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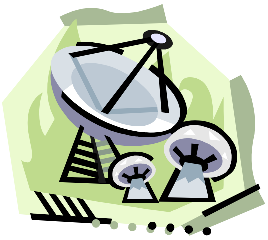
Memorandum to Clients

February, 2005 | News and Analysis of Recent Events in the Field of Communications | No. 05-02



SHVERA, Spawn of SHVIA

Congress Fine-Tunes DBS Carriage Requirements

By: Paul J. Feldman
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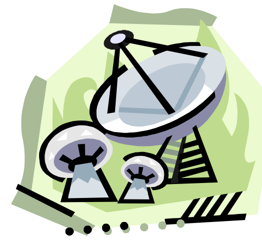

Recently, federal legislation was enacted that reauthorizes and revises the Satellite Home Viewer Improvement Act (SHVIA). The new "Satellite Home Viewer Extension and Rural Consumer Access to Digital Television Act" (S.2684, known as SHVERA) has important provisions changing certain regulations under which local and distant stations are carried on direct broadcast satellite services such as DirecTV and Dish Network. The legislation requires the FCC to initiate a number of proceedings in 2005 to enact new satellite carriage rules. The FCC has recently released the first Notice of Proposed Rulemaking (*NPRM*) to enact revised rules on "significantly viewed" status for the purpose of satellite importation of distant broadcast signals.

*SHVERA allows but does **not** require DBS operators to import distant "significantly viewed" stations into markets served by an affiliate of the same network as the imported station, subject to network-nonduplication and syndicated exclusivity rules.*

The SHVERA legislation addresses many issues, including the following:

Distant Digital Signal Importation/"Unserved" Digital Households: SHVERA enacts numerous new and detailed requirements involving the satellite importation of distant digital network broadcast signals into households "unserved" by a local digital signal of a particular network. Generally, the FCC is required to determine whether it should develop a new method for identifying households that are "unserved" by *local digital* TV signals of a particular network, and are thus eligible to receive satellite-delivered *distant digital* signals of an affiliate of that network. The FCC apparently could use the predictive model currently used to determine when a household is unserved by an analog signal. In any case, the FCC will have to establish a) the appropriate signal level for classifying whether a household is "unserved" by a local digital signal and is thus eligible to receive a distant digital signal of that network; b) the predictive model to be used for determining the signal reception at individual locations; and c) procedures for subscribers seeking waivers of the prohibition on receiving distant digital signals.

Importation of "Significantly Viewed" Stations to "Served" Subscribers: In addition to the provisions discussed above regarding importation of signals into "unserved" areas, SHVERA *allows but does **not** require* DBS operators to import distant "significantly viewed" stations into markets *served* by an affiliate of the same network as the imported station, subject to network-nonduplication and syndicated exclusivity rules. The FCC has released an *NPRM* on rules to implement these provisions. That *NPRM* also pub-

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The Scoop Inside

FCC to tower proponents: "Look out below"

New Tower Procedures May Streamline Approval Process

But watch out for the fine print

By: Donald J. Evans
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Lately it seems like the FCC is part nanny, part Robin Hood, and part vigilante. It compels businesses to engage in affirmative action activities. It washes out the mouth of stations who use naughty words. It guards the nation's flyways by verifying that towers are painted and lighted. It fights terrorism by ensuring that a wide array of communications media are accessible to electronic surveillance by the FBI. It redistributes wealth by making its regulatees subsidize rural telephone companies, schools, libraries, and rural health care providers. It gives discounts to Indian tribes and small businesses. It pursues anyone who owes the Federal government a debt. Whether it be crime, racial injustice, poverty or profanity, there is no social ill to which the FCC's writ does not run.

Now the FCC's benevolent zeal has turned to historic preservation.

As we mentioned in our last issue, the FCC has adopted rules (currently scheduled to go into effect on March 7) which will implement the "Nationwide Programmatic Agreement" (NPA). The NPA is an accord hammered out by representatives of the FCC, the Advisory Council on Historic Preservation, and the National Conference of State Historical Preservation Officers. These folks, along with representatives of Indian tribes and potentially affected tower managers and owners, formed a working group to try to come up with a way to streamline compliance with the National Historic Preservation Act.

The latter Act requires federal agencies, including the FCC, to take into account the potential effect of any of their undertakings on registered historical properties or properties eligible for registration. The FCC and potential tower builders had been struggling with this requirement for years because the so-called "SHIPOs" and "THIPOs" (state and tribal historical preservation officers, respectively) were delayed in completing the necessary consultation that had to occur before the FCC could sign off on a tower construction with historic implications. The NPA is intended to ease that backlog by clarifying the obligations of the various parties to the process.

And, for those inclined to look on the bright side, there are several very useful elements in the NPA. For one thing, it clarifies the circumstances under which a modification to an existing tower structure must undergo new historic preservation review. Because the criteria for a "substantial modification" of a tower are now clearly defined, a tower owner can be sure what sorts of changes will trigger regulatory delay.

In addition, the NPA defines far more precisely the zones around the tower ("areas of potential effects") within which a tower builder must assess adverse historical effects. Very significantly, the NPA makes it clear that a tower proponent does ***not*** have to scout around and determine whether structures in the protected zone are "eligible" for inclusion in the Historic Register even if they are not in the Register already. Clarifying these and other points and standardizing the process with uniform forms and procedures will certainly help to eliminate many proposed towers from historic consideration at all and will speed the disposition of applications for other towers that may or may not adversely affect historic properties.

But for those glass-half-empty types among you, there's also a down-side or two. Perhaps the most outrageous requirement found in the NPA is the obligation to have a government-certified expert proclaim that your proposed construction does not require a field survey (basically, an archeological excavation) to ensure that no historical or archeological treasure will be disturbed by the construction. In other words, the default requirement would routinely call for such a site excavation – ***unless*** you can get an ex-

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Focus on FCC Fines

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Indecency – Congress Begins to Up the Ante – One year after the ill-fated Janet Jackson half-time show at Super Bowl 2004, the House of Representatives has voted to increase nearly 20-fold the maximum amount which the FCC can fine broadcasters for indecency violations. The bill, which is nearly identical to a similar effort that died in Congress last year, would authorize the FCC to whack licensees – and, in some instances, non-licensees, such as the person(s) who actually utter the indecency on air – up to $500,000 a crack. The bill includes language which would give the Commission considerable latitude to impose lesser fines, should the circumstances warrant. But the clear message of the bill is that the House is willing to give the FCC plenty of clout with which to induce compliance with the indecency rule.

The bill, which passed by a 389-38 vote, would also impose deadlines on the FCC for action on indecency complaints, and would expressly instruct the Commission to treat any final indecency violations as raising character qualifications issues relative to the licensee, particularly at renewal time. A violation would be "final" for purposes of this provision if the licensee has paid the fine imposed by the Commission ***or*** a court of competent jurisdiction has issued a final order compelling such payment.

As ominous as all this sounds, it is just a proposal. Before it can become law, the Senate has to sign on as well, and the President has to sign it. Last year's version of this bill stalled out as the Senate loaded it up with additional provisions which ultimately killed it. This is not to say that this year will necessarily end up the same way. There continues to be considerable anti-indecency sentiment on Capitol Hill. But there are some elected officials who see danger lurking in the anti-indecency frenzy. Rep. Bernie Sanders (I-VT), for example, issued a statement expressing the view that "free expression and Americans' First Amendment rights are the real target of this legislation". Congressman Sanders cited the recent "Saving Private Ryan" situation (in which a significant number of television licensees declined to broadcast the movie on Veterans' Day out of concern that such broadcast might be held to be indecent because of some of the language used in it), and reminded his colleagues that a $500,000 fine could easily bankrupt many small broadcasters.

Non-Commercial Stations Fined for Commercials - A noncommercial Spanish-language station in Florida was slapped with a $10,000 fine for airing two spots that the FCC determined were advertisements. The station argued that the FCC's translation from Spanish to English was incorrect. But even after it accepted the licensee's translation as arguably more accurate than its own, the FCC ***still*** determined that an announcement which encouraged listeners to attend a party in Old Town and another announcement which provided a qualitative description of a sponsor's service were both commercials.

In a separate case, the FCC continued its pursuit of a San Francisco NCE TV station. As reported in our January, 2004 column, the FCC fined the station $10,000 for airing commercials. A year later the Commish issued an additional $7,500 fine to the TV station for continuing to broadcast advertisements. This time, the advertisements were for an automobile company and an investment house. The FCC noted that the station had a history of poor compliance.

Readers are reminded that noncommercial stations may not broadcast statements that contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease. As with indecency, there is no bright-line test and broadcasters bear the risk in many uncertain instances. Licensees should consult counsel prior to broadcasting materials about which they are uncertain.

$14,500 Down the Toilet - A septic tank cleaning company splashed down with a fine from the FCC. The FCC pulled the handle on the company for sending prerecorded advertisements to consumers. FCC regulations prohibit companies from sending such advertisements to consumers. In addition, the septic company did not respond to FCC notices regarding the incidents. Still, the Commission was able to flush the company out. With the scent of violation and the disregard for FCC authority in the air, the government was quick to spray the company with a $14,500 fine.

EAS violations - The monthly list of fines issued by the FCC for EAS violations include a low-power television station in Florida and an AM/FM combo in Pennsylvania. As noted in previous editions of this column, because stations are required to maintain logs of EAS system testing and operations, EAS failures are readily apparent to visiting FCC inspectors. All broadcasters and cable system operators should maintain their EAS systems in working condition, should participate in all regular system testing, and should be sure to maintain complete and accurate records demonstrating their compliance with the rules.

CP fees down, everything else up

FCC Announces Proposed 2005 Regulatory Fees

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The Commission has released its Notice of Proposed Rulemaking on the Assessment and Collection of Regulatory Fees for Fiscal Year 2005. And here's a surprise: the majority of broadcast licensee regulatory fees are proposed to go up for 2005. The proposed fees (which would be due for payment later this year) are set out below.

Perhaps the most noticeable change for broadcasters relates to the fees for new AM, FM, VHF, and UHF construction permits. Since 1994, the reg fees for these CPs have steadily increased which has resulted in CP fees which have oftentimes been higher than fees for actually licensed stations. To correct this inequity, the Commission is proposing to set the AM, FM, VHF, and UHF construction permit reg fees to be no higher than the regulatory fee associated with lowest licensed station for that fee category. As a result, reg fees for new broadcast permits are proposed to plummet by as much as 70%. (Note that this reduction is not likely to have much effect on the FCC's finances, since the number of outstanding new broadcast permits is relatively small because the Commission has not been issuing many in recent years, and the permits which were outstanding over the last several years have largely vanished, either because the stations have since been built and licensed or because the permits expired.)

A licensee which fails to pay the required reg fee is "red lighted". When that occurs, the licensee will not be granted any new authorization unless and until the "red light" is cleared either by payment of the outstanding fee or the making of appropriate arrangements with the FCC for such payment.

All other broadcast fees are proposed to be increased. The increases range from a modest 1% or so (for Class A AM stations serving more than 3,000,000) to more than 14% (for commercial VHF TV stations in markets below 100).

The payment window has not yet been set. While regulatory fees are usually due to be received by the FCC in late September, this may not be the case this year. As you will recall, last year, the Commission surprised everyone and required payment of regulatory fees in August. With that recent history, it is difficult to predict what the Commission will do this year. We will let you know when the FCC announces the filing window.

As usual, fee payments must be accompanied by a completed FCC Form 159 (Fee Remittance Advice). To fill out that form you will need to know the FCC Registration Number (FRN) of the entity owing the fee, as well as the FRN of the person or entity making the payment (if that person or entity is different from the one which owes the fee). You will also need to know the payment type code for the particular fee you are paying. Fees can be paid on-line again this year. Again, payments not paid on-line or received by Mellon Bank (*i.e.*, the Commission's fee collection representative) by their due date will be assessed a ***25% late payment fee***. We will, of course, be happy to assist you in the filing of your fee(s).

Payment of reg fees has always been important, but it has become even more so in recent months with the implementation of the "red light" system. Under that system, a licensee which fails to pay the required reg fee is "red lighted". When that occurs, the licensee will not be granted any new authorization unless and until the "red light" is cleared either by payment of the outstanding fee or the making of appropriate arrangements with the Commission for such payment. If a delinquent licensee files an application of any kind, that application will be dismissed if the delinquency is not cleared up within 30 days. In view of this, we urge everyone who is subject to regulatory fees to be sure to get their payments made in a timely manner.

Comments on the Commission's proposed regulatory fees are due to be filed with the FCC by March 8. Reply comments are due March 18. We expect the Commission to release its Report and Order with the final regulatory fee amounts early this summer.

The *proposed* 2005 regulatory fees are listed on the next page.

Fee Category	Proposed FY 2005 Annual Regulatory Fee (USD)
TV VHF Commercial	
Markets 1-10	61,975
Markets 11-25	44,675
Markets 26-50	32,025
Markets 51-100	18,800
Remaining Markets	4,625
Construction Permits	3,175
TV UHF Commercial	
Markets 1-10	20,025
Markets 11-25	17,525
Markets 26-50	10,050
Markets 51-100	6,125
Remaining Markets	1,725
Construction Permits	1,725
Low Power TV, TV/FM Translators/ Boosters	395
Other	
Broadcast Auxiliary	10
Earth Stations	205

Satellite Television Stations	
All Markets	1,075
Construction Permits	535

Proposed FY 2005 Schedule of Regulatory Fees for Commercial Radio Stations

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=25,000	625	475	375	450	550	725
25,001 -75,000	1,225	925	550	675	1,125	1,250
75,001 -150,000	1,825	1,150	750	1,125	1,550	2,300
150,001- 500,000	2,750	1,950	1,125	1,350	2,375	3,000
500,001 -1,200,000	3,950	2,975	1,875	2,250	3,750	4,400
1,200,001- 3,000,000	6,075	4,575	2,825	3,600	6,100	7,025
>3,000,000	7,275	5,475	3,575	4,500	7,750	9,125
AM Radio Construction Permits	310					
FM Radio Construction Permits	550					

Special – DTV Carriage Update

Cable, Non-Coms Cut Carriage Compact

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Once the DTV transition has been completed, what must-carry rights will broadcasters be entitled to? That is perhaps the most important unresolved question still hanging over the transition process. Or, at least, it *was* the most unresolved until this month, when two events provided at least the outlines of the must-carry future.

One event (discussed in the article on Page 7) was the Commission's decision to limit commercial over-the-air broadcasters to one channel of DTV must-carry only, even if the broadcaster happens to be airing multiple channels of programming.

But a matter of days before the FCC announced that decision, the noncommercial television industry and the cable industry unveiled an agreement through which NCE broadcasters are assured of carriage of up to four separate digital streams.

The agreement was struck by the Association of Public Television Stations (APTS) and Public Broadcasting Service (PBS), on behalf of the NCE television folks, and the National Cable and Telecommunications Association (NCTA), on the cable side. Once ratified by members of all those groups, the agreement will commit local cable operators to distribute up to four digital streams from each public television station, as long as the programming is not duplicated by another local PBS station. No agreement yet exists to ensure DBS carriage.

Under the agreement, during the transition period when NCE stations are still broadcasting both in analog and digital formats, upgraded cable systems that offer HDTV transmissions will carry, in addition to the analog signal, up to four streams of free noncommercial digital broadcast programming and associated material from one NCE station in a market, if the station chooses to distribute that many streams. After all TV stations in a market are transmitting only digital signals, upgraded cable systems that offer HDTV will carry free noncommercial digital programming of each local must-carry NCE station. This carriage may include four streams of free noncommercial digital programming and associated material, subject to reasonable programming duplication parameters. And if any NCE station decides to shut off analog transmission and broadcast in digital-only before the DTV market transition, that station may choose to have its digital signal carried on the upgraded local cable system at that time.

The agreement does not supersede existing pre-transitional digital carriage agreements among NCE stations and cable systems. Any such existing agreements will remain in effect until they expire.

The agreement won't become effective until ratified by (a) NCE stations in markets comprising 80 percent of U. S. TV households and (b) cable Multiple System Operators (MSOs) representing at least 80 percent of cable subscribers. Ratification must occur within 60 days of the agreement's approval by the Boards of APTS, PBS and NCTA; the MSOs will commence carriage within 180 days of ratification.

In public statements announcing the agreement, NCTA touted the "compelling content" of NCE programming. That's not a controversial point, especially for the kind of programs that have become public TV's hallmark.

But NCTA's press releases did not address what for many, if not most, is the core issue for broadcasters, *i.e.*, whether the DTV transition will entail a paradigm shift in how the economic pie is divided up in television's for-profit sector. The Commission's refusal to impose a multi-channel must-carry obligation on cable and satellite operators indicates that the Commission is not inclined to promote such a shift. The NCTA-APTS-PBS agreement, on the other hand, does establish a *modus operandi* which commercial operators may attempt to pursue in the hope of obtaining, through private contractual agreements, that which the FCC has declined to provide through regulatory fiat.

Of course, political and legal wrangling is bound to ensue on the commercial side. As with the original must-carry and retransmission consent rules, it will probably take a number of years for such activity to run its course. But in the short run, with the digital transition looming, privately negotiated solutions will be required to bring

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Special – DTV Carriage Update

Commission Kiboshes Compulsory Compound Carriage

FCC-mandated DTV carriage stops at one

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In February, the FCC finally addressed issues that had been pending for over four years regarding Cable TV must-carry of DTV signals, including (1) whether cable operators would be required to carry multiple programming streams of a DTV signal (multicasting), and (2) whether cable operators would be required to carry *both* a station's analog and DTV signal during the DTV transition (dual carriage). The results were not good for broadcasters: the FCC decided that cable operators are *not* required to carry multicasting or to provide dual carriage, in fulfilling their must-carry obligations. The fact that this proceeding involved very difficult issues of constitutional law and digital technology and policy probably led to the four years of delay, but it appears that this was an item that Chairman Powell wanted to "check off his list" prior to leaving the Commission in March.

Multicasting

In its January, 2001, *DTV Must-Carry Report and Order*, the FCC found that the statutory requirement that cable providers carry only the "primary" video of a broadcast signal meant that stations were entitled to carriage of only one digital programming stream, rather than all or multiple streams. The Commission re-affirmed that conclusion in its February Order. While the FCC recognized that there is some ambiguity over what Congress might have meant by the term "primary video", the Commission concluded that Congress's language certainly implies that some programming is "secondary", and thus not entitled to must-carry. Although the term "secondary" might have been intended to refer to digital services such as Internet access or data transmission, the FCC appeared to conclude that these non-video services are better described as "ancillary" services, which certainly do not qualify for must-carry. That would leave multiple video programming streams as "secondary".

The Commission also recognized that First Amendment considerations limited its ability to read the term "primary" expansively and, pursuant to that expansive reading, to enact requirements that the cable industry assert significantly burden cable operators' free speech rights to program their systems as they please. The Supreme Court's 1997 *Turner* decision upheld the constitutionality of a *single analog* must-carry requirement by a narrow 5-4 vote, based on "substantial evidence" in the record that absence of an analog must-carry requirement would lead to such substantial financial hardship on stations that free over-the-air service to the public would suffer as stations died.

Despite the narrowness of the *Turner* decision and the seemingly easy distinctions which could be said to make its reasoning inapplicable to multicasting, a number of Commissioners still appeared open to the notion of some multicast must-carry obligation; they invited Congress to address that issue in Telecom Act re-write legislation this year. However, even if Congress wants to take such action, it may be difficult to do so in a way that passes Constitutional muster.

Dual Carriage

In its January, 2001, *DTV Must-Carry Report and Order*, the FCC concluded that the Communications Act neither required nor prohibited the carriage of *both* a station's analog and DTV signals; rather, the Commission interpreted the statute as leaving that issue to the Commission's discretion. The Commission thus sought comments on the matter, with the focus on technical issues of channel space and compression as well as constitutional implications. Four years later, the FCC has now concluded that a dual carriage requirement ***would*** violate the First Amendment rights of cable operators. The FCC's action here was not a surprise, given that it had asserted that conclusion on a tentative basis in 2001, and given the narrow nature of the Supreme Court's 1997 *Turner* decision, discussed above. Nevertheless, some broadcasters had hoped that the Communications Act's mandate that the FCC promote the DTV transition might overcome the FCC's other concerns. Addressing that argument, Chairman Powell noted that the FCC had taken many other actions designed to promote the DTV transition, including giving broadcasters a second channel during the transition and mandating the manufacture of digital TV tuners. According to the Commissioners, even if requiring dual carriage would promote the transition, the FCC did not have the authority to do so under the First Amendment.

Of course, even though broadcasters do not have mandatory *rights* to multicasting and dual carriage, that does not mean that they are barred from *negotiating* for some or all of those rights with cable operators on an individual basis.

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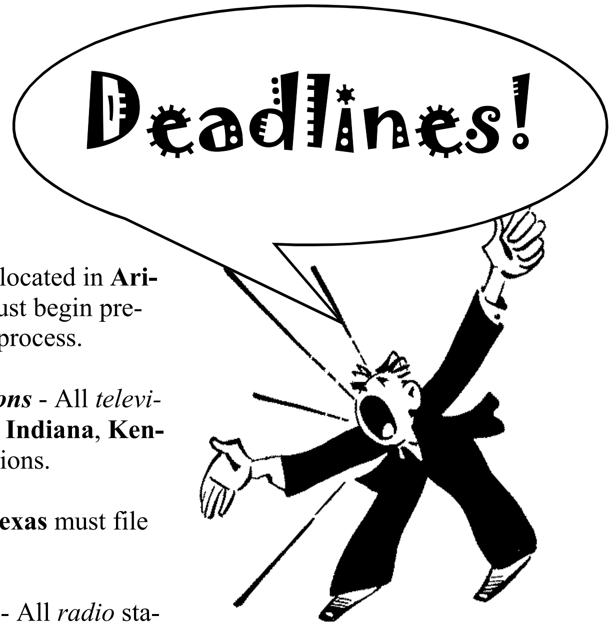

April 1, 2005

Television Renewal Pre-Filing Announcements - *Television*, *Class A television*, and *LPTV* stations originating programming and located in **Ohio** and **Michigan** must begin pre-filing announcements in connection with the license renewal process.

Radio Renewal Pre-Filing Announcements - *Radio* stations located in **Arizona**, **Idaho**, **Nevada**, **New Mexico**, **Utah**, and **Wyoming** 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 **Indiana**, **Kentucky**, and **Tennessee** must file their license renewal applications.

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

Radio and Television Renewal Post-Filing Announcements - All *radio* stations located in **Texas**, and all *television* stations located in **Indiana**, **Kentucky**, and **Tennessee** must begin their post-filing announcements in connection with the license renewal process, and continue such announcements on April 1 and 16, May 1 and 16, and June 1 and 16.

EEO Public File Reports - All *radio* and *television* stations with five (5) or more full-time employees located in **Delaware**, **Indiana**, **Kentucky**, **Pennsylvania**, **Tennessee**, and **Texas** 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 located in **Delaware**, **Pennsylvania**, and **Texas** must file a biennial Ownership Report (FCC Form 323 for commercial stations or Form 323-E for noncommercial stations). All *television* stations located in **Delaware**, **Indiana**, **Kentucky**, **Pennsylvania**, **Tennessee**, and **Texas** must also file a biennial Ownership Report. All reports filed on FCC Form 323 or 323-E must be filed electronically.

April 10, 2005

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.

Deadline Postponement!

Children's Television Commercialization Rules - The requirement that all DTV and TV stations must eliminate displays of commercial website addresses during children's programming has been postponed to **January 1, 2006**.

Long-term Planning Reminder: Carriage elections due in October

Television stations face an October, 2005 election deadline relative to cable carriage - must-carry or retransmission consent. It is not too early to focus on that election, as the negotiation of retransmission consent agreements can take considerable time to complete.

Trying to get the ball rolling?

Qualcomm Proposal Would Allow Non-broadcast Interference to TV Licensees

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The Commission has sought comment on a Petition for Declaratory Ruling filed by Qualcomm Incorporated. Qualcomm was one of the two major winners in the Lower Band 700 MHz auction, where they successfully bid for the authority to operate, *nationwide*, on the spectrum currently assigned to TV Channel 55.

When Qualcomm won the spectrum at auction, it was aware that it would need to protect the existing television operators on Channel 55 (and adjacent channels) until the end of the DTV transition. Under the Commission's rules, that protection must be afforded on the basis of geographic spacing. In certain circumstances, though, the Commission permits 700 MHz licensees to demonstrate that the actual service area of a television stations is less than the hypothetical service area established by the geographic spacing rules.

Qualcomm's Petition requests that the Commission permit the use of the Longley-Rice Method (OET 69) to determine whether the proposed wireless operations would cause interference to the television licensee. Qualcomm argued that television licensees are accustomed to the Longley-Rice Method, and its use would not impose a substantial burden on television licensees.

Perhaps more controversial, Qualcomm also proposed that the 2% *de minimis* interference standard presently in effect for DTV operations be extended to 700 MHz operators as well. Under certain conditions, the Commission's DTV rules permit a DTV station to cause up to 2% new interference to other DTV stations. Qualcomm requested that the Commission also permit 700 MHz licensees to cause the same level of interference to DTV stations.

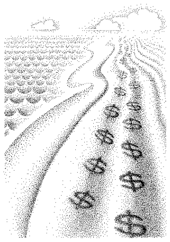
In addition, Qualcomm requested that the Commission adopt a streamlined processing procedure for applications filed by 700 MHz licensees that would require the television licensee to object to a proposed 700 MHz facility within fourteen (14) days of the public notice announcing the filing of the application. Under the Qualcomm proposal, the television licensee would have the burden of demonstrating that the Longley-Rice study provided in the application was defective or that the proposed facility would exceed the 2% interference threshold. Otherwise, the 700 MHz application would be granted.

The common fear among broadcasters is that Qualcomm's proposals are but the first step to reduce the protections enjoyed by television licensees from interference by new services that are permitted to share the TV Band (including unlicensed devices).

The common fear among broadcasters is that Qualcomm's proposals are but the first step to reduce the protections enjoyed by television licensees from interference by new services that are permitted to share the TV Band (including unlicensed devices). If 700 MHz licensees are permitted to cause 2% of new interference to existing licensees, the argument goes, what is to prevent the Commission from permitting unlicensed devices or other so-called "white space" operators from causing new interference to television licensees?

These concerns may be a tad paranoid, since the interference to operators on Channel 55 would be temporary, ending once the Channel 55 TV operators vacate that spectrum as the DTV transition winds down. But just because you're paranoid doesn't mean that they're not after you. After all, once the Commission has reached the conclusion that 2% interference from such other nonbroadcast sources is tolerable in one context, it would not take much creativity to argue that that level should be deemed tolerable in all other contexts. And thus would the snowball start rolling downhill.

Comments on Qualcomm's request are currently due to be filed by March 10, 2005; Reply Comments are due on March 25, 2005. A number of parties, including the NAB and several broadcasters, have filed or are planning to file comments opposing Qualcomm's proposals. If you would like to obtain further information on the proceeding, or to file comments, please let us know.



Same old same old . . . for now

Streaming Rates: No Change for 2005-2006

But new rate-setting system kicks in in May

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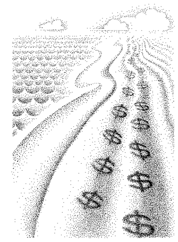


The Copyright Office has shut down proceedings to set rates and terms for webcasting licenses for the period beginning January 1, 2005, and ending on December 31, 2006. Webcasting rates and terms that were in effect on December 31, 2004, will remain in effect during 2005.

The proceedings are being terminated as required under the Copyright Royalty and Distribution Reform Act of 2004, which becomes effective on May 31, 2005. That Act eliminates the Copyright Arbitration Royalty Panel (CARP) system for setting rates and, instead, replaces it with a (theoretically) more streamlined system overseen by three permanent Copyright Royalty Judges (CRJs). New proceedings to establish rates and terms for webcasting licenses will be initiated by the CRJs in the future.

In the meantime, folks who stream musical programming on the internet continue to have two alternative ways of determining the copyright fees they owe: they can pay either on a "per performance" basis or on an "aggregate tuning hour" basis.

The "per performance" option currently costs the streamer 0.0762 cents ($0.000762) per performance for all digital audio transmissions, with the term "performance" defined as "per song per listener". The total number of performances (minus 4% of that total number which are treated as royalty-fee in order to account for songs that did not reach an actual listener due to technical reasons or channel switching) is multiplied by the rate of 0.0762. To illustrate, if your station streamed ten songs and during each song you had ten on-line listeners, your gross royalty liability would be 10 songs x 10 listeners (*i.e.,* 100 performances) x 0.0762 cents, or a total of $7.62 cents.

Alternatively, broadcasters can pay royalties under the "aggregate tuning hour" option. Fees under this option are calculated on the basis of the number of on-line listeners per hour, with the term "tuning hour" being defined as one listener listening for one hour. Broadcasters electing this option are can fall into one of two categories: (a) stations "reasonably classified" as news, talk, sports or business programming; and (b) conventional AM and FM music programming. Royalties for the former, non-music, stations are 0.0762 cents ($0.000762) per Aggregate Tuning Hour. Royalties for conventional music stations are 0.88 cents ($0.0088) per Aggregate Tuning Hour. So, for example, if your station has 10 all-day listeners and has music programming for 20 hours of the day and news/talk for 4 hours of the day, your gross royalty liability would be 20 hours x 10 listeners x 0.88 ***PLUS*** 4 hours x 10 listeners x 0.0762, for a total of $1.79.

For purposes of determining how many "performances" or "aggregate tuning hours" a station has streamed, the Copyright Office assumes that the station is, and has been, keeping detailed records. While the Office has yet to adopt final recordkeeping requirements, it has imposed *interim* requirements. The *interim* recordkeeping requirements – *i.e.*, the minimum information which streamers must record and retain – are as follows:

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

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

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

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

(Continued on page 11)

(Continued from page 10)

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

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

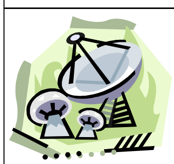
Services must maintain records for each sound recording streamed for a period of no less than two weeks (two periods of seven consecutive days) for each quarter of the calendar year. The two weeks reported need not be consecutive, although a service may choose that option. Likewise, each week period does not have to begin on a Sunday B it can begin on any day of the week and then run for a total of seven consecutive days. The two weeks chosen should reflect the programming typically offered by the service during the calendar quarter.

According to the Copyright Office, there is no set form or time for submitting reports and no designated entity to report to (although webcasters will likely be reporting to SoundExchange). The Copyright Office reports that they're working on these details and will release this information in the future. In the meantime, webcasters should must keep their recordkeeping efforts in their own files.

(Continued from page 6)

digital multicasting to the masses now connected to the broadcast airwaves only by cable. Negotiated carriage for new programming streams, like the NCTA-APTS-PBS agreement, may be the only short-term solution while the politicking and litigating goes on in the background.

As a strategic matter, the successful negotiation of the agreement at this time is probably a major coup for the cable industry. Having secured multi-channel carriage, the NCE industry is not likely to be inclined to lobby the Commission or Congress for statutorily-mandated must-carry. That means that the commercial TV broadcasters will have to lobby on their own. While the commercial folks are not without "quality" programming to which they can point with pride, their ability to argue in favor of across-the-board must-carry requirements would be increased substantially if they were joined by the NCE industry, with its long- and well-established track record of indisputably educational programming. By striking a deal with NCE broadcasters, the cable industry has thus likely diminished the prospects for governmentally-imposed multi-channel must-carry. We shall see.



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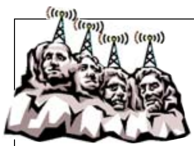
lishes the current list of all stations that are considered significantly viewed in specific communities, and urges licensees to review the list for typos and other errors.

Carriage of Local Stations on a Single Dish: SHVERA generally requires DBS operators that choose to offer local stations in a particular market to reallocate their channels so that subscribers in that market can receive "all" local stations on a *single* dish. This would eliminate Dish Network's practice of placing the signals of non-network broadcast stations on a second dish *separate* from the one used to carry network broadcast stations. SHVERA *does* allow DBS carriers to carry local *analog* station signals on a separate dish from local *digital* station signals, and also allows operators to carry *all* local stations on a separate dish from non-broadcast programming (TNT, CNN, etc.). DBS operators must comply with the single dish requirement by June of 2006.

Satellite Carriage of LPTV/Class A Stations: SHVERA modifies the Copyright Act to give DBS operators a compulsory license that would *allow but* ***not*** *require* such operators to transmit LPTV and Class A network station signals to subscribers within 20 miles of the station's transmitter site (in the top 50 markets) and to subscribers within 35 miles of the station's transmitter site (outside of the top 50 markets).

SHVERA has many complex details in its legislative language, and we encourage broadcasters to review it carefully.

The FCC will be issuing a number of *NPRM*s this year to create rules required by various provisions of the SHVERA. Comments on the "significantly viewed" *NPRM* discussed above are due on April 8th, with reply comments due by April 29th.



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pert to absolve you and your site.

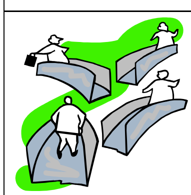
There are, of course, exceptions to this requirement, but they are somewhat (actually, unbelievably) narrow. You do not need the expert's blessing as long as (1) geomorphological characteristics make it clear that there could be nothing under the ground (*e.g.*, you're building on bedrock) *or* (2) the ground beneath the proposed structure has already been disturbed to a level two feet below the proposed construction. In any other situation (*i.e.*, in most situations), you either have to actually perform the field survey or get an expert to say that there is no reason to think that a field survey would be required. This is true even if you're planning to build in the middle of uninhabited woods or fields – since there could have been colonials or Vikings or Indians on the site centuries ago and the site must not be irrevocably disturbed without the blessing of an expert.

For PCS operators, multi-station broadcasters, and other licensees who erect lots of towers, the need to secure this expert blessing will add both delay and significant expense to the bottom line. Of course, certified archeological experts (which we plan to become when we retire as communications lawyers) will be assured full employment for centuries to come.

CTIA, the cellular industry association, has already appealed the FCC's order to the court of appeals. They will argue that tower construction is not within the FCC's province unless the agency is authorizing construction of a specific tower. (Most geographically licensed services like PCS, cellular, etc. do not have to get FCC approval for individual station locations.) There is no federal license issued for those towers and thus no federal "undertaking" triggering compliance with the Historic Preservation Act. Note that, since individual tower locations ***are*** approved for broadcast stations, the CTIA appeal, even if successful, is not likely to be of much help on the broadcast side. Still, if the appeal is successful, the FCC will presumably be able to devote less time to historic preservation and get back to the important work of monitoring nipples and four-letter words on the airwaves.

Raymond Quianzon, Lee Petro Promoted to "Senior Counsel"

The members of Fletcher, Heald & Hildreth are pleased to announce that Raymond Quianzon and Lee Petro have been promoted to the position of senior counsel, effective February 1, 2005. The senior counsel title denotes attorneys who have demonstrated maturity, judgment, a high level of knowledge regarding a significant range of matters important to the firm's practice, and the ability to act effectively and independently for the benefit of both the firm and our clients. Congratulations to Raymond and Lee for this recognition.



FHH - On the Job, On the Go

Raymond Quianzon lectured at the Reservation Economic Summit (RES 2005), which was held in Las Vegas on February 7-9. RES 2005 was organized by the National Center for American Indian Enterprise Development and focused on improving Native peoples' access to advanced communications technologies.

Mitchell Lazarus appeared as a presenter at an FCBA-sponsored seminar titled "Engineering for Communications Lawyers 101" on February 15.

On March 7, **Vince Curtis** and **Frank Jazzo** will conduct a license renewal seminar for the New Mexico Broadcasters Association in Albuquerque.

Harry Martin will be the FCBA host for "Representing Your Local Broadcaster", a conference co-sponsored by the NAB, the FCBA and the American Bar Association in connection with the NAB convention in Las Vegas. The conference will be held on April 17. The next day, **Harry** will participate as a panelist on the enforcement seminar at the NAB convention, also in Las Vegas.

New LPFM Rumblings May Signal Upcoming Changes

With FCC Forum, Proposed Legislation, LPFM Looking for Improved Status

By: Lee G. Petro
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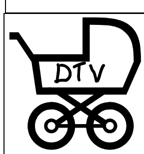
Two recent events in Washington brought the lowly Low Power FM service back into the public eye. In February, on the fifth anniversary of the FCC's adoption of LPFM rules, the FCC convened a forum in Washington to listen to LPFM broadcasters talk about their stations. The forum also gave LPFM'ers the opportunity to suggest changes to the Commission's rules. Meanwhile, over at the Capitol, Senators McCain, Cantwell, and Leahy reintroduced legislation that would lift the third-adjacent channel protection requirements that Congress imposed on the LPFM service in December 2000. Although it is too early to tell whether these efforts will lead to any major changes in the LPFM regulatory scheme, it is clear that this issue will be in the forefront over the next year.

At the FCC-sponsored forum, LPFM operators from across the country were given the opportunity to discuss their current operations and suggest regulatory changes. Not surprisingly, the operators had a few ideas, all of them designed in one way or another to enhance the regulatory status of LPFM stations. Several licensees asked the Commission to make LPFM a primary service, affording them priority (and protection) over new FM Translators. Also, one LPFM operator suggested that the Commission should permit LPFM stations to air a limited number of commercials each hour. (The rationale was not unappealing: according to the proponent, a local diner may not be able to afford to buy ads on the local Clear Channel station, but the LPFM station could offer time at a reduced cost.) Another LPFM broadcaster sought federal funding through the Corporation for Public Broadcasting, arguing that LPFM provides essentially the same service as the local CPB-eligible public radio station. Finally, another broadcaster expressed frustration that full-power FM licensees may not fully understand the underwriting rules (which permit companies to underwrite LPFM and other noncommercial stations) before they file complaints with the FCC. Out-going Media Bureau Chief, Ken Ferree, announced that the FCC is planning a new proceeding soon to address some of the issues that have emerged since the LPFM service began five years ago. It is unclear precisely which issues might be up for review.

Over at the Capitol, Senator McCain and his colleagues introduced their legislation to eliminate the third-adjacent channel restrictions on LPFM stations. In December 2000, the NAB successfully lobbied Congress to pass legislation imposing third-adjacent channel protection and requiring the Commission to hire an independent third-party to study whether such protections were required. Last year, the FCC sent to Congress a report prepared by Mitre indicating that such protections are not required and recommending that Congress eliminate the rule. The Senators stated that the Mitre Report should serve as the basis for lifting the interference protections. McCain suggested that the $2 million bill for the Mitre Report should be sent to the NAB for raising their "thinly veiled claims of interference."

Last year, similar legislation was passed by the Commerce Committee, but was not voted on by the full Senate. We will continue to track this year's version of the bill. The NAB has already sent a letter to Congress asking that the current interference protections be kept in place.

With the FCC apparently gearing up to review LPFM issues, and with the Senate teeing up LPFM legislation, the prospects for change in the LPFM service appear to be looming large.



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The Commissioners pointed to such agreements, and particularly noted the recent agreement between the Cable TV industry and the Association of Public Television Stations and PBS (*see* related article on Page 6), under which cable operators will voluntarily carry up to four streams of noncommercial digital programming streams from one public TV station in each market, along with that station's analog signal. Certainly many cable operators have expressed an interest in obtaining locally-oriented programming for their growing digital tiers, including local news and sports channels.

Broadcasters will have a timely opportunity to obtain voluntary digital carriage in the context of retransmission consent negotiations that will occur this year, leading up to the carriage election deadline of October 1st. Unfortunately, as Commissioners Copps and Adelstein recognized, it appears that the smaller, independent stations will have the least leverage to obtain voluntary digital carriage. Nevertheless, if such broadcasters can produce locally-oriented digital programming, they may discover the opportunity to get such programming carried. In the meantime, we will keep you informed as court appeals and actions in Congress on these issues occur.

Auction Bid-ness

Surviving Bidder Gets No Price Break From Disqualification of Competing Bidders

By: Steve Lovelady
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Auctions are a fact of life now for anyone who wants to build a new radio or television station. Congress mandated the auctions, and the FCC has been happily acting as an auctioneer for several years now. If more than one applicant wants a particular slice of the spectrum pie, it's (auction) hammer-time.

But what happens if the other bidders - who drove up the price for the construction permit that you always dreamed of owning - turn out to be unqualified? Is it fair that you have to pay a higher price because some Bozo bidding against you couldn't afford what he bid or was incapable of qualifying to be an FCC licensee?

Such was the unfortunate plight recently for a bidder for a new Virginia Beach TV permit. And the Commission, ever sympathetic and compassionate, clearly felt the guy's pain. But the Commission's official response amounted to "tough cookies". For the sake of "efficiency" the FCC will ***not*** allow auction bidders to challenge each other's qualifications before, during or after the auction, with only one exception: the qualifications of the final winning bidder are subject to challenge when it submits its long-form application after the auction closes.

In the Virginia Beach case, three bidders participated in the auction. The minimum opening bid was $1,240,000, and the bidding continued until one of the bidders, Winstar, "won" with a high bid of $8,752,000. Winstar subsequently stiffed the Commission, defaulting on its bid, and the FCC offered the permit to the next highest bidder, one Robert Copeland, for $7,956,000 (the amount of his last bid).

But Copeland believed that the other "losing" bidder was also unqualified, a belief which took his reasoning on an interesting course. If all the other bidders who bid against him were unqualified to bid from the get-go, he figured, then Copeland should get the permit for the opening bid amount ($1,240,000). After all, if the other two bidders were unqualified, they shouldn't have been permitted to bid at all, which would have left Copeland alone and unchallenged in the bidding. Thus, in his view, the permit should be his for the minimum opening bid price. Copeland's creative logic was impressive. It was also unsuccessful.

The Commission rejected Copeland's reasoning. The FCC had previously considered this issue when it first adopted the auction rules. It decided then that the best system involved a two-phase review process. In the first phase, only a minimum amount of information is required from the applicants. All applicants certify, under penalty of perjury, that the information submitted in their applications is true, and the Commission conducts a minimum screening procedure (*i.e.*, is the form complete and internally consistent; does the information match the FCC's records). In the FCC's analysis, this procedure reduces the administrative burden at the start of the auction, avoids unnecessary delay in the initiation of the new services being auctioned, and encourages applicants to participate in the auction.

In the second phase of the review process, after the winner has been determined, a more comprehensive long-form application is required of just the winning bidder. Only at that point are petitions to deny entertained, and only with regard to the winner's long-form application. The Commission pointed out to Copeland that these rules had been fully debated at the time they were adopted, and received full consideration by the Commission in that proceeding.

So, if you want to play the auction game, you must play by the FCC's rules. You cannot challenge the qualifications of the losers who bid against you. Only the winning bidder can be knocked off its throne, but even that does not undo the bidding process. If you're Copeland, the unfairness here is obvious. The FCC invites you to bid as long as you're qualified, and the next thing you know you're bidding against a couple of folks who clearly aren't qualified. If they run the price up, why should you be bound, since they shouldn't have been there in the first place?

On the other hand, the Commission can legitimately say that, if Copeland was so darned confident that his opposing bidders were unqualified, he should simply have lobbed in his minimum opening bid and then sat back, waiting for the chance to knock the others out post-auction. By actively joining in the bidding, Copeland was effectively telling the FCC that he was willing to pay the amount of his various bids for the permit. The Commission is merely holding him to that.

In any event, this merely underscores one of the more important, often unstated, rules for those jumping into the auction game: *Caveat emptor*!

Multiple ownership: the beat goes on . . .

FCC Takes a Pass on Supreme Court Review Of Third Circuit Multiple Ownership Decision

By: John Butcher
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The Bush administration has decided not to seek Supreme Court review of the Third Circuit Court of Appeals decision rejecting significant elements of the FCC's June, 2003, rules relaxing media ownership limits.

If you've been following the saga, you'll recall that in June, 2003, the FCC adopted new media ownership rules which loosened cross-ownership and television ownership limits and changed the definition of "market" for radio ownership purposes. In June, 2004, after considering appeals filed by both (a) parties seeking to reverse the FCC's deregulatory course and (b) parties seeking to accelerate it, the Third Circuit remanded the cross-ownership and television rules to the FCC for further consideration. In sending the rules back to the FCC, the Court criticized the agency for failing to justify the particular numerical caps chosen and for failing to explain adequately why more restrictive rules were not necessary to protect competition and diversity.

Having already stayed the effectiveness of the rules as of September, 2003, the Third Circuit, in its June, 2004, decision, extended that stay pending further FCC action. However, in September, 2004, the Third Circuit lifted the stay with regard to the new radio ownership rules. As a result, the ownership regulations in effect at this time are a motley patchwork of the old television and cross-ownership rules and the new radio rules.

The administration's decision not to seek review of the Third Circuit's ruling does not completely eliminate the possibility of such review, but it certainly reduces the odds. A number of media companies, as well as the NAB, have filed their own petitions asking the Supremes to take a look at the lower court's decision. However, with the administration taking a pass, the seeming importance of the case may have shrunk enough to convince the Supreme Court that it need not weigh in. And if that happens, we will not be seeing any absolutely final proceeding-and-litigation-ending decision from the top of the legal food chain.

If the Supreme Court does not take the case, the FCC will have a number of possible "next steps" to choose from. First, the FCC could return to the Third Circuit with the same set of proposed ownership rules, but with new and improved rationales designed to answer the Court's initial objections.

Second, the FCC could start over from scratch and attempt to promulgate a brand new set of multiple ownership and cross-ownership limits.

Third, the FCC could take a piecemeal approach, utilizing separate proceedings to consider separate facets (*e.g.*, cross-ownership for one, television ownership for another, etc.) of the overall ownership question. The result there would be a series of separate decisions, with each one standing or falling on its own merits. That would avoid the practical problem the Commission ran into with its omnibus 2003 approach: even though the Third Circuit had no problem with significant elements of the 2003 rules, the fact that ***all*** elements of those rules were up for review in a single appeal led to major delays in implementing those elements which the Court appeared to bless.

Finally, the FCC could simply throw up its hands and leave the pre-June, 2003 rules in effect.

We have seen some indications that the Commission's inclination may be toward the piecemeal approach. However, Commissioner Copps, apparently anticipating a move in that direction, has cautioned against the Commission "writ[ing] quick rules, one by one and under the radar scope, and accomplish[ing] piecemeal what they couldn't get whole." According to Copps, this would result in a "a stealth airwaves grab".

The path to be taken by the FCC will likely be determined by who happens to be driving the FCC bus. A new Chairman is due for appointment in the next several months, along with a new Media Bureau Chief (to whom will fall the task of implementing whatever rules the Commission may adopt and the courts affirm).

And, of course, the Supreme Court could surprise everyone and agree to take the case. If that were to happen, the case would likely not be argued until the Fall of 2005, and a decision would likely not be issued until the end of 2005 or early 2006.

And so the saga continues. Stay tuned, it should be an interesting Spring…

FM Allotments Proposed –1/20/05-2/17/05

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
TX	Cuney	121 miles SE of Arlington	259A	05-33	Cmts -03/28/05 Reply-04/12/05	Drop-in
CA	Groveland	61.8 miles NE of Modesto	264A	05-13	Cmts -03/21/05 Reply-04/05/05	Drop-in
OR	Powers	207 miles S of Portland	293C2	05-14	Cmts -03/21/05 Reply-04/05/05	Drop-in
TX	Zapata	45.4 miles S of Laredo	292A	05-15	Cmts -03/21/05 Reply-04/05/05	Drop-in
NC	Richlands	98.6 miles S of Raleigh	281A	05-16	Cmts -03/21/05 Reply-04/05/05	1.420(i)
WA	Goldendale	126.7 miles N of Portland, OR	240A	05-8	Cmts -03/21/05 Reply-04/05/05	Drop-in
OR	Ione	170 miles E of Portland	295A	05-9	Cmts -03/21/05 Reply-04/05/05	Drop-in
OR	Monument	150 miles SW of Walla Walla, WA	266A	05-10	Cmts -03/21/05 Reply-04/05/05	Drop-in
WA	Port Angeles	83 miles S of Seattle	229A	05-11	Cmts -03/21/05 Reply-04/05/05	Drop-in
GA	Ty Ty	36 miles SE of Albany	249A	04-12	Cmts -03/21/05 Reply-04/05/05	Drop-in
IN	Madison	43.5 miles NE of Louisville	265A	04-17	Cmts -03/21/05 Reply-04/05/05	Substitution of vacant channel
IN	Richmond	54.9 miles N of Cincinnati, OH	267B1	04-17	Cmts -03/21/05 Reply-04/05/05	1.420(i)
KY	Erlanger	10.5 miles S of Cincinnati, OH	266A	04-17	Cmts -03/21/05 Reply-04/05/05	Show Cause
KY	Lebanon Junction	27.2 miles S of Louisville	274A	04-17	Cmts -03/21/05 Reply-04/05/05	1.420(i)
KY	New Haven	40.9 miles S of Louisville	297A	04-17	Cmts -03/21/05 Reply-04/05/05	1.420(i)
OH	Norwood	3.7 miles S of Cincinnati	262A	04-17	Cmts -03/21/05 Reply-04/05/05	1.420(i)
KY	Springfield	52.2 miles S of Louisville	265A	04-17	Cmts -03/21/05 Reply-04/05/05	1.420(i)
FL	Jacksonville	94.69 miles N of Daytona Beach	245C0	05-32	Cmts -03/28/05 Reply-04/12/05	Channel reclassification
TX	Paint Rock	32 miles W of San Angelo	296C3	05-31	Cmts - 03/28/05 Reply-04/12/05	Drop-in
GA	Homerville	89.9 miles N of Jacksonville, FL	246A	05-32	Cmts -03/28/05 Reply-04/12/05	Drop-in

FM ALLOTMENTS PROPOSED –1/20/05-2/17/05 *(continued)*

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
MI	Charlotte	22.1 miles S of Lansing	291B	05-35	Cmts -03/28/05 Reply-04/12/05	1.420(i)
TX	Lovelady	94.5 miles N of Houston	288A	05-36	Cmts -03/28/05 Reply-04/12/05	Drop-in
LA	Oil City	23.5 miles NW of Shreveport	285A	05-37	Cmts -03/28/05 Reply-04/12/05	Drop-in
TX	Mt Enterprise	94.6 miles S of Shreveport, LA	231A	05-34	Cmts -03/28/05 Reply-04/12/05	Drop-in
LA	Hornbeck	83 miles S of Shreveport	269A	05-46	Cmts -03/31/05 Reply-04/15/05	Drop-in
TX	Tennessee Colony	98.2 miles NE of Waco	300A	05-47	Cmts -03/31/05 Reply-04/15/05	Drop-in
KS	Atwood	262 Miles SE of Denver, CO	280C0	05-45	Cmts -03/31/05 Reply-04/15/05	Drop-in
NE	McCook	274 miles SW of Lincoln	292C2	05-45	Cmts -03/31/05 Reply-04/15/05	Substitution of vacant channel
CO	Burlington	176 miles NE of Colorado Springs	282C1	05-45	Cmts -03/31/05 Reply-04/15/05	1.420(i)
CO	Flagler	122 miles NE of Colorado Springs	261C3	05-45	Cmts -03/31/05 Reply-04/15/05	Substitution of vacant channel

FM ALLOTMENTS ADOPTED –1/20/05-2/17/05

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
WI	Rhinelander	177.4 miles of Madison	243C3	04-288	TBA
IL	Grayville	154 miles W of Louisville, KY	229A	04-368	TBA
WA	Burbank	249 miles S of Seattle	256C1	02-63	None

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.