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Fletcher, Heald & Hildreth, P.L.C.
will be officially closed on
Monday, December 26
and Monday, January 2.

We wish you safe and happy holidays.

This time, the LoPo proponents aren't thinking in terms of the volunteer-laden kind of community, school or church radio that the FCC authorized for LPFM. This time, they are looking for ***commercial*** radio licenses which will let them sell spots and compete (or try to compete) for advertising dollars. Supporters say they are interested in creating a middle ground between mom-and-pop local stations and the super-sized, rigorously-formatted group owners. Cheap commercials from businesses otherwise priced out of prime time would support the service. LPAM supporters say the service would reinvigorate locally-focused programming

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Significant viewing, for the birds

Another Spawn of SHVERA:

Satellite Carriage of Out-of-Market Broadcast Stations

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The Commission recently adopted a *Report and Order* that continues the implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA). The *Order* allows (but does ***not*** require) satellite carriers to offer FCC-determined "significantly viewed" signals of out-of-market broadcast stations to in-market subscribers, subject to certain constraints set forth in SHVERA. The *Order* includes an updated list of stations currently deemed significantly viewed. That list is available on the FCC's website. (Go to http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-187A2.pdf.)

The SHVERA, enacted in December 2004, amended the Communications Act and the copyright statute. Among other things, it directed the FCC to: (1) publish and maintain a list of stations and communities eligible for significantly viewed status; and (2) commence a rulemaking proceeding to implement SHVERA requirements. Significantly viewed signals are those that meet specific over-the-air non-cable viewership levels in a particular community.

In its most recent *Order*, the Commission took the following actions:

- ***"Significantly Viewed" Determinations:*** The rules which will determine how stations may obtain significantly viewed status will operate for satellite carriage in much the same fashion as they have historically operated for cable carriage. This means that parties must petition the Commission when seeking either to add a particular station to the Significantly Viewed List for a particular community, or to restrict carriage of a listed station through application of the Commission's network non-duplication or syndicated exclusivity rules.

- ***Required Showing:*** ABC, CBS and NBC network affiliates must demonstrate significantly viewed status by showing they have at least three percent share of viewing hours in television homes in the target community and a net weekly circulation share of at least 25 percent. All other stations (referred to as "independent" even though some may be affiliated with networks other than ABC, CBS and NBC) must show at least two percent viewing hours and a net weekly circulation of at least five percent.

- ***Subscriber Eligibility:*** The *Order* concludes that the SHVERA requires that a subscriber must first be receiving a specific local market network station (if such a station exists in the market) from the satellite carrier in order to be eligible to receive a significantly viewed station affiliated with the same network.

- ***Digital Significantly Viewed:*** The SHVERA prevents satellite carriers from retransmitting the digital signal of a local market network station in a lesser format than the digital signal of the out-of-market significantly viewed station affiliated with the same network. Thus, as a condition to offering a significantly viewed digital signal, satellite carriers must comply with "equivalent bandwidth" and "entire bandwidth" requirements, which permit satellite carriage of a significantly viewed station only if the amount of bandwidth used to carry such station is equivalent to the amount of bandwidth used to carry the signal or signals of the affiliated local network station, or the entire amount of bandwidth used by the local station. These carriage requirements for local market digital signals apply only

(Continued on page 4)

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Focus on FCC Fines

By: R.J. Quianzon
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Turkeys Don't Fly – In a case that is reminiscent of an episode of the sitcom WKRP in Cincinnati, a Montana FM station faces a $4,000 fine for a Thanksgiving incident involving a live turkey. Station personnel were participating in a phone-in donation drive and used a live turkey as part of the fund-raising effort. In order to encourage listeners to phone the station, on-air personalities conducted a promotion called "Save the Turkey". (Wattle they think of next?) Some facet of the promotion required the dangling of a live turkey from the window on a higher floor of the station building.

While this promotion may have merited a closer look by the humane society, this was not the cause of the FCC fine. Instead, the station faces a $4,000 fine for broadcasting a telephone call. A turkey-loving passerby who happened to observe the fowl play of poultry in motion wanted to let the station know that, at least in her view, the dangling of live turkeys from multi-story buildings was inappropriate. She called the station's receptionist who transferred the call to the on-air personality. The on-air staff chose to broadcast the complaint call live and admonished the caller for complaining. In addition, the call was recorded and later rebroadcast by the station without the caller's knowledge or prior consent.

The caller then complained to the FCC. The FCC reviewed the details of the incident and found that the station was at fault for broadcasting and rebroadcasting the call without the caller's consent. The prohibition against airing conversations does not generally apply to calls placed to "call-in" lines. But in this case, the caller had placed her call to the station's receptionist, ***not*** to a call-in line. In addition, the FCC noted that although it was clear that the caller was unaware that she was being put on-air, the station *still* rebroadcast the phone call. While an initial fine of $6,000 was proposed, the FCC lowered the fine to a poultry $4,000 because of the licensee's record of good behavior – at least prior to the turkey incident. The FCC did not report on what became of the turkey.

Second Bite at the Apple – Faithful readers may recall an item in this column last August, concerning a Missouri FM station which was fined $18,000 for claiming that its "main studio" was a guard shack at a nearby gated community. The station was not pleased with the double digit fine and requested that the FCC reconsider. The FCC reconsidered the fine, looked at new information submitted by the station and didn't blink – the $18,000 fine stays. However, the FCC made a point of highlighting some of the "claims" raised by the station.

To review, the FCC inspected a radio station in March of this year. An agent first inspected the station's tower. The agent then read a sign on the tower which directed readers to a guard shack at the entrance to a nearby gated community. At the guard shack, the FCC found the public file for the station and a guard with a single telephone line and no other apparent means of controlling the transmitter. The station claimed that the guard shack was the main studio; the FCC did not accept that take on its main studio rules and issued its fine.

In its request for reconsideration, the station submitted further information in its defense. For instance, according to the Commission's first decision, when the FCC inspector showed up, the guard in the shack denied that he worked for the station. Now, however, the station claims that the guard was actually the station manager and was just afraid to admit that he was receiving money from the licensee "for fear that he would be turned over to the IRS."

The FCC also pointed out that its rules require management personnel to report to the main studio on a daily basis, and it expressed skepticism at the notion that the station owner and an assistant might also use the shack as the main studio. The FCC noted that no property from the station was located in the shack and, in any event, the shack was only 128 square feet (figure something in the nature of a 10'x12' room). The FCC also pointed out, somewhat ominously, that the station submitted these claims under penalty of perjury.

The FCC also fined the station for EAS problems because it had not conducted required EAS tests. The station did have EAS equipment, but the equipment was switched to manual rather than automatic. The station pointed out that FCC rules provide for a 60-day repair or replacement period for defective EAS equipment – the suggestion being that the rules appear to contemplate that licensees have a built-in 60-day grace period during which they need not comply with EAS requirements. The FCC agreed that its rules do indeed provide for a repair/replacement period, but it stopped well short of buying into the licensee's self-serving reading of the rule. According to the Commission, the rule is ***not*** a "free 60-day pass to operate without functional EAS equipment". As the FCC saw it, the licensee's problem was ***not*** that its EAS equipment was defective; rather, the problem was that the equipment simply had not been turned on.

(Continued on page 4)

FM Auction Update

Auction 62 Looms Large on the Horizon

171 CP's on the block, upfront payments due 12/2/05

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The FCC has announced that it received 339 applications to participate in the upcoming FM auction. Five of the applications were rejected and several of the remaining applications require further information before the FCC can determine their acceptability.

Applicants whose applications have been accepted and who intend to be bidders in the auction have until ***December 2*** to wire money to the FCC as an indicator that they are earnest participants. Note that the process of wiring the upfront payments to the Commission is somewhat involved and requires, among other things, provision of notice to the Commission's representatives immediately before the funds are wired. If you are among those who plan to participate in this auction, you should review the Commission's public notices carefully to assure that you are familiar with all the nitty-gritty requirements. (Alternatively, we would be happy to assist you in making sure that your upfront payment is properly submitted.)

On the block in this auction are 171 construction permits for new FM stations – but ***caveat emptor*** – the FCC does ***not*** guarantee that any of the channels will necessarily provide any particular level of service to any particular area or audience(s). The opening bids for the licenses range from a high of $200,000 to a low of $1500, with many stations priced between those extremes.

The auction was originally scheduled to begin on November 1, 2005. However, in light of the disaster recovery from Hurricane Katrina, the FCC postponed the auction until January 12, 2006.

Late Breaking TV Auction News!!!

As we are going to press, the FCC has just announced the dates for the upcoming TV auction (Auction No. 64):

Form 175 applications due by ***JANUARY 20, 2006***
Upfront payments due by ***FEBRUARY 17, 2006***
Auction begins ***MARCH 15, 2006***.

More details in next month's *Memo to Clients.*

(Continued from page 2)

if the satellite carrier chooses to carry an out-of-market significantly viewed digital signal, and do not affect the "carry-one, carry-all" rules in general.

- ***"Satellite Community" defined:*** Stations are deemed significantly viewed in a particular community. Satellite carriers, like cable operators, use cable communities where they exist. If there is no cable system, satellite carriers may use existing communities (*e.g.*, cities, towns, villages, etc.) to serve as satellite communities. In the absence of a distinct community entity, a satellite community may be defined by one or more adjacent five-digit zip code areas.

- ***Carrier Responsibilities:*** At least 60 days before retransmitting a significantly viewed signal into a local market, satellite carriers must notify all television stations in such market.

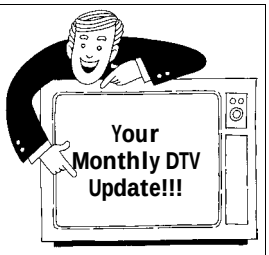
If you have questions about any opportunities or burdens which these new SHVERA-based rules may present, do not hesitate to call on us for assistance.

(Continued from page 3)

Finally, the FCC noted that the state broadcast association had conducted a mock inspection of the station a year earlier. The state association's mock inspection uncovered these very problems with the station's main studio. Unimpressed that the station did nothing to rectify the problems after a year, the FCC used this fact as additional justification for not reducing its fine.

Third Bite at the Apple – Readers may recall that a San Francisco noncommercial station was fined two years ago for airing roughly 2,000 advertisements. The station, which aired primarily non-English programming, responded to the initial Notice of Liability with claims that the FCC policies were discriminatory against non-English programming. This claim was rejected and the FCC issued a forfeiture order. In response, the television station again asked the FCC to review the facts and to reverse the forfeiture order. On review, the FCC upheld the previous decision and issued another Order affirming the fine. Still not satisfied, the third time around the station asked the FCC to reconsider its decision. In deciding the reconsideration, the FCC used the word "repetitious" several times and dismissed the latest attempt for review. It is not clear what the television station intends to do in light of the latest FCC Order.

FCC Sets All-DTV-Receiver Deadlines, Starts Thinking About Syncing



By: Lee G. Petro
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This month's DTV Update takes a gander at two topics that will have a direct effect on the roll-out of digital service. First, we'll discuss the recently-adopted final schedule for mandatory inclusion of digital receivers in consumer televisions. Next, we'll look at the Notice of Proposed Rulemaking released this month in which the FCC takes a major step toward adoption of distributed transmission system technology for DTV television stations.

On the receiver front, it was only last year that the Commission first imposed a schedule of deadlines by which consumer televisions had to include DTV receivers. As we discussed in the June, 2005, *Memo to Clients*, the Consumer Electronic Association (CEA) then requested that the Commission eliminate the July 1, 2005 deadline by which 50% of all television receivers with 25"-36" screens must have DTV tuners. In response, the Commission declined to eliminate the deadline. Further, the Commission accelerated by four months (to March 1, 2006) the date by which 100% of sets with 25"–36" screens must be DTV-equipped. And adding insult to injury, the Commission sought comment on whether it should similarly move up, from July 1, 2007, to December 31, 2006, the deadline for ***all*** TV sets 13" and larger. In addition, the Commission sought comment on whether to establish a similar deadline for televisions sets with screens less than 13".

Distributed transmission system (DTS) technology will (ideally) permit a licensee to serve areas within its protected service area that might not otherwise receive a strong signal from a single transmitter due to terrain or man-made obstructions.

Now, the other (and final?) shoe has dropped.

This month the Commission adopted the final schedule for ***all*** digital television-related equipment. The Commission moved forward the deadline for television sets with screens between 13"-24" from July 1, 2007, to March 1, 2007, and expanded the universe of gear subject to that deadline to include all television sets smaller than 13", and all VCRs and digital video recorders (DVRs). The March, 2007 is one year after the deadline applicable to sets with screens between 25"-36". This deadline is also identical to the deadline established in the House-version of the DTV bill that has yet to be reconciled with the Senate bill. Moreover, this deadline is roughly two years before the hard-return date of April 7, 2009, established in the pending Senate bill.

While the Commission was anxious to accelerate the deadline for DTV tuners, it did not honor the broadcasters' request to move that deadline up to a point before the 2006 holiday season. Instead, the Commission relied on CEA's claim that its members could not possibly meet a December, 2006, deadline.

In addition, the Commission declined to establish a labeling requirement for all television sets which would inform the public that analog sets will not be able receive over-the-air signals after a certain date. Instead, the Commission encouraged voluntary actions by the consumer electronics industry while the Commission puts the finishing touches on a corollary rulemaking proceeding that may address this issue.

Only time will tell whether the March 1, 2007, deadline will be met by the consumer electronics industry. However, as long as some analog-only sets remain on the shelves, as the FCC, NAB and CEA have stated, more education is necessary at the point-of-purchase to ensure that the public fully understands the impact of the decision to purchase either an analog-only or digital television set. With the deadline now set, hopefully the FCC, NAB and CEA will begin an educational program to educate the public in their future purchases, and adopt some sort of labeling that will inform those unaware of the DTV transition that that flashy analog-only television set they're looking at will not be able to receive over-the-air signals after 2009.

Next, the Commission is seeking comment on rules that would permit a television licensee to use synchronized transmitters spread out within its service area, rather than the standard single-transmitter model that has been used since Harry T. gave 'em hell.

The main advantage of the distributed transmission system (DTS) technology is that it will permit a licensee to serve areas within its protected service area that might not otherwise receive a strong signal from a single transmitter due to terrain or man-made obstructions. DTS technology would allow multiple transmitters to fill-in these areas much as analog TV boosters do currently –

(Continued on page 6)

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but television receivers would ***not*** suffer the same on-channel interference typically present with analog signals. In addition, by using DTS technology, licensees could avoid "tall tower" zoning concerns by scrapping the use of a single antenna atop a tall tower and substituting instead the use of multiple transmitters with multiple, lower, antennas, thus more efficiently providing a balanced signal level throughout the station's service area.

DTS obviously presents a fundamental change in approach to the delivery of over-the-air TV signals. And, naturally, the old rules will need to be adjusted considerably to accommodate that change. To that end, the Commission has proposed several rules to help aid the development and implementation of DTS during the DTV transition and thereafter. First, the FCC has clarified several elements of its interim policy of accepting proposals for building-out a DTS within a station's service area during the current application filing freeze. The Commission will entertain requests to implement DTS technology, so long as the proposed system is designed to serve essentially all of the station's service area (both replication and maximization). The proposed transmitters must be located within the station's predicted noise-limited service contour (PNLC), and may not extend the PNLC contour beyond a minimal amount necessary to serve a population within the PNLC. If the DTS transmitter's service area extends beyond the station's PNLC, then that extended service is only secondary, and will not be protected post-transition.

Next, the Commission has reached tentative conclusions and solicited comments on many elements of the DTS technology. First, the Commission has concluded that DTS will aid the DTV transition. Accordingly, it proposes to give primary status to the service provided by DTS within a station's service area. At the same time, the Commission has tentatively concluded that DTS cannot be used to expand the service area of television stations beyond that which will be in the DTV Table of Allotments scheduled to be adopted next year. While one of the leading proponents of DTS proposed permitting licensees to expand their coverage areas within their DMA so long as no interference is caused, the Commission rejected this proposal, since it would likely lead to contractual conflicts based on territorial exclusivity, and because the proposals would conflict with the traditional notion of localism. Instead, the Commission has proposed that DTS service be limited to geographic areas based on predicted contours (*see* box, below).

Channel	Zone (see § 73.609)	F(50,90) field strength	ERP at HAAT	Distance
2-6	1	28 dBu	10 kW at 305 m.	108 km. (67 mi.)
2-6	2 and 3	28 dBu	10 kW at 610 m.	128 km. (80 mi.)
7-13	1	36 dBu	30 kW at 305 m.	101 km. (63 mi.)
7-13	2 and 3	36 dBu	30 kW at 610 m.	123 km. (77 mi.)
14-69	1, 2 and 3	41 dBu	1000 kW at 365 m.	103 km. (64 mi.)

The Commission believes that these distances will, in almost all instances, equal or exceed a station's currently authorized coverage contour. Concerned that parties may "cherry-pick" areas within their service contours, the FCC also proposed rules that would bar applications which would result in a loss of service to populations within the station's current service area.

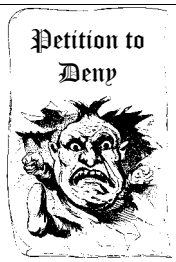
Further clearing the way for DTS, the Commission also proposed to apply to DTS operations the existing ERP, antenna height and emission mask rules currently applicable to DTV stations. In addition, the Commission proposes to use the same licensing scheme as well as a uniform construction period for DTS operations. The Commission has also asked for comment on how to apply its interference protection standards for DTS – that is, should the FCC consider interference to each DTS transmitter separately, or should it utilize an overall interference calculation based on a combination of the signals of all the DTS transmitters?

Finally, the Commission proposed to permit Class A television licensees to use DTS technology. Interestingly, the Commission has proposed to permit Class A television licensees that have commonly-owned stations with overlapping noise-limited contours to operate on a single frequency within this market area. This proposal is intended to offset displacement concerns, and the Commission would afford primary status to the area served by such interconnected Class A stations. The Commission is seeking comment on all elements of this plan, including the licensing of such networks, and how the Class A licensee would select the single channel on

(Continued on page 9)

Inadequate coverage exposing licenses?

Petitioners Push Peak Penalty For Paucity of Political Programming



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In November, petitions were filed by two organizations – Chicago Media Action and the Milwaukee Public Interest Media Coalition – challenging the license renewals of twenty commercial television stations in the Chicago and Milwaukee markets. The gist of the attack is that all of the target stations failed to serve the public interest because they did not provide adequate coverage of state and local races during the 2004 election campaign.

The petitions are based primarily on data obtained from a study prepared by the Center for Media and Public Affairs (CMPA), which analyzed all regularly-scheduled local news programming and public affairs programming carried by the five highest-rated commercial stations in both markets during the four weeks prior to the elections. The CMPA study showed that, in Chicago, less than 1% of total newscast time was devoted to local and state elections, only 7.8% of total news time was spent on any election coverage at all, and 79% of that coverage focused on federal races.

The petitioners bemoan the fact that strategies, statistics, and scandals, rather than the candidates' platforms or ballot issues, dominated local and state coverage.

Notably, about 12% of election-related news coverage addressed voting mechanics and other non-substantive matters, such as ballot procedures and turnout. While these topics are of considerable media interest in the wake of the 2000 Presidential election recount, they do not involve the real issues to be decided in the various elections themselves. In the end, approximately 8% of election news time in Chicago was dedicated to local and state elections, a level the petitioners felt to be unacceptably low. The Milwaukee statistics showed similar results.

In addition to the minimal coverage provided on local and state races, the petitioners express concern about the focus of the stations' election news coverage. They bemoan the fact that strategies, statistics, and scandals, rather than the candidates' platforms or ballot issues, dominated the local and state coverage.

While the petitioners strive mightily to paint a bleak picture of current political broadcasting, the allegations made in the petitions are unlikely to have any traction. Although Section 309(k) of the Communications Act still requires the FCC to give broadcast renewal applications a reasonably close look, the agency must renew unless it concludes that the renewal applicant has engaged in "serious violations" or a "pattern of abuse" by the licensee.

To be sure, Section 309(k) also requires that the FCC make an affirmative determination that the renewal applicant has served the public interest in the preceding license term. And the petitioners are presumably hoping that the Commission may conclude that the election coverage statistics presented in the petition will convince the Commission that the public interest has ***not*** been served.

But as a practical matter, that hope is not likely to be realized. The Commission has historically shied away from precisely that kind of content-based determination.

Despite Section 309(k)'s requirements that nominally dictate FCC determinations to renew or not to renew, the current renewal process bears little resemblance to the rigor of the long-gone comparative hearing days. In lieu of an adversarial match-up requiring the licensee to enumerate in detail the reasons it was deserving of a renewal, applicants now need only certify their general compliance by checking boxes on the renewal application. Under the current renewal regimen, it is unlikely that the Commission would, or could, deny the Chicago and Milwaukee license renewals currently being challenged.

That, of course, raises the question of why the petitioners (who are presumably reasonably sophisticated) are quixotically tilting at this particular windmill. While it's hard to say for certain, the petitioners may be making noise in an attempt to get Congress's attention. If enough of the petitioners' shock and indignation were to rub off on enough legislators (who, after all, would benefit from more substantive campaign coverage, at least in theory), those legislators might change the law and force the FCC to delve more deeply into such matters at renewal time.

But as tempting as it may be to try to enlist the government to force broadcasters to become more socially responsible (at least as far as the petitioners may define social responsibility), the First Amendment is designed to keep the government ***out*** of the editorial process. So rejection of the petitioners' suggested approach – both by the FCC and Congress – would clearly advance the interests of a free press and broadcast programming free of intrusive governmental regulation. Such a result should be encouraged.

Licenses, Liens and Legalities

FCC Reversed by Court On Treatment Of Security Interests in Licenses

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In the April, 2005 issue of the *Memorandum to Clients,* we reminded you, in an article about bank financing for broadcasters, that the holder of an FCC license cannot legally pledge that license as collateral for a loan. Last month, the United States Court of Appeals for the D.C. Circuit (the usual venue for appeals of FCC rulings) affirmed this fact of life. The court's opinion is a cautionary tale for anyone thinking about financing a radio or television station.

It all started ten years ago in California. Paradise Broadcasting sold its AM radio station to Kidd Communications. Instead of paying all cash for the station, Kidd negotiated "seller financing" in the form of a promissory note payable to Paradise. Soon thereafter, Kidd defaulted in its payments under the note.

Paradise sued Kidd, but they settled the litigation by Kidd giving a new promissory note to Paradise to replace the old one. The new note provided that "[i]n the event of a default which is not cured, both parties agree to act reasonably and in good faith to effect an orderly turnover of the station to Paradise." Basically, the parties appeared to be trying to make clear that, if Kidd stiffed Paradise the second time around, then the answer would be that Paradise should get the station back with a minimum of muss and fuss – not an unreasonable approach for Paradise, in particular, to strive for, given the problems it had already run into in Round One.

*Noting that the FCC is **not** obligated to accommodate state court's decisions contrary to FCC policies, the court held that the Commission failed to explain adequately its attempted reconciliation of state commercial and contract interests with federal communications law and policies.*

In hindsight, this turned out to be a bad move by Paradise, because Kidd soon defaulted in its payments on the new note.

Let's briefly interrupt our story at this point for a review of pertinent FCC law.

First, under federal statutes, any FCC license holder must obtain the FCC's prior approval before assigning or transferring its license to anyone else. Second, the FCC's rules prohibit the seller of a broadcast license from retaining any right to a reassignment of that license after the sale. Third, the FCC has consistently interpreted its own rules in the past to mean that a license holder cannot use its FCC license as collateral for a loan. Finally (and this is more a matter of common sense than FCC law), any contract that vaguely provides for a party that is already in default to cooperate in good faith with the non-defaulting party is probably not worth the paper it is written on.

Maybe Paradise was unaware of these laws. Maybe, in a triumph of hope over experience, it knew about them but figured that they might not apply to Paradise's situation. Maybe there was some other reasoning at work. Whatever may be the case, the promissory note wording quoted above lacked detail (to put it charitably) about how Paradise could legally resume operation of the station.

Now, back to our story: Paradise sued Kidd after Kidd defaulted on the second promissory note. Surprise, surprise – after Kidd stopped paying Paradise, Kidd didn't cooperate to "effect an orderly turnover of the station to Paradise" either. A California court ordered a foreclosure sale of the station's tower site, including the towers and transmitter facilities of the station. Paradise was the successful bidder at the foreclosure sale, but Kidd refused to relinquish possession of the station property. Paradise had to sue Kidd to gain possession of the tower site.

Paradise also sued Kidd in California court to recover the station's other equipment and to force Kidd to file an application with the FCC to assign the station's broadcast license to Paradise. Paradise won all of these suits, and the clerk of the court, acting as a trustee, signed FCC applications to gain control of and transfer the station's license to Paradise.

The FCC's Media Bureau, over objections by Kidd, granted the license assignment applications. Kidd appealed, and the full Commission affirmed the Bureau's actions. The Commissioners concluded that allowing the transfer of the license back to Paradise was consistent with the FCC's policy of accommodating state court de-

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cisions regarding contract law matters and also served the public's interest by returning the station to the airwaves. The California court's clerk assigned the licenses to Paradise.

Paradise was batting 1000 at this point. Sure, Paradise had spent a bunch of money on lawyers' fees and the better part of a decade fighting Kidd, but now it had all of the station's property ***and*** the license back. In fact, Paradise soon sold the station to a new buyer (for cash, this time).

But wait! Our story doesn't end there. Kidd appealed the FCC's decision to the federal court of appeals in DC . . . and, for the first time in this legal odyssey, Kidd won (or, as John Milton would say, "Paradise lost"). Before the court, the FCC (defending its action in favor of Paradise) argued that the grant of the license assignment application was perfectly legal. But the DC Circuit didn't agree with the FCC's reasoning.

If the buyer cannot come up with enough cash to buy your station, consider alternative deal structures or alternative sources of security for repayment of the note.

Noting that the FCC is not obligated to accommodate a state court's decision that is contrary to the Commission's policies, the three-judge panel of the DC Circuit decided that the FCC failed to explain adequately how it reconciled state commercial and contract interests with federal communications law and policies. The court vacated the FCC's decision allowing assignment of the station's license to Paradise, and remanded the case to the FCC for further proceedings. As this is written, the FCC is considering suggestions from Kidd and Paradise about how to proceed from this point.

So what conclusions can we draw from this tale of woe?

For sellers of broadcast stations: be very cautious when taking a promissory note from a buyer for part or all of the purchase price. If you take a note secured by the station license as collateral, you will be running afoul of two of the FCC's policies – one prohibiting a seller from retaining a reversionary interests in a broadcast license, and the other prohibiting a security interest in the license itself. If the buyer cannot come up with enough cash to buy your station, consider alternative deal structures (such as a long term time brokerage agreement) or alternative sources of security for repayment of the note. These could include personal guaranties, security interests in other property of the buyer (including station hardware), or pledges of all the ownership interests of the licensee where the buyer is an entity. As an example, when the buyer is a corporation, the seller might insist on a pledge of all the corporation's stock. (If the buyer isn't already a corporation, the seller might insist on incorporation as an element of the deal.) Foreclosing on the stock would still require FCC approval, and it would effectively allow the seller to regain control of the license – but since foreclosure on stock would ***not*** be the same thing as foreclosing on the license itself, this approach would normally pass muster at the FCC.

For lenders to radio and television stations, the lesson should be (as we suggested in our April, 2005 article), make sure that your security instruments (mortgages, pledges, financing statements, etc.) contain wording expressly acknowledging that the parties intend to abide by current FCC law prohibiting security interests in licenses. Add wording that instead grants a security interest in the proceeds from any future sale of the FCC license. Also add wording that if the FCC laws ever change so that security interests in licenses are permitted, then the station's license will automatically be deemed to be subject to a security interest in your favor. While the facts of the Kidd/Paradise case were limited to a seller-financing situation, the court's decision could easily be read to affect third-party financing transactions as well.

Now that the Kidd/Paradise case has been remanded to the Commission, the FCC may take this opportunity to review and revise its policies in this area. To many, there is no real difference between a security interest in a license and a pledge of all of the buyer-corporation's stock. However, for decades the FCC has insisted that there is enough difference to make the latter approach legal and the former illegal. It will be interesting to see whether the 21st Century Commission will stick with this 20th Century approach. Stay tuned for further developments.

(Continued from page 6)

which it would operate.

Obviously, there are terrain-challenged areas in which DTS may provide great advantages. Just as significantly, DTS may lift the blockage on the roll-out of DTV stations in areas (such as Denver) where zoning concerns have blocked construction of new towers. At the same time, the proposal to use a single channel for Class A television stations may cause great concern to full-power television stations, especially if tight controls are not maintained on the channel selection process. Comments on these DTS proposals will be due 60 days after the NPRM is published in the Federal Register.

Updates from Planet Kidvid

Commission Cracks Down On Omission Of Children's TV Info from Public Files

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Children's television violations as a new revenue stream for the FCC? Could be, based on a recent flurry of fines and admonishments for a variety of kidvid violations. The misconduct at issue involved public file record keeping requirements in the areas of children's television reports and issues/programs lists, as well as public outreach with regard to children's television. In all of these recent cases, the licensees themselves brought the problems to the FCC's attention in their respective license renewal applications.

The big loser in the batch was an Indiana station which got whacked for $15,000 for various failures in record keeping and public file requirements. In its renewal application, the station initially stated that it had not prepared issues/programs lists during the license term. It also confessed that it had not placed in its public file evidence of compliance with the Commission's limits on commercial matter during children's programming, and that several of its Children's Television Programming Reports had not been filed with the Commission and/or placed in the public file in a timely manner. Finally, the station acknowledged that its EEO Public File Reports had not been prepared and timely placed in the station's public file. In an amendment to the application, the station later reported that actually, the issues/programs lists for the fourth quarter of 1997 through the fourth quarter of 2000 ***had*** been prepared and were at first placed in the public inspection file, but that they were later moved to internal station files. The station also added that daily certifications of compliance with children's television commercial limits were completed and placed in internal station files.

These cases illustrate the importance of the time-honored truism that the job is never over until the paperwork is done.

Based on all of this information, the Commission found that the licensee had engaged in willful and repeated violations of its rules. It noted that while corrective actions had been taken, those actions did not relieve the licensee of liability for the violations that had occurred. The Commission also reiterated its view of the critical role that the public file serves in making important information concerning station operations available to the public. In light of these factors, the Commission granted the license renewal application but assessed a $15,000 fine.

Another television station was nicked $4,000 when it reported that review of its public inspection file showed that the kidvid commercial compliance certification and issues/programs list for the fourth quarter of 2001 and third quarter of 2003, along with the kidvid commercial compliance certification for the first quarter of 2002, were missing from the station's public file. The licensee stated that it believed that these documents may have been inadvertently misplaced as a result of reorganization of the public file shortly after the current licensee took over the station, but it did not explain why its employees would have discarded materials which had been completed after the new licensee began operations. The licensee also noted that all of the documents in question had been restored and placed in the public inspection file. Taking these factors into consideration, the Commission found that a fine of $4,000, well below the base fine amount for a public file violation of $10,000 was in order and granted the license renewal application.

Finally, a number of Paxson stations admitted that their review of internal records showed that when the stations provided information about "core" children's programming to publishers of program guides, they had not included information as to the target age range for the programming as required by the Commission's rules. The stations noted that most program guides do not publish that information in any event. Still, the stations went ahead and put new procedures in place to make sure that the information is now provided. In view of the fact that "core" programming – by the FCC's definition – includes as one of its elements that information about target audience be provided to program guide publishers, this failure could have been a serious matter. Had the Commission been so inclined, it could conceivably have concluded that the licensee's failure to include age range information in its notifications meant that *none* of the programs in question were "core". But that, in turn, would have led to the further conclusion that the station ran, in effect, no "core" children's programming at all –

(Continued on page 15)

Reading between the lines

FCC Response in Kidvid Appeals Suggests Dark Clouds on Horizon

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As we reported last month, three separate challenges to the FCC's new children's programming rules have been made to the US Courts of Appeals – one in the Sixth Circuit by the United Church of Christ and two separate cases in the DC Circuit by Viacom and Disney. Since our last report, the FCC has filed responses to Viacom and Disney's claims and made strategic requests to move those cases from the DC Circuit to the Sixth Circuit.

While the FCC's filings in these cases are what one would expect, they may provide some insight into the FCC's approach to enforcing the new rules. Unfortunately, this approach looks like it will be both unforgiving and inconsistent.

The FCC's statements to the court suggest that the Commission may be gearing up to apply its new kidvid rules in an uncompromising and unforgiving way.

While a certain amount of rhetorical posturing is par for the course in appellate filings, the FCC's pleadings demonstrate an utter disregard of the effect its new rules will have on television station operations. This should be of great concern to television broadcasters. For instance, the FCC argues that the extension of core programming requirements to television stations' multicast channels is "narrowly tailored" because that extension will increase the amount of required core programming "only for broadcasters who choose to use their digital capacity to air more free video programming." That's swell, as long as a station is intending to multicast ***exclusively*** on a pay-per-view or other subscription basis. But any station which would use any of its multicast channels for free over-the-air programming would find themselves subject to the kidvid core programming requirements on those non-pay channels.

The FCC also emphasizes the fact that additional core programming guidelines are *nonmandatory* guidelines. While this is technically true, any station choosing to disregard these *nonmandatory* guidelines may find its license renewal designated for review by the full Commission.

On the subject of its new preemption rules, the FCC shrugs off any notion that live sports programming creates any problem with regularly scheduled core programming, noting that stations should simply choose time slots for children's programming that don't conflict with sports programming. This, of course, provides little help to those west coast network affiliates that receive sports programming in the early weekend hours in which children are most likely to be in audience. Presumably, the FCC would be satisfied with moving all such stations' children's programming to weekdays at 11:00 a.m., regardless of whether or not any children are likely to be home at that time.

With regard to the controversial new rules on the display of Internet web site addresses during children's programming, the FCC's filings create new confusion rather than providing greater clarity. The proposed new rules specifically state that the display of Internet website addresses during program material is permitted ***only*** if the website complies with the FCC's four criteria for "noncommercial" websites. Subsequent informal statements by FCC staff members have confirmed that they regard the new rules as an outright ban on "commercial" websites during children's programming.

The FCC's new filings, however, take a different approach, stating that the "address of commercial websites ***may*** even ***be displayed*** during children's programs so long as the time of such display is counted against commercial limits." In addition to flatly contradicting its prior pronouncements (not to mention the language of the rule itself), this gloss raises more questions about how stations will be expected to count website displays against their commercial limits. Would, for instance, the display of a website inside a commercial be double-counted against the limits?

The FCC's statements, of course, may be viewed as litigation tactics. They nevertheless suggest that the FCC may be gearing up to apply its new rules in an uncompromising and unforgiving way. Moreover, there is clearly some confusion surrounding the application of the new website restrictions.

Since the FCC's pleadings to the courts do not constitute

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CONELRAD for the 21st Century

EAS Goes Digital

DTV, DBS,DAB, SDARS now part of the EAS system
As FCC mulls further overhaul of the emergency system

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In this new era of homeland insecurity, the government is doing what it can to maximize its ability to alert the public to emergency situations. So it is not surprising that the FCC recently announced that it is extending the reach of its Emergency Alert System (EAS) rules to include digital television (DTV), digital cable television, direct broadcast satellite television (DBS), digital radio (DAB or IBOC), and satellite radio (SDARS) in national EAS activations. Currently, EAS rules only require the participation of terrestrial analog television, terrestrial analog radio, analog cable systems, and terrestrial wireless cable systems in national EAS alerts.

Digital and satellite programming providers must begin participating in national EAS alerts by December 31, 2006, with direct broadcast satellite television given until May 31, 2007 to participate. Participation in state and local EAS activations will for the time being remain voluntary for all broadcasters and programming providers. If digital and satellite providers choose to transmit state and local EAS messages, they must comply with FCC EAS rules governing those messages, as terrestrial analog providers must do currently.

While the FCC has determined that EAS should remain an important component of any future alert and warning system, and while it has now extended EAS participation to digital and satellite programming providers, the FCC is still considering alternate approaches.

The Commission has had EAS in its sights for more than a year, with possible actions ranging from tweaks to comprehensive overhaul to replacement by some more advanced warning system involving new technologies. While the Commission has now determined that EAS should remain an important component of any future alert and warning system, and while it has now extended EAS participation to digital and satellite programming providers, the Commission is still considering alternate approaches. As a result, the FCC also is seeking further comments on the development of a future alert and warning system.

For the time being, digital television (DTV) operators, including digital low power television (LPTV) and digital Class A television licensees, will have the same EAS obligations as analog television licensees. This will include installing ENDEC units so that monitoring and transmitting of EAS messages is available at all times the stations are in operation and transmitting EAS test messages. Multicasting DTV stations must provide EAS messages on all program streams that the DTV station offers, including subscription streams. However, DTV stations will have significant flexibility in determining the method they will use to deliver EAS messages on those various program streams. One option available to DTV stations would be to transmit EAS messages on only one program stream but simultaneously to force tune all receivers to that stream.

Digital cable systems may likewise determine the method they will use to distribute EAS messages to viewers of digital cable channels – the primary requirement being that all viewers receive the complete EAS message on the channel they are watching. The "plug-and play" agreement (a Memorandum of Understanding between the cable television and consumer electronics industries regarding a cable compatibility standard for integrated, unidirectional digital cable television receivers and other unidirectional digital cable products, which has been essentially adopted by the FCC) requires that, to be labeled as "Digital Cable Ready", a television set must respond to EAS messages transmitted in compliance with the Digital Video Service Multiplex and Transport System Standard for Cable Television. Digital cable systems with fewer than 5,000 subscribers, like similar analog and wireless cable systems, may provide a video interruption and an audio alert message on all channels and the EAS message on at least one channel.

Direct Broadcast Satellite (DBS) providers will be required to participate in national EAS activations and to provide national EAS messages to viewers of all channels. They must comply with EAS rules regarding encoding and decoding equipment, monitoring of EAS sources, and EAS testing. Although participation in state and local EAS activations remains voluntary, DBS must pass through all EAS messages aired on local channels to

(Continued on page 13)

(Continued from page 12)

the subscribers viewing those channels. Additionally, DBS providers must inform their customers if they are not capable of receiving and distributing EAS alerts from state and local emergency managers. Home Satellite Dish (HSD) services will not be required to participate in EAS because such systems are few in number and HSD users receive programming directly from programmers.

Digital Audio Broadcast (DAB) stations – that is, over-the-air AM and FM radio stations which transmit a digital signal using the IBOC technical system in addition to transmitting an analog signal – will be required to transmit the EAS messages that they air on all audio streams they provide. DAB broadcasters will also have the flexibility to determine the method they use to distribute EAS messages to all audio streams as long as all listeners receive the complete and timely EAS message on the stream to which they are listening.

Satellite Digital Audio Radio Service (SDARS) – that is, subscription services provided by Sirius and XM – will be required to transmit national EAS messages on all channels. They must receive national EAS messages through an ENDEC unit from which they monitor at least two sources (including one primary entry point (PEP) station), or directly monitor FEMA. SDARS providers are strongly encouraged to have the ability both to receive EAS alerts from state and local emergency managers and to disseminate them on the local traffic and weather channels they offer. SDARS must inform their customers of the channels that will and will not be capable of providing state and local EAS messages. They must comply with EAS testing requirements and monitor a state or local primary source to participate in testing.

The FCC will continue to explore, along with other government agencies and industry, ways in which emergency information may be made available more efficiently and effectively using new technologies. It has issued a Further Notice of Proposed Rulemaking seeking comment on all issues relating to a next generation alert and warning system and the role the FCC should take in developing such a system.

The myriad issues which the FCC has placed on the table for discussion include:

(i) System Architecture: Would point-to-point or satellite distribution of EAS messages directly to media outlets deliver alerts to the public more quickly or more efficiently? Should these types of distribution be in addition to or instead of the current EAS system?

(ii) Common Protocols: For a digitally-based system to be distributed simultaneously over multiple platforms, must a common messaging protocol be adopted? Should the Common Alerting Protocol (CAP), endorsed by many public and private organizations responsible for emergency alerts, be adopted? Would CAP allow simultaneous distribution to radio, television, and wireless media such as mobile telephones and PDAs?

(iii) Specific Technologies: Should DBS and SDARS providers be required to deliver state and local messages? How could state and local messages be delivered on such national systems? Should next generation digital set top boxes be designed with this capability? Should all digital radio services be required to transmit warnings over the digital displays on receivers? Should traditional telephone companies competing with cable television service providers and DTV broadcasters in delivering digital content through fiber optic connections be required to transmit emergency alerts and warnings?

The Commission is seeking comment on a wide variety of issues relating to a next generation alert and warning system and the role the FCC should take in developing such a system.

(iv) Government efforts to develop a warning system: What should the FCC's role be in FEMA's efforts with the Association of Public Television Stations (APTS) to develop an Integrated Public Alert and Warning System (IPAWS) and the current testing of digital media, including digital TV, to send emergency alert data over telephone, cable, wireless devices, broadcast media, and other networks?

(v) Performance Standards: Are standards necessary and should the FCC have a role in developing and enforcing them? What enforcement techniques should be used?

(vi) Coordination with state and local governments: How can the FCC best work with states to implement current EAS rules and develop next generation alert and warning systems?

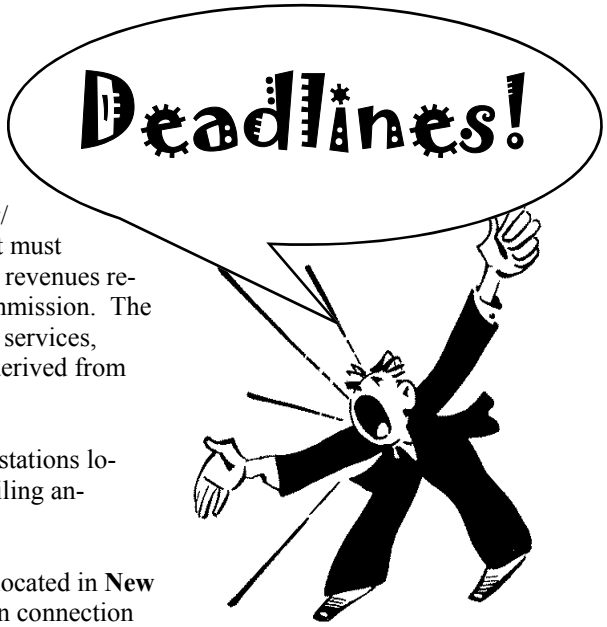
(vii) Accessibility to persons with disabilities: How can the FCC make EAS alerts more accessible to people with disabilities? Can the closed captioning rules be revised to enhance dissemination of emergency information?

(viii) Multilingual EAS messages: What are the ways to best alert non-English speakers?

The Commission is obviously looking far into the future, with an eye toward developing an emergency alert system

(Continued on page 16)

December 1, 2005



DTV Ancillary Services Statements - All *DTV licensees* (***not*** permittees) must file a report on FCC Form 317 stating whether they have offered any ancillary or supplementary services together with the broadcast service provided during the previous fiscal year. If a station has offered such ancillary/ supplementary services *and* has charged a fee for them, then it must separately submit a payment equal to five percent of the gross revenues received and an FCC Remittance Advice (Form 159) to the Commission. The report on Form 317 specifically asks for a list of any ancillary services, whether a fee was charged, and the gross amount of revenue derived from those services.

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

Radio Renewal Pre-Filing Announcements - *Radio* stations located in **New Jersey** and N**ew York** 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 **Colorado**, **Minnesota**, **Montana**, **North Dakota**, and **South Dakota** must file their license renewal applications.

Radio Renewal Applications - All *radio* stations located in **Connecticut**, **Maine**, **Massachusetts**, **New Hampshire**, **Rhode Island**, and **Vermont** must file their license renewal applications.

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

EEO Public File Reports - All *radio* and *television* stations with more than five (5) full-time employees located in **Alabama**, **Colorado**, **Connecticut**, **Georgia**, **Maine**, **Massachusetts**, **Rhode Island**, **Minnesota**, **Montana**, **New Hampshire**, **North Dakota**, **South Dakota**, and **Vermont** must place EEO Public File Reports in their public inspection files. For all stations with websites, the report must be posted there as well. Per announced FCC policy, the reporting period may end ten days before the report is due, and the reporting period for the next year will begin on the following day.

Radio and Television Ownership Reports - All *radio* stations located in **Alabama**, **Connecticut**, **Georgia**, **Maine**, **Massachusetts**, **New Hampshire**, **Rhode Island**, and **Vermont** must file a biennial Ownership Report (FCC Form 323 for commercial stations or Form 323-E for noncommercial stations). All *television* stations located in **Colorado**, **Connecticut**, **Maine**, **Massachusetts**, **Minnesota**, **Montana**, **New Hampshire**, **North Dakota**, **Rhode Island**, **South Dakota**, and **Vermont** must also file a biennial Ownership Report. All reports filed on FCC Form 323 or 323-E must be filed electronically.

January 10, 2006

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.

(Continued on page 15)

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.

February 1, 2006

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

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

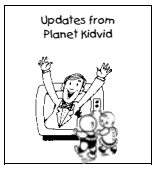
Television/Class A/LPTV/TV Translator Renewal Applications - All *television*, *Class A TV*, *LPTV*, and *TV translator* stations located in **Kansas**, **Nebraska**, and **Oklahoma** must file their license renewal applications.

Radio Renewal Applications - All *radio* stations located in **New Jersey** and **New York** must file their license renewal applications.

Radio and Television Renewal Post-Filing Announcements - All *radio* stations located in **New Jersey** and **New York** and all *television* stations located in **Kansas**, **Nebraska**, and **Oklahoma** must begin their post-filing announcements in connection with the license renewal process, and continue such announcements on February 1 and 16, March 1 and 16, and April 1 and 16.

EEO Public File Reports - All *radio* and *television* stations with more than five (5) full-time employees located in **Arkansas**, **Kansas**, **Louisiana**, **Mississippi**, **Nebraska**, **New Jersey**, **New York**, and **Oklahoma** 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 **Arkansas**, **Louisiana**, **Mississippi**, **New York**, and **New Jersey** must file a biennial Ownership Report (FCC Form 323 for commercial stations or Form 323-E for non-commercial stations). All *television* stations located in **Kansas**, **Nebraska**, and **Oklahoma** must also file a biennial Ownership Report. All reports filed on FCC Form 323 or 323-E must be filed electronically.



Crackdown on Public Files *(Continued from page 10)*

and ***that*** could have posed serious problems.

In a moment of rationality, however, the Commission elected not to take this draconian approach and found that the stations had violated only the rule with regard to public information initiatives and admonished the stations for this admitted violation.

These cases illustrate the importance of the time-honored truism that the job is never over until the paperwork is done. While one might think, however foolishly, that the sole focus of the children's television rules is on *programming*, the rules definitely do not stop there. It is not enough that a station merely provides good, solid, kid-friendly programming. Rather, the station must also jump through a variety of bureaucratic hoops both before and after the broadcast in order to assure full compliance with the rules.

FCC Court Response
(Continued from page 11)

formal actions by the FCC, the information we might glean from those pleadings does not carry the force of law – not yet, at least. But if those pleadings do reflect the enforcement approach the Commission has decided to take, television licensees would do well to take the most conservative approach to compliance with the new rules until some further direction – from either the Commission or the courts – is officially provided. Absent a stay, either from the DC Circuit or the FCC itself, the new rules will become effective January 1, 2006.

FM ALLOTMENTS PROPOSED –10/20/05-11/21/05

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
OK	Savanna	135 miles SE of Oklahoma City, OK	275A	05-297	Cmnt: 12/27/05 Rply: 1/10/06	Drop-in
OK	Okeene	91 miles NW of Oklahoma City, OK	268C3	05-296	Cmnt: 12/27/05 Rply: 1/10/06	Drop-in
NY	Black River	79 miles N of Syracuse, NY	223A	05-279	Cmnt: 12/27/05 Rply: 1/10/06	Section 1.420(i)
TX	Garwood	78 miles W of Houston, TX	247A	05-304	Cmnt: 1/3/06 Rply: 1/17/06	Drop-in
TX	Lometa	93 miles NW of Austin, TX	253A	05-305	Cmnt: 1/3/06 Rply: 1/17/06	Drop-in
TX	Richland Springs	127 miles NW of Austin, TX	235A	05-305	Cmnt: 1/3/06 Rply: 1/17/06	Accommodation Substitution
TX	Luling	48 miles S of Austin	234C0	05-305	Cmnt: 1/3/06 Rply: 1/17/06	Accommodation Reclassification
TX	San Angelo	225 miles WNW of Austin	254C0	05-305	Cmn:1/3/06 Rply: 1/17/06	Accommodation Reclassification
KS	Valley Falls	28 miles N of Topeka, KS	245C2	05-310	Cmnt: 1/3/06 Rply: 1/17/06	Section 1.420(i)
KS	Pawnee City, NE	71 miles SE of Lincoln, NE	256A	05-310	Cmnt: 1/3/06 Rply: 1/17/06	Drop-in
VA	Glade Spring	121 miles W of Roanoke, VA	263A	05-295	Cmnt: 1/9/06 Rply: 1/24/06	Accommodation Substitution
VA	Marion	105 miles W of Roanoke, VA	273A	05-295	Cmnt: 1/9/06 Rply: 1/24/06	Section 1.420(i)
VA	Weber City	105 NE of Knoxville, TN	274C3	05-295	Cmnt: 1/9/06 Rply: 1/24/06	Section 1.420(i)

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.

(Continued from page 13)

which makes the most effective and timely use of all available communications technologies to bring emergency information to the public. The deadlines for comments and reply comments had not been established at press time, but it is likely that those deadlines will fall in early 2006.

But the super-advanced system which the Commission is exploring is still years away. In the meantime, the Commission has taken the logical step of requiring services which deliver programming to the public to get on board. If you have questions concerning the potential impact of the FCC's recent changes on your operation, do not hesitate to give us a call.

FM ALLOTMENTS ADOPTED –10/20/05-11/21/05

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
OR	Terrebonne	135 miles E of Salem, OR	293C2	02-123	TBA
OH	Baltimore	30 miles E of Columbus, OH	273B1	04-161	None
GA	Ellaville	68 miles SW of Macon, GA	232A	05-106	TBA
GA	Milner	43 miles NW of Macon, GA	290A	05-106	TBA
GA	Plains	82 niles SW of Macon, GA	290A	05-106	TBA
NJ	Bass River Township	8 miles N of Trenton, NJ	293A	05-188	None

(Continued from page 1)
and encourage innovation.

Plus, the proposal would permit ownership of LPAM licenses by individuals as well as entities, and any licensee could hold up to 12 LPAM licenses nationwide (although ***local*** ownership would be limited to one LPAM station per market). And LPAM's could be bought and sold, unlike LPFM's.

It is, of course, possible that the proposed LPAM service is the result of fresh thinking and is truly intended (as its proponents claim) to be a complement to LPFM. But it is also possible that the LPAM proposal is simply an effort by LPFM's original proponents to secure a for-profit low-power service. Since it is extremely unlikely that LPFM will be opened up to commercial operation, the only alternative is to come up with some Plan B, and AM is pretty much the last available choice.

As a practical matter, the LPAM concept has a very long and tough row to hoe. Existing full-service AM operators will no doubt insist that the technical specifications for any LPAM service be carefully devised and closely enforced to ensure protection of full-service signals. (The LPAM proposal is notably short on technical details.) And full-service AM operators are also likely to take exception to the notion that some local advertisers are being priced out of the AM radio market. While the LPAM proponents claim that that is the case, they offer no empirical (or even anecdotal) evidence – and one might expect that there are plenty of relatively low-powered AM stations already on the air which are already selling time at reasonable prices.

But the factor most likely to bring the LPAM proposal to a grinding halt is the fact that its proponents want it to be a ***commercial*** medium. The problem there is that the Communications Act provides that any commercial broadcast spectrum must be subject to the auction process. But the LPAM proponents don't want to have to bid at any auction for the spectrum.

They are vague as to just how LPAM channels would be handed out if – as would certainly be the case – more than one applicant seeks a particular channel in a particular area. There is at least a suggestion that the proponents wouldn't mind seeing a return to comparative hearings. But the LPAMers apparently don't remember (or never knew) that participation in the comparative process was generally an expensive and extremely time-consuming activity.

In any event, as the Communications Act now seems to make pretty clear, the FCC doesn't have the authority to resurrect comparative hearings, or any other non-auction licensing process for doling out channels. If the proponents insist that their brainchild not be subject to auctions, it is difficult to see how the idea will go anywhere.

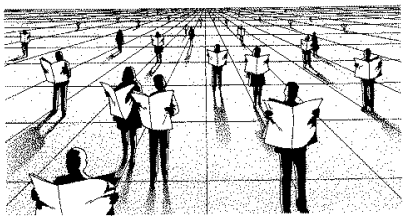
Still, the idea has been placed on the table, and the FCC has invited comments. Note that this is still far short of a formal rulemaking proceeding. The Commission has ***NOT*** yet issued any notice of proposed rulemaking, or even notice of inquiry, with respect to this proposal. All that has happened has been that petition for rulemaking has been filed and the FCC has acknowledged that filing and asked for comment on it. *Reply comments on the LPAM proposal are currently due by Tuesday December 6, 2005.* Let us know if you would like any assistance in preparing comments.

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

Updates on the News

Wilkommen, bienvenue, welcome − At long, long last, President Bush has named a replacement to fill the seat vacated by former Chairman Powell's departure. Let's shout out a big *Memo to Clients* "howdy" to Deborah (Debi) Tate, who comes to the FCC from the Tennessee Regulatory Authority, where she has been active on the VOIP front. Tate will occupy one of the Republican seats on the Commission. Simultaneously with her nomination, President Bush also reupped Commissioner Copps for a second term.

So long, farewell, auf wiedersehn, adieu − And just as Commish-to-be Tate walks in one door, out goes Commissioner Kathleen Abernathy through another. The ink was barely dry on the Tate nomination when Abernathy announced that she's outta there as of December 9. Abernathy had long been reported to be interested in leaving the Commission − after all, her term had technically expired 18 months ago, but she got to stay on pending a replacement.

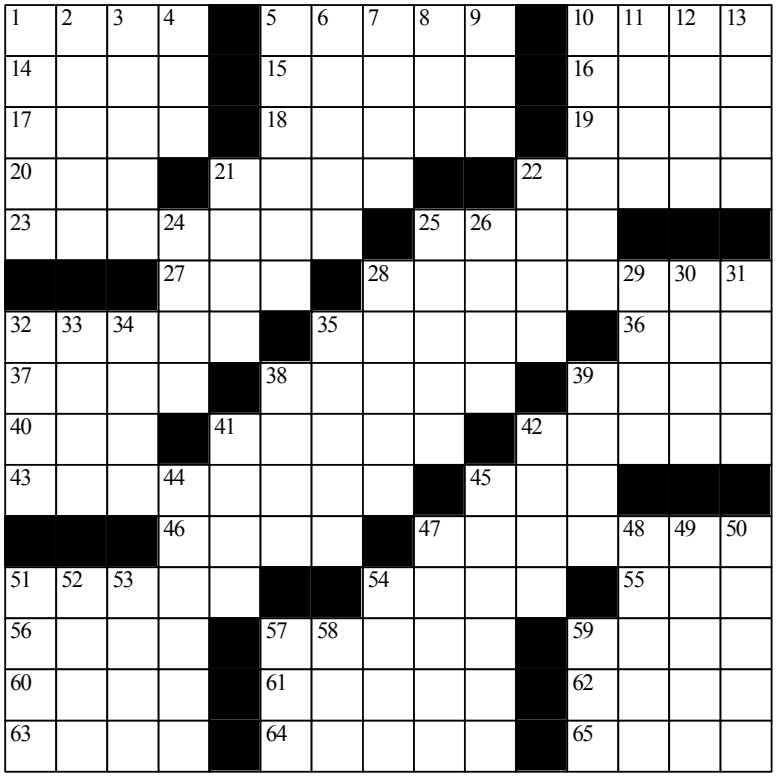


Another one bites the dust − As we are going to press, it has just been announced that the Warner Music Group has entered into a settlement agreement with the Attorney General of New York in connection with the NYAG's on-going investigation into payola and record promotion practices. WMG is coughing up $5 million (to be distributed among a number of nonprofit entities) to make this problem go away. Several months ago Sony struck a similar (albeit pricier) deal with the NYAG. We plan to cover this development in more detail in next month's issue.

Closing time − As we all know, when the FCC grants its consent to a proposed assignment of license (or transfer of control of a licensee), that grant is good for 90 days. Theoretically, that 90-day limit creates a use-it-or-lose-it situation which, in most areas of the Real World, would ordinarily mean that, if you don't close within the shelf-life of the grant, you would have to start all over again by filing another assignment/transfer application. We say "theoretically" there because we are dealing here *not* with the Real World, but rather with the FCC. And at the FCC, as a practical matter, when you start running close to the 90th day without a closing in sight, what usually happens is you file a letter request for further time within which to close, and that's that. The staff does ***not*** ordinarily even bother to take any action on such requests − everybody just assumes that the requested extension has been granted, and life goes on. Well, the times, they are a-changin'. We understand that, over the last several months, the staff has been requiring folks seeking a second extension of the closing deadline to provide: (a) details of what they have done to move the deal toward consummation; and (b) assurance that the deal still has potential to close. We also hear that the staff is requiring some explanation for the failure to close within the deadlines. These reports reflect a major tightening up in an area which historically has been among the loosest around. This should give pause to anyone who may be inclined to enter into an assignment/transfer deal with no firm notion of when, if ever, it will be consummated. It looks like the days of the infinitely-extendable assignment/transfer grants are over.

Indecency update − The trade press continues to report that, any day now, we can expect a spate of indecency rulings which may or may not clarify the Commission's policies in that controversial area. There certainly does seem to be a public relations push underway at the FCC relative to indecency, but it's a bit difficult to figure out what it all means. In a speech, Chairman Martin was critical of both broadcasters and cable operators on the indecency front. And as we reported last month, the Commission has touted its new indecency page on its website. That page provides, among other things, various statistics concerning the number of indecency complaints filed. Interestingly, the number of complaints filed in 2005 plummeted from the levels a year earlier (when, of course, *L'affaire Janet Jackson* shook civilization to its core) − until, that is, the third quarter, when the number shot back up again, quadrupling from about 6,000 in 2Q to more than 26,000 in 3Q, with more than 23,500 of those in July alone. But it turns out that all but five of those July complaints were apparently generated by a single group, the Parent's Television Council (at least according to PTC's website). So it's not clear exactly what we can or should make of the welter of statistics the FCC has posted.

That's particularly true in view of the FCC's formal adoption of its Form 475B, the complaint form we described in this column last month. In a press release, the Commission effused that the new form will "significantly improve" the complaint process by "minimizing confusion on what information the Commission requires". That's a pretty remarkable claim for the Commission to make, since Form 475B specifically states that the following items of information are ***"not required"*** (the italics, bold-face and underlining are as they appear in the FCC's press release): date and time of program; call sign, channel, frequency of station; city/state where program was viewed; details about the nature of the broadcast.



MAKING YOU NUTS

Here's one for the techo types. Hidden among the answers are words which, when combined with other answer-words, produce homophones for standard units commonly found in technical broadcast applications (f'rinstance, 27-A plus 51-A plus 9-D produces a homophone for very small units of length − although those units are *not* normally associated with broadcasting). Your mission, should you choose to accept it, will be to solve the crossword and then weed through answers in the grid and locate combinations of answer-words that result in homophones for the following units (each commonly associated with the service indicated in parenthesis):

(a) power (FM)
(b) power (TV)
(c) frequency (AM)
(d) frequency (FM)
(e) location (all services);
(f) sound intensity (FM)
(g) signal strength (FM).

ACROSS

1 Antenna spec
5 Witherspoon
10 __, me worry?
14 Radius neighbor
15 Diner patron
16 Prefix for sol or drome
17 Public disturbance
18 Metal scum
19 Learn
20 Type of broadcast link (abbr.)
21 First place
22 First pet of the '80s
23 Directed
25 Connect
27 Palindromic Bobbsey
28 Romeo and Juliet, in the end
32 Sealed papal documents
35 Express views
36 Power spec.
37 Hutchinson *et al.*
38 1966 murderer Richard
39 West of the Urals
40 Solder and soldier component
41 Mimicry
42 As good as a mile
43 "Old McDonald ____"
45 ___ Gratia Artis
46 Prefix for foil and mount
47 What Jeter calls his boss
51 Neshui Ertegun's brother
54 Moving video shots
55 Stolen
56 GM brand
57 ___ face (policy u-turn)
59 Phone prefix
60 Narc unit
61 Songs for four hands
62 People's Court host Llewelyn
63 Knock 'em dead
64 Mule noises
65 "Got it"

DOWN

1 Pains
2 Primo invitees
3 American lizard
4 Make lace
5 Blush
6 Like some seals
7 Bond alma mater
8 Their (Fr.)
9 Speech hesitations
10 __-Hai (nasty demoness of Oceanic mythology)
11 Part of bread, foot and Italy
12 Asian sea
13 British sympathizer
21 Periods of history
22 Common I/O devices
24 Darkroom projs.
25 Like ripe fruit
26 Hog call
28 Pilot, melon and orca kin
29 Ricky portrayer
30 Goddess of discord
31 Evian and Baden-Baden
32 With Bed and Beyond
33 US PR source
34 Haul in
35 Otello, *e.g.*
38 Distaff Coast Guard recruitee
39 Schoolyard response to "Are not"
41 "To market to buy ___"
42 Fleming and Deco
44 Tarzan in his youth
45 He starred as The Thing
47 An Alou
48 Prefix for 4-down?
49 Elephant, agent or state
50 French story
51 Sets a price
52 Hard rain
53 Type of fides
54 Type of bargain
57 Initials on a Lincoln penny
58 Belonging to you and me
59 Start of 16th Century