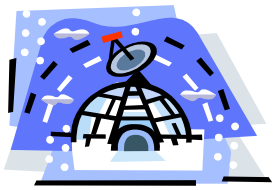
FLETCHER, HEALD & HILDRETH, P.L.C.

Memorandum to Clients

March, 2005 | *News and Analysis of Recent Events in the Field of Communications* | No. 05-03

LPFM On Fire

FM TRANSLATORS IN THE DEEP FREEZE



By: Lee G. Petro
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Last month, we reported on the Commission's LPFM Forum that brought together the luminaries of the LPFM world with the FCC Commissioners and staff to discuss the future of the LPFM service. As we indicated then, the prospects for change in the LPFM service loomed large.

As it turns out, truer word was never spoken. Hot on the heels of the forum, LPFM's lowly position in the regulatory universe got upgraded substantially.

The first post-forum indication of increased attention to LPFM arrived in the form of an emergency petition, filed by a collection of public interest groups led by the Media Access Project (MAP). The petition requested that the Commission freeze the processing of all pending FM translator applications while the FCC reviewed allegations that certain translator applicants are engaged in the "massive trafficking" of FCC licensees.

Less than two weeks later, the Commission issued a decision which loosened a number of previously restrictive LPFM rules, proposed further relaxation of other such rules, and froze processing of all pending FM translator applications for six months while further revisions to the LPFM rules are considered. Things appear to be looking up for the LPFM industry.

LP-100 licensees may now file applications at any time to move their transmitter sites up to 3.5 miles, and LP-10 licensees may now seek to move their transmitter sites up to two (2) miles.

In its petition MAP argued that two applicants, Radio Assist Ministries and Edgewater Broadcasting, Inc., filed 4,000+ applications for new FM Translator stations with the specific intent of selling them to other parties. In support of its allegations, it provided a brochure that was handed out at the National Religious Broadcasters convention in February, 2005, offering for sale translator construction permits obtained by Radio Assist and Edgewater. Radio Assist *et al.* have opposed the emergency petition, arguing that MAP failed to demonstrate that any violation of Commission rules or policies has occurred. In addition, they argued that improper *ex parte* contacts were made by former Commissioner Gloria Tristani on behalf of the MAP petition, in violation of the Commission's rules. (It has been a banner month for *ex parte* arguments – *see* article on page 6).

Close on the heels of this exchange, the Commission released its Second Order on Reconsideration and Further Notice of Proposed Rulemaking in the long-running LPFM proceeding. In this latest Order, the FCC amended the LPFM rules to provide additional flexibility for LPFM licensees in modifying their authorized facilities. Specifically, LP-100 licensees may now file applications at any time to move their transmitter sites up to 3.5 miles, and LP-10 licensees may now seek to move their transmitter sites up to two (2) miles. The Commission also granted the Me-

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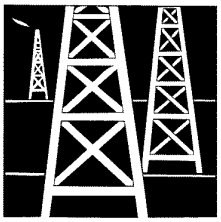
The Scoop Inside



On the horizon . . .

New Structural Standards for Towers On the Drawing Board

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A major rewrite of the ANSI/TIA/EIA "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures", applicable to broadcast and communications towers, is nearing completion. A TIA/EIA standards committee has been working on the new Standard No. 222-Revision G (222-G) for the past six years and anticipates publishing the new standard this summer. The new standard will change the loads and design criteria for broadcast towers and have an impact on the load-carrying capacity of existing structures.

All new tower construction and major renovations of existing structures must conform with the new standard once the standard is finalized. Existing towers will be affected only if physical alterations are made or antenna-loading exceeds the original design. Specifically, existing towers will likely be required to be evaluated using the new standard when there is: (1) a change in type, size, or number of appurtenances such as antennas, transmission lines, platforms, ladders, etc.; (2) a structural modification; or (3) a change in serviceability requirements or a change in classification of the structure under the new standard's "reliability classes".

Other highlights of the anticipated new standard include:

- elimination of the term "normal soil" (for determining lateral load capacities, bearing-load capacities, and resistance to pull-out) and use of values representing the soil type (sand, clay, etc.);
- a new gin pole standard for use in tower erection;
- the use of "gust" wind speed instead of "fastest mile" wind speed (which may increase the cost of some towers);
- a method for checking towers under earthquake loads;
- establishment of three different "reliability classes", which will allow the tower owner to rate a tower to a lower class knowing that the consequences of a failure are tolerable based on tower use and location;
- guyed structures with dynamic response potential by introduction of a version of patch loading on the upper tower mast spans;
- expanded exposure categories;
- requirement for wind speed up over hills, ridges, and escarpments;
- 50-year three-second peak gust Wind Map and 50-year Ice Thickness and Wind Map;
- wind loading guidelines for antenna mounting frames;
- earthquake loading specifics and seismic analysis procedures;

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Focus on FCC Fines

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Content, Content, Content. Our focus this month: broadcast content, a subject to which the Commission and its enforcement staff recently dedicated numerous hours and considerable ink. In a series of fines, the FCC punished broadcasters for the content of commercials, station identification spots and emergency notifications. In addition, in something of an aberration from recent practice, the FCC chose ***not*** to fine stations for dozens of complaints received about indecent programming.

Yelling "fire" - but without the visuals. The FCC hit three different San Diego TV stations for their coverage (or lack of coverage) during the 2003 wildfire crisis. Although the three television stations broadcast significant coverage of the spreading wildfires in their areas, the stations' emergency coverage failed (according to the Commission) to accommodate their hearing impaired viewers. As a reminder, both Congress and the FCC have been explicit in their requirements that television stations must make emergency information available both to typical viewers ***and*** to the hearing impaired. FCC rules are flexible with respect to the manner in which stations should make such information available to the hearing impaired – approved devices include scrolls, crawls, graphics and closed captioning. But however the station elects to provide emergency information, such information ***must*** be made available. (*See* related story on Page 4.)

The FCC flamed television stations with fines ranging from $20,000 to $25,000 for failing to provide to the hearing impaired certain emergency information that was available to the non-hearing impaired audience. As wildfires spread throughout Southern California, local stations provided round-the-clock coverage of the growing disaster. However, during substantial portions of that coverage, the stations did not include corresponding coverage designed to aid the hearing impaired. After reviewing hours of tape of the stations' coverage, the FCC concluded that in a number of instances warnings were given only orally, without immediate graphic or text follow-up.

For example, in one instance stations broadcast announcements from the local sheriff advising viewers to evacuate an area. According to the Commission, the hearing impaired saw nothing but the Sheriff speaking, which would obviously be ineffective if they could not hear what he was saying; it was only hours later that the stations provided a graphic for viewers to understand what had been said. Similarly, although the stations aired press conferences and interviews with emergency personnel who provided advice on how to take medical and smoke inhalation precautions, that advice was not reduced to a graphic or other readable format until much later. The FCC found that this lack of accommodation for hearing impaired viewers resulted in a dangerous situation for those viewers. The FCC soaked the violators with five-figure fines.

What are you kids listening to? FCC regulations require TV and radio stations to identify themselves by call sign and community of license at the beginning and end of a broadcast day and every hour on the hour. A Minnesota FM station chose to replace its hourly identification message with a promotional spot. In turn, the FCC chose to replace its standard $1,000 fine with a $5,000 fine. Noting that the station aired the promo instead of the required ID at least 21 times a day for ten weeks, the FCC was not pleased with what it had discovered. The fine arose from a complaint filed against the station and a response by the station in which it admitted that it had stopped identifying itself. Stations should ensure that they are taking the few moments every hour to identify the station as required by the rules.

Commercials costs stations thousands. As noted in previous editions of this column, the FCC has been vigorously enforcing restrictions placed on noncommercial educational stations. Such stations are not permitted to broadcast material that promotes, for remuneration, any service, facility or product of a for-profit entity. Two Florida stations and a New Jersey station recently received $10,000 and $1,000 fines for airing what the FCC determined were commercials. In one instance, the FCC served up a $10,000 fine for hundreds of "spots" that encouraged listeners to patronize certain sponsors. In another instance, the FCC hit a station with a $10,000 fine for identifying an underwriter as having "the biggest variety" and knowing "the most" about products. As we have previously observed, the FCC's criteria in this area are fuzzy at best. While the Commission claims that it will defer to reasonable good faith determinations by licensees as to whether any particular announcement is a "commercial", the FCC is not shy about second-guessing such determinations. (In one of the recent fines, the Commission increased the fine not because the "commercial" nature of the announcements was so egregious, but merely because the licensee had broadcast the announcements repeatedly – more than

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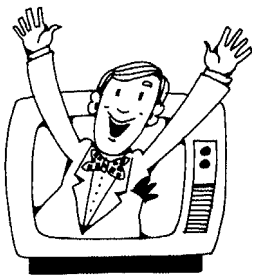

Say what?

FCC Reminds Video Distributors of Obligation To Provide Emergency Information for Hearing/Vision Disabled Audience

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As noted in the article on page 3, the FCC has hit three San Diego TV stations with fines ranging from $20,000-$25,000 for failure to make emergency information accessible to persons with hearing disabilities. Shortly after those fines were announced, the Commission issued a "reminder", directed to broadcasters, cable operators and satellite television services, that they are required to make emergency information accessible to persons with hearing and vision disabilities.

"Emergency information" is defined by the FCC as "information about a current emergency that is intended to further the protection of life, health, safety, or property, *i.e.*, critical details regarding the emergency and how to respond to the emergency". While the primary focus of this requirement is on ***local*** matters affecting the audience in the particular geographic area where the emergency is occurring, the Commission notes that, on occasion, matters of national importance may also be of local concern and could, thus, trigger this requirement.

In 2002 the FCC stated it would let programmers rely on their own good faith judgments. But in its recent decisions, the Commission seems to have limited the scope of that "good faith judgment" dramatically.

The types of emergency situation which might give rise to "emergency information" include: tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules arising from such conditions. As exhaustive as that list may appear, the Commission emphasizes, in italicized print, that this "*list of emergencies is not intended to be exhaustive*".

According to the Commission, in order to provide the necessary information to persons who are deaf or hard of hearing, video distributors (including TV licensees) must used captioning (closed or open), crawls, scrolls or the like. Emergency information provided by those means should not block any closed captioning, and closed captioning should not block any emergency information.

As for blind/low vision people, video distributors are expected to aurally describe the emergency information in the main audio, if the information is provided during a regularly-scheduled newscast or a newscast which interrupts regular programming. Additionally, if emergency information is provided in some other context (say, by an emergency crawl or scroll), the information must be accompanied by an aural tone.

The FCC's recent reminder is particularly noteworthy for one thing it does not say. It contains nary a word about any agency deference to the "good faith judgments" of TV licensees.

Back in 2000, when the Commission first adopted this requirement, it stated unequivocally that, "[i]n determining whether particular details need to be made accessible, we will permit programmers to rely on their own good faith judgments". That language certainly suggests that a reasonable measure of discretion was left to video distributors to decide precisely what elements of "emergency information" need to be specially transmitted. That, at least, is what the San Diego TV licensees believed.

But in the decisions issued in conjunction with the recent fines, the Commission seems to have limited the scope of that "good faith judgment" dramatically. The licensees in question ***had*** provided emergency information for the hearing disabled. But the Commission concluded that the licensees had broadcast a considerable amount of additional emergency information which was not simultaneously provided for the hearing disabled. The licensees argued that they were merely exercising the good faith judgment which the FCC had itself acknowledged. The FCC was not persuaded, and suggested that the licensee's interpretation of that language was an "expansive" interpretation which would "swallow the rule and render it wholly ineffective".

Perhaps not surprisingly, the follow-up "reminder" is-

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1,000 times over a period of several months. But if the licensee believed, in good faith, that the announcements were not commercials, one might have thought that the number of broadcasts should not have made any difference.) In any event, noncommercial stations should use caution when preparing and airing underwriter announcements.

Lost in translation? In a curious decision, the Commission designated for hearing a noncommercial FM translator operator to determine, among other things, whether the translator station actually originated programming. The translator's operation had been under the microscope since a petition to deny a related application was filed three years ago. Responding to a series of pleadings and inquiries from the Commission's staff, the translator operator offered up a number of "incomplete, inconsistent and vague responses", including some which appeared to contradict information which the licensee had included in earlier filings. The Commission was particularly concerned that the translator operator appeared far from clear as to exactly what primary station he was rebroadcasting. As a result, the FCC designated a hearing to determine whether the translator operator had complied with the translator rules and also whether he had engaged in misrepresentation or lack of candor. As a worst case scenario, the translator operator faces possible disqualification and a fine of up to $300,000.

This decision illustrates again that the regulation of words and language can be quite subjective and broadcasters should use caution in their programming.

No fines. The FCC receives hundreds of complaints about indecency every month. However, this month the FCC disposed of many of the complaints without fining stations.

Cable is O.K. The FCC made short order of complaints involving cable programming. Noting that the FCC does not regulate cable indecency, it dismissed complaints about the Fox Network's cable program *Nip/Tuck* and CNN's political coverage (in which a producer was heard heatedly cursing when a special effect did not work during coverage of the Democratic National Convention). Although some in Congress have made noises about permitting the FCC to regulate cable programming for indecency, at this time it is generally acknowledged that the FCC has no such authority.

Private Ryan, Saved. As widely reported last November, certain ABC television affiliates had concerns about airing the movie *Saving Private Ryan* due to its violent content and its brash language, which includes repeated use of "f**k" and its variants. The FCC recently decided, for the third time in as many years, that airing of the movie on Veteran's Day did ***not*** constitute an indecent broadcast. Specifically, although the FCC had appeared to announce, in the Golden Globes II decision in March, 2004, that the use of "f**k" (and its variants) would be considered indecent, the expletive was allowed in a war movie. The FCC went to great lengths to distinguish the movie from the utterance at issue in the Golden Globe decisions. However, this latest decision illustrates again that the regulation of words and language can be quite subjective and broadcasters should use caution in their programming.

Nudity and Sexual Content O.K. NBC, Fox and WB also sneaked by the FCC with episodes of *Will and Grace*, *Arrested Development* and *Angel*. Numerous complaints were submitted to the FCC regarding these shows. The FCC reviewed the programs and found that the content – which included sexual references, drug references and dialogue with expletives bleeped out – was not patently offensive. Material must be patently offensive for the FCC to take action. Although the FCC found that the programs did indeed contain sexual references, it determined that the programs were not patently offensive. Similarly, ABC was unscathed following broadcast of a suggestive scene in which an apparently nude (at least her back was unclothed, and the context of the piece certainly suggested that the rest of her was unclothed as well) woman hopped into the arms of a football player. The scene, an introduction to Monday Night Football, was not patently offensive to the FCC and no fine was issued. The FCC claims to have provided guidelines by which it judges language and content, but the determinative factors are often so subjective that they do not function as useful guidelines by any stretch of the imagination. All broadcasters should be aware that viewers are beginning to complain more frequently about programming and that the FCC must respond to the complaints. Alas, the FCC response can be somewhat unpredictable.

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sued by the Commission does not even allude to the "good faith judgment" question. The recent fines in combination with the "reminder" send a clear signal to video distributors: the Commission currently expects that ***all*** emergency information transmitted conventionally will also be made accessible to persons with hearing or vision disabilities.

FCC Steps In To Review Grant of Assignment By Licensee Guilty of Perjury and Election Law Violations

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A recent controversial sale of five radio stations in Oklahoma by a politician convicted of perjury and obstruction of justice has raised a couple of interesting issues for television and radio station owners and their lawyers. First, when can you consider the FCC's grant of consent to an assignment of a radio station license to be "final" for purposes of closing a sale/purchase transaction? Second, when does direct contact with the FCC Commissioners and their staff become prohibited "*ex parte*" communications?

The facts surrounding the stations' sale and subsequent brouhaha are colorful. The central character is a 78-year-old legend in Oklahoma politics, Gene Stipe. A long-time (53 years) member of the Oklahoma legislature until 2003, he resigned his office when he pled guilty on charges of perjury and conspiracy to violate the Federal Election Campaign Act and obstruct a Federal Election Commission investigation. The investigation involved his contributions to the campaign of another Oklahoma politician. Stipe was sentenced to six months of house arrest with five years' probation, and paid a fine of almost $500,000.

For the past 40 years, Stipe has also been the operator of five radio stations in and around McAlester, Oklahoma. Beset by his legal trouble and in declining health, Stipe arranged to sell all of his radio stations. The buyer was a protégé of Stipe who now occupies Stipe's former seat in the Oklahoma legislature.

In June of 2004, Stipe proposed to sell his stations to his protégé. His applications fully disclosed his campaign financing and perjury convictions as well as his poor physical and mental health. The applications stated that the Stipe was selling the stations at below market value in an effort to quickly exit the broadcasting business. Six months later, the Media Bureau staff granted them. Notices of the grants were released on January 24th. On January 28th, Stipe consummated the sale and the new owner filed license renewal applications for the stations on the February 1 deadline.

That's when things got interesting.

The Media Access Project (MAP), a Washington D.C. non-profit public interest law firm, somehow became aware of the grant of the assignment applications. Instead of just filing a petition seeking reconsideration of that action, MAP apparently started a campaign against the applications, calling and e-mailing various FCC Commissioners. MAP also contacted *The New York Times*. In an article dated February 25, the *Times* reported that, after inquiries from its reporters, Chairman Powell had ordered a review, by the full Comission, of the Bureau's assignment grants.

Stipe and his lawyers were blindsided by this reversal, which they found out about from the *Times* article. They promptly sought recusal of three FCC Commissioners and their staffs from further consideration of the Stipe matter because the communications between those agency officials and MAP had been "*ex parte*". ("*Ex parte*" is a Latin/legal term meaning communication with a decision-making official by only one side in a contested mater, without the other side being present to offer rebuttal arguments or contrary evidence). In response, the three Commissioners involved (Powell, Copps and Adelstein) announced that they do not plan to recuse themselves. In a joint statement they asserted that recusal is appropriate only when there is serious doubt about the agency's ability to act fairly and impartially (implying that such is not the case in these circumstances).

This case illustrates why it is a good idea, whenever possible, for the buyer of a radio or television station to wait until the grant of an assignment application is final and not appealable.

This case illustrates why it is a good idea, whenever possible, for the buyer of a radio or television station to wait until the grant of an assignment application is final and not appealable. The normal sequence of events when an agreement to sell a station has been signed is: (1) the seller and buyer file an application with the FCC; (2) the FCC accepts the application and gives notice to the public; (3) there follows a 30-day period for the public to file objections stating reasons why the application should not be granted; (4) if no public objections are filed and the Bureau staff finds that it is in the public interest, the application is granted; (5) the FCC publishes notice of the grant of the application; (6) there is another 30-day period for the public to file petitions for reconsideration;

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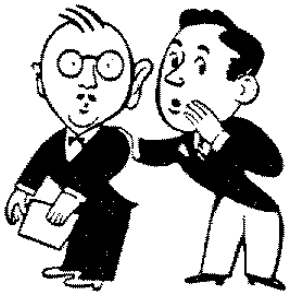
and (7) there is a further ten-day period during which the FCC, on its own motion, may initiate review of the Bureau's action. Only after all of these events, and assuming no objections are raised during the process, can the grant of the application be considered "final."

This process, from filing to finality, usually takes three-four months to complete. However, as soon as Step 4 occurs (Media Bureau staff grant), it is legal for the seller to assign the license to the approved buyer. That is what happened in Stipe's case. The problem is that, if the grant is later reconsidered and ultimately reversed before it becomes final – as may be the case here – the sale might have to be reversed. This is an extremely rare occurrence, but when it does occur it may necessitate "unscrambling the egg", as Stipe's lawyers put it – a messy process in which all the transactions which were completed as part of the closing have to be undone.

To be sure, Stipe's is an extraordinary case, since seldom does the full FCC take such an active interest in a seemingly routine, otherwise uncontested assignment application. And yet, that's likely what Stipe's buyers were thinking when they chose to proceed with a pre-finality closing.



In Stipe's case the buyer and seller were also in a hurry to consummate the sale because the deadline for Oklahoma radio renewals was fast approaching. The FCC will not allow consummation of the assignment of a license whose renewal application is pending. By closing right before the license renewal applications were due, the buyer avoided having to wait for another four months for the renewals to be processed. Another important benefit to the buyer was that his renewal applications could not be challenged on the basis of the former owner's (Stipe's) qualifications to be a broadcast license owner. It will be interesting to see if the FCC Commissioners require the buyer to give the stations' licenses back to Stipe, since it is generally agreed that serious questions may exist relative to his personal qualifications to remain a licensee.

Another interesting issue in this case involves the *ex parte* communications that took place between MAP and the Commissioners. In this age of e-mail campaigns, Blackberries and instant messaging, when does an expression of outrage to an FCC Commissioner by a public policy activist become a prohibited communication? MAP argues that MAP was not a formal party to the application process, and until it becomes one MAP's communications with the Commission are exempt from the rules prohibiting *ex parte* communications. Whether or not MAP is correctly interpreting the FCC's *ex parte* rules (which were tightened up considerably in the late 1990's) remains to be seen.

On the other hand, Stipe and his buyer were understandably offended by the notion that an influential Washington public interest advocate such as MAP was privately speaking with the Commissioners and their staffs in an attempt to undo a decision that had been thoroughly reviewed by the Media Review over a six-month period of time. Stipe's lawyers allege that some of the e-mails to Chairman Powell and at least one other Commissioner were sent to private e-mail addresses that are not available to the general public. The FCC's General Counsel is looking into the matter.

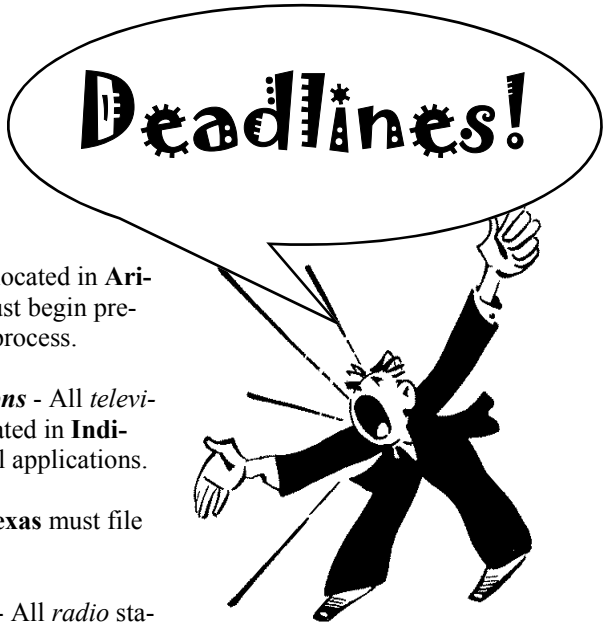
Violations of the *ex parte* rules have potential consequences for both the party contacting the FCC and the Commissioners and their staffs who engage in such conduct. There are well-established FCC rules and procedures for raising objections to the assignment of FCC licenses – procedures that give fair notice to the applicant about the nature and scope of such objections and the opportunity for all affected parties to reply – and it is not clear why MAP should be allowed to circumvent those procedures.

And finally, this case raises an interesting question of FCC licensing policy. Historically, the Commission has repeatedly warned that it will not tolerate licensees who engage in fraud before the FCC or other governmental bodies. According to the FCC, the Commission must depend on the honesty and candor of its regulatees, and any demonstration that a regulatee cannot be relied on raises questions about that regulatee's basic qualifications. Here, Stipe's admission of criminal perjury and obstruction of an FEC investigation clearly sent up warning flags about his basic qualifications. Under the Commission's established policies, it may have been expected that Stipe should have been placed in a hearing to determine whether he was entitled to hold the licenses at all. The Bureau's failure to take such a course is likely what sent MAP on its crusade.

But from the Bureau's standpoint, was it really a mistake to grant Stipe's applications? While his qualifications may have been questionable, at least a grant of the applications would promptly remove him from the ranks of broadcast licensees – presumably the ultimate result MAP was looking for. The problem is that, by looking the other way and granting the applications, the Bureau took a short-cut which avoided the difficult questions raised by the FCC's oft-expressed concerns about character qualifications.

Having chosen to review the Bureau's decision, the full Commission has effectively assured that this case will live on, likely affording fascinating insight into a number of regulatory corners which are normally hidden from view.

April 1, 2005



Television Renewal Pre-Filing Announcements - *Television*, *Class A television*, and program-originating *LPTV* stations 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 television*, *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, 2004

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

Issues/Programs Lists - For all *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.

June 1, 2005

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

Radio Renewal Pre-Filing Announcements - *Radio* stations located in **California** must begin pre-filing announcements in connection with the license renewal process.

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Multiple Ownership Update

FCC Tosses Two Cents' Worth In At Supreme Court

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Last month, the Bush administration decided ***not*** to seek Supreme Court review of the Third Circuit Court of Appeals decision rejecting significant portions the FCC's proposed rules relaxing media ownership limits. But fear not, the litigation will still drag on: despite the administration's decision, a number of media companies as well as the NAB have appealed the Third Circuit ruling to the Supremes. As previously noted in these pages, with the administration out of the fight, it is unlikely that the Supreme Court will consider the remaining appeals.

Still, the FCC isn't taking any chances. In an effort to discourage the Supreme Court from reviewing the matter, the Commission has submitted a "cross-petition" to the Supremes in which it offers its own opinions on how the appeals filed by the third parties should be handled.

First and foremost, the FCC argues that the Supreme Court should not accept the appeals because they question the Commission's authority to establish numerical limits on broadcast ownership, authority that the FCC insists has been firmly laid out in prior cases. Essentially, the FCC is seeking to avoid any review which might lead the Court to question the continuing wisdom of those earlier cases.

However, in the event the Supreme Court opts to hear the case – well then, the FCC has a bone or two to pick with the Third Circuit.

In sending the rules back to the FCC, the Third Circuit chastised the agency for failing to justify the particular numerical caps chosen or to explain adequately why more restrictive rules were not necessary to protect competition and diversity. In its cross-petition to the Supreme Court, the FCC now counters that the Third Circuit erred in (a) tossing out the relative weights assigned to TV, radio, cable and newspaper outlets by the Commission for cross-ownership purposes, and (b) failing to appreciate the positive impact of the Internet on media diversity. The FCC also defends the specific limits it set on the number of stations a single party may own in a market against the Third Circuit's conclusion that those limits were arbitrary. Take that, Third Circuit.

So, while the FCC doesn't feel like putting on the gloves to duke it out with the Third Circuit (and thereby risking another drubbing over media ownership), the Commission's got a punch or two to throw from the front row if somebody else makes it into the ring. Ah, the nobility of public service.

(Continued from page 8)

Television/Class A/LPTV/TV Translator Renewal Applications - All *television*, *Class A television*, *LPTV*, and *TV translator* stations located in **Ohio** and **Michigan** must file their license renewal applications.

Radio Renewal Applications - All *radio* stations located in **Arizona**, **Idaho**, **Nevada**, **New Mexico**, **Utah**, and **Wyoming** must file their license renewal applications.

Radio and Television Renewal Post-Filing Announcements - All *radio* stations located in **Arizona**, **Idaho**, **Nevada**, **New Mexico**, **Utah**, and **Wyoming**, and all *television* stations located in **Ohio** and **Michigan** must begin their post-filing announcements in connection with the license renewal process, and continue such announcements on June 1 and 16, July 1 and 16, and August 1 and 16.

EEO Public File Reports - All *radio* and *television* stations with five (5) or more full-time employees located in **Arizona**, the **District of Columbia**, **Idaho**, **Maryland**, **Michigan**, **Ohio**, **Nevada**, **New Mexico**, **Utah**, **Virginia**, **West Virginia**, and **Wyoming** 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 **Arizona**, the **District of Columbia**, **Idaho**, **Maryland**, **Nevada**, **New Mexico**, **Utah**, **Virginia**, **West Virginia**, and **Wyoming** must file a biennial Ownership Report (FCC Form 323 for commercial stations or Form 323-E for noncommercial stations). All *television* stations located in **Arizona**, **Idaho**, **Nevada**, **New Mexico**, **Utah**, and **Wyoming** must also file a biennial Ownership Report. All reports filed on FCC Form 323 or 323-E must be filed electronically.

Commission Proposes Language Changes for Application-Related Public Notices

New Verbiage Would Reduce Identification of Parties, Highlight On-Line Availability of Sales Agreements

If the FCC changed the requirements relating to the application-related public notice, would the public notice?

We may find out in the near future. In March, the Commission issued a notice of proposed rulemaking proposing a number of modifications in the rule requiring that broadcast applicants provide public notice of the filing of certain types of applications.

If you have ever filed for a new construction permit or a "long-form" assignment or transfer, you are presumably familiar with the post-filing drill. Once the application has been filed, the applicant must provide broadcast and/or print public notice of the filing in order to "promote public participation in the broadcast licensing process", according to the Commission. The contents of the notice vary based on the type of application filed, but the gist of all such notices is that an application has been filed with the Commission and the public may comment on the application if it so chooses.

Now the Commission is proposing to tweak that requirement.

First, the FCC proposes to change the content of the notice to be made in connection with assignment and transfer applications. At present, the rule requires the notice to contain a listing not only of the buyer and seller, but also of all officers, directors, and five percent or greater shareholders. When one or both parties to the application happen to have elaborate ownership structures, the resulting public notice takes on the proportions of a Russian novel. But now the FCC is proposing to eliminate that additional clutter so that only the names of the buyer and seller would be required. (The FCC invites comment on whether the current requirement should be retained.)

The Commission also notes that applicants for new, original construction permits are similarly required to list everybody and his little brother in the public notice. The FCC asks whether that requirement might be reduced in the same way.

Second, the Commission proposes inserting into the assignment/transfer public notice a sentence specifically announcing the deadline for petitions to deny the application. Including such a reference would mean that the time within which the public notice must be given would have to be adjusted somewhat. At present, the notice process is to begin "immediately" following filing of the application. But the petition to deny deadline is not established until the application appears on an FCC-released notice normally issued several days after the filing. So the Commission proposes to delay the start of the applicant's public notice process to coincide with the issuance of the FCC-released notice of acceptance of the application.

Third, the FCC proposes that the assignments/transfers public notice conclude with the following language:

> A copy of the application, including the agreement for the sale of the station, may be accessed through the FCC website at www.fcc.gov/e-file. After accessing this webpage, users should click on the "CDBS Public Access" link and follow instructions found there.

The newly-proposed public notice language obviously encourages members of the public to try to review the underlying sales agreement in assignment and transfer applications.

Since the application, including the underlying sales agreement, is already a public document (it's available on request at the FCC and should be similarly available from the station's local public records file), the proposed language does not make public anything that was not already public. But the proposed language obviously encourages members of the public to try to review the underlying sales agreement.

Fourth, the rule currently requires the post-application public notice to be published in a local newspaper as well as broadcast on the affected station(s). Noncommercial stations are exempt from the newspaper publication component, as are stations which are the only operating stations in their particular service in their particular community. The Commission now proposes to eliminate those exemptions. As a result, ***all*** types of stations would be subject to the newspaper publication aspect of the public notice rules. Over and above that, the FCC solicits suggestions for other non-broadcast publication approaches, such as the internet.

In the Commission's view, the public notice requirement should "enhance the transparency of and public participation in the sales application review and licensing process".

(Continued on page 11)

FEC Ducks LUC Question

Does Candidate's Failure To Meet Fine-Print Disclosure Standards Preclude Lowest Unit Charge?

FEC to Broadcasters: Concentrate and Ask Again Later

By: Michael Richards
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The last election season is past, and the next one is still over the horizon. But the disputes over the right way to comply with lowest unit cost requirements linger.

Take a recent case brought by the Missouri Broadcasters Association to the Federal Election Commission. Missouri Senator Kit Bond certified that his political commercials last year met the requirements for guaranteed lowest unit cost. But his opponents disagreed. They claimed that Bond's spots were not entitled to LUC treatment because of an alleged mistake in the "stand by your ad" message which Federal law requires in political commercials. Despite the minor alleged imperfection in the spots, some Missouri stations charged Bond the lowest unit cost.

Senator Bond's opponents cried foul. They said lowest unit cost pricing for a non-compliant spot amounted to an illegal campaign contribution, the supposedly illegal contribution being the difference between the stations' lowest unit cost and their other, standard rates – unless, of course, the Senator's opponents got a similar deal for non-compliant ads. (Needless to say, if the Missouri stations actually raised their rates for the supposedly non-compliant ads, the Bond campaign would doubtless have raised its own ruckus.)

Short of selling all political advertising – including clearly non-compliant spots – at lowest unit cost, the broadcasters were caught in a legal trap. The logical way out, it seemed, was to get the issue clarified by the designated arbiter, *i.e.*, the Federal Election Commission (FEC).

The question presented to the FEC was relatively broad: what should a broadcaster do in these circumstances? Must the broadcaster act as a vigilante campaign cop in order to avoid making illegal campaign contributions when a campaign may have made a small technical mistake? After all, the Bond campaign had certified compliance. The broadcasters argued that a campaign's certification should provide protection for the broadcaster from further tussles about the legitimacy of billing at lowest unit cost.

Sounds reasonable, right? After all, broadcasters are not necessarily experts in the arcana of Federal election law. But logic does not always rule the day. The FEC's answer was no answer at all to the core question. Instead, the FEC ducked the question by merely finding that Senator Bond's commercials qualified for lowest unit cost – and then said no more.

Two dissenting Commission members chastised their colleague's non-answer, saying the majority failed to provide "useful and meaningful guidance."

Needless to say, without anything useful or meaningful to guide them, broadcasters continue to be stuck in the no man's land between two warring infantries. Raising rates on suspicions that a political ad, even if certified, may not comply could lead to complaints and litigation. Not raising rates above LUC can also lead to complaints and litigation. And with the FEC having ducked, there appears to be no immediate relief in sight.

(Continued from page 10)

That's swell, but a bit out of touch with reality on a couple of levels. First, as far as we can tell, the appearance of a fine-print public notice in the "legal notices" section of the local newspaper seldom if ever causes anyone to file anything with the FCC. Ditto for the on-air notice.

And second, even if a member of the public were to try to "participate" in the "application review process", such participation tends to have virtually no effect at all. The number of applications which have ***ever*** been dismissed, denied or designated for hearing because of a challenge by a member of the public inspired by a public notice is minuscule, and – for at least the last 25 years or so – may be zero. This is because the FCC is generally disposed to grant the applications which are filed. To derail an application, a petition has to raise very serious issues in a very convincing manner. Seldom, if ever, are members of the public in a position to do so.

But the Commission continues to indulge in the pleasant notion that public participation should be encouraged. Hence, the Commission is diddling with its public notice rules. The deadlines for comments and reply comments have not yet been established as of this writing.

Indecency on the Hill - An Update

Senator Hints At Expanding Indecency Authority To Non-Broadcast Media

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While the FCC continues to struggle with the problem of alleged broadcast indecency (*see* article on page 3), some in Congress are making noises about expanding that struggle to include the transmission of alleged indecency by subscription video providers such as cable and satellite television services.

Historically, subscription services have enjoyed effective immunity from the FCC's indecency clean-up campaign. The theory has been that, unlike free over-the-air broadcast programming which is available to one and all at all times, subscription services cannot be received unless and until the consumer expressly invites those services into the home through the subscription process. Since the subscription programming is thus, at least theoretically, welcome in the home, the "nuisance" rationale which underlies the FCC's indecency enforcement has been thought to be inapposite.

Another aspect of the traditional distinction between cable and over-the-air programming has been that the delivery of cable programming requires a physical connection – *i.e.*, a cable – into the viewer's home. No such connection is necessary, obviously, for over-the-air reception.

While these distinctions may have made sense at some early point in the development of subscription media, that time is arguably long since past. As a number of broadcasters have accurately pointed out, a child clicking through the channels on a cable- or satellite-connected television set cannot tell when the image on the screen comes from a broadcast or a non-broadcast source. And if indecency regulation is intended to protect children, why should the two sources not be regulated the same way? This is particularly so since both cable and satellite services use spectrum in a variety of ways – that is, it cannot be said that subscription delivery is based solely on a passive, non-spectrum mechanism such as a mere cable.

Apparently with all this in mind, Senate Commerce Committee Chairman Ted Stevens announced that he wishes to subject cable television and MVPD providers to the broadcast indecency standards. (This, of course, assumes that there are in fact some discernible "standards" to be applied – debate on that topic continues to rage.) Stating that "cable content is riddled with filth", the Alaskan Senator would treat the likes of HBO, Showtime and the satellite radio services (*i.e.*, Sirius and XM) as over-the-air broadcasters exposing these businesses to the same level of government indecency regulation.

As of this writing no bills advancing Stevens' concept have been introduced, and according to at least one report, Stevens may be backing off some of his tough talk. And at least one report has surfaced that another Senator may be planning to introduce a bill which would ***prohibit*** the FCC from going after indecency on subscription services – a pre-emptive strike against Stevens' notion. But if the ideas Stevens originally expressed do germinate into amendments to the Communications Act, look out. Expansion of the FCC's indecency jurisdiction in that way would likely generate a free-for-all First Amendment battle far beyond the indecency skirmishes we have seen thus far. No longer a mere eye-poking duel between Moe and Curly at the cafeteria counter, this would be a full-fledged, dining room-wide food fight.

No longer a mere eye-poking duel between Moe and Curly at the cafeteria counter, this would be a full-fledged, dining room-wide food fight.

While any First Amendment litigation carries with it the risk that the courts may disagree with your view of the First Amendment, the ultimate advantage of such litigation is, ideally, some increased clarity in the standards which can and should be applied under the First Amendment. When the Supreme Court last looked at the issue of broadcast indecency in its seminal 1978 opinion in *Pacifica Foundation*, it was anticipated that FCC enforcement of indecency would be routinely subject to judicial overview. Such overview has, unfortunately, not come to pass. As a result, the broadcast industry finds itself subject, today, to an indecency "standard" which is really no standard at all. Imagine the fireworks if Congress were to direct the Commission to apply that "standard", such as it is, to program services which have for years have been subject to no such regulation at all – indeed, services which have often reveled in their ability to provide precisely the kind of programming which, because of the FCC's raised eyebrow, broadcasters have shied away from.

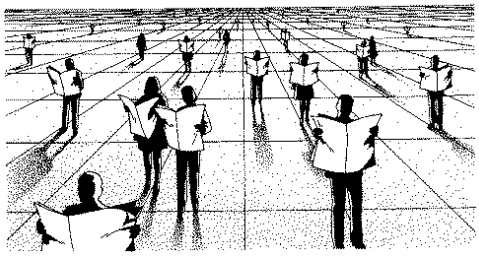
Meanwhile, in other indecency news from Capitol Hill, the House has passed a bill which would raise the fines for indecency violations to as much as half a million dollars. A similar bill was passed by the House last year, only to stall out in the Senate. This year, the Senate has thus far similarly remained out on this issue.

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

Updates on the News

Ave, Caesar If you've just come out of a month-long coma, let us be the first to let you know that we have a new Chairman. In March, Commissioner Chairman Martin got the nod to move down the hall and take over the reins from Michael Powell. Congratulations, of course, and welcome to the new Chairman.

IBOC Update In October, 2002, the FCC started authorizing interim operation with iBiquity's hybrid IBOC (in-band/on-channel) transmissions systems. Authorizations were limited facilities similar to those which had been evaluated by the National Radio Systems Committee (NRSC). Because of the somewhat narrow scope of the NRSC evaluations, the interim authorizations did not permit multicast operations, *i.e.*, the ability to offer multiple digital program channels within the bandwidth originally used for a single digital channel. Undeterred by that minor bureaucratic detail, the tech mavens at NPR came up with a system with which an FM IBOC station can accommodate both a main and a secondary digital channel with "good" (according to the FCC) quality and "sufficient robustness for mobile service". The Commission appears to be impressed (favorably) with NPR's system. But rules is rules, as they say, and the Commission is not quite ready to authorize its deployment as a purely routine matter. Still, the Commission doesn't want to discourage this promising development, so here's the scoop. If you want to take a crack at multiple digital audio transmission, you can do so, but only ***after*** the FCC has given you experimental authority under Section 73.1510 of the rules. You get such authority by filing a letter request (a/k/a an "informal application), with no fee or form. Grants generally go out within a week.



EEO? Awwwww Actually, make that EEO audits. They're back. The Commission sent EEO audit letters to "randomly selected broadcast stations and multi-channel video programming distributors" in early March. A total of 61 radio stations (all full service AM or FM) and 23 TV stations (including full service, Class A and LPTV) were on the receiving end. If you're not among those lucky folks, don't fret – the FCC expects to audit approximately five percent of all licensees this year (and every year, for that matter). With more than 13,000 radio stations on the books, and more then 2,300 full service and Class A TV stations (not to mention an additional 2,000+ LPTV stations), the Commission still has a ways to go to get to the 5% level. The FCC assures us that audit letters will be mailed to additional licensees throughout the year.

FCC rules available For those traditionalists among you who still like to have on hand the most current rule books available, get your orders in now to the Government Printing Office (GPO). In mid-March, the GPO announced the availability of the latest edition of Title 47 of the Code of Federal Regulations, which is the technical name for the FCC's rules. You can phone in your order (operators may or may not be standing by) at (202) 512-1800, or you can fax it in at (202) 512-2233, or you can mail it in to Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. (Let us know if you would like any help in placing your order.) There are a total of five separate volumes; a complete set of all five will set you back just under $300 – a small price to pay for excellence. But if you really want the latest and the greatest, you may be disappointed. These bound volumes are up to date only through September 30 of last year. You'll have to wait for next year's printing to find out what's happened in the last six months.

Significant viewing housekeeping In connection with its Congressionally-mandated review of must-carry requirements for satellite TV services (*see* last month's article about SHVERA, the latest word from Congress on the matter), the FCC is trying to clean up its list of "significantly viewed stations" which will be an integral aspect of those new requirements. The list of significantly viewed (or SV, to the *cognoscenti*) stations was first developed almost 35 years ago for use in the regulation of the then-nascent cable television industry. During the intervening three decades, it goes without saying, there have been considerable changes in the television and cable industries. Since Congress is making the Commission use its pre-existing SV list in the context of satellite must-carry, the Commission figures that it might be a good idea to take a closer look at that list and maybe scrape some of the barnacles off of it. The FCC has invited anyone who has an interest in this area to review the list and let the Commission know of any mistakes that they may find. The deadline is currently set at April 8.

News from the FM Allotment Front

Staff Re-thinks Reversal Re Reliance On Relocation of Reference Points

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Attentive readers may recall an article which appeared in the September *Memo to Clients* concerning an apparent change in the way the proposals which appear to create short-spacings are to be evaluated by the staff. Historically, the staff was willing to consider such proposals if the stations to which the proposed reallotment would be short-spaced agreed to propose some alternate reference points for their respective channels. While the technical effect of such an approach might be seen as creating one or more short-spacings, that problem tended to be overlooked, presumably because, thanks to innovations such as Section 73.215, the notion of absolute fealty to the standard channel spacings had become unnecessary.

But then in September, 2004, the staff re-thought that approach and announced that, instead, allotment proponents would not be able to rely on such hypothetical sites.

As we wrote back then, the ink was still drying on the decision, and reconsideration was a distinct possibility. And sure enough, the staff has now clarified its policy for situations in which one stations ("Station A") agrees to modify its reference coordinates to permit a second station ("Station B") to modify its allotment to specify a new city of license. We quote:

> On the effective date of an FM allotment rulemaking order which includes this arrangement, Station A will be protected at its newly specified coordinates with maximum class facilities. It will be permitted to continue to operate with its previously license facilities with an "implied STA" but would be subject to established cut-off and application conflicts proceedings policies with regard to any facility application or rulemaking proposal filed on or after the effective date of the order. Station B enjoys full Section 3.207 protection rights *vis-à-vis* Station A, based on Stations A's new reference coordinates.
>
> The two stations, however, may enter into an agreement under which Station B files its implementing application which protects Station A at Station A's former licensed coordinates and Station B requests processing under Section 73.215. [If Station A is not already a Section 73.215 facility], Station A may file a letter request to reestablish its former licensed site as its protected site with Section 73.207 protection rights toward Station B. The Station A filing may not precede the Station B filing, must clearly identify the Station B filing, and, must demonstrate compliance with Sections 73.207 or Section 73.215 to all other protectable records.

We hope that this clears everything up.

FHH - On the Job, On the Go

Viva Las Vegas!!! It's that time of year again, as the FHH troops head for the annual NAB show in Las Vegas. This year you can expect to run into **Frank Jazzo**, **Scott Johnson**, **Harry Martin**, **Frank Montero**, **Ed O'Neill, Lee Petro**, **Jim Riley, Kathleen Victory** and **Howard Weiss**. They're all staying at the Bellagio.

Before the convention cranks up on Monday, **Harry** will be the FCBA representative introducing the joint ABA/NAB/FCBA legal seminar, "Representing Your Local Broadcaster" on Sunday, April 17. He'll also be on a panel on FCC rule enforcement on Monday, April 18.

While in Vegas **Frank M.** will be attending and making a presentation at the Independent Spanish Broadcasters Association meeting and reception at the Las Vegas Convention Center on Wednesday, April 20. Long before he hits Vegas, **Frank M.** will be attending the second meeting of the Diversity Advisory Board of the American Association of Advertising Agencies, of which he is an appointed member, in New York. And after he leaves Vegas, you will be able to find him attending and making a presentation on current FCC issues at the annual convention of the Puerto Rico Broadcasters Association in Puerto Rico from May 19-22.

And if you hang around Vegas after the NAB show, you may still find **Lee**, who will be staying there through April 22 to attend the Broadband Wireless Convention.

(Continued from page 1)

dia Bureau the authority to provide LPFM permittees an additional 18 months to construct their facilities.

The Commission also sought comment on several issues relating to the long-term operation of the LPFM service, including:

whether LPFM licensees should be able to assign their licensees to other qualified entities;

whether the FCC should extend the period during which mutually exclusive LPFM applicants may reach time-share agreements from 30 days to 90 days;

whether the Commission should permit the renewal of licensees that were granted on the basis of an involuntary time-share arrangement between two or more parties;

whether to require that all LPFM licenses be restricted to local entities; and

whether to extend the prohibition on entities holding more than one LPFM license.

Perhaps the most significant question raised for comment was whether the Commission should give primary interference protection to LPFM stations over translator facilities, including even those translators that had been filed prior to the filing of the LPFM application. The Commission suggested that it might be appropriate to give primary interference status to LPFM stations, which originate programming, as opposed to FM translators, which merely retransmit programming originated elsewhere. The significance of the source of programming may be particularly striking where noncommercial translators are concerned: NCE translators can be located hundreds or thousands of miles from the community in which the programming is being originated.

The Commission also questions whether, if LPFM licensees are accorded primary interference rights, all pending translator applications should be dismissed, or only those found to be mutually exclusive. Alternatively, the Commission suggested that it might make primary status rights for LPFM stations prospective only, which would obviate any such dismissals.

In light of these questions, the Commission ordered the Media Bureau to immediately stop processing all pending translator applications that were filed as part of the August, 2003 filing window. This effectively granted some of the relief sought in the MAP petition. ***This processing freeze is currently set to continue until September 17, 2005.*** Of course, it is always possible that the Commission could extend the freeze if it does not issue final LPFM rules prior to this date, or shorten the freeze date should it move more swiftly. In the meantime, though, we will not be seeing any further processing of translator applications in the near future.

The deadline for filing comments in the LPFM proceeding has not been established. We will let you know as soon as the date is determined.

The FCC's sudden infatuation with the LPFM service is startling. Originally envisioned as a lowly secondary service with extreme limitations on virtually every aspect of operation –facilities, ownership, program content – LPFM now appears to be heading toward a vastly superior position in the hierarchy of broadcast services. Full service broadcasters should pay attention to this development now, or risk being unpleasantly surprised somewhere down the line.

(Continued from page 2)

- effective slenderness ratios for tower mast compression members (legs and bracing members);
- base and guy insulator specifics;
- expanded protection grounding with minimum structure grounding resistance of 10 ohms; and
- proposed climbing and working facilities specifics.

The new standards will allow an engineer to perform a preliminary assessment of whether it is feasible to increase the loading on a tower without the full cost of a detailed rigorous analysis. In some instances that preliminary analysis may save the tower owner considerable time, effort and expense. Of course, before any additional loading can actually be placed on the tower, a full rigorous analysis will still be required.

The goal of the re-write is to establish an internationally recognized and acceptable set of construction standards for towers. The standards currently in place date back to the 1980s. Structural analysis apparently has developed considerably, as a result of which today's standards for tower structures are not necessarily consistent with building codes in a number of areas.

FM ALLOTMENTS PROPOSED –2/18/05-3/22/05

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
AR	Altheimer	56.9 miles S of Little Rock	251C3	05-81	Cmts -04/25/05 Reply-05/10/05	Drop-in
AL	Opelika	64.2 miles N of Montgomery, Al	232A	05-79	Cmts -04/25/05 Reply-05/10/05	Drop-in
TX	Anson	23.8 miles N of Abilene	251C2	05-66	Cmts -04/25/05 Reply-05/10/05	Accommodation downgrade
TX	Roby	48.3 miles NW of Abilene	249A	05-66	Cmts -04/25/05 Reply-05/10/05	Drop-in
MS	Guntown	117 miles S of Memphis	257C3	05-80	Cmts -04/25/05 Reply-05/10/05	1.420(i)
OK	Hennessey	63 miles N of Oklahoma City	249A	05-85	Cmts -04/25/05 Reply-05/10/05	Drop-in
IL	Odin	81.7 miles E of St. Louis, MO	288A	05-86	Cmts -04/25/05 Reply-05/10/05	Drop-in
TX	Spur	70.4 miles SE of Lubbock	260C3	05-87	Cmts -04/25/05 Reply-05/10/05	Drop-in
AL	Livingston	126 miles W of Montgomery	242A	05-83	Cmts -04/25/05 Reply-05/10/05	Drop-in
AL	Rockford	43.6 miles N of Montgomery	286A	05-84	Cmts -04/25/05 Reply-05/10/05	Drop-in
NV	Silver Springs	50 miles E of Reno	273C	05-76	Cmts -04/25/05 Reply-05/10/05	Drop-in
OK	Covington	76 miles N of Oklahoma City	290A	05-77	Cmts -04/25/05 Reply-05/10/05	Drop-in
VT	Poultney	71 miles S of Burlington	223A	05-78	Cmts -04/25/05 Reply-05/10/05	Drop-in
CA	Lost Hills	48.5 miles NW of Bakersfield	245B1	05-88	Cmts -04/25/05 Reply-05/10/05	1.420(i)
CA	Maricopa	48.5 miiles SW of Bakersfield	245A	05-88	Cmts -04/25/05 Reply-05/10/05	Drop-in
IN	Fishers	21 miles NE of Indianapolis	238B	05-67	Cmts -04/25/05 Reply-05/10/05	1.420(i)
IN	Lawrence	11.7 miles W of Indianapolis	230B1	05-67	Cmts -04/25/05 Reply-05/10/05	1.420(i)
IN	Clinton	93 miles W of Indianapolis	229A	05-67	Cmts -04/25/05 Reply-05/10/05	Show Cause
TX	Encino	117 miles SE of Laredo	250A	05-100	Cmts -05/05/05 Reply-05/20/05	Drop-in
TX	Sour Lake	71.9 miles NE of Houston	241C1	05-99	Cmts -05/05/05 Reply-05/20/05	1.420(i)
WY	Jackson	91 miles E of Idaho Falls, SD	294C2	05-101	Cmts -05/05/05 Reply-05/20/05	NCE
TX	Milano	72 miles NE of Austin	274A	05-97	Cmts -05/05/05 Reply-05/20/05	Drop-in

FM ALLOTMENTS PROPOSED –2/18/05-3/22/05 *(continued)*

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
WY	Wheatland	70 miles N of Cheyenna	98A	05-98	Cmts -05/05/05 Reply-05/20/05	Drop-in
AR	Cherokee Village	136 miles N of Memphis, TN	222C2	05-104	Cmts -05/05/05 Reply-05/20/05	1.420(i)
AR	Black Rock	103.4 miles N of Memphis, TN	252C2	05-104	Cmts -05/05/05 Reply-05/20/05	1.420(i)
AR	Cave City	132 miles N of Memphis, TN	254A	05-104	Cmts -05/05/05 Reply-05/20/05	Drop-in
AR	Little Rock	137 miles SW of Memphis, TN	253C0	05-104	Cmts -05/05/05 Reply-05/20/05	Accommodation downgrade
CO	Akron	115 miles NE of Denver	279C1	05-102	Cmts -05/05/05 Reply-05/20/05	Drop-in
PA	Gallitzin	84 miles E of Pittsburgh	228A	05-103	Cmts -05/09/05 Reply-05/24/05	1.420(i)
TX	Hale Center	34.7 miles N of Lubbock	236C1	05-114	Cmts -05/09/05 Reply-05/24/05	Drop-in
MA	Andover	24 miles N of Boston	223B	05-108	Cmts -05/09/05 Reply-05/24/05	1.420(i)
FL	Islamorada	79 miles S of Miami	288C2	05-107	Cmts -05/09/05 Reply-05/24/05	1.420(i)
FL	Sugarloaf Key	16 miles N of Key West	289A	05-107	Cmts -05/09/05 Reply-05/24/05	Drop-in
CA	Alturas	193 miles N of Reno, NV	268C1	05-125	Cmts -05/09/05 Reply-05/24/05	Accommodation downgrade
CA	Palo Cedro	9 miles SE of Redding	266C3	05-125	Cmts -05/09/05 Reply-05/24/05	1.420(i)
NC	Knightdale	10.7 miles E of Raleigh	291C0	05-121	Cmts -05/09/05 Reply-05/24/05	1.420(i)
WI	Monona	6 miles SE of Madison	263A	05-122	Cmts -05/09/05 Reply-05/24/05	1.420(i)
MN	Fisher	98 miles N of Fargo, ND	262C1	05-116	Cmts -05/09/05 Reply-05/24/05	1.420(i)
LA	Colfax	121 miles S of Shreveport	267A	05-117	Cmts -05/09/05 Reply-05/24/05	Drop-in
IL	Knoxville	190 miles SW of Chicago	291A	05-118	Cmts -05/09/05 Reply-05/24/05	Drop-in
TX	Moody	121 miles S of Dallas	256A	05-119	Cmts -05/09/05 Reply-05/24/05	Drop-in
TN	Loretto	95 miles S of Nash-ville	252C3	05-124	Cmts -05/09/05 Reply-05/24/05	1.420(i)
KY	Prospect	12.5 miles N of Louisville	255B	05-120	Cmts -05/09/05 Reply-05/24/05	1.420(i)
NC	Liberty	23.1 miles S of Greensboro	262C0	05-115	Cmts -05/09/05 Reply-05/24/05	1.420(i)

FM ALLOTMENTS PROPOSED –2/18/05-3/22/05 *(continued)*

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
NV	Spring Creek	203.2 miles S of Boise City, ID	269C1	05-113	Cmts -05/09/05 Reply-05/24/05	1.420(i)
CA	Mojave	60 miles S of Bakersfield	255A	05-109	Cmts -05/09/05 Reply-05/24/05	Drop-in
CA	Trona	227 miles NE of Bakersfield	247A	05-109	Cmts -05/09/05 Reply-05/24/05	Accommodation substitution
OK	Stringtown	69 miles N of Sherman, TX	290A	05-110	Cmts -05/09/05 Reply-05/24/05	Drop-in
OK	Haileyville	142 miles SE of Oklahoma City	252A	05-110	Cmts -05/09/05 Reply-05/24/05	Accommodation substitution
NY	Cumberland Head	80 miles NW of Burlington, VT	264A	05-111	Cmts -05/09/05 Reply-05/24/05	Drop-in

FM ALLOTMENTS ADOPTED –2/18/05-3/22/05

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
MA	Adams	70 miles N of Springfield	255A	04-357	TBA
OH	Ashtabula	65.9 miles NE of Cleveland	241A	04-358	TBA
CO	Crested Butte	194 miles W of Colorado Springs	246C3	04-359	TBA
PA	Lawrence Park	4.6 miles N of Erie	224A	04-360	TBA
MA	East Harwich	84.2 miles S of Boston	254A	02-72	TBA
AL	Coaling	13.2 miles SE of Tuscaloosa	237C2	DA 05-553	None
AR	Calico Rock	191 miles N of Memphis, TN	246C3	DA 05-553	None
AZ	Munds Park	20 miles S of Flagstaff	291C1	DA 05-553	None
CA	Mount Shasta	221 miles N of Sacramento	300C1	DA 05-553	None
CA	Pacific Grove	2 miles N of Monterey	286A	DA 05-553	None
FL	Ebro	119 miles SW of Tallahassee	236C3	DA 05-553	None
GA	Augusta	145 miles SE of Atlanta	282C0	DA 05-553	None
KS	Fort Scott	95 miles S of Kansas City	280C3	DA 05-553	None

FM ALLOTMENTS ADOPTED –2/18/05-3/22/05 *(continued)*

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
KS	Hutchinson	48 miles NW of Wichita	246C2	DA 05-553	None
MS	Amory	119 miles NW of Birmingham, AL	239A	DA 05-553	None
UT	Monroe	128 miles S of Provo	263C	DA 05-553	None
CA	Kerman	18 miles W of Fresno	224A	04-301	TBA
TX	Lockney	63 miles N of Lubbock	271C3	04-302	TBA
OK	Lone Wolf	130 miles S of Oklahoma City	224A	04-303	TBA
TX	Quanah	212 miles S of Oklahoma City	255C3	04-304	TBA
CO	Orchard Mesa	249 miles SW of Denver	249C3	04-306	TBA
TX	Rising Star	65 miles SE of Abilene	290C3	04-307	TBA
CA	Twentynine Palms	142 miles E of Los Angeles	270A	04-308	TBA
CA	Waterford	106 miles SE of San Francisco	294A	04-309	TBA
AR	Gassville	152 miles N of Little Rock	224A	04-237	TBA
MA	Nantucket	105 miles SE of Providence RI	249A	04-238	TBA

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.