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Memorandum to Clients

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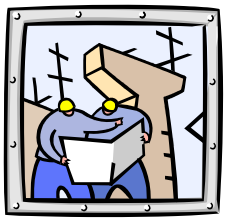
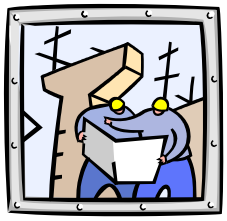


Looking back, planning ahead

FCC Begins Review of Katrina Impact on Communications



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The FCC has established an Independent Panel to Review the Impact of Hurricane Katrina on Communications Networks. Twenty-four members from various sectors of the telecommunications and media industries have been appointed to serve on the panel. Vice presidents of engineering from Clear Channel and Entercom have been designated to represent broadcasters on the panel. Other sectors represented are public safety organizations, wireline telecommunications providers, wireless telecommunications providers, cable providers, satellite providers, equipment providers, utilities, and unlicensed telecommunications providers.

The overall take-home message has clearly been that, in responding to the Katrina emergency, the FCC stepped up to the plate and hit the ball hard when it counted.

The panel has been given the tasks of: (1) reviewing the impact of Hurricane Katrina on telecommunications and media infrastructure in the affected area; and (2) submitting recommendations to the FCC for improving disaster preparedness, network reliability, and communications among first responders. A report from the panel is due June 15, 2006.

Despite the botched governmental response both before and after Katrina struck, there is a perception in many circles that the FCC's performance was praiseworthy. Press reports described Commission staffers working long hours, seven days a week, making themselves available to attempt to resolve problems, respond to requests, and generally provide relief where needed. The positive PR for the agency and its staff was considerable, particularly in contrast to the unrelenting criticism to which other agencies (FEMA comes immediately to mind) were subject.

While in retrospect the FCC might be second-guessed on some aspects of its post-Katrina approach (for example, why did the FCC insist on having licensees seek individual STA's when the agency could presumably have simply granted a blanket STA to all licensees in the storm-affected areas – thus relieving all those licensees of having to worry about asking for and receiving their own STA's?), the overall take-home message has clearly been that the FCC stepped up to the plate and hit the ball hard when it counted.

Presumably with that positive image in mind, the Commission is seeking to re-confirm its role as an effective force for good. The panel is seeking input from all interested members of the public. Written statements may be submitted at any time. In addition, short oral presentations from the public were solicited for the panel's next meeting.

The Panel convened its inaugural meeting in Washington in January, but it plans to hold its next meeting in Jackson,

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The Scoop Inside

A word to the wise from Joe Di Scipio

Long Shot or Sure Thing?

Is it illegal to broadcast ads for internet gambling?

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The advertisements are sometimes ubiquitous and unavoidable, particularly on sports radio stations during football season. You also see them on cable channels. Here at FHH we even see them on the little video screen in the elevator, which provides commercials to the captive audience on the ride up and down to our offices.

Everywhere, it seems, the siren song of Internet gambling – involving both sports betting and other games of chance – is being belted out.

So you may well wonder whether or not your stations should accept and broadcast advertisements for sports betting and other on-line casino gambling. A strong hint at the answer to that question was provided on January 20, 2006, by the U.S. Attorney for the Eastern District of Missouri when she announced that The Sporting News agreed to pay $7.2 million because it had, over a three-year period, accepted fees in exchange for advertising "illegal internet and telephonic gambling" to its print, Internet, and terrestrial radio audiences. The settlement amount includes a $4.2 million payment to the U.S. (which was made back in January) and a promise to run, over the next three years, $3 million (at $1 million per year) worth of PSA's aimed at informing the public of the illegality in the United States of commercial Internet and telephonic gambling.

Although The Sporting News agreed to pay $7.2 Million to settle the claim that it promoted illegal gambling, the law in this area is ***not*** settled. As with many aspects of the Internet, there has been no new legislation passed specifically addressing the legality of the particular on-line activities which The Sporting News was promoting. As a result, the Missouri U.S. Attorney was forced to rely on a 1961 anti-gambling law in bringing her prosecution against The Sporting News. But, of course, there was no Internet in 1961, and it is not at all clear that that 20th century law can properly be interpreted to reach the 21st century conduct of which The Sporting News was accused.

But because The Sporting News chose to fold rather than play its hand out, the applicability of the 1961 law to such promotions has not yet been tried in court, and it is therefore still not clear whether the Interstate Wire Act of 1961 (the Act the United States Attorney relied on in her suit) actually applies to Internet gambling or to non-sports gambling. Rather than causing your eyes to glaze over by reproducing the relevant part of the statute here, we're going to ask you to trust us on this one – it is not at all clear that the government would have won if The Sporting News case had actually been tried in court, despite the fact that a U.S. Attorney in Missouri (and the U.S. Department of Justice, which has previously taken the same position in a letter to the NAB) may urge otherwise.

While we cannot say for certain whether the advertising of Internet gambling is illegal, we can say that it is sufficiently risky to warrant serious consideration and detailed discussion with counsel. Prior to accepting and broadcasting such advertisements, give us a call so we can discuss the law and the risks in detail with you.

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Timing is Everything

Four years to repair towers – In August 2001, the FCC notified Cumulus of a painting problem with one of its towers near Savannah, Georgia. Cumulus finally addressed the problem in July, 2005. The FCC was not moved by Cumulus's somewhat surprising claim that Cumulus had "acted promptly" and assessed a $10,000 penalty.

During August 2001, an FCC agent inspected the towers at issue and found that the paint was badly faded and peeling. Cumulus responded that it was taking bids and that the towers should be painted by December 2001. After the December deadline passed, Cumulus told the FCC that they would be replacing the towers completely by mid-year (meaning, presumably, mid-2002, but you never know). Seven months later, in July of 2002, Cumulus reported that they would be moving off of the towers and that they would have a new tower location soon.

Focus on FCC Fines

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More than a year and a half after its first inspection, the FCC returned to the towers in the Spring of 2003 and found that the same towers still had the same problems. Cumulus noted that it operated 260 stations across the country and claimed that they were acting promptly to address the tower painting problem on the Savannah array. Cumulus also advised the FCC that they believed that the Savannah problem involved exceptional circumstances. Among the exceptional circumstances, Cumulus claimed that it had to obtain authority from the Army Corps of Engineers (in addition to approvals from more than a half-dozen federal and local agencies) before it could dismantle the towers.

Cumulus eventually told the FCC that the towers had been completely dismantled on July 22, 2005. The Commission noted that the dismantling did not occur until nearly four years after the FCC issued its first notice about the painting. The FCC hit Cumulus with a $10,000 fine and noted that the "exceptional circumstances" did not mitigate the fact that the FCC found the towers to be improperly painted.

15 minutes to turn down an AM – An FCC agent reviewed the station logs of a Virginia AM station and found a discrepancy. Although the station was supposed to reduce its power at 8:15 p.m., the station logs indicated that the power was not reduced until 8:30 on certain days. The agent also noted that several items were missing from the station's public file and that EAS discrepancies existed. The FCC proposed slamming the station with a $22,000 fine.

In response, the station stood by the accuracy of its station logs. However, the station logs had indicated 15 minutes of over-power operation. Having fessed up to the 15 minutes of excessive power, the station could not avoid the $4,000 component of its fine arising from the power violation.

The station then changed its response. This time, the station noted that the station's power was controlled by a usually reliable computer and that it may have been a bit too hasty in its previous reliance on the station logs. In fact, now the station submitted a sworn affidavit that the station was "sure the log was in error."

Noting the conflicting statements, and relying upon the sworn statement that the logs were in error, the FCC removed the $4,000 fine for the 15 minutes of excessive power. The station also was able to explain its EAS logs. The FCC left in place the fine for the public file problems, and the station skated away with a $5,250 fine.

1.04 seconds of Pokemon – As part of its license renewal process, a Virginia television station disclosed an oversight to the FCC regarding its children programming. It seems that during an episode of *Pokemon*, a commercial for a Gameboy game system was aired. As part of the commercial, there was a 1.04 second shot of a toy game card. The game card was not completely featured; rather, only a corner of the card, featuring the letters "MON", was visible. But that fleeting glimpse was all it took to convert the entire *Pokemon* program into a program-length commercial.

As a matter of policy, the Commission has long held that, when a children's program associated with a particular product includes, within the program, "commercials for that product", then the entire program is deemed to a "commercial". The agency's goal is to keep young viewers from being "confused by a show that interweaves program content and commercial matter".

The licensee in this case protested, understandably, that the fleeting glimpse of a partial *Pokemon* game card during a commercial for an entirely separate and distinct product should not be treated as magically converting the whole show to a commercial. But, consistently with previous rulings, the FCC declared that the duration of the shot was immaterial. The station should not have aired the commercial, as the FCC

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focus is upon the cognitive abilities of children. Because children could have seen the 1.04 seconds of the stylistic "MON" during a *Pokemon* show, the entire show violated the FCC's program length commercial rules. However, the FCC found that the violation was an isolated incident and allowed the station to renew its license with an admonition.

This decision (and several other similar decisions which have been released recently) underscore the importance of vigilant ***pre***-broadcast screening of all children's programming. It is clear that the Commission is intent upon enforcing the strictest possible interpretation of "program length commercial" – even if doing so requires the Commission to take the position (as here) that a 1.04 second fleeting image of a partial playing card is enough to do the trick. (To give you a frame of reference – and an idea of how ludicrous this decision really is – a single tone in the standard busy signal on a telephone is approximately one second in length.)

Mickey Mouse renewal application – From the "we couldn't resist the puns" file we report on an oversight by Disney. The Disneyland Resort properly had been operating a walkie-talkie system using 900 MHz frequencies. However, several years ago the FCC turned the 900 MHz band into a pumpkin and denied any future new 900 MHz applications. Under normal circumstances, this would be fine as long as Disney kept renewing its grandfathered license. Alas, Disney needed a fairy godmother, not grandfathered regulations.

It appears that the person who was responsible for renewing the licenses flew off to Never Neverland and forgot to tell his co-workers to renew the 900 MHz license. Three months after the license expired, Disney admitted that they were goofy and had forgotten to renew the license. Disney tried to get the FCC to grant one of three wishes.

The first wish was that the FCC accept the Disney renewal application even though it was filed several months late. The FCC, taking the role of Scrooge McDuck, took a gander at the request and denied it. The second wish was that the FCC waive its rules (or wave its wand) and grant Disneyland a new license to operate the 900 MHz system even though the rules had changed. Here, the FCC bought the Toy Story and gave Disney a new license. The third wish, which was for the FCC not to cancel the original license, was deemed moot as Disney was granted its second wish and had a new license. The FCC eliminated Disney's 900 MHz operations as a tenuous wooden puppet and made it into a real boy (or valid license).

The moral of the story: rather than wishing upon a star, licensees should be certain that they have fail-safe measures for keeping track of their FCC licenses and authorizations. The FCC is as strict as a wicked step-mother with its authorizations and the glass slipper of a waiver or request for leniency will not fit every licensee.

A Pirate's Life for Me – Finally, we provide details on two issues involving radio pirates. Readers may recall our report, in the September 2005 installment of this column, concerning a retailer who got spanked with a $14,000 fine for selling pirate transmitters. The FCC upped the ante this time and whacked another retailer with a $25,000 fine for the same thing. This time, the FCC ordered a catalog and conducted internet research (at www.ramseyelectronics.com) to find the distribution channel of the transmitters. The site and catalog offer "plug it in and get on the air" radio transmitters for sale. However, the site has fine print warning that buyers must comply with appropriate regulations.

The FCC noted that certain transmitters require FCC certification prior to being sold in the United States for use in the United States. The retailer was selling the equipment to destinations in the United States based on nothing more than a representation from buyers that the equipment was going to be used outside of the country. The FCC found the retailer's enforcement to be lacking and that, therefore, the sales were in violation of FCC regulations. Upshot? A $25,000 fine.

In a more interesting twist, a suburban Atlanta man has announced that he has found a loophole in the FCC's rules which allows him to broadcast an unlicensed AM signal in his community. The gimmick works like this. FCC rules permit certain unlicensed operation in the 510 - 1705 kHz band ***as long as*** the final stage input power of the transmitter does not exceed 100 milliwatts (one-tenth of a watt). The rules also provide that such operation cannot occur within the protected field contours of a licensed AM station. It appears that the suburban Atlanta man has set up several micro stations – *i.e.*, 0.1 watt – on 1620 MHz and is broadcasting throughout his town. In fact, trade press reports that the man is providing locally-oriented programming, is selling advertising time, and is even paying for ASCAP and BMI licenses. While the business model of this system may not fit within standard plans, the Atlanta man insists that his system is legal and that FCC rules permit his station.

Any person seeking to operate a station of this sort should seek detailed legal and engineering analysis of their system. While certain FCC regulations permit some unlicensed intentional transmissions, systems such as this are likely to encounter resistance from licensed operators. And, because they depart from the original purposes of unlicensed spectrum use, these operations may not long survive scrutiny from the FCC

Remnant spot liquidator - too good to be true?

Spot Auctions and Lowest Unit Charges:
Regulatory complications lurk in marketplace innovation

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Auctions – the perfect marriage of supply and demand, a device guaranteed to promote maximum efficiency in the miracle of the marketplace. Why, just look at the phenomenal success of e-bay or, for an example even closer to home, check out the FCC's own wholesale shift to auctions as the most efficient means of allotting spectrum! America has apparently declared auctions to be good.

So it came as no surprise when at least one enterprising website offered broadcasters the opportunity to sell off residual spot inventory through an on-line auction. At the promoter's website (named "Bid4Spots"), advertisers post their particular needs for radio time, including such factors as markets, preferred demographics, spot lengths, overall budget, maximum cost per thousand listeners (CPM), and the like. Radio stations then bid for the advertisers business in a "reverse" auction, with each successive bid being lower than its predecessor – with the station bidding the lowest CPM by the end of the auction getting the buy.

An FCC political advertising maven acknowledged that the Commission is not sure yet how to deal with reverse auctions for commercial time. As the staffer put it, the novel Bid4Spots model is "a definite head-scratcher."

On paper it sounds like a swell idea, and certainly a nice way of disposing of unsold time.

Not so fast.

The problem, which the auction site's promoters apparently haven't quite solved, is how any auction sales can be squared with the "lowest unit rate" provision of the political broadcasting rules. Contrary to the promoter's early publicity, the folks at the Commission have ***not*** yet figured out exactly how the political rules are to be applied in such situations. And if *they* haven't figured it, you can be sure that Bid4Spots hasn't figured it out, either.

The political rules, of course, require stations to sell commercial time to qualified candidates at the "lowest unit charge" (LUC) as election day approaches. As any licensee who has lived through an election campaign knows, the calculation of LUC is a complex process which requires consideration of the length and class of spot being purchased. While some buys are straightforward and uncomplicated, others can be difficult to tie down. And ***all*** candidates for elected office – Federal as well as state and local (to the extent that state and local candidates are being sold spots at all) – are entitled to these rock-bottom rates during the 45 days before your area's primary and for 60 days before a general election.

In its early promotional materials, Bid4Spots crowed that auctioned spots would ***not*** count toward calculating the rock-bottom prices that federal candidates are guaranteed during the election season. That "news" was picked up in the trade press. But, Bid4Spots later had to correct the record – as did those members of the trade press that first ran the story. The corrected word was that auction spots *would* affect LUC calculations, and that participating stations should be sure to check with their counsel and/or the FCC for further information.

As it turns out, any suggestion that there is already a definite answer to this problem is over-stated. We went straight to the source and asked the Commission's staff to shed some light on this. One of the FCC's political advertising mavens acknowledged that the FCC is not sure yet how to deal with reverse auctions for commercial time. As one staffer put it, the novel Bid4Spots model is "a definite head-scratcher."

The conundrum arises because the political broadcasting rules – and the LUC provisions in particular – are based on the assumption that the terms of time sales can be duplicated. But that assumption breaks down when it collides with the auction process. There is no requirement that any two auctions be alike, and it is at least possible, if not almost inevitable, that no two auctions will ever be identical. Indeed, if an auction is used to sell off certain rag-tag spot avails that could not otherwise be sold, how can a station be expected to make identical opportunities available to a candidate seeking to buy that same "auctionable" class of spots on the same terms?

Obviously, the FCC will have to devise some way to deal

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Don't get stuck!!!

FREEZE SETS IN AS LPTV, CLASS A, TRANSLATOR DIGITAL FILING WINDOW OPENS

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The march towards digital continues as the FCC recently announced the filing window for LPTV, TV translator, and Class A stations to file for a digital "companion channel". At the same time the FCC also announced that it would impose a freeze on most LPTV, TV translator, and Class A applications. The filing window for digital companion channels will open May 1, 2006, and close on May 12, 2006. The freeze on the filing of LPTV, TV translator and Class A analog and digital minor change, analog and digital displacement, and digital on-channel conversion applications will begin April 3, 2006, and end May 12, 2006.

LPTVs, like their full powered television cousins, are supposed to be in the midst of the long-pending, oft-postponed transition to digital. Unlike full power television stations, however, LPTVs were not automatically given a second channel for DTV operations during the transition period. Instead, the FCC sought to provide "flexible and affordable opportunities for digital LPTV and TV translator service" by giving LPTVs and TV translators a choice. Licensees and permittees of LPTVs and TV translators could either implement an on-channel digital conversion of their analog channel (sometimes referred to as "flash-cutting") or they could seek a second, "companion", channel that may be operated simultaneously with their analog channel (much as full powered stations simultaneously operate their analog and DTV channels). Licensees choosing a companion channel, of course, would have to return one of the two channels to the Commission at some future date and operate the remaining channel as a digital station (again, mirroring the full power DTV transition plan). And during the conversion period, the digital companion channel would be licensed on a secondary, non-interfering basis.

The recently announced filing window concerns the provision of the digital companion channels. LPTV and TV translator licensees are not guaranteed a digital companion channel. Instead, they must apply for one during the filing window. Among other things, the application for a digital companion channel must identify a channel that can be operated consistently with the Commission's interference protection rules with respect to other authorized stations. Only current LPTV, TV translator, and Class A TV station permittees or licensees are eligible to apply for a digital companion channel and, even then, ***only*** if they have ***not*** already applied for on-channel digital conversion.

The FCC will not accept any minor change, analog and digital displacement, or digital on-channel conversion applications from LPTV, TV translator or Class A applicants from April 3, 2006 through May 12, 2006.

To provide "stability" to the LPTV database prior to these applications, the FCC will not accept any minor change, analog and digital displacement, or digital on-channel conversion applications from LPTV, TV translator or Class A applicants from April 3, 2006 through May 12, 2006. Of course, Class A stations were already subject to the long-standing freeze on displacement and modification applications "that would serve any area that is not already served" by their authorized facilities. As demonstrated in a recent case involving two Chicago Class A stations, the FCC has strictly enforced the ongoing freeze.

In that case, the FCC refused to allow two Class A stations to move from one tower of the John Hancock building to another tower on the same building because the moves would have increased the service area of one station by 34% and the other by 15% and the applicant failed to demonstrate that the moves were necessary for reasons beyond the applicant's control. Plainly, this action indicates a determination by the Commission to discourage even relatively minor interim technical changes to existing non-full service TV stations. During the April – May freeze LPTV, TV translator or Class A stations should expect even less likelihood of favorable reception at the Commission.

Any LPTV, TV translator or Class A stations considering modifications are therefore urged to file ***before*** the start of the freeze on April 3rd. In addition, if you are a current Class A, LPTV or TV translator licensee, and have chosen or are contemplating using a second digital

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One more chance to make the pieces fit before D(TV) Day . . .

FCC Offers New Approaches To Resolve Second Round DTV Channel Conflicts

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The DTV conversion machine continues its inexorable march to the finish line, even though that line keeps moving. In February, the Commission issued guidelines for resolving the few situations (involving a total of 30 licensees) in which interference conflicts remain unresolved after the second round of channel elections that were made last November. Those guidelines afford the affected licensees a bit more latitude than they may have expected.

As originally contemplated, the conversion plan called for licensees to make their second round elections and then, if a conflict still remained, the conflicted licensees would be limited to requesting the contingent channel specified in their Form 384's (*i.e.*, their Second Round Election Forms). The contingent channel was then to be evaluated based on the licensee's certified coverage area. The Commission did not plan to give licensees the opportunity to propose reduced operating facilities in order to resolve engineering conflicts.

But now that we have reached that point in the process, the FCC has had a change of heart. Presumably because the universe of affected licensees is so small (again, the number appears to be 30 *in toto*), the Commission has announced that those licensees must file, by April 3, a Second Round Conflict Decision Form 385 in which they indicate how the conflict(s) identified thus far will be resolved. In their submissions licensees ***may*** propose reducing their operating facilities for their proposed elected channel – but then they must include a Schedule B specifying their proposed operating parameters. On the other hand, these few remaining licensees may, as part of a Negotiated Channel Agreement, also propose to increase their operating facilities to serve a larger coverage area, but in such cases the licensee must, by March 3, formally amend its pending proposal so that its proposed coverage contour does not extend beyond the coverage contour of the currently certified facilities.

Under the new policy, affected licensees may also propose any in-core channel as their contingent channel, but those doing so will not be afforded any additional opportunity to resolve any conflicts in the Second Round. If a conflict arises, the licensee will be required to participate in the Third Round.

Meanwhile, attentive readers may recall our article in the October, 2005 *Memo to Clients* in which we reported that it looked like the final conversion date would be April 7, 2009. As we indicated then, though, that deadline was not etched in stone. And sure enough, the deadline has moved. So if you picked April 7, 2009 in the office pool, you're probably out of luck. The new operative date is ***February 17, 2009***. That's the date that both Houses of Congress have now approved, and the President has signed off on it as well. We still have a ways to go before we get there – just about two years, as a matter of fact – so there might still be some slippage. But for now, at least, February 17, 2009, is looking like D(TV)-Day.

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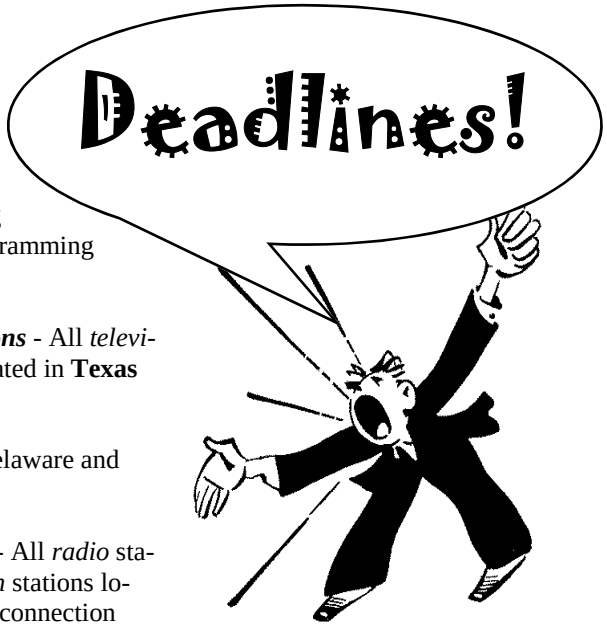
companion channel (rather than on-channel flash-cut conversion), ***this may be your best chance to get the companion channel that best suits your station's needs***. Bear in mind that operation on such companion channels will have to protect the authorized analog or digital facilities of TV broadcast stations *and* the authorized analog facilities of TV translator, LPTV, Class A television stations, *and* 700 MHz public safety and commercial wireless licensees. Also, companion channels will be authorized ***only*** on a secondary, non-interference basis during the dual-operation interim period, even if the primary station with which they are associated is entitled to interference protection. We encourage you to contact your consulting engineer ***immediately*** and have the engineer do a study to determine what is available for your station.

Please contact us if you are interested in filing in the digital companion channel window, or if you have any questions.

April 1, 2006



Television Renewal Pre-Filing Announcements - *Television* stations located in **Arizona**, **Idaho**, **Nevada**, **New Mexico**, **Utah**, and **Wyoming** must begin pre-filing announcements in connection with the license renewal process. **Arizona**, **Idaho**, **Nevada**, **New Mexico**, **Utah**, and **Wyoming** *Class A television* stations and *LPTV* stations originating programming also must begin pre-filing announcements.

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

Radio Renewal Applications - All radio stations located in Delaware and Pennsylvania must file their license renewal applications.

Radio and Television Renewal Post-Filing Announcements - All *radio* stations located in **Delaware** and **Pennsylvania** and all *television* stations located in **Texas** 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 more than five (5) 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**, **Indiana**, **Kentucky**, **Pennsylvania**, and **Tennessee** must file a biennial Ownership Report (FCC Form 323 for commercial stations or Form 323-E for noncommercial stations). All *television* stations located in **Texas** must also file a biennial Ownership Report. All reports filed on FCC Form 323 or 323-E must be filed electronically.

April 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.

Commercial Compliance Certifications - For all *commercial television* stations, a certification of compliance with the limits on commercials during programming for children ages 12 and under must be placed in the 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.

FHH - On the Job, On the Go

Frank Jazzo attended the Dinner Gala of the Society of Satellite Professionals International during the Satellite 2006 Conference in Washington, D.C.

Jeff Gee served as a co-Chair for the National Telecommunications Moot Court Competition, which was held this month at Catholic University in Washington, D.C.

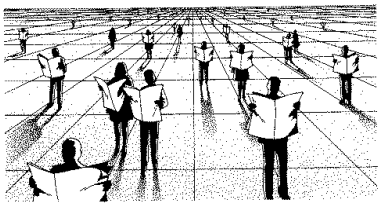
Howard Weiss and **R.J. Quianzon** were both quoted in a *USA Today* article on spectrum license distribution.

Joe Di Scipio was a presenter at "Doing the Deal", the National Association of Broadcasters Educational Foundation Broadcast Leadership Training session held earlier this month.

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

Updates on the News

Upton for upping upper limits – Now that it looks like the Commission will soon be back up to full strength Commissioner-wise, some long-pending controversies are likely to heat up. And what could be more long-pending and more controversial than multiple ownership? While that hot potato was tossed back to the FCC more than a year ago, nothing has been done about it since – reportedly because Chairman Martin, lacking a clear majority behind him, was biding his time. Once Commissioner-designate McDowell gets confirmed (and there seems little doubt that that will happen), Martin will have his majority and things can start to happen. Perhaps recognizing that multiple ownership may be moving up on the FCC's to-do list, the Chairman of the House Telecommunications Subcommittee, Fred Upton (R-MI), has tried to get ahead of the curve by dropping Martin a line suggesting that the FCC relax its broadcast ownership limits and scrap the newspaper/broadcast crossownership ban.



Upton proposes that two new market tiers be added to the ownership limits. As he sees it, in markets with 60-74 stations, it should be okay to own up to 10 stations (as opposed to the current limit of 8), and in markets with 75 or more stations, the limit should be upped to 12. If left to his own devices, Upton would eliminate ownership limits altogether (except in some small markets), but he would settle for less.

Given the huge free-for-all that occurred back in 2003, when the Commission last took up this issue, we can expect to see a boatload more proposals kicked around before the dust settles. But coming from one of the powers-that-be on Capitol Hill, this opening shot does set an interesting tone for what's to come.

Indecency on the come-back trail? – And speaking of long-pending controversies, how about all that indecency stuff? Two years ago, you couldn't swing a dead cat without hitting some governmental official or other determined to crack down on bad-mouth Bonos and bare-breasted broadcast beauties. But since then nothing has happened – a couple of fines and settlements in 2004, but no FCC action to speak of in 2005, and no new legislation at all. The trades continue to report, even as we go to press, that the FCC is preparing a large wad of indecency-related decisions designed to shed new and useful light on its enforcement policies – but the trade press also reported that that wad of decisions was supposed to be out two months ago, so who are you going to believe? (Truth be told, though, we have heard that the Commission has in fact voted on a batch of indecency items, so we probably can expect to see them very soon.) Meanwhile, the Chairman of the Senate Commerce Committee, Ted Stevens (R-AK), reportedly has indicated that he may try to advance legislation which would increase the limit on indecency fines. Proposals along those lines have been kicking around since *L'Affaire Jackson* during the 2004 Super Bowl, but they have not attracted enough support to become law. While the whole indecency brouhaha had seemed to die down as policy makers got distracted by other issues, Stevens's remarks suggest that they may be making a comeback among legislators, just in time (coincidentally enough) for this year's elections.

EEO audits, redux – The Commission is continuing its EEO monitoring program. In late January it mailed out more than 150 audit letters to radio and television licensees. Since the Commission audits approximately 5% of all licensees each year, we can look for another couple of batches of such letters later this year. According to the Commission, the licensees to whom the audit letters are sent are selected randomly.

À la carte rocks (continued) – We reported back in December that the Commission was changing its views on the overall desirability of "à la carte" selections in cable and satellite programming services. Earlier this month, the new and improved FCC report was released and, sure enough, we now learn that à la carte is just about the best thing since sliced bread. What about that pesky report back in 2004, in which the Commission found that à la carte was bad, bad, bad? According to Chairman Martin, that earlier report "contained mistaken calculations, relied on unsupported and problematic assumptions, and presented an incomplete analysis." Despite those problems, however, the earlier report somehow managed to slip through. Ideally, the review process at the Commission has since been improved.

Blame it on the IRS – One advantage of being a not-for-profit entity is that you don't have to pay annual FCC regulatory fees. But that doesn't mean that the FCC is going to leave you alone at reg fee time. To the contrary, it is not at all unusual for not-for-profits to receive dunning letters from the FCC inquiring about the whereabouts of their reg fee payments. The proper response to such letters is to send a letter back to the FCC, explaining the entity's not-for-profit status, and providing some evidence of that status. While that generally does the trick as far as that particular year goes, it is also not unusual for the FCC to send out a similar, if not identical, dunning letter the next year – even though

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FM ALLOTMENTS ADOPTED –1/20/06-2/20/06

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
AL	Shorter	24 miles E of Montgomery, AL	300C3	04-201	None
AL	Orrville	66 miles W of Montgomery, AL	265C2	04-201	None
AL	Birmingham	92 miles N of Montgomery, AL	299C0	04-201	None
TX	Lovelady	102 miles N of Houston, TX	288A	05-36	TBA
LA	Oil City	103 miles NE of Tyler, TX	285A	05-37	TBA
TX	Lufkin	84 miles S of Tyler, TX	286C0	05-37	Reclassification
OK	Ringwood	122 miles NW of Oklahoma City, OK	285A	04-277	TBA
NM	Taos Pueblo	73 miles N of Santa Fe, NM	292C3	04-278	TBA
CA	Randsburg	96 miles E of Bakersfield, CA	271A	04-276	TBA
OK	Mooreland	137 miles NW of Oklahoma City, OK	254A	04-279	TBA
TN	Arlington	32 miles NE of Memphis, TN	274C1	05-140	None
KY	Prospect	52 miles W of Frankfort, KY	255B	05-120	None
TX	Mount Belvieu	60 miles W of Beaumont, TX	248C	04-426	None
NY	Watermill	95 miles E of New York, NY	233A	03-44	TBA
FL	Sanibel	22 miles S of Fort Myers, FL	229C2	05-134	None
GA	St. Simons Island	20 miles E of Brunswick, GA	229C3	05-267	TBA
FL	Ocala	78 miles W of Daytona Beach, FL	229C0	05-267	Reclassification
MN	Grand Portage	146 miles NE of Duluth, MN	224C	04-433	TBA
TX	Roma	120 miles NW of Brownsville, TX	278A	05-142	TBA

FM ALLOTMENTS PROPOSED –1/20/06-2/20/06

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
TX	Crowell	81 miles W of Wichita Falls, TX	250A	06-11	Cmnts: 3/13/06 Reply: 3/28/06	Drop-in
MS	Sumrall	81 miles S of Jackson, MS	226C3	06-19	Cmnts: 3/30/06 Reply: 4/14/06	1.420(i)
MS	Hattiesburg	90 miles SE of Jackson, MS	279C0	06-19	Cmnts: 3/30/06 Reply: 4/14/06	Reclassification

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.

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Mississippi – at the Mississippi e-Center of Jackson State University – on March 6. Requests to make oral presentations were invited by public notice issued on February 3, with requests due by February 17, 2006 – a very short time frame, but presumably motivated by the fact that the Panel's charter expires in only a couple of months. It is not clear whether there will be additional opportunities to make direct, oral presentations to the Panel at the March 6 meeting, but presumably such opportunities will arise in connection with future meetings.

Written and oral presentations to the Panel during the March 6 meeting are to focus on (1) the impact of Hurricane Katrina on telecommunications and media infrastructure and public safety communications, (2) the sufficiency and effectiveness of the recovery effort with respect to this infrastructure, and (3) ways to improve disaster preparedness, network reliability, and communications among first responders.

Panel meetings are open to the public and may also be viewed on the FCC's website.

If you wish to submit a written statement to the panel, or make a late request to make an oral presentation to the panel, please get in touch with the attorneys with whom you work right away.

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with this.

For the moment, it appears that, while the Commission is aware of the question, it has not come up with any answers. Rather than develop and issue a declaratory ruling on its own motion, the staff does not currently appear inclined to leap, uninvited, into the fray. It may be that, before the Commission will act, a formal inquiry from an affected broadcaster (or perhaps an affected political advertiser) will have to be filed to frame the issue in a concrete factual context. Until the FCC chooses to provide some guidance in this area, broadcasters intrigued by the auction process will be left to scratch their heads and cross their fingers.

Unloading remnant commercial time by auction could be an attractive business proposition. But before they jump into the bidding pool, stations should consider the implications carefully – long before the federal political season begins.

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First Class

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nothing has changed and the FCC has no reason to believe that the entity's not-for-profit status has changed at all.

According to a representative of the FCC's Office of Managing Director – the office whence the FCC's leg-breaker letters emanate – the Commission expects documentation of not-for-profit status to be resubmitted every year. Why? Because "the IRS has informed [the FCC] that at a minimum we should be asking for a recertification annually and they have urged us to verify each entity has paid or filed each year prior to accepting the certification." The FCC expresses its regret for the inconvenience, but suggests that whatever inconvenience the FCC approach causes is "likely considerably less than moving to the IRS standard." That, of course, should make everyone feel much better.

FCC Creature Feature: **IT'S A HIVE!!!** Finally, an FCC decision that reads like a real horror movie. A guy had an FM station in west Texas which he took off the air in August, 2003. He needed to get it back on the air by August 18, 2004, or risk losing the license through automatic expiration. He claims that he got it back on the air on August 17, but a petitioner disputes that. The licensee reasserts that the station was on the air for about 2-1/2 hours on August 17, but then went dark again. What was the problem? KILLER BEES!!!!! (Cue the dramatic organ music, or maybe the *Psycho* violins.) It seems that, while our licensee had a construction crew on site on August 17, they learned that the area was infested by KILLER BEES (more organ music) which "had just killed one man and hospitalized two others." Clearly freaked by the bad mojo, the crew refused to work during the day, leaving our licensee unable to get everything done. Acting alone (we're thinking that this sounds like Indiana Jones, or maybe Jack Nicholson in *The Shining*), he put up a temporary metal pole, installed an antenna, and operated the station for about 150 minutes in the evening. He then had to dismantle the set-up so that the electrical crew could come back, but the local villagers (*i.e.*, "municipal officials") wouldn't let the crew back for a couple of days "due to the bee problem." The Commission believed him.