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Memorandum to Clients

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Down the home stretch in the DTV transition sweepstakes

FCC Releases Details of Final Steps In DTV Transition

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In last month's *Memorandum to Clients*, we provided an overview of the DTV transition based on the Commission recently adopted, but not then-released, transition plan.

The Commission has since released the Report and Order, an 80-page (160, if you count the attachments) extravaganza. As we have reported previously, there will be three rounds of channel elections by full service television licensees and permittees, as well as the "use-it-or-lose-it" maximization/replication deadlines of July 1, 2005 (for the top-four network affiliates in the top 100 markets), and July 1, 2006 (for everyone else, including noncommercial licensees). Since the maximization/replication deadlines will not be directly affecting your decision making in the next few months, we will address that subject in next month's *Memo*. This article focuses on the processes for the DTV transition.

In August 2006, the FCC expects to release a proposed DTV Table of Allotments that will reflect all of the elections made during the three rounds.

The DTV transition choices available to each individual licensee or permittee are initially limited by the DTV channel reservations made by the Commission in the initial DTV Table of Allotments. Each licensee fits into one of four situations: (1) both of the licensee's channels, *i.e.*, analog and DTV, are located within the "core" DTV spectrum (channels 2-51); (2) the licensee's analog channel is located *within* the core, but its DTV channel is located *outside* the core; (3) the licensee's analog channel is located *outside* the core spectrum, but the DTV channel is located *within* the core spectrum; or (4) the licensee does not have either channel within the core. This last category also includes those "singleton" licensees and permittees that do not have a paired channel, but whose only channel is located outside the core.

Follow along, and see if you can keep from getting dizzy.

Step 1. Pre-Election Certification – ***All*** licensees and permittees, including noncommercial stations, will be required to file a Pre-Election Certification Form (FCC Form 381) sometime in November. (The due date has not been set yet – it will be established once the new rules are published in the Federal Register.) This Pre-Election Certification is designed to establish the baseline allotment scheme from which the final channel arrangement will be developed. Each licensee will have to make two certifications at this stage.

First, the Commission will require that each licensee/permittee specify the license or granted construction permit authorization that it intends to build-out and operate as its permanent DTV facilities. The licensee/permittee could specify either the facilities listed in the initial DTV Table of Allotments ("replication facilities"), or the facilities listed in a subsequent authorization to increase the service area of the DTV facility beyond what was specified in the initial DTV Table of Allotments ("maximized facilities"). But the licensee/permittee can***not*** specify facilities which are the subject of a modification application that is currently pending before

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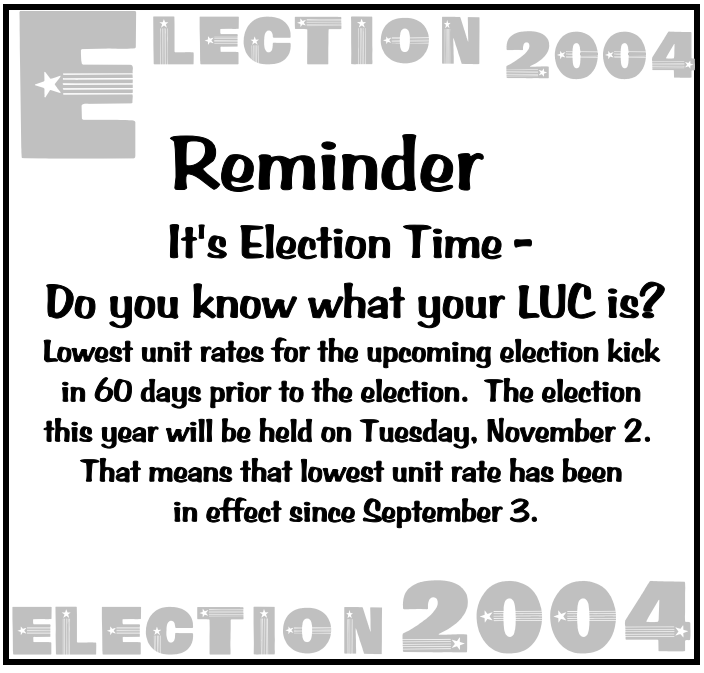

FCC opens red light district

FCC to Implement New Debt Collection Procedures

Applications to be dismissed if the bills aren't paid

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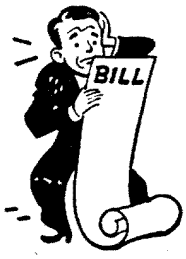

As we have reported previously in these pages, the FCC has adopted new rules in an effort to crack down on deadbeat licensees and applicants. The new rules go into effect on October 1 (but we hear from some sources that that may be postponed a month or so due to problems with the FCC's records - *see* related article on Page 11). At that point the FCC will check its database to see if anyone seeking a benefit from the FCC is delinquent on any debt to the agency. By comparing the FRN (FCC Registration Number) of the entity seeking the benefit with its roster of reprobate FRNs, the FCC can put a "red light" on the processing of any application by such entities. Recently, the FCC elaborated on how this process will work.

Among other things, the FCC indicated that the system will cross-check not only FRNs but the underlying TINs (employer ID numbers or social security numbers) for unpaid debts. That means you can't just open a new FRN to avoid the red light. The Commission also explained that debts owed to the Universal Service Fund, the TRS Fund, and other FCC-mandated funds will come under the delinquent debt umbrella, along with the annual regulatory fees and application fees familiar to most broadcasters.

On the positive side, the FCC indicated that delinquent applicants will get a notice of their delinquency so that they can cure it (with appropriate penalties) in time to get their application granted. Now is a good time, then, to double-check the contact person on your CORES account because that person alone will receive the FCC delinquency notice. If your account has an outdated address or contact person, you may not receive timely notice that a fee of some sort has not been paid. Finally, a new resource called "Red Light Check" will be available on the FCC's website as of October 1. Using your FRN and passcode, you will be able to determine instantly whether you are subject to a red light for any reason.

And for you all who think that the FCC may not really care about the occasional, penny-ante peccadillo in the long-distant past, you are all entitled to at least one more think as you consider the case of one applicant who filed to participate in the upcoming FM auction. An auction participant is required to submit upfront payments equal to 50% ***more*** than the established upfront payment applicable to others if the participant in question "has previously been in default on any Commission license or has been delinquent on any non-tax debt owed to any Federal agency." In the recent case, the applicant asked for a waiver of that requirement. It seems that he had obtained a $2,240 student loan way back in 1985 in order to attend broadcasting school. The loan was guaranteed by the Higher Education Assistance Foundation. The loan went into default "due to unemployment and other financial setbacks", and was referred to the IRS. But by 1992 the loan had been repaid (with interest). In light of the fact that the default was cured more than a decade ago, the applicant argued that he should not be subject to the 50% penalty in his upfront auction payment.

Doubtless there wasn't a dry eye in the Commission's offices when they denied the waiver request. According to the FCC, its "rules and the integrity of the competitive bidding process are best served by applying the upfront payment requirement in a fair and consistent manner."

While this case arose in a context other than the soon-to-be-in-effect debt collection rules, it reflects a certain hard-nosed quality likely to apply under the new rules, too. So much for the notion that "de minimis non curat lex" (for all you non-classicists,

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Owner Caught in Space Warp? Near the end of Richard Nixon's administration, an individual broadcaster set-up his station in a Georgia town of 6,000 people. The broadcaster sent in his paperwork to the FCC, was issued a license (today he has AM and FM licenses) and began to operate his station. For some 30 years, the broadcaster routinely (and successfully) renewed his licenses, paid his fees and was proud that he complied with all FCC broadcast rules − he even claimed that he had the best public file in Georgia. Indeed, even the FCC recognized that the station owner had a history of compliance with FCC rules.

During the same 30 years, technology evolved, giving us the artificial heart, reusable space shuttles, home computers, disco music, cellular telephones . . . and hand-held GPS locators.

And then, some 30 years (and numerous renewal grants) after our Georgia broadcaster built his station, the FCC sent out an agent to conduct a routine inspection of the station.

Using today's hand-held GPS technology, the FCC agent determined that the station's transmitter site was not exactly where its license said it should be. When the station submitted its original station application in the 1970s, it was apparently off by six seconds in longitude and 17 seconds in latitude − representing a variance of less than four-tenths of mile (1795 feet). The FCC's response to this error was to label the operator a willful and repeated violator and hit him with a fine.

Now bear in mind that the station had not been moved since it was first approved by the FCC and constructed. The only thing that seems to have changed since that time is the FCC's ability to measure coordinates through satellite technology which was not routinely available in the 1970s.

Surprised at the FCC's reaction, the station owner pointed out that he had been in the business for forty years and that his FCC compliance record was spotless. He advised the FCC that he has the best public file in the state of Georgia and also made sure that profanity was not used at his stations. Recalling that he had hired three reputable engineers during this time, he observed that the supposed inaccuracy in the station's location had never been noticed. The owner seemed to be somewhat upset that the new GPS technology was being used to correct errors on licenses that the FCC had issued decades before.

The FCC was not receptive to the man's pleas but did reduce his from $4,000 to $3,000 for having a history of compliance with FCC rules. The station owner appealed the $3,000 fine but the decision was upheld.

Many observers believe that this treatment by the FCC is unforgivingly harsh, particularly when the licensee in question, having once obtained FCC approval, had not done anything since which might give him reason to believe that he was operating outside the scope of that approval. In fact, it appears that even the FCC field agent who inspected the station suggested that the long-time operator should not be fined. However, the decision to fine the operator ultimately was made (and reaffirmed) by an FCC bureaucrat in Washington − hundreds of miles from the small Georgia town.

As this column has been reporting for some time, the FCC's Enforcement Bureau has been keenly focused upon fining broadcasters, particularly for tower violations. Readers are again reminded that their towers should be checked and maintained in accordance with FCC regulations. In addition, because FCC agents are packing heat (or at least hand-held GPS locators), owners should double check their towers, studios, stand-bys, relays, STLs and anything else into which an agent may sink his or her global positioning teeth.

More Faulty Towers Not only are the FCC agents brandishing GPS locators but they are calling for back-up from local police. The FCC's Detroit field office received a complaint about tower lighting in a Michigan town. The next day, the FCC agents called local police in the town to have them observe whether the tower was lighted. The local authorities confirmed that the lights were out. About two months later, the FCC agents went to inspect the problem themselves. Although the original lighting problem had been repaired, the FCC fined the station for the original lighting violation as well as later-discovered problems with the tower's registration and EAS compliance in the studio. The station was fined $12,800.

Among other tower problems, a station in South Carolina was fined $2,000 for failing to register its tower. An Alabama station was similarly fined for failing to register its tower in addition to EAS problems − total damage: $11,000. A Virginia operator faces a $6,600 fine for having no lock on

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Copyright CARP-out?

Congress Contemplating Cutting Out Copyright CARP's

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The Senate is now considering legislation that would eliminate the Copyright Arbitration Royalty Panels (CARPs) and replace them with three full-time Copyright Royalty Judges (CRJs) serving staggered six-year terms. A similar proposal passed unanimously in the House of Representatives last March.

Under the Copyright Act's various compulsory licenses, certain industries may use copyrighted works without the copyright owners' permission by paying prescribed royalties to the Copyright Office. Such statutory licenses are in place for the cable, satellite, digital recording, and webcasting industries.

Under the current system, CARPs decide the royalty rates and terms that webcasters pay in such "compulsory license" situations. But the CARP process is prohibitively expensive, often costing participants hundreds of thousands of dollars. As a result, small webcasters who cannot afford to participate in the CARP process have been left effectively voiceless.

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

The proposed CRJ system would put royalty rate determinations into the hands of three specialized judges, eliminating an expensive process that many webcasters say excludes them from the process of determining the amount of money they pay to musicians, songwriters and record companies for broadcasting music on the internet.

The proposed CRJ system could have a real impact on the petition recently submitted jointly by DiMA and SoundExchange to the Copyright Office seeking to extend the current webcasting rates. DiMA is a trade group of major webcasters such as AOL, Microsoft, Yahoo, Real Networks and Live365.com. SoundExchange, as you know, is the group charged with collecting webcasting royalties.

The DiMA/SoundExchange joint petition would extend the current royalty rates through the end of 2006, unless Congress passes the CARP reform bill. In that case, the rates would expire at the end of 2005 and the webcasting industry would then renegotiate new 5-year royalty rates under the new CRJ system. New rates could bring all sorts of new possibilities for webcasters.

Before the new system becomes law, however, this bill must be passed by the Senate and signed by the President. Due to the Presidential race, Congress is currently set to go home in October. It's difficult to predict whether the Senate will have enough time to pass this bill before this Congress adjourns.

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its tower's fence for four days and an $8,000 fine for not properly painting the tower. The same station ran into trouble for AM power problems, as discussed below.

Is There Really Such a Thing as TOO MUCH Power?

In the case of AM stations in Virginia, North Carolina and Louisiana, the FCC fined stations for having too much power − transmission power. The Virginia operator (described above) with the fence and painting problems was also whacked with a fine for not reducing its power at night. It apparently wasn't all that hard to tie down the violation: the FCC agent simply observed the power level at the station's base current meter. In Norco, Louisiana, FCC agents spent five separate evenings monitoring an AM station and determined that the station was not reducing its power after dusk by the required amount. The station manager admitted that due to a technical problem, it could not control certain aspects of its reduced power routine, so the station simply reduced its daytime power by 50%. The Louisiana station faces a $5600 fine. A North Carolina station was zapped with a $4000 fine for not powering down its Gastonia AM operations at night.

AM station owners should be sure that all aspects of their night-time operations comply with their license.

Ex-Commish protecting kids from "Miracle Pets"

Petitioners Challenge TV Renewals

Questions raised about quality of children's programming

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Gloria Tristani, a former FCC Commissioner, is spearheading a renewal challenge against two Washington, DC area TV stations. The petitions to deny the licenses of Fox-owned, but UPN affiliated, WDCA-TV and Paxson's WPXW are based on an analysis by a University of Arizona professor, Dale Kunkel. Kunkel takes issue with the stations' assessment that specific programs listed in the stations' children's programming reports meet the FCC's required broadcast of three weekly hours of regularly scheduled children's educational shows. Professor Kunkel says that some of this programming gives children anti-social rather than positive messages. The petitions allege, among other things, that the shows are not educational, are not specifically designed for children and, in one case, have not been regularly scheduled or identified at the program start as a children's educational program, as FCC rules require

The programs cited in the complaint are "Miracle Pets", "Ace Lightning", and "Stargate Infinity."

Tristani, who is now managing director of the Office of Communications of the United Church of Christ, is collaborating on the case with the Center for Digital Democracy, an activist group, and a Georgetown University law professor, Angela Campbell. The petitioners ask the FCC to designate the Fox and Paxson renewal applications for hearing "to ensure the entire broadcast industry will pay more attention to their obligations to the child audience," according to a press release the group helpfully issued.

Historically, the Commission and Congress have for the most part tried not to involve themselves too deeply in the regulation of program content (the primary exceptions being prohibitions against obscene, indecent or profane programming and cigarette advertising). Still, the FCC has for decades found a variety of ways to try to "protect" children from the effects – real or imagined – of certain types of programming. Congress pushed the Commission farther in that direction in the early 1990s, with the enactment of legislation establishing a number of specific regulatory limits on children's television programming.

For the most part the broadcast industry has not challenged children's television regulations, possibly because the Commission has not invoked those regulations to probe very deeply into the actual programming being aired. The recent petitions could change all that. And in so doing, the petitions could create a dramatic constitutional showdown similar to the judicial actions that struck down the FCC's EEO rules several years ago.

The Supreme Court has upheld the FCC's right to prevent harm to children from certain broadcast materials – again, indecency and smoking being the main examples. But the FCC would be on shakier First Amendment ground if it agreed with the petitioners, because the "harm" posited by the petitioners is far from clear. While some experts may claim, as Professor Kunkel does, that certain programs may not be salutary for children (or society as a whole), other experts – including those who are said to have assisted in the design of those programs – disagree. According to a representative of the company which supplied two of the shows slammed by the petitioners, those shows were developed by "a leading educational children's TV authority" who has chaired the Department of Communications at Stanford with a specialty in FCC compliance.

While this potential problem has long lurked beneath the surface of children's television regulation, neither the FCC nor the industry nor the "public interest" sector has seen fit to prod the beast in order to judge just how big and nasty its teeth might be.

How is the Commission supposed to resolve this battle of experts? And how can such governmental regulation, necessitating resolution of substantial disagreement on the finer points of child psychology (among other arcana), ultimately be squared with the First Amendment?

In their renewal challenges to Fox and Paxson, the petitioners appear to ask the FCC to choose among programs based on their content and, in so doing, to curtail licensees' editorial discretion to determine how best to meet the FCC's children's programming mandate. Essentially, the Commission is being asked to delve into the extremely murky area of content assessment, and to become the arbiter of whether particular programming is or is not in the public interest. While this potential problem has lurked beneath the surface of children's television regulation for more than a decade, neither the Commission nor the industry nor the "public interest" sector has seen fit to prod the beast in order to judge just how big and nasty its teeth might be. The petitioners' challenge might do just that.

And if you think that the two petitions against the Washing-

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Out the door and around the block

Hundreds Catch Auction Fever As FM Auction 37 Approaches

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In an unprecedented showing of interest for an auction, 700 different applicants have been drawn, like camels to an oasis, to Auction No. 37, which presents the opportunity to bid on one or more of the 288 FM construction permits that will be put on the auction block beginning November 3.

Applicants were required to submit notice of their intention to participate in the auction in July. The information released thus far by the Commission reveals interesting traits among many of the potential bidders. Nearly two-thirds of the auction applicants told the FCC that they qualified as "new entrants". To qualify for "new entrant" status, a bidder had to certify that it held three or fewer media of mass communications. Among those new entrants, almost 300 told the FCC that they held absolutely no interests in mass media. And a third of the auction applicants identified themselves as individuals, although the majority of applications were filed on behalf of organizations (*e.g.*, corporations, companies and partnerships). In view of the years-long, on-again-off-again build-up to this auction, it is no surprise that so many people have shown up to bid.

It should be noted that it has cost applicants nothing thus far to participate in the auction – the filing of the initial Form 175 applications required no fee at all. As a result, it is entirely possible that some, possibly many, of the 700 applicants were tire-kickers who were willing to throw in an application just to see what might happen. The next step in the auction process should separate the serious players from the dilettantes, as participants are required to submit their up-front payments (or earnest money) to the Commission. This payment will buy bidders bidding units to participate in the auction and is a fungible amount. Of particular note, this payment will do nothing to limit the actual amount that bidders bid for markets. If a potential bidder is interested in a market with a $10,000 upfront payment, the bidder need only submit the $10,000, and can then raise its bid to whatever amount it chooses. As a practical matter, it is safe to assume that all channels on the block will sell for considerably more than the minimum upfront payment set by the Commission for each channel.

It is safe to assume that all channels on the block will sell for considerably more than the minimum upfront payment set by the Commission for each channel.

PCS Auction In other auction news, the FCC has put 250 PCS licenses on the block to be auctioned next January. The PCS licenses are the second generation cell-phone licenses that cover various parts of the nation. In the upcoming auction, half of the 250 licenses have been set-aside so that only "entrepreneur" bidders can participate. However, in the very capital intensive world of wireless telephones, the FCC considers entrepreneurs to be entities with less than a half-billion dollars in assets and less than $125 million in annual gross revenues. Discounts are also available to small businesses in this auction, with up to 25% off. Clients interested in participating in the PCS auction have until November 12 to submit auction applications.

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ton stations are mere aberrations unlikely to surface elsewhere, think again. Two other DC television stations were hit with petitions to deny their renewals, alleging indecency. And published reports indicate that "designated videotapers from local activist groups" are already hard at work taping local news on a number of "top rated TV stations", with a "dozen or more potential license challenges" possibly in the works. And at least one other group is pressing the Commission to re-define "indecency" to include "violence", and further to provide that "indecent violence" be barred from the airwaves at all times. Clearly, aggressive efforts to push the FCC into detailed content regulation are afoot.

After a couple of renewal cycles in which petitions tended to be few and far between, it appears that we may be on the verge of a new wave of objections. And the likely bases for those objections could include a wide range of content-based arguments not seen before. Those of you who have already successfully navigated this round of renewals should be happy; those of you still facing the renewal gantlet should prepare yourselves.

E/I? E/I? Oh!

FCC Adopts Children's DTV Programming Rules

New Rules for Children's Analog TV Also Included

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The FCC has adopted new children's programming requirements for DTV stations. DTV stations which choose to multicast must also air more children's programming. In return, they will have greater flexibility in scheduling the programs. For both digital and analog stations, the FCC restricted the on-screen display of website addresses during children's programming and required that the "E/I" (for "educational/informational") symbol be displayed during the entire length of children's programs.

The FCC's current guideline calls for television stations to air three hours per week of children's "core educational programming." For DTV stations which multicast, the guideline will increase proportionally to the increase in each station's free non-subscription video programming offered on its multicast channels. DTV stations which multicast will have the flexibility to air all "core educational programming" on a single channel or multiple channels, as long as at least three hours per week air on the main channel.

The FCC's existing limits on children's commercials have been extended to all digital programming directed to children ages 12 and under, regardless of whether it airs on subscription or non-subscription channels.

Only programming aired on non-subscription channels will count as "core educational programming". Currently, programming must be "regularly scheduled" to count as "core educational programming". The FCC decided that in order to count as "core educational programming" a program must ***not*** be preempted more than 10% of the time. However, DTV stations which multicast will be able to move programs to another channel without the change being considered a preemption if the programs air at the same time and notices are given on both the old and new channels. The new DTV guidelines will be effective after a one-year phase-in period.

The FCC's existing limits on children's commercials have been extended to all digital programming directed to children ages 12 and under, regardless of whether it airs on subscription or non-subscription channels. The FCC also re-defined commercials to include promotions for programs which are not educational.

For both analog and digital stations, as well as cable systems, the FCC restricted the on-screen display of website addresses during children's programs. For programs directed to children 12 and under, websites may be displayed only if: (1) they offer a substantial amount of actual program-related or other noncommercial content; (2) they are not primarily intended for commercial purposes; and (3) the page to which viewers are first directed on the site is not used at all for commercial purposes and does not contain links to any other pages with commercial material.

The FCC warned that broadcasters may not use interactivity or other technological developments in children's programming to circumvent the limits on commercials. The FCC did not prohibit direct, interactive links to commercial websites in children's programming because it does not believe such links are yet a problem. The FCC did issue a Further Notice of Proposed Rule Making seeking comment on the use of interactivity in children's programming and how commercial interactivity should be considered in connection with limits on commercials.

Analog and digital stations will both be required to display the "E/I" symbol on-screen during the entire length of children's programs once the new rules become effective. NCE stations will also have to display the symbol.

The new rules expand considerably the FCC's "kidvid" regulations. In some ways the changes are not unreasonable and should prove workable for multi-channel DTV broadcasters. In others, though, the Commission may be going overboard. Consider, for example, the difficulties inherent in insuring that no website displayed during children's programming includes any link to any other website which contains commercial content. While a program producer/broadcaster can readily control the commercial content of its own site, control of other third-party sites is a different matter. The producer/broadcaster's choice, then, is to commit to constantly monitoring all other sites mentioned on its own website or, alternatively, to not to mention its own website at all.

The full text of the FCC's decision had not been released at press time. Look for more details on the new requirements and the effective date of the new rules in a future issue. If you wish to file comments regarding the use of interactivity in children's programming, please contact the FHH attorney with whom you work. The date for comments has not yet been established.

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the Commission. The Commission's staff has informally advised that all pending applications that are not granted by the start of the transition, except for applications affected by international negotiations, will ***not*** be protected from the channel selection process.

The second certification will require confirmation that the licensee/permittee has reviewed the database information relating to the authorization that it intends to operate permanently and that that information is correct.

Step 2. First Round Election – The next step will be for ***only*** those folks who have at least one "in-core" channel. These licensees and permittees will be required to file FCC Form 382 in December, 2004, to indicate whether they will use their in-core channel (and, for licensees/permittees with two in-core channels, which of those two they will use). The options here include: (1) which in-core channel the licensee/permittee elects (for those with two in-core channels); (2) whether it will select its one in-core channel (for those with only one in-core channel); or (3) whether it will release the in-core channel(s) it has in order to make an election of a new in-core channel in a subsequent round. In addition, these parties will be able to negotiate a channel swap with other parties.

While the Commission earnestly believes that it can stick to the tentative dates set forth in the Report and Order, that belief probably represents the triumph of hope over experience in view of the history of the DTV transition to date.

If a party selects its in-core DTV channel, then the associated analog channel will be released for future use by other parties. If a party selects its in-core analog channel, then the Commission will study whether a digital facility operating on the channel used previously for an analog facility will cause new interference to surrounding DTV facilities. "New" interference is defined by the Commission as the existing interference caused to the station "plus no more than 0.1 percent additional reduction in service population". As discussed below, if the Commission determines that the DTV operation on a previously-analog channel would cause new interference, then the Commission will contact the party to resolve the conflict in the next phase.

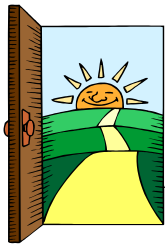
Step 3. 1st Round Conflict Analysis and Resolution – After the First Election forms are filed, the Commission will review those elections, check them for possible interference, and contact those licensees/permittees who specified a channel election that would cause an interference conflict. Those parties will have the option to: (1) accept the interference and reduce their proposed facilities; (2) switch their election to their other in-core channel (if they have two); or (3) abandon their in-core channel (for those with just one in-core channel) and have the right to elect a channel in the second round. Importantly, a licensee/permittee with two in-core channels can***not*** elect at this point to abandon ***both*** of its in-core channels in order to participate in the second round. The Commission reasoned that these parties already have an in-core DTV channel that replicates their analog signal in compliance with the Commission's rules. The Commission anticipates that this Step 3 will be completed by April 2005.

Step 4. Second Round Election – In July 2005, the Commission expects to accept the FCC Form 384, in which those licensees/permittees with no in-core channel(s), and those who previously abandoned their in-core channel(s), will have the opportunity to make their elections. The parties will be able to make a specific election, or to hit the "I feel lucky" button and ask the Commission to select the "best available" channel. At the same time, the parties will specify a "contingent" channel which would be available only if the party rescinds its initial election in this round due to a settlement agreement or negotiated conflict resolution with another party.

Step 5. Second Round Conflict Analysis and Resolution – The Commission will follow the same procedure as after the First Round Election, contacting those licensees in September 2005 to determine whether they will either: (1) accept the interference caused by their second round election; (2) reach a settlement arrangement with another party to remove the conflict; or (3) abandon the election and choose to participate in the third round election. Where two parties that would cause an interference conflict refuse to reach a settlement and refuse to accept the interference, the Commission will require that they both participate in the third round, and will not grant either request.

Step 6. Third Round Election – In January 2006, the Commission will accept the final round of channel elections by those parties who could not find an acceptable channel in the first two rounds, by those parties with "low" VHF channels (2-6) who seek a replacement channel, and by those parties who are still subject to international coordination issues. Any party who has chosen a channel in the first two rounds will not be permitted to participate if that election has already been "locked in".

(Continued on page 9)



Translators to enter DTV universe . . . eventually

Commission Adopts Rules for DTV On Translators and LPTV's

But conversion isn't imminent

By: Stephen T. Lovelady
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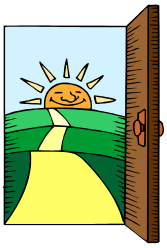


Now that the FCC has established a roadmap for converting full service television stations from analog to digital broadcasting (*see* related article on Page 1), it has turned its attention to the fate of low-power television (LPTV), television translator and Class A stations. The Commission has unanimously adopted new rules authorizing (more like requiring, actually) the holders of LPTV and translator licenses to switch to digital operation in the future. From the FCC's viewpoint, there is no reason for so-called "secondary" television services to continue broadcasting analog signals once full service stations have completed the jump to digital.

As of this writing the details are still a little hazy because, as so often happens, the full text of the FCC's action has not yet been issued. In particular, few details have been disclosed about any changes to Class A TV regulations. But by using the two-page press release issued when the FCC voted to adopt its decision, and by referring back to the notice of proposed rulemaking that got this proceeding started, we can discern some central features of the regulatory future of these non-full service television services. Here are the essential points:

- Current LPTV and TV translator license holders will be given the option to either "flash cut" to digital broadcasting on their currently authorized channel, or temporarily operate on two channels—their current analog channel and a to-be-assigned digital companion channel;

- So long as they broadcast a stream of free over-the-air programming, LPTV and TV translator stations will be allowed to offer ancillary services (such as pay-per-view, internet access, etc.) in any extra bandwidth, just like full service DTV stations;

- No firm date has been set for final conversion of LPTV, translator and Class A stations to digital and turn-off of all analog broadcasting, but the Commission has made it clear that the final date will be as soon as possible after the full service cutoff;

- Conflicting applications for new digital channel authorizations will be subject to auction;

- Contour protection methodology for predicting interference between analog LPTV and TV translator stations

(Continued on page 10)

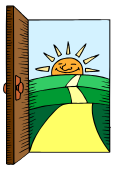
(Continued from page 8)

If parties still cannot find a channel without causing new interference to other licensees, or if two or more licensees still are making conflicting elections, the Commission will attempt to determine the best channel for replication of the analog signal. In situations where no amicable resolution can be achieved, the FCC may consider a variety of factors in making the final call. Those factors could include: which party was the earliest adopter of DTV technology, which party will serve the greatest population, or whether one of the parties is located on a low VHF channel.

Step 7. Proposed Table of Allotments – In August 2006, the Commission expects to release a proposed DTV Table of Allotments that will reflect all of the elections made during the three rounds, as well as any concessions made by parties to accept interference from other stations.

While the Commission earnestly believes that it can stick to the tentative dates set forth in the Report and Order, that belief probably represents the triumph of hope over experience in view of the history of the DTV transition to date. Given the possibility of petitions for reconsideration, not to mention objections which the Commission might raise while assigning DTV channels to particular parties, it is not impossible that there might be a little bit of, er, slippage in the date of the adoption of the final DTV Table of Allotments.

We will keep you apprised during this period of the specific steps to be taken in the near future. In view of the complex nature of the transition, we advise you to contact your attorney at FHH to discuss the details that could affect your facility and decision-making process.



(Continued from page 9)

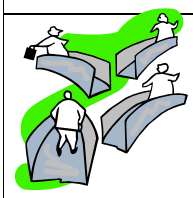
will be replaced with DTV interference prediction methodology; and

- After all current license holders have received authorizations to convert, the FCC will open the process up to the public for any left-over channels and areas not served.

All of this sounds pretty good – in theory. There is a possible fly in the ointment, however, for incumbent LPTV and TV translator owners. The problem is that the LPTV and translator services are ***secondary*** in nature. Because of that, LPTV and translator stations must fit into the interstitial spectrum between full service station allotments. But the DTV allotments for full service stations are still in a state of flux: the complicated multi-round process has just been announced by the FCC for the "repacking" of all full service stations into the spectrum represented by Channels 2 through 51 (Channels 52 through 69, previously available for broadcast use, are being reclaimed for new commercial wireless and public safety uses). Will there be any space left over for LPTV and translators? It is too early to tell (although it's also too early to panic, if you're an LPTV or translator licensee). Realistically, it will be a year or two before the FCC's plans for LPTV and translators can be finalized, let alone implemented. January 2006 is now the expected date for the third and final round of full service station channel selections, and no final plans for LPTV and translator station channels can be made until after that occurs.

So long as they broadcast a stream of free over-the-air programming, LPTV and TV translator stations will be allowed to offer ancillary services in any extra bandwidth, just like full service DTV stations

Finally, in announcing its order on digital conversion of LPTV and TV translator stations, the Commission declined to establish a digital TV booster class of licenses. Boosters are essentially transmitters on the same channel that "fill-in" areas within the primary station's service area which might not receive the station's signal because of terrain or other obstructions. Not authorizing DTV boosters is understandable, since there will soon be a new "fast track" proceeding at the FCC to allow full service TV stations to use distributive transmission systems (DTS) technology. Buried near the end of its recent periodic full service DTV order, the Commission announced that it was "in principle" approving the use of DTS technology. Since DTS technology essentially replaces the primary transmitter with a number of smaller synchronized transmitters placed throughout the station's service area (think cell phone technology), it is the equivalent of many booster stations.



FHH - On the Job, On the Go

On September 13, **Frank Montero** briefed the Congressional Hispanic Caucus on the status of certain issues dealing with the accuracy of the Arbitron and Nielsen ratings systems.

On September 17, **Frank M** and **Raymond Quianzon** spoke at the MMTC Auctions Seminar during the Annual Conference of the National Association of Black Telecommunications Professionals in Washington, D.C. Their topic, not surprisingly, was the FCC broadcast and wireless auction process.

And for those of you planning to attend the NAB Radio Show in San Diego, be sure to look for us there. FHH attendees will include both **Franks** (**Montero** and **Jazzo**), both **Harrys** (**Martin** and **Cole**), **Jim Riley**, **Scott Johnson** and **Howard Weiss**. **Harry M** will appear on a panel on Thursday, October 7 at 3:00 p.m. dealing with enforcement and indecency issues. The FHH troupe will be camping out at the Manchester Grand Hyatt. **Frank M** will also attend a board meeting of the Independent Spanish Broadcasters Association while in San Diego.

On October 13, **Paul Feldman** will address the United States Telecom Association at TELCOM '04 in Las Vegas. He will be discussing the regulatory, technical and market viewpoints of telecommunications fiber networks and fiber-to-the-home.

And finally, globetrottin' **Frank M** will be back on the road on October 30, speaking at the Black Entertainment & Sports Lawyers Association conference in Puerto Vallarta, Mexico. He will appear on a panel entitled "The Realities of Working in Radio: How to Get the Deal Done".

Late Breaking News Page

...t-for-Tat?

CBS O&O's Whacked for $550G In Janet Jackson Super Bowl Affair

The FCC has unanimously decided that Viacom − the parent of CBS − betrayed its trust to the FCC and to all parents who assumed that their children could watch the Super Bowl without being exposed to offensive material. Accordingly, the FCC proposed fining 20 CBS owned-and- operated stations $27,500 each for airing the now infamous halftime show. The two Democrats on the Republican-controlled Commission also argued that each of the more than 200 CBS affiliates should also be fined.

During the February 1, 2004, Super Bowl half-time show, two performers engaged in a dance routine which culminated in the male dancer removing part of the wardrobe of the female dancer. In the words of FCC Chairman Powell, it was a stunt more appropriate for a burlesque show. Indeed, the FCC describes the show as Janet Jackson and Justin Timberlake discussing and simulating sex, with Justin first telling Janet that he's gonna have her naked and then, sure enough, pulling off her clothing.

CBS, obviously, saw the show differently. According to CBS, the breast was exposed for only 19/32ths of a second and was unexpected by the network.

The FCC was not persuaded about the unexpected part. In particular the FCC felt that press releases and advertising issued by CBS and MTV, both Viacom subsidiaries, strongly suggested the contrary. The promotional tidbits contributed to the FCC's conclusion that the crucial denouement was being used to "titillate or shock", and that it was therefore patently offensive. (The FCC also revealed that neither Janet nor Justin actually sang, but were lip-synching during the performance. That didn't appear to alter the determination that the program was offensive.)

Of the 500,000 or so complaints the FCC received about the show, many also complained about other aspects of the MTV production, including particularly several crude ads and a singer wearing a poncho made from the American Flag. The FCC dismissed the other complaints in a passing footnote, focusing exclusively on the breast-baring conclusion of the Janet-Justin show. One Commissioner, complaining that the fine was too low, noted that the fine worked out to roughly one dollar for each of the 500,000 complaints received. He also observed that the fine could be paid for with seven and a half seconds of Super Bowl advertising.

Two Commissioners strongly felt that ***all*** 200-plus CBS affiliates (including translators in Guam and Alaska) should be fined, rather than "completely off the hook". They also indicated that by not fining all CBS affiliates that aired the Super Bowl, the FCC may be suggesting that indecent broadcasting is excusable if the station did not control the production content.

Chairman Powell stated that he felt the non-O&O affiliates should not be punished as a matter of fundamental fairness because station owners, like most viewers, saw the Super Bowl as a family event, and they should not be held accountable such a dramatic and unforeseeable departure from previous shows. Nevertheless, the fine imposed on CBS should serve as a warning to all affiliates that, from here on out, one may now reasonably anticipate such antics. Indeed, in its order the FCC expressly warns stations to take "reasonable precautions" such as delay technology or independent prescreening of network feeds.

Procedurally, CBS now has thirty days either to pay the fine or to contest the FCC's decision. As of this writing, CBS has not announced what it plans to do.

Taking a page from Telemarketing 101

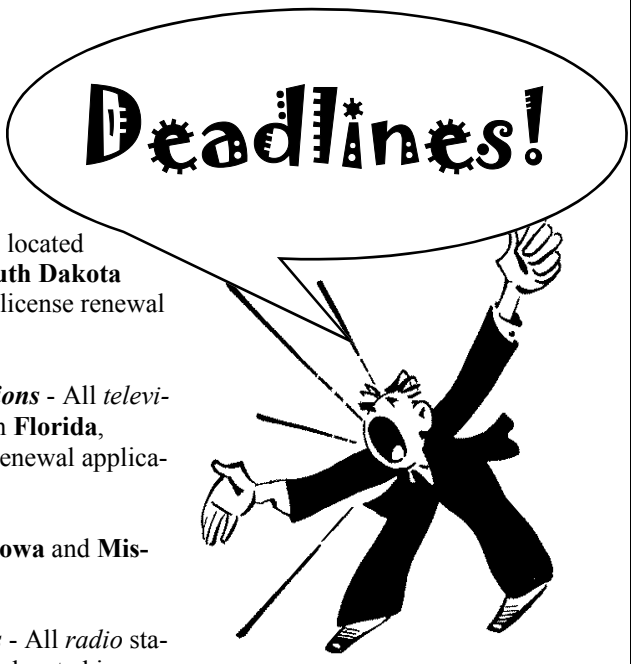
FCC Fee Collectors' Dunning Calls Misdirected

As we were going to press, we learned that, probably as part of the impending start of the "red light" process (*see* article on Page 2), the FCC has farmed out to some non-FCC organization lists of supposedly dead-beat licensees; the organization's personnel started calling the people on the FCC's list, advising them that they owe the FCC and must now pay.

But in at least a significant number of those cases, the FCC's information is wrong: the licensees are ***NOT*** deadbeats and do ***NOT*** owe anything. Unfortunately, the people doing the calling are not equipped to deal with that. The latest word we have received is that, in response to complaints from folks receiving the calls, the calls have been stopped, at least temporarily.

There appear to be some serious problems with the FCC's record-keeping relative to licensee payments, particularly regulatory fee payments. In view of the upcoming "red light" process, and also in view of the current flurry of dunning calls, it would be wise for each licensee to review its books and track down records of payment of reg fees for the last several years. Despite the FCC's errors and fee collection agency's apparent ignorance, we do ***not*** recommend that you ignore any FCC call or notice concerning a debt to the agency. It looks like the availability of such records may be essential to eliminate any doubt about whether the fees have been paid.

October 1, 2004



Television Renewal Pre-Filing Announcements - *Television* stations located in **Alabama** and **Georgia** 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.

December 1, 2004

Television Renewal Pre-Filing Announcements - *Television* stations located in **Arkansas**, **Louisiana**, and **Mississippi** must begin pre-filing announcements in connection with the license renewal process.

Radio Renewal Pre-Filing Announcements - *Radio* stations located in **Kansas**, **Nebraska**, and **Oklahoma** must be-

(Continued on page 13)

News from the FM Allotment Front

Staff Rejects Hypothetical Reference Points For Existing Stations Proposed for Relocation

In an unheralded decision released late in September, the Audio Division announced a change in its FM reallotment policies which may affect channel change proposals currently on the drawing boards. Anyone involved in the crafting of such proposals should take note.

The policy in question concerns reliance on hypothetical transmitter site relocations for existing stations, in order to re-allot a channel without short-spacing any of those stations. For example, let's say that you want to move around a couple of channels, but your proposed moves would end up creating short-spacings to one or more operating stations. Historically, the staff would be willing to consider the proposal if the stations to which you would be short-spaced agreed to propose some alternate reference points for their respective channels. While the technical effect of such an approach might be seen as creating one or more short-spacings, that problem tended to be overlooked, presumably because, thanks to innovations such as Section 73.215, the notion of absolute fealty to the standard channel spacings has become something of a quaint vestige of the halcyon regulatory past.

Avoid reliance on hypothetical relocations of existing stations as essential elements of your plan.

Not any more.

Noting that "full Section 73.207 spacing" in allotment proceedings is a "foundational requirement", the staff ruled that use of hypothetical (or, as the staff characterized them, "fictional") reference points permits proponents to "selectively exempt themselves" from that requirement. And that, according to the staff, is "contrary to the plain language" of the rules. So from this point on, allotment proponents will not be able to rely on such hypothetical sites.

The ink is still drying on this decision, so it is entirely possible that reconsideration or other review will be sought. But for the time being, the staff has announced its policy (and has, in so doing, expressly "overruled" the staff's earlier, contrary decisions). If you plan to advance a reallotment proposal in the foreseeable future, you should be sure to avoid reliance on hypothetical relocations of existing stations as essential elements of your plan.

(Continued from page 12)

gin 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 **Alabama** and **Georgia** must file their license renewal applications.

Radio Renewal Applications - All *radio* stations located in **Colorado**, **Minnesota**, **Montana**, **North Dakota**, and **South Dakota** must file their license renewal applications.

Radio and Television Renewal Post-Filing Announcements - All *radio* stations located in **Colorado**, **Minnesota**, **Montana**, **North Dakota**, and **South Dakota** and all *television* stations located in **Alabama** and **Georgia** must begin their post-filing announcements in connection with the license renewal process, and continue such announcements on December 1 and 16, January 1 and 16, and February 1 and 16.

EEO Public File Reports - All *radio* and *television* stations with more than five (5) full-time employees located in **Alabama**, **Colorado**, **Connecticut**, **Georgia**, **Maine**, **Massachusetts**, **Rhode Island**, **Minnesota**, **Montana**, **New Hampshire**, **North Dakota**, **South Dakota**, and **Vermont** 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 **Colorado**, **Minnesota**, **Montana**, **North Dakota**, and **South Dakota** , and all *television* stations located in **Alabama** and **Georgia** 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.

FM ALLOTMENTS ADOPTED –8/25/04-9/17/04

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
AR	Greenbrier	166.3 miles W of Memphis, TN	227C2	03-247	None
AZ	Mohave Valley	96.1 miles S of Las Vegas	229A	01-135	None
NV	Bunkerville	84.4 miles NE of Las Vegas	240C	01-135	None
NV	Logandale	57.83 miles N of Las Vegas	228C	01-135	None
UT	St. George	119.61 miles NE of Las Vegas	291C2	01-135	None
AR	Arkadelphia	66 miles SW of Little Rock	265C3	One-step upgrade	None
AZ	Cottonwood	83.3 miles N of Phoenix	240C0	One-step upgrade	None
CA	Garberville	155 miles SW of Redding	279C0	One-step upgrade	None
CO	Timnath	55.6 miles N of Denver	288C1	One-step upgrade	None
FL	Rock Harbor	63.98 miles S of Miami	271C1	One-step upgrade	None
GA	Brunswick	59.2 miles N of Jacksonville	264C0	One-step upgrade	None
GA	Columbus	107.8 miles S of Atlanta	297C0	One-step upgrade	None
GA	Dublin	132.5 miles S of Atlanta	240C0	One-step upgrade	None
GA	Wrightsville	136 miles S of Atlanta	298C3	One-step upgrade	None
HA	Keaau	224 miles S of Honolulu	287C2	One-step upgrade	None
ID	Victor	63.7 miles E of Idaho Falls	222C2	One-step upgrade	None
ID	Victor	63.7 miles E of Idaho Falls	279C1	One-step upgrade	None
IA	Des Moines	165.9 miles NE of Omaha, NE	227C0	One-step upgrade	None
MI	Newberry	221 miles N of Green Bay,WI	230C2	One-step upgrade	None
NC	Calabash	50.4 miles S of Wilmington	285C2	One-step upgrade	None
NM	Roswell	171 miles N of Albuquerque	258C3	One-step upgrade	None

FM ALLOTMENTS ADOPTED –8/25/04-9/17/04 *(continued)*

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
UT	Delta	87.9 miles SW of Provo	240C1	One-step upgrade	None
VA	Roanoke	99.98 miles N of Greensboro, NC	285C2	One-step upgrade	None
WA	Walla Walla	295 miles SE of Seattle	256C2	One-step upgrade	None
WY	Cheyenne	98.8 miles N of Denver	292A	One-step upgrade	None

"One-step Upgrade" Listings

While the changes in the FM Table of Allotments which we report in these tables are normally accomplished through the rulemaking process, channel changes can also occur through one-step upgrade applications. Periodically the Commission issues Orders which list changes to the Table which have been implemented through that application process. The changes themselves do not give rise to any new filing opportunities. However, anyone who is considering proposing other changes to the Table should be aware of the one-step upgrade changes, as they may affect your proposals.

FM ALLOTMENTS PROPOSED –8/25/04-9/17/04

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
TX	Paducah	112.5 miles NE of Lubbock	234C3	04-342	Cmts -10/18/04 Reply-11/02/04	Drop-in
CA	Nevada City	57.8 miles N of Sacramento	297A	04-338	Cmts -10/18/04 Reply-11/02/04	Drop-in
TX	Crosbyton	44.4 miles N of Lubbock	264C3	04-340	Cmts -10/18/04 Reply-11/02/04	Drop-in
OH	Cridersville	73.6 miles S of Fort Wayne, IN	257A	04-343	Cmts -10/18/04 Reply-11/02/04	Drop-in
IN	New Harmony	150.3 miles NE of Louisville, KY	266A	04-341	Cmts -10/18/04 Reply-11/02/04	Drop-in
MN	Grand Portage	145.87 miles N of Duluth	245C0	04-339	Cmts -10/18/04 Reply-11/02/04	Drop-in
WA	Union Gap	147.6 miles N of Seattle	285A	04-327	Cmts -10/18/04 Reply-11/02/04	Drop-in
GA	Americus	117.1 miles S of Atlanta	295A	04-328	Cmts -10/18/04 Reply-11/02/04	Drop-in
LA	Dulac	59.8 miles SW of New Orleans	242A	04-329	Cmts -10/18/04 Reply-11/02/04	Drop-in
TX	Palacios	92.7 miles SW of Houston	264A	04-330	Cmts -10/18/04 Reply-11/02/04	Drop-in

FM ALLOTMENTS PROPOSED –8/25/04-9/17/04 *(continued)*

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
KS	Washington	73.4 miles S of Lincoln, NE	271A	04-331	Cmts -10/18/04 Reply-11/02/04	Drop-in
CA	King City	91.3 miles S of San Jose	275A	04-332	Cmts -10/18/04 Reply-11/02/04	Drop-in
NV	Fallon Station	196.5 miles N of Fresno, CA	287C	04-333	Cmts -10/18/04 Reply-11/02/04	Drop-in
CA	Coachella	91.3 miles N of San Diego	278A	04-334	Cmts -10/18/04 Reply-11/02/04	Drop-in
CA	Cambria	123 miles SW of Fresno	293A	04-335	Cmts -10/18/04 Reply-11/02/04	Drop-in
TX	Carbon	144.9 miles Sw of Dallas	238A	04-336	Cmts -10/18/04 Reply-11/02/04	Drop-in
AL	Northport	5.1 miles W of Tuscaloosa	286A	04-337	Cmts -10/18/04 Reply-11/02/04	Drop-in
TX	Cross Plains	169.9 miles SW of Dallas	294A	04-348	Cmts -10/25/04 Reply-11/09/04	Drop-in
NV	Fernley	170.8 miles N of Sacramento, CA	231C3	04-349	Cmts -10/25/04 Reply-11/09/04	Drop-in
CA	Oroville	66.2 miles N of Sacramento	272A	04-350	Cmts -10/25/04 Reply-11/09/04	Drop-in
OK	Pittsburg	98.3 miles S of Tulsa	232A	04-351	Cmts -10/25/04 Reply-11/09/04	Drop-in
OK	Olustee	145 miles S of Oklahoma City	252A	04-362	Cmts -11/08/04 Reply-11/23/04	Drop-in
MA	Adams	69 miles NW of Springfield	255A	04-357	Cmts -11/08/04 Reply-11/23/04	Drop-in
OH	Ashtabula	65.9 miles NW of Cleveland	241A	04-358	Cmts -11/08/04 Reply-11/23/04	Drop-in
CO	Crested Butte	104 miles S of Aspen	246C3	04-359	Cmts -11/08/04 Reply-11/23/04	Drop-in
PA	Lawrence Park	95.8 miles S of Buffalo, NY	224A	04-360	Cmts -11/08/04 Reply-11/23/04	Drop-in
NM	Roswell	170.7 miles N of Albuquerque	289C0	04-361	Cmts -11/08/04 Reply-11/23/04	Drop-in

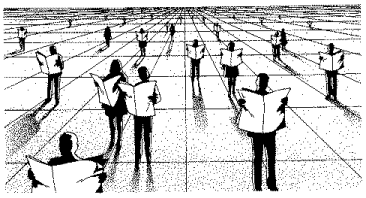
Notice Concerning Listings of FM Allotments

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.

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

Updates on the News

Stay Off, Freeze On That pesky Third Circuit, which sent the Commission's new ownership rules back to the drawing board in a split decision last June, has added a new twist to an already twisted situation. As you may recall, in its June decision the Court left in place the stay on the new ownership rules which it had imposed in September, 2003. But since the Court had upheld significant portions of the new rules in June, the Commission went back to the Court and asked it to lift the stay in certain limited respects. Lo and behold, the Court agreed. But the Court's terse order was not a model of clarity, and it seems to have caught the Commission by surprise, because no sooner was the stay lifted but the Commission imposed a freeze on all commercial radio CP applications and assignment/transfer applications. It turns out that the FCC needed to run its new application forms, tailored to the new ownership rules, past the Office of Management Budget again, since the original OMB approval obtained in 2003 had since expired. According to sources inside the Commission, the freeze may be lifted as early as the end of September, at which point the staff will issue guidance on how to proceed.



FCC Displays Parenting Skills With much huzzah, the Commission in September launched its "Kidszone" web page, an "interactive, high tech site designed to engage children and teens in grades K through 12." Since the FCC seems to be donning the mantle of Federal Nanny, we thought we should take a quick look at "Kidszone" to see what it might tell us about the FCC's parenting skills.

Many believe that consistency is important in dealing with kids. Well, check out Kidszone's approach to the use of cellphones on airplanes. At one point the Commission ominously warns that, if you use a cellphone on a plane, "the airplane may not go the right direction or fly at the right height, or they may even crash! Next time you get on a plane, make sure you turn off your mobile phone so everyone can have a safe flight." But elsewhere, the site quotes a "veteran pilot" who says, "From everything I've read cell phones and most avionics shouldn't conflict." He says that the pre-flight announcement to turn off phones is "more for making sure [we] have people's attention and for [individual] safety". While the FCC then quotes an FAA official with a contrary view, the FCC suggests that there have been no conclusive tests on the question. So the FCC seems to be sending mixed signals here, not to mention sowing disrespect relative to the FAA's longstanding prohibition against air-borne cellphone use.

The FCC also claims that at Kidszone young visitors can learn "what is unacceptable language for radio and television". But the site doesn't live up to that claim. Instead, it merely states that the broadcast of obscenity and indecency are prohibited. Well, we already knew that. But then the site provides a couple of links − aha, perhaps that's where we can find out what's "unacceptable language". No such luck. The links lead to some pages which offer only the usual verbiage you find in Commission forfeiture decisions − and even adults agree that that verbiage sheds precious little light on the subject.

The FCC has also indicated concern about "violence" and children, but that concern didn't stop the Commission from including a shoot-'em-up video game in which the player can blast away (complete with realistic exploding sound effects) from a spaceship. And there's a "Hangman" game which features a somewhat realistic depiction (not the classic stick figure) of a cowboy being hanged in the desert. There's also a brief informational item advising young readers of the existence of "cell phone guns" apparently used by drug dealers.

It is possible, if not likely, that many parents may prefer not to have their children exposed to at least some aspects of Kidszone. Should that force the Commission to alter the contents of its site? Of course not, since the offended parents presumably have the ability to prevent their kids from visiting the site. But shouldn't that rationale apply equally to allegedly offensive − maybe "indecent", maybe "violent", maybe something else − broadcast content? And if that's so, why shouldn't the onus be on the parents to control their children's exposure to the material, rather than imposing a blanket prohibition against its broadcast?

By the way, in the interest of thorough investigative reporting, we had two boys, 15 and 13, check Kidzone out. They pronounced it "lame".

(Continued from page 2)

"the law does not concern itself with trifles").

We urge persons doing business with the FCC to keep careful receipts of payments made to the FCC. Not only could these help to resolve any mistakes on the FCC's part, but the receipts may well be necessary in the context of a station sale to assure the buyer that all licenses have in fact been validly issued. Under the new rules, all license grants are contingent on the payment of debts owed to the FCC, and cautious buyers may want evidence that all such contingencies have been removed.

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