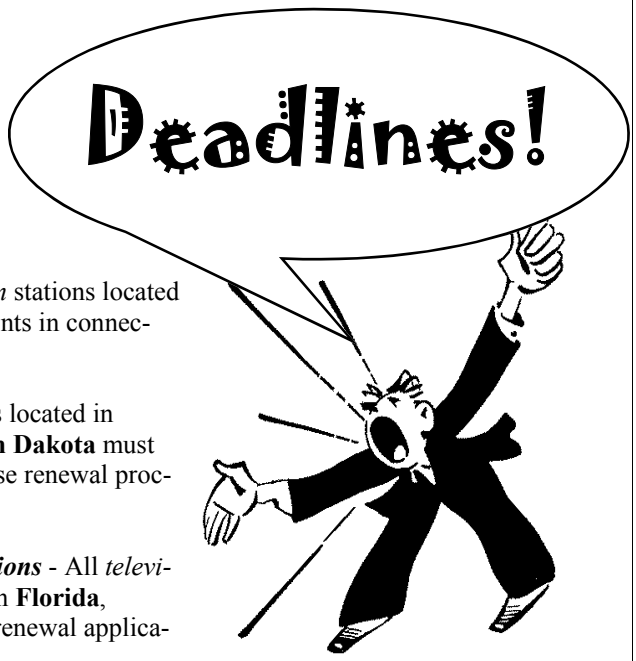
For its part, the AFD complained about a "Will and Grace" episode in which (to quote the complaint), a "woman photographer passionately kissed [a] woman author and then humped her (what she called a 'dry hump.')." (The FCC helpfully advised, in a footnote, that " 'dry humping' is commonly understood to consist of two people rubbing their clothed bodies together for sexual stimulation.") The Commission took a look at the show and held that "there is no evidence that the activity depicted was dwelled upon, or was used to pander, titillate or shock the audience." Also, the Commission made a point of observing that the characters were fully clothed. Score one for "Will and Grace".

Since we didn't see either show, we really shouldn't comment on whether or not the FCC's decisions make sense. But we are constrained to observe that it does appear to be of some importance to the FCC that the characters kept their clothes on.

FHH - On the Job, On the Go

So long to our summer clerk, **Gina Beck**, who has returned to the relative calm of academia for her third year of law school.

And welcome to **Alicia Staples**, a paralegal who joined us a couple of months ago. This month marks her first contribution to the *Memo to Clients*.



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.

October 1, 2004

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

Radio Renewal Pre-Filing Announcements - *Radio* stations located in **Colorado**, **Minnesota**, **Montana**, **North Dakota**, and **South Dakota** 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 **Florida**, **Puerto Rico**, and the **Virgin Islands** must file their license renewal applications.

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

Radio and Television Renewal Post-Filing Announcements - All *radio* stations located in **Iowa** and **Missouri** and all *television* stations located in **Florida**, **Puerto Rico**, and the **Virgin Islands** must begin their post-filing announcements in connection with the license renewal process, and continue such announcements on October 1 and 16, November 1 and 16, and December 1 and 16.

EEO Public File Reports - All *radio* ***and*** *television* stations with more than five (5) full-time employees located in **Alaska**, **American Samoa**, **Florida**, **Guam**, **Hawaii**, **Iowa**, **Mariana Islands**, **Missouri**, **Oregon**, **Puerto Rico**, **Virgin Islands**, and **Washington** 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 *radio* stations in **Iowa** and **Missouri**, and all *television* stations located in **Florida**, **Puerto Rico**, and the **Virgin Islands** must file a biennial Ownership Report (FCC Form 323 for commercial stations or Form 323-E for noncommercial stations). All reports filed on FCC Form 323 or 323-E must be filed electronically.

October 10, 2004

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

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

EAS *(Continued from page 1)*

The FCC is seeking comments on whether the current EAS is the most effective and efficient public warning system that best takes advantage of technological advances. The FCC notes that two recent studies by private committees have advocated upgrading, not replacing, EAS. Recommendations include placing a single federal agency, possibly the Department of Homeland Security (DHS), in charge of creating and overseeing an effective national warning system. It has also been suggested that emergency information should be delivered through a public/private partnership making coordinated use of mass media and other dissemination systems. The FCC seeks comments on these recommendations.

The FCC also seeks comments regarding the respective roles of the federal agencies involved with EAS and whether a new public/private partnership should be created to ensure the effective delivery of emergency information to the public.

With respect to state and local EAS, the Commission notes that EAS has never issued a national alert, even though it was originally designed for that purpose. Instead, it has been invoked for local, state and regional emergencies. Because of that, the FCC asks whether broadcasters should be required to participate in state and local alerts by "mak[ing] their facilities available to local emergency managers".

The FCC asks whether the EAS should be combined with alternative public alert and warning systems (APAWS) to form a comprehensive nation system capable of reaching everyone all the time.

The FCC also expresses possible interest in national standardization of the EAS system by, for example, establishing national guidelines for state/local EAS plans and insisting that adjacent state and local jurisdictions utilize standardized approaches. The Commission is also contemplating national guidelines for the implementation of EAS at any level. Noting the large number of persons – *e.g.*, FEMA managers, state and local emergency personnel, public safety officials, individual station or cable system management at the state/local level – who may request EAS alerts, the FCC suggests that it may be appropriate to require both that all EAS participants monitor NWS transmissions and that local or state emergency managers concur with the initiation of any alert.

On the technical side, in view of questions which have been raised about the reliability of the "down the chain" approach which requires that all participants be able to monitor "upstream" signals at all times, the Commission has requested suggestions for how the distribution technology might be improved.

The NPRM also suggests a number of technical updates to the system, such as requiring that all participants modify their EAS equipment to include various emergency event codes (covering such events as Amber Alerts) which are of relatively recent origin. Similarly, the NPRM seeks comments on how digital technology might be used to enhance warnings and to what extent stations currently make use of the technology. The FCC also questions whether it should extend EAS obligations to digital broadcast media such as DBS, DTV, satellite DARS, and digital cable. The FCC also asks whether multi-channel broadcasters (*e.g.*, DTV stations and IBOC radio stations) should be required to transmit EAS messages on all program streams or on only one stream (with receivers forced to switch to that stream during alerts). Since IBOC signals can carry text displayed by the receiver, the FCC asks whether text should be part of IBOC EAS messages.

But over and above the mere tweaking of the existing system, the NPRM also seeks comment on far more radical approaches to EAS. The current system, after all, is only effective if there are people in the broadcast audience who are able to hear the alerts once they are broadcast. But at any given time, most people are not listening to the radio or watching TV, and thus would not benefit from even the most technically sound EAS system. So the FCC asks whether the EAS should be combined with alternative public alert and warning systems (APAWS) to form a comprehensive nation system capable of reaching everyone all the time. Such a system could utilize notification through the public telephone network, the internet, and/or cellular capabilities, and could deliver alerts to cellphones, PDA's, computers, cable boxes, radios, TV's and a variety of other receivers. A number of established APAWS are privately operated, and some are used in state systems. The FCC suggests that APAWS might participate in the existing EAS structure or, even more radically, that EAS might be integrated into APAWS to provide a single, integrated interface that would link the emergency manager and all emergency delivery systems.

Contemplating such a pan-media approach, the Commission notes the development of the Common Alerting Protocol (CAP), which is a non-proprietary data interchange format that simultaneously disseminates all-hazard emergency alerts over different kinds of communications networks and systems, including those for multilingual and special needs populations. The CAP format is compatible with web service applications, the NWS's technology, and the EAS protocol, and eliminates the need for multiple custom software interfaces to the many APAWS involved in hazard alerts. Several government agencies and private companies use CAP, including DHS and the NWS. The FCC seeks comments on using CAP.

(Continued on page 14)

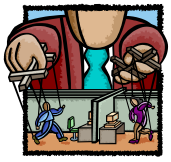
EAS *(Continued from page 13)*

Myriad other questions are presented in the NPRM. For example:

- Should consumer devices be required to incorporate the ability to automatically turn on and tune in to the channel carrying the alert and the ability to receive geographically addressed messages (through, *e.g.*, GPS)?
- Are the existing rules for public alerts directed to persons with hearing and vision disabilities, or non-English speaking persons, adequate?
- Should the rules provide for greater protection against unauthorized use (for example, by requiring password protection on all EAS decoders)?
- How can broadcasters be protected from liability if they inadvertently broadcast a false or inaccurate EAS message?
- Should the base forfeiture amount for an EAS violation (which currently stands at $8,000) be increased?

The unmistakable take-home message of the NPRM is that the FCC is looking to overhaul and update the EAS to insure its maximum effectiveness. That process may ultimately lead to a system which resembles the current system only marginally, if at all. But with 50 years of experience with EAS and its predecessors under its belt, and with a range of technological options not even dreamed of in the days of CONELRAD, the Commission should be well-positioned to craft an effective alert system far beyond the capabilities of EAS.

If you have any suggestions about how such a system might operate, we encourage you to submit comments in response to the NPRM. The date on which comments are due has not yet been established as or this writing. They will be due 60 days after the NPRM is published in the Federal Register. Reply comments will be due 30 days thereafter. Please contact the FHH attorney with whom you work if you would like to submit comments to the FCC or join with others in submitting such comments.

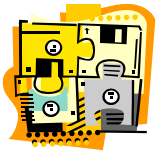


Joint Sales Agreements *(Continued from page 8)*

harms which have resulted from the use of JSA's, and specifically has inquired about whether the use of JSA's has permitted some stations to carry local news programming.

The Commission also raised the issue of grandfathering. It noted that it did not grandfather existing radio JSA's, but rather allowed parties two years to come into compliance with the new rules. For LMA's, however, the Commission did grandfather agreements pending the 2004 biennial review. But then this past year's Appropriations Act changed the biennial review in 2004 to a *quadrennial* review in 2006. The Commission has asked for comment on whether it should nonetheless proceed with its review of grandfathered agreements in 2004.

Comments in this proceeding are due on September 27, and reply comments are due on October 12. This is obviously a somewhat expedited schedule, which may reflect that the Commission's decision is already largely made. Nonetheless, it is going through the motions of seeking the appropriate information from interested parties. If you would like our assistance in preparing comments to be filed with the Commission in this proceeding, please let us know.



Auxiliary Eviction *(Continued from page 2)*

must agree to it. Currently, due to bureaucratic procedures, it is estimated that Nextel will have until Halloween to decide whether it will accept the FCC's plan. FCC staff is also reminding Nextel and others that this is now a proceeding subject to disclosure rules; any negotiations or offers suggested by Nextel to the FCC may not be conducted behind closed doors and are subject to public inspection. At this point no one can be sure whether Nextel will accept the FCC's plan. Still, readers with auxiliary operations in the 2 GHz band should be sure to monitor developments in this matter and expect to be contacted by Nextel if the deal is accepted.

Focus on FCC Fines *(Continued from page 3)*

Pirates - The FCC continues to fine radio pirates $10,000 a piece for their broadcasts. Of note this month, a New Jersey man was fined $10,000 for broadcasting at 91.9. A St. Petersburg, Florida , man was fined $3,000 for broadcasting at 102.1; although his fine was originally $20,000 he proved to the FCC that he could not pay the fine and they reduced it to $3,000. A Florida man was fined $ 10,000 for broadcasting at 107.5; the FCC issued the fine to the Port Charlotte pirate on August 11, two days before the eye of Hurricane Charley hit that city.

FM ALLOTMENTS ADOPTED –7/20/04-8/24/04

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
MD	Crisfield	81 miles N of Norfolk, VA	250A	02-76	None
IN	Sellersburg	10.9 miles N of Louisville, KY	230A	03-98	None
NC	Smithfield	29.6 miles S of Raleigh	272A	02-40	None

FM ALLOTMENTS PROPOSED –7/20/04-8/24/04

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
LA	Harrisonburg	102.4 miles N of Baton Rouge	232A	04-266	Cmts - 09/16/04 Reply-10/01/04	Drop-in
CA	Mecca	91.9 miles NE of San Diego	274A	04-267	Cmts - 09/16/04 Reply-10/01/04	Drop-in
NM	Taos	113 miles N of Albuquerque	288A	04-268	Cmts - 09/16/04 Reply-10/01/04	Drop-in
LA	Rosepine	112.2 miles S of Shreveport	281A	04-270	Cmts - 09/16/04 Reply-10/01/04	Drop-in
OK	Waynoka	116.4 miles NW of Edmond	231C2	04-271	Cmts - 09/16/04 Reply-10/01/04	Drop-in
CA	Wasco	27 miles NW of Bakersfield	224A	04-272	Cmts - 09/16/04 Reply-10/01/04	Drop-in
TX	Richland	65.3 miles S of Dallas	299A	04-273	Cmts - 09/16/04 Reply-10/01/04	Drop-in
TX	Port Isabel	116.2 miles S of Corpus Christi	288A	04-274	Cmts - 09/16/04 Reply-10/01/04	Drop-in
CA	Coalinga	59 miles SW of Fresno	265A	04-275	Cmts - 09/16/04 Reply-10/01/04	Drop-in
CA	Randsburg	96.7 miles E of Bakersfield	271A	04-276	Cmts - 09/16/04 Reply-10/01/04	Drop-in
OK	Ringwood	73.2 of Edmond	285A	04-277	Cmts - 09/16/04 Reply-10/01/04	Drop-in
NM	Taos Pueblo	117.7 miles NE of Albuquerque	292C3	04-278	Cmts - 09/16/04 Reply-10/01/04	Drop-in
OK	Mooreland	132.4 miles NW of Oklahoma City	254A	04-279	Cmts - 09/16/04 Reply-10/01/04	Drop-in
WA	Coupeville	47.5 miles S of Seattle	266A	04-280	Cmts - 09/16/04 Reply-10/01/04	Drop-in
KY	Booneville	81.86 miles SE of Lexington	227A	04-287	Cmts - 09/20/04 Reply-10/05/04	Drop-in
WI	Rhinelander	117 miles NW of Appleton	243C3	04-288	Cmts - 09/20/04 Reply-10/05/04	Drop-in
TN	Morrison	69.5 miles S of Nashville	287A	04-316	Cmts - 10/04/04 Reply-10/19//04	Drop-in
TX	Center	54 miles S of Shreveport, LA	248A	04-317	Cmts - 10/04/04 Reply-10/19//04	Drop-in

FM ALLOTMENTS PROPOSED –7/20/04-8/24/04 *(continued)*

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
TX	Refugio	39.9 miles N of Corpus Christi	279C1	04-299	Cmts - 10/04/04 Reply-10/19//04	1.420(i)
KY	Coal Run	136 miles SE of Lexington	221C3	04-319	Cmts - 10/04/04 Reply-10/19//04	1.420(i)
VA	Clinchco	57.2 miles N of Johnson City, TN	276A	04-319	Cmts - 10/04/04 Reply-10/19//04	Show Cause
CO	Fruita	261 miles SW of Denver	255C3	04-300	Cmts - 09/30/04 Reply-10/15//04	Drop-in
CA	Kerman	18.8 miles SW of Fresno	224A	04-301	Cmts - 09/30/04 Reply-10/15//04	Drop-in
TX	Lockney	48.8 miles N of Lubbock	271C3	04-302	Cmts - 09/30/04 Reply-10/15//04	Drop-in
OK	Lone Wolf	122 miles S of Oklahoma City	224A	04-303	Cmts - 09/30/04 Reply-10/15//04	Drop-in
TX	Quanah	88.7 miles NW of Wichita Falls	255C3	04-304	Cmts - 09/30/04 Reply-10/15//04	Drop-in
WA	Oak Harbor	33.9 miles S of Bellingham	289A	04-305	Cmts - 09/30/04 Reply-10/15//04	Drop-in
CO	Orchard Mesa	131 miles W of Aspen	249C3	04-306	Cmts - 09/30/04 Reply-10/15//04	Drop-in
TX	Rising Star	157.4 miles SW of Dallas	290C3	04-307	Cmts - 09/30/04 Reply-10/15//04	Drop-in
CA	Twentynine Palms	142 miles E of Los Angeles	270A	04-308	Cmts - 09/30/04 Reply-10/15//04	Drop-in
CA	Waterford	100.6 miles NE of San Jose	294A	04-309	Cmts - 09/30/04 Reply-10/15//04	Drop-in

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.

MEMO TO CLIENTS AVAILABLE BY EMAIL!

For those of you interested in reducing the amount of paper on your desk, the FHH Memo to Clients is available via email. If you are interested in receiving the Memo to Clients by email, please let us know by email addressed to office@fhhlaw.com. Same great content, much less paper. Interested in looking at back issues of the Memo to Clients? Visit our website at *www.fhhlaw.com*.

FORMERLY COMMERCIAL FM ALLOTMENTS NOW RESERVED FOR NCE USE –7/21/04-8/24/04					
State	**Community**	**Approximate Location**	**Channel**	**Docket or Ref. No.**	**Availability for Filing**
MA	West Tisbury	6.69 miles S of Martha's Vineyard	282A	04-113	NCE /TBA
MO	Laurie	133 miles S of Kansas City	265C3	04-116	NCE /TBA
NC	Dillsboro	49.9 miles SW of Asheville	237A	04-118	NCE /TBA
ND	Berthold	123 miles N of Bismarck	264C	04-119	NCE /TBA
NY	Amherst	15.7 miles N of Buffalo	221A	04-120	NCE /TBA
OK	Cordell	83.6 miles NW of Lawton	229A	04-121	NCE /TBA
OK	Weatherford	80.2 miles W of Oklahoma City	286A	04-122	NCE /TBA
OK	Wynnewood	63 miles S of Oklahoma City	283A	04-123	NCE /TBA
OR	Madras	120.8 miles SE of Portland	251C1	04-125	NCE /TBA
IL	Canton	31.3 miles SW of Peoria	277A	04-97	NCE /TBA
IL	Cedarville	51 miles S of Madison, WI	258A	04-98	NCE /TBA
IL	Clifton	65 miles S of Chicago	297A	04-99	NCE /TBA
IL	Freeport	137.6 miles W of Chicago	295A	04-100	NCE /TBA
IL	Pinckneyville	70.4 miles S of St. Louis	282A	04-101	NCE /TBA
IN	Farmersburg	92.6 miles W of Indianapolis	242A	04-102	NCE /TBA
IN	Fowler	33.7 miles NW of Lafayette	291A	04-103	NCE /TBA
IN	Madison	43.5 miles N of Louisville, KY	266A	04-104	NCE /TBA
KS	Council Grove	60.9 miles SW of Topeka	281C3	04-106	NCE /TBA
KY	Smith Mills	112 miles NW of Bowling Green	233A	04-107	NCE /TBA
LA	Golden Meadow	42.9 miles S of New Orleans	289C2	04-108	NCE /TBA
LA	Homer	53.8 miles N of Shreveport	272A	04-109	NCE /TBA
LA	Ringgold	34.9 miles S of Shreveport	253C3	04-110	NCE /TBA
PA	Liberty	11.5 miles S of Pittsburgh	298A	04-127	NCE /TBA