

Memorandum to Clients

October, 2004

News and Analysis of Recent Events in the Field of Communications

No. 04-10



Checking out the fine print

A Closer Look at DTV Transition, LPTV Style

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In last month's *Memorandum to Clients*, we reported that the FCC had adopted rules for digital conversion of low-power television stations (LPTV) and television translators. When that article was written, however, the Commission had not yet issued the full text of its order, and some of the details were a little hazy.

Well, the FCC's LPTV and translator DTV Report and Order was released in late September and we have now reviewed all 87 fine-print pages plus appendices. Our summary last month was accurate, but here are some more details (in no particular order) that weren't apparent at the time we wrote that report:

Class A stations operating on digital companion channels will be secondary services, at least initially.

Currently, analog Class A LPTV stations enjoy a level of protection from interference similar to full-service television sta-

tions. Under the DTV order, Class A stations that flash-cut to digital broadcasting on their current channel will maintain such primary status (with certain exceptions for stations operating on channels 52-69). However, Class A stations that request a new digital companion channel in order to broadcast both in analog and digital during the transition period will **not** be protected from interference **on such companion frequen-**

As with full-service stations, the Feds want a cut of the action off the top. Five percent (5%) of gross revenue from "feable" services (to use FCC-speak) must be paid annually to the Commission.

cies. Instead the digital channel will be considered a secondary service and treated the same as regular LPTV or translator stations (*i.e.*, they won't be permitted to interfere with full-service stations or other primary users of the spectrum). According to the FCC, it would be just too complicated to protect the digital companion channels of all 600 Class A stations from interference right away. The Commission does, however, clearly say that when all the dust settles, Class A stations will retain primary status on the single channel they ultimately choose for digital operation.

The government gets a 5% cut of any ancillary subscription services offered on digital LPTV or translators.

Just like full-service DTV stations, digital LPTV and translator stations will be permitted to offer ancillary services in any extra bandwidth not occupied by their required minimum of one over-the-air stream of free video programming. Also as with full-service stations, the government wants a cut of the action off the top. Five percent (5%) of gross revenue from "feable" services (to use *FCC-speak*) must be paid annually to the Commission. This works just like a sales tax – it's based on gross revenue. So even if you lose money when providing subscription-based services, the Commission still wants 5% of any revenue you collect.

Existing analog translators can rebroadcast converted DTV signals in analog format, and digital translators will be able to rebroadcast analog television signals in digital format.

In the interest of getting the most free programming possible to the viewing public, the FCC is authorizing existing LPTV and translator stations to capture the signals of full-service

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Welcome to



FM Auction Ready to Roll



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Bidders have submitted applications, the FCC has received millions of dollars in earnest money, the opening prices have been set and, on November 3, the FCC will hoist its electronic gavel and begin to sell FM construction permits. The prices and pace of the auction will be determined mostly by market forces and the tenacity (or daring, or foolhardiness, or all of the above) of the bidders. And boy, are there plenty of bidders to go around.

With 288 construction permits up for grabs, 700 different potential bidders submitted applications to participate in the auction. After running the applications through the standard bureaucratic review and requiring bidders to deposit earnest money, the FCC qualified 456 of the applicants for the auction. Half of the qualified bidders are individuals, while the other half are corporations, companies, partnerships and similar business organizations. In addition, 277 of the qualified bidders, more than half, are claiming discounts as “new entrants” into the media industry – with almost 200 of the new entrants claiming that they have no other television, radio, cable or newspaper interests at all. The auction promises to be quite busy during the first few rounds.

As the auction rounds progress – the FCC intends to begin with two rounds per day – many of the bidders will likely begin to peel away as they lose eligibility. Most (*i.e.*, 324) of the bidders have submitted less than \$100,000 as earnest money for the auction. These bidders will likely focus on a single market or, possibly, just a handful of markets. These bidders need only remain active in a few markets to maintain their eligibility. In contrast, fifteen bidders purchased one million dollars or more of eligibility for the auction. LUK Broadcasting, a new entrant to broadcasting that is being backed by the same financial interests as telecommunications giant WiTel, sent the FCC \$11 million and is eligible to bid simultaneously in every single market except Guam and American Samoa.

The starting bids for the FM markets vary from \$1,500 up to \$200,000. However, the starting bids will have no effect on what the final price for a market turns out to be. The final price for any single market will be determined by the bidders in the auction and the price that they ultimately are willing to pay for the construction permits. In the same vein, the length of the auction is unpredictable. The auction will end only when bidding has stopped on the last of the 288 construction permits. Until that time, because of the somewhat non-intuitive workings of the FCC’s auction process, surprise last-minute bidding (by participants who may have seemed to have lost interest in earlier rounds) is possible. Accordingly, every auction participant who is a high bidder should monitor the auction rounds closely until the very end.

Notice to Auction Participants

If you are going to participate in the upcoming auction, and if you have authorized anyone at FHH to serve as a bidder for you, be sure to keep in close contact with him or her throughout the auction process. Situations can change quickly, especially in later rounds when the time for assessing the bids of others and formulating a response becomes shorter.

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FCC faults Fox and affiliates, except one. The Spring 2003 Fox program "Married by America" allowed viewers to vote on which characters in a reality show should be married. One of the episodes involved bachelor parties for the contestants in Las Vegas. The FCC describes scenes from the show as including topless strippers with a bachelor in his underwear. The FCC determined, perhaps not surprisingly, that those scenes fell comfortably within the Commission's definition of indecency. Fox disagreed. According to Fox, the nudity was obscured or pixilated and not readily visible. The FCC responded that "even a child would have known that the strippers were topless and that sexual activity was being shown". The FCC fined Fox-owned stations **and** any Fox affiliate which broadcast the show \$7,000.

The FCC noted that this outcome was different from the Super Bowl/Janet Jackson decision, where only owned-and-operated stations were fined and affiliates were not. According to the FCC recalled, the Super Bowl incident could not have been anticipated by innocent affiliates (who may have been living in a cave somewhere for the past several years and thus were unaware of the nature of popular entertainment produced by the artists in question). In contrast, the FCC concluded that all of the Fox affiliates knew what "Married by America" was about. The Commission also observed that, unlike the Super Bowl, the Fox show was taped well in advance. To support its claim that affiliates had a choice in this matter, the FCC pointed out that at least one Fox affiliate refused to air the series because the station found the show to be in bad taste and demeaning of the institution of marriage. Fox and its affiliates have until November 11 to contest the fine or pay \$7,000 per station.

FCC fines FM Fifty Five Thousand. A Sacramento station was hit with a \$55,000 fine for broadcasting indecent material. The fine consists of the maximum per incident fine of \$27,500 for each of two broadcasts. The first broadcast involved an on-air personality pretending to be a child using several sexually-oriented double entendres. The second broadcast involved an extended discussion of techniques intended to degrade and harm partners during sexual activities. Finding the station's broadcast to be egregious misconduct, the maximum fine was assessed and the station warned that its license may be revoked the next time. The FCC was not at all impressed by the station's defense that, because the show had a large market share, the community embraced the programming. The FCC held that the Commission has a duty to protect any children that may be listening and that the large market share merely indicated that more children might

be listening.

Cable Companies Chided for Children's Content. Two cable operators and affiliated programmers (Nickelodeon and ABC Family) have agreed to pay \$1.5 million in fines for violations of children's programming rules. The programmers admitted that in several instances, they aired commercials for products associated with characters during shows which contained those characters. In addition, on numerous instances the cable companies exceeded the amount of advertising permitted to be telecast during an hour of children's programming. Although much of cable programming content is not subject to FCC regulation, children's programming remains within the FCC's bailiwick. The reminder to cable companies came with a \$1.5 million price tag this month.

DJ Calls Competitor On-Air. In furtherance of their on-air rivalry, a Massachusetts DJ called a DJ from a competing station and pretended to be a listener. However, the calling DJ broadcast the entire conversation on his station without disclosing that - presumably to enhance the "entertainment" value for the station's listeners. Needless to say, the president of the station which was the butt of the joke was not impressed (at least not favorably). He fired off a letter to the FCC to report the incident. Although the station which was charged with the violation claimed that it was an isolated incident and not authorized by management, the FCC noted that this was an easy instance of a "willful" act by an employee of the station which was in violation of the rules. The FCC fined the station \$7,000.

South of the Border, Down Mexico Way. Most broadcasters that operate near the Canadian or Mexican borders are aware of the limitation on the transmission or delivery of broadcast programming from a US facility to a foreign broadcast station for the purpose of rebroadcasting back into the US. The FCC granted a company permission to broadcast San Diego Padres games to a station in Mexico that broadcast the game back into the U.S. When the company first sought permission to do this, the Mexican station operated at 5 kW. However, after the company obtained permission from the FCC to ship its programming to Mexico for rebroadcast, the Mexican station changed its power and location in apparent violation of international agreements - and that, in turn, caused the initial international authority to become invalid. The FCC was not amused and fined the company \$25,000 for not complying with the terms of its permit.

Focus on FCC Fines

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DTV stations, and convert and rebroadcast them in analog format. Conversely, when digital translator stations are constructed, they will be authorized to convert

analog full-service station signals (if any are still left by that time) to digital for rebroadcast. No advance permission is required from the FCC for LPTV or translators to operate in these modes.

The application process for on-channel digital conversion has been clarified (somewhat).

Existing LPTV and translator licensees who want to flash-cut to digital operation on their currently authorized channel will be allowed to obtain authorization from the FCC by filing only a minor-change application, so long as the protected signal contour of the proposed digital facility overlaps some portion of the protected contour of the station's analog authorization. If the LPTV or translator station is broadcasting on channels 52-69, it may have to notify primary-service occupants of such frequencies, such as wireless carriers and public-safety radio users. As soon as revised application forms are approved (FCC Form 301-CA for Class A stations and FCC Form 346 for LPTV and translators), current licensees will be able to apply for conversion; if they choose, though, licensees may wait to apply until they are ready to convert at some time in the future. There will be no fees charged by the FCC for filing such minor-change applications, nor will any additional annual regulatory fees be due. Construction permits will be valid for a three-year period, with the possibility of six-month extensions if a permit holder experiences delays beyond its control. Although the FCC says that such applications may be filed on a "first-come, first-served basis," mutually exclusive applications will be subject to resolution by competitive auction (except for Class A stations, which are exempt by law). If this seems a little contradictory to you, we agree. Presumably, the Commission will give us further clarification as the digital conversion parade rolls along.

Limited operation outside of the "core" TV channels of 2-51 will be permitted for the foreseeable future.

The FCC is in the process of converting the spectrum currently occupied by television channels 52-69 to commercial wireless and public safety communications uses. The FCC has already auctioned off some of those frequencies to wireless companies. For the time being, however, Class A, LPTV and translator stations that con-

vert on-channel to digital operation will be allowed to continue broadcasting on channels 52-69. The key is that ***all such broadcast operations must be non-interfering.*** In other words, they will be secondary services subject to immediate termination if they cause interference to a primary user. LPTV (other than Class A) and translator station operations have always been secondary services and subject to displacement by primary users, so this requirement shouldn't be difficult to accept. Existing Class A, LPTV and translator stations can also apply for digital companion channels in the 52-59 range, if there are no suitable in-core channels available. By statute channels 60-69 must be vacated at the end of the full service DTV transition (now expected to occur sometime between 2006 and 2009, depending upon the area), and the FCC didn't see any point in granting new digital companion channels in that band for such a relatively short period of time.

The FCC will permit a digital translator station to transmit on the same channel as the primary station whose signal it is rebroadcasting, so long as the translator owner obtains the primary station owner's consent – this will allow seamless extension of the primary station's authorized service area on the same channel.

A digital translator can rebroadcast on same channel as the primary station signal it is receiving.

As we mentioned in last month's article, the FCC decided not to authorize digital booster television licenses at this time because it is considering the possibility of authorizing distributive transmission system (DTS) technology. Since DTS will be the functional equivalent of booster stations, the Commission figured that boosters would be unnecessary.

However, the FCC will permit a digital translator station to transmit on

the same channel as the primary station whose signal it is rebroadcasting, so long as the translator owner obtains the primary station owner's consent. The significance of this is that it allows seamless extension of the primary station's authorized service area on the same channel. A drawback is that applications for such operations must be filed as new translator or LPTV stations, and permits will be subject to all of the same interference analyses the FCC requires for any such stations.

Numerous technical standards are set in the FCC's Report and Order.

The FCC's Report and Order establishes many technical standards for digital LPTV and translators such as: maximum transmitter power; emission masks; interference prediction methodology; permitted interference levels; equipment certification; modification of analog equipment for digital operation; and program system and information protocols. As much as we wish we could be as intelligent as engineers, alas, we are merely lawyers and

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More fine print

Full Power DTV Transition: More of the Story on the Final Steps

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Last month, we discussed the channel election process laid out by the FCC in its September DTV Transition order. This month, we address a number of other notable portions of the DTV Order and the important upcoming deadlines.

Deadlines

First, as discussed last month, the first step of the DTV channel election process is the filing of the Pre-Election Certification form. There are two items to be addressed on this form. First, each full-power TV licensee must indicate which authorized DTV facility it will operate post-DTV transition. Second, each licensee must certify that it has reviewed the Commission's database and confirmed that it is accurate. Both certifications are included in FCC Form 381. Television licensees and permittees who are not already familiar with this form should be sure to check it out ASAP – you can do so at <http://www.fcc.gov/Forms/Form381/381.pdf>. **The deadline for filing this form is NOVEMBER 5, 2004.** The form must be filed electronically through the FCC's CDBS filing system. Once the Commission has reviewed these submissions, it will release a public notice announcing the deadline for submitting the First Round Election forms by those licensees with at least one in-core (2-51) channel.

Next on the transition schedule, the Commission will require broadcasters to fully implement the Program System and Informational Protocol ("PSIP") by **February 1, 2005**. PSIP is the data that is transmitted with the digital signal that provides the DTV receivers with information about the number of channels being broadcast and the programming that is being provided on each channel. Also, the PSIP will transmit the content advisories necessary for the use of the V-Chip and for viewers to be aware of programming ratings.

There are also deadlines relating to the replication and

maximization build-out, which are discussed in more detail below. As other deadlines are established, we'll let you know.

Replication/Maximization

In the DTV Order, the Commission established deadlines for licensees to construct their facilities. By the deadline, the digital facilities must be constructed to the thresholds established by the Commission, or else the licensee will lose its interference protection beyond the then-current service area of the DTV facility.

For licensees affiliated with the top four networks that are assigned to the top 100 television markets, the use-it-or-lose-it deadline is **July 1, 2005**. By that date, the licensees which will be operating on their current digital channel must construct their full, authorized facility. Those licensees which will be operating their DTV facility on a channel other than their originally-assigned DTV channel will be required to provide service to at least 100% of the number of viewers specified as receiving NTSC service in the 1997 DTV Table of Allotments.

All other commercial and noncommercial stations have one additional year – until **July 1, 2006** – to complete their construction. As with the top four affiliates, licensees which will operate their DTV facility on their current digital channel must construct their full, authorized facilities by **July 1, 2006**. Those licensees which will not operate on their current digital channel will be required to serve 80% of the number of NTSC viewers specified as receiving service in the 1997 DTV Table of Allotments. (While waivers based on financial reasons will be considered, they will require strong supporting evidence and will undergo very strict scrutiny.)

To the extent that viewer numbers come into play, the

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must acknowledge our intellectual limitations. Therefore, we leave it to better minds to advise you on the fine points of, for example, the ATSC A/65B PSIP standard for channel navigation and its numerous benefits for consumers (see pages 81 - 83 of the Order).

As we wrote last month, there is no reason for operators of Class A, LPTV and translator stations to panic about these new rules. The FCC has taken just the first step in what will be a long journey. No firm dates have been set yet for this process to even commence, and much depends on what happens with the full-service DTV conversion, so stay alert for future announcements.



Royalty rate reduction!!

ASCAP Rates Cut for Some TV Stations

But don't get your hopes up
'til you've run all the numbers

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As a result of negotiations between the Television Music License Committee (TMLC) and the American Society of Composers, Authors, and Publishers (ASCAP), television stations will now be able to pay 13% less for some of their music.

Under the terms of the 11-year agreement negotiated between TMLC and ASCAP, stations will reduce their annual blanket license payments from a collective \$98.1 million to \$85 million. The new agreement also includes ASCAP-covered music used on digital channels or streamed on the internet.

Due to increased local newscasts and reality programming, neither of which uses as much music as other types of shows, TMLC argued that the industry was overpaying for music and there should be a reduction in the compensation due for music licensing. The rate reduction takes effect next month. It is retroactive to April, 1998 (when the previous license expired) and extends to April, 2009.

Not everybody may be dancing in the streets about the agreement, though. The new terms don't cover the Big Three Networks (ABC, CBS, NBC), which are subject to separate ASCAP licenses, nor do they cover the music licensed by BMI or SESAC. TMLC is currently in negotiations to reduce the rates in the BMI and SESAC licenses – both of which expire at the end of this year.

The new ASCAP agreement is certainly a positive development. But before you run out and start spending any savings you expect to realize from the new deal, check out the fine print. The stations and ASCAP have been operating under an interim license for the past six years. The payment rates under that interim license have been based on audience calculations from 1995-1997. The new agreement will be based on current audience calculations. So while the average station will see a 13% reduction in payment, if a station's audience share has increased since 1995-1997, it could end up paying even more than before.



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Commission will update the population figures with 2000 Census information, but will base the "population served" figures on the facility specified in the 1997 DTV Table of Allotments.

Of special note, the Commission will apply the channel election and build-out requirements to satellite stations. In addition, those licensees with pending DTV construction permit applications, either due to international concerns or pending maximization applications, will be required to file a "checklist application" and construct the "replication" facility by **August 4, 2005**. Those licensees will not lose the right to prosecute their pending applications, and the Commission will permit licensees to request permission to construct the non-checklist facility by August 4, 2005, deadline.

Various and Sundry Items

Simulcasting – The Commission *eliminated* the requirement that licensees air on their DTV channels the same programming that is aired on their NTSC channel. The Commission reasoned that such requirements may impede the development of new digital programming.

Station Identification – The Commission adopted requirements that licensees follow the same station ID rules for their DTV station as are applicable to the NTSC Station. This information will be included in the PSIP data that is transmitted with the DTV signal.

DTV Receiver Labeling – The Commission determined that it will not adopt specific "DTV Ready" labeling requirements at this time. Consideration of that question has been deferred until some future rulemaking proceeding.

Distributed Transmission Systems – The Commission acknowledged the support of parties for developing rules to permit licensees to place synchronized transmitters throughout their service area to fill-in gaps and for the more efficient use of the spectrum. The Commission pledged to open a separate "fast-track" proceeding to address this matter, and directed the staff to adopt conservative standards to process requests on a case-by-case basis in the meantime.

Obviously, we are at long last fast approaching the finish line in the marathon-plus transition process. Still, we expect that there will be many bumps on what's left of the transition road. One way to stay on top of things will be to read the *Memorandum to Clients* each month.

Speak truth to power, but remember to bring copies



Ex Parte Rules: Things to Remember While Trying to Work the Inside Track

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The FCC's "ex parte" rules strictly limit oral and written communications with FCC personnel, including FCC Commissioners, about contested matters on which the personnel are working or will be making decisions. The restrictions also apply to communications made to FCC personnel by individuals or entities which are not parties in a contested matter. This includes oral and written communications made by governmental authorities such as U.S. Senators and Congressmen and state or local officials on behalf of one or some of the parties in a contested matter. The purpose of the rules is to protect the integrity – and the appearance of integrity – of the FCC's processes by ensuring that all relevant persons or entities have the opportunity to respond to data or arguments presented to the FCC regarding a contested matter.

While it may strike some as odd that they are not entitled to contact FCC personnel whenever they choose about whatever subjects they choose, consider this analogy. Suppose you're litigating a divorce, and in the middle of the trial you happen to

run into your soon-to-be-former spouse at a restaurant enjoying an apparently pleasant meal with the judge presiding over your divorce proceedings. Even though they might claim (correctly or otherwise) that they weren't really discussing your case, you would be justified to be ever so slightly suspicious about whether the deck had been stacked against you. And it is precisely that possibility of unfairness, and the possible perception of such unfairness, that the "ex parte" rules are intended to eliminate. Folks who are involved in contested proceedings before the FCC should be confident that decisions are not being influenced through under-the-table, undisclosed communications.

For many contested matters, including competing applications, oral communications with FCC personnel are prohibited at all times, unless all parties involved are present at a meeting with FCC personnel, and written communications must be served on the other parties involved. Other contested matters, such as most rulemaking proceedings

and many mergers, may be designated by the FCC as "permit-but-disclose" proceedings. In "permit-but-disclose" proceedings, oral and written communications are permitted up until shortly before a decision is made as long as (a) any written material shown to personnel during a meeting, even if the material is not left with the personnel, is formally submitted in the rulemaking or merger record, and (b) a summary of new data or arguments presented orally to personnel and not already reflected in the presenter's written submissions in the rulemaking record is formally submitted in the rulemaking or merger record. The summary must adequately describe the new data or arguments and disclose the presenter's requests, positions, and reasoning so that opposing parties are able to fully respond.

Even status inquiries are governed by the FCC's "ex parte" rules. A summary of a status inquiry must be submitted in a "permit-but-disclose" rulemaking or merger record if the

inquirer (a) states or implies a view as to, or otherwise addresses, the merits or outcome of a proceeding or (b) states why timing is important to a particular party, gives a date by which a proceeding should be resolved, or otherwise influences the timing of a proceeding. A status inquiry merely expressing concern that a proceeding by resolved expeditiously need *not* be disclosed.

FCC personnel may request supplemental filings if they believe that the initial disclosure is inadequate. In addition, violations of the FCC's "ex parte" rules may result in disqualification from participating in a proceeding or fines.

It is highly recommended that you consult with the FHH attorney with whom you work before contacting or communicating orally or in writing with FCC personnel or Commissioners, or asking or suggesting that another individual or entity do so on your behalf.

For many contested matters, including competing applications, oral communications with FCC personnel are prohibited at all times, unless all parties involved are present at a meeting with FCC personnel, and written communications must be served on the other parties.

November 5, 2004

Television Pre-Election Certification Form - All television stations must electronically file their Pre-Election Certification on FCC Form 381.

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 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 **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.

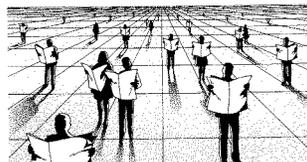
Deadlines!



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

Updates on the News

Concentration forum set for St. Paul – Commissioners Copps and Adelstein, apparently not satisfied with the input the Commission has been receiving for the last couple of years relative to media concentration, have scheduled their own forum on that topic, to be held at Hamline University in St. Paul, Minnesota on December 9 from 7:00-10:30 p.m. The purpose is to give “citizens outside of Washington” an opportunity to “voice their opinions about media concentration”. A splendid time is guaranteed for all. And speaking of media concentra-



tion, the U.S. Court of Appeals for the Third Circuit has rejected a request presented by Viacom to lift restrictions on crossownership of radio and TV stations in the same market.

Yellow changing to red real soon – As we have alerted you in recent issues, the FCC has announced its “red light rule” pursuant to which the Commission will dismiss applications filed by any applicants who are delinquent in any debt owed to the Commission. The ini-

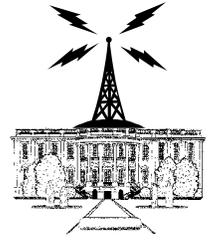
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Red tape made easy?

FCC Moves to Facilitate Approval Process Of Tower Construction Near Sensitive Sites

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The wired nation is increasingly going wireless. And more wireless means more towers. More towers mean more paperwork and more disputes over tower construction. Often, processing delays occur because a tower is proposed in or around an historic site.

It adds up to “an exponential increase in the number of environmental and historic preservation reviews conducted by tower constructors, State Historic Preservation Officers and FCC staff, creating case backlogs, additional paperwork, and delays in the deployment of necessary wireless, public safety, broadcast and other communications infrastructure,” says the FCC.

The FCC’s antidote is to standardize the review process, from application to approval, so state, federal, Indian tribal and Hawaiian native organizations charged with protecting heritage sites can get their reviews done as quickly as possible.

The FCC’s goal is to standardize the review process, so responsible organizations charged with protecting heritage sites can get their reviews done as quickly as possible.

New standardized forms are in the works. The same form will work regardless of whether it’s being submitted to the FCC, or to a state, tribal or Native Hawaiian historic preservation office. Although pending applications filed on older forms will still be valid, anyone who wishes to re-submit a tower proposal on the new forms (once they are available) will be allowed to do so

The new procedures specifically exclude certain tower building efforts from this historic preservation review process. These include: enhancements to existing towers, replacement and temporary towers, as well as certain towers constructed on industrial and commercial properties

or in utility corridor rights-of-way.

The new historic preservation review procedures are currently expected to be in effect, and the new forms available, by the end of 2004 or early in 2005.



(Continued from page 8)

tial roll-out of that program was originally set for October 1, but then some internal problems with the FCC’s own record-keeping appear to

have led to a postponement. But the reprieve was short-lived. The Commission has announced that the “red light rule” is going to kick in as of November 1. If you plan on filing any applications, you would be well-advised to check out the “RLD System” the Commission has set up to help applicants and prospective applicants figure out whether the Commission thinks that they’re delinquent. You can get to the RLD System at www.fcc.gov/redlight.

EEO audits strike again, with more to come – In early October the Commission issued EEO audit letters addressed to more than 150 licensees. This is part of the re-emergence of EEO regulation as a matter of relatively high priority to the Commission. Similar audit inquiries were issued last

May, and the Commission promises that more will be on the way in 2005.

Fake 301’s? – And from some bizarre corner of the universe comes word that a number of “fraudulent FCC Form 301” applications may have been filed with the Commission, and some of them may even have been accepted for filing. Some published reports indicate that these applications reflect that they were prepared by consulting engineers, although those engineers have apparently denied that they in fact prepared them. The reports suggest that elaborate steps were taken to get the applications filed, including establishment of bogus CDBS filing accounts. As of press-time, however, the culprit(s) has/have not been identified, and the purpose of the alleged fake filings is far from clear – although some have speculated that this may be intended to underscore the supposedly unreliable nature of electronic filing, and electronic voting, systems.

FM ALLOTMENTS ADOPTED –9/17/04-10/22/04
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State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
CO	Crawford	185.4 miles S of Boulder	272C2	03-144	TBA
CO	Gunnison	148.6 miles SW of Colorado Springs	299A	03-144	None
GA	Athens	69 miles NE of Atlanta	284C1	03-190	None
GA	Doraville	13.4 miles W of Atlanta	238C1	03-190	None
AL	Fort Rucker	80.6 miles S of Montgomery	280C3	04-146	None
AL	Ozark	76.9 miles S of Montgomery	285A	04-146	None
AL	Slocomb	98.6 miles S of Montgomery	263C3	04-146	None
NC	Bethel	14.2 miles N of Greenville	255C3	04-72	None
NC	Windsor	40 miles N of Greenville	249A	04-72	None
AL	Maplesville	50.2 miles N of Montgomery	292A	03-5	None

FM ALLOTMENTS PROPOSED –9/17/04-10/22/04

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
CO	Security	8.9 miles S of Colorado Springs	288C2	04-367	Cmts -11/15/04 Reply-11/30/04	Drop-in
CO	Genoa	93.3 miles N of Colorado Springs	291C3	04-367	Cmts -11/15/04 Reply-11/30/04	Drop-in
MI	Crystal Falls	111.7 miles N of Green Bay	280C2	04-370	Cmts -11/15/04 Reply-11/30/04	Drop-in
WI	Laona	98.62 miles N of Green Bay	272C3	04-371	Cmts -11/15/04 Reply-11/30/04	Drop-in
IL	Grayville	154 miles W of Louisville, KY	229A	04-368	Cmts -11/15/04 Reply-11/30/04	Drop-in
IN	Lanesville	16.2 miles W of Louisville, KY	243CA	04-380	Cmts -11/18/04 Reply-12/03/04	Drop-in
NC	Hillsborough	14.8 miles NW of Durham	273A	04-375	Cmts -11/18/04 Reply-12/03/04	Drop-in
KS	Haven	33.9 miles NW of Wichita	246C2	04-376	Cmts -11/18/04 Reply-12/03/04	Drop-in
OH	North Canton	5 miles S of Akron	269A	04-377	Cmts -11/18/04 Reply-12/03/04	Drop-in

FM ALLOTMENTS PROPOSED -9/17/04-10/22/04 (continued)

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
TX	West Orange	113.9 miles N of Houston	258C0	04-378	Cmts -11/18/04 Reply-12/03/04	Drop-in
GA	Lexington	89.1 miles N of Atlanta	249C2	04-379	Cmts -11/18/04 Reply-12/03/04	Drop-in
CA	Cedarville	190 miles N of Reno, NV	260A	04-387	Cmts -11/29/04 Reply-12/14/04	Drop-in
LA	New Llano	99.5 miles N of Shreveport	252C3	04-386	Cmts -11/29/04 Reply-12/14/04	Drop-in
CA	Blythe	172 miles W of Phoenix, AZ	239B	04-388	Cmts -11/29/04 Reply-12/14/04	Drop-in
LA	Boyce	154.7 miles NW of Baton Rouge	222A	04-389	Cmts -11/29/04 Reply-12/14/04	Drop-in
NY	Celoron	62.7 miles S of Buffalo	237A	04-390	Cmts -11/29/04 Reply-12/14/04	Drop-in
TX	Wells	123 miles N of Houston	254A	04-391	Cmts -11/29/04 Reply-12/14/04	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.



FHH - On the Job, On the Go

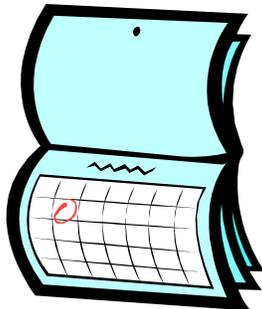
Frank Jazzo will be conducting a license renewal seminar on November 5, along with Michael Wagner, Assistant Chief of the FCC's Audio Division, at the annual convention of the Alaska Broadcasters Association being held in Anchorage on November 4-5.

Gene Lawson recently participated in the 35th Annual Advanced Business Law Seminar in Irvington, Virginia, which addressed such topics as getting closely-held companies ready to sell to either a private buyer or a public company. Valuation, timing, non-competition and other side agreements and, perhaps most importantly, buyer due diligence were all on the agenda. **Gene** also participated in the 19th Annual Mid-Atlantic Bankruptcy and Reorganization Institute in Charlottesville. Not surprisingly, a wide range of bankruptcy-related issues were addressed.

And how about a big *MTC* shout-out to **John Butcher**, who joined us as an associate this month. John is a graduate of Kenyon College (*summa cum laude* and *Phi Beta Kappa*, thank you very much) and the University of Virginia Law School, where he was on the editorial staff of the *Journal of Law and Politics*. He can be reached at 703-812-0432 or butcher@fhhlaw.com

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First Class



Holiday Schedule Reminder

Fletcher, Heald & Hildreth, P.L.C.
will be officially closed on
November 25 (the Friday after Thanksgiving),
December 24 (the Friday before Christmas) and
December 31 (New Year's Eve).

We will be open on November 11 (Veterans' Day).