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Memorandum to Clients

May, 2006 | *News and Analysis of Recent Events in the Field of Communications* | No. 06-05

Trying to reason with electoral season

New Legislation On The Drawing Boards

But ultimate prospects for passage remain unclear

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Mid-term Congressional elections are less than six months away, which means two things: first, it's time for broadcasters to review their political ad policies and, second, it's time for legislators to do something they can tout in those political ads. In the latter category, several showy moves are being made in Congress that may impact broadcasters, cable companies, telecom providers and consumers. Although telecom reform is not usually considered a make-or-break issue for most candidates, pending elections can have unpredictable effects on legislation. Eager to be seen as "doing something," legislators have been known to fast track ill-advised, but politically feasible, legislation, while quietly tabling more difficult to pass items.

The differences between the two disparate versions – the Senate's narrowly pin-pointed approach which would simply up the per-violation fine, and the House's kitchen sink approach – will have to be resolved in conference.

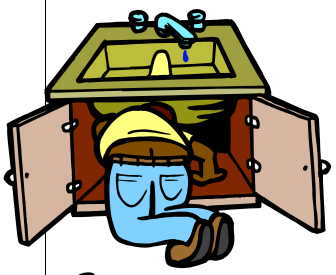
In the first category we have pending legislation to "get tough" on broadcast indecency. In a surprise move in mid-May, the Senate voted to approve a measure that would increase fines for broadcast indecency to $325,000 per violation (the current limit is $32,500 per violation). As late as a week before that vote, many pundits and trade publications were predicting a substantial, if not indefinite, delay on indecency legislation.

Of course, the pundits may yet be correct, as there are many significant differences between the bill passed by the Senate and the version passed by the House last year. The recent Senate version limits itself to merely raising the amount of the fine. The House version, however, goes a great deal further. The House version not only increases fines on indecent broadcasts (to $500,000 per violation) but also empowers the FCC to require the offending broadcaster to air educational PSAs – presumably to counteract the harms caused by the indecent material. In addition, the FCC would be required to commence license revocation proceedings after three indecency violations. The House measure also would impose liability on the individuals that utter broadcast indecencies – rather than on just the licensee of the station. The FCC also would face new requirements under the House version, including restrictions on the amount of time the FCC has to consider indecency complaints, new factual and legal elements to be considered in determining fines, and new reporting requirements.

Before a new indecency law is imposed on the industry, the differences between these two disparate versions – the Senate's narrowly pin-pointed approach which would simply up the per-violation fine, and the House's kitchen sink approach – will have to be resolved in conference. Whether

(Continued on page 8)

The Scoop Inside



FCC cleans up and tightens up the rules

BRS/EBS One Step Closer To Reality

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In a much anticipated Order, the FCC corrected, clarified and revised most of the miscues which had marred its 2004 decision re-vamping the MDS/ITFS band to make it more commercially viable. The 2500 – 2690 MHz band had been mired for decades in a mélange of channels interleaved for educational service (now EBS) and commercial multipoint distribution service (now BRS). At the same time, legacy rules and procedures strangled the ability of operators to assemble viable bandwidth.

Although the FCC commissioners proudly proclaimed in June, 2004 that they had finally "gotten it right," it quickly became apparent that the plan for transitioning to the new band plan was wholly unworkable. Under the new band plan, the channels assigned to licensees would be shuffled around to create a small core of high power 6 MHz mid-band channels useable for wide-area video transmissions, and two bands of low power 5.5 MHz channels suitable for cellular type operations. Replacement spectrum for old MDS Channels 1 and 2 and largely unused MDS return channels were also thrown into the mix to create a large swath of prime spectrum in the 2496-2690 MHz band ideally suited for fixed and portable 3G applications.

The problem was that the FCC ordained that the transition from the old band plan to the new one would be initiated and orchestrated in each market by individual licensees or spectrum lessees. The markets were defined as MEA's – Major Economic Areas – which were so vast in size that no one was willing to undertake the financial burden of transitioning a market. Not a single market had actually been transitioned in the 19 months since the re-structuring was adopted. Plus, the original transition rules left many unanswered questions about who was to pay for what and when.

The latest Order adopts the industry's near unanimous recommendation that transitions occur on a BTA-by-BTA basis which will be much more manageable for all concerned. In addition, the Order clarified the following key points:

- The procedures applicable to initiating and implementing a market transition were detailed. Parties have 30 months from the effective date of the new rules to initiate a transition, and the transition must them be completed within 18 months.

- A transition "proponent" may demand reimbursement from the other commercial licensees, commercial lessees of both EBS and BRS spectrum in the market, and (somewhat surprisingly) from non-commercial EBS licensees who use their spectrum for commercial services. The latter provision is curious since the rules had previously been structured to exempt non-commercial entities from having to bear any of the cost of transitioning.

- Reimbursement of the proponent is due as soon as the transition is complete. However, the FCC established no mechanism for enforcing the payment obligation.

- Perhaps the most contested issue was whether leases by educators for commercial purposes should be limited in their length. Some educators had expressed concern that educators would be pressured into what amounted to lifetime leases so there needed to be a term limit on leases to protect them from themselves. After much

(Continued on page 8)

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Pirates are Twice as Bad as Expired Operators – A Texas college operating an unlicensed station faced only half the fine that a pirate would for the same offense. The Texas college had licensed a satellite station in 1994 and continued to operate it after the authorization had expired ten years later. Explaining that it thought the license was for 15 years, the college filed a renewal application and an application for special authority to continue operating.

The FCC noted that it usually whacked pirates with a $10,000 penalty for operating without a license. However the FCC also recalled that recently it has been applying a more lenient standard to folks caught operating with an expired license. More specifically, the FCC relied upon a case from two years ago that set the ground rule that a person operating with an expired license would face a fine of $5,000 (*i.e.*, half of the fine paid by pirates).

Focus on FCC Fines

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Demonstrating considerable indulgence, the FCC also decided that since the school had turned itself in and had submitted the necessary FCC paperwork – albeit late – the fine could be further adjusted down. In the end, the FCC reduced a possible $13,000 fine ($10,000 for operating without a license and $3,000 for failure to file its paperwork) down to $4,000. Readers are reminded that the best way to avoid a fine altogether is simply to make sure that all of your licenses are current.

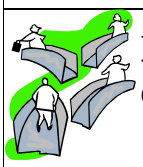
Failure to reduce AM power not Minor to FCC – On several occasions monitored by an FCC agent, a New Jersey AM station did not lower its 5000 Watt signal to 500 Watts until an hour after it was supposed to do so – rather than power down at 8:30 p.m. power down, the station powered down at 9:30. The FCC found fault with this behavior and hit the station with a $4,000 fine.

In response, the station stated that the hour delay was a "minor infraction" and that a $4,000 penalty was not appropriate. The FCC did not miss the opportunity to reiterate that unauthorized pre-sunrise operations were considered a serious matter and the fine was not reduced. The FCC based its concern on the fact that the failure to lower power poses the potential for interference to other broadcast stations.

AM licensees should ensure that their operations comply with the power restrictions on their FCC authorization. It appears that the New Jersey AM station's problems could have resulted from failure to adjust for daylight savings time. The power down was almost exactly one hour late. Licensees should be sure that their system properly adjusts for daylight savings time.

Write Back to the FCC or Pay Fine - As this column consistently reports, licensees fare well if they cooperate at least to some extent with the FCC. For example, recall the above story of the $13,000 fine being reduced to $4,000 in light of the cooperation. Conversely, the failure to cooperate may cause the FCC to become very angry. Like the scorned Alex Forrest (played by Glenn Close in *Fatal Attraction*), the FCC ***won't*** be ignored.

A company in North Carolina refused to provide the FCC with the information that it sought and it now faces a $20,000 fine. The FCC and the company engaged in several telephone conversations, e-mails and other exchanges. As part of these exchanges – and not incidentally to determine the company's liability – the FCC demanded certain documents and answers. When the company stopped providing all the information, the FCC fired back with a $20,000 fine. Readers should be certain that they reply to inquiries from the FCC and should do so with the advice of counsel.



FHH - On the Job, On the Go

Frank Jazzo and **Vince Curtis** will join **Roy Stewart**, Senior Deputy Chief of the FCC's Media Bureau, in conducting an FCC Update session at the annual convention of the New Mexico Broadcasters Association on Saturday, June 9, in Albuquerque.

On May 25-26, **Frank Montero** appeared as a speaker at the convention of the Puerto Rico Radio Broadcasters Association, addressing a range of regulatory issues.

Media Darling of the Month – This month's Media Darling is **Joe Di Scipio**, who was quoted in an article about network-affiliate relations published on mediaweek.com.

LPFM Plus?

FCC Invites Comments On Proposal To Allow FM Translators To Originate Programming

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In an era when established over-the-air radio stations are facing competition from internet streaming, podcasts, satellite radio, low-power FM, and multi-channel HD programming, at least one radio station owner wants the FCC to allow a new mode of competition. Last month, Miller Media Group (MMG) headquartered in Taylorsville, Illinois, filed a petition with the FCC seeking rule amendments to allow FM translator stations to originate local programming.

MMG already operates a commercial full power FM station (WTIM-FM, 97.3 MHz) that serves the community of Taylorville. Last year MMG acquired a construction permit to build FM translator Station W228BH, also to serve Taylorville, on 93.5 MHz. In its petition for rulemaking, filed with the FCC on April 27th, MMG argues that the FCC's rules should be changed to allow all FM translator stations to originate local programming instead of just rebroadcasting a signal from another station. Given the opportunity, MMG says it could broadcast live Taylorville town counsel meetings or additional high school sporting events on the new translator.

Even if the FCC were open to removing the reins on FM translators, opponents from the LPFM universe would likely find allies among full-service licensees as well. Many full service broadcasters likely don't fancy the idea of even more competition for local audiences (and, possibly, revenues).

The main thrust of MMG's argument in favor of a rule change is the FCC's long standing goal of promoting "localism" in broadcasting. The current rules merely protect incumbent FM radio stations from competition, according to MMG. It also points to the FCC's rewrite of the TV translator rules in 1982, which allowed the owners of TV translators to broadcast original programming on their stations.

What is not clear in MMG's petition, however, is whether anything has changed since 1990 – the last time the FCC substantially revised its FM translator rules. In 1990, the FCC decided that it was in the public interest to protect current FM radio stations from unwarranted competition from translator operations. Recognizing the principle that commercial stations can stay on the air and serve the public only if they are profitable businesses, the FCC concluded that competition for advertising dollars from translator stations could undermine the economics of existing stations. This principle has been reiterated more recently in the fight between terrestrial radio broadcasters and satellite radio operators over whether satellite radio should be permitted to provide "local" content such as traffic and weather reports. The principle was also upheld in the FCC's decision to allow only non-commercial operation of low-power FM stations.

So at first blush the outlook isn't brilliant for this proposal. This is especially so in view of the fact that as recently as March, 2005, the Commission seemed determined to maintain the FM translator service's position as low man on the radio service totem pole, particularly relative to LPFM. The freeze on FM translator applications which was imposed at that point, and which was by its own express terms supposed to last only six months, remains in effect (*de facto* if not *de jure*) more than a year later. The clear implication there is that the FCC does not feel motivated to advance the FM translator service for the time being.

And even if the Commission were open to removing the reins on FM translators, opponents from the LPFM universe would likely find allies among full-service licensees as well. Many full service broadcasters likely don't fancy the idea of even more competition for local audiences (and, possibly, revenues), and would therefore be expected to dislike the idea of a raft of new low-power stations originating local programming.

But notwithstanding these dark clouds on the proposal's horizons, the fact remains that the Commission has invited public comment on the proposal. That fact alone may give MMG some hope that its proposal may gain some traction. We shall see.

Once more, with filing

Public File Requirements For Political Ads

McCain-Feingold Act Imposes Additional Public File Obligations

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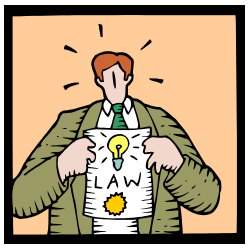


While broadcasters have long had to comply with the FCC's requirement to maintain a "political public file" with details of all requests by (or on behalf of) "legally qualified" election candidates to purchase air time for the 45 days prior to a primary election and 60 days prior to a general or special election, broadcasters must now also remember to comply with the McCain-Feingold Campaign Reform Act's requirement to place in their "political public file" details regarding all requests by ***anyone*** to purchase air time for a message relating to (1) a "legally qualified" candidate, (2) an "election to federal office", (3) a "national legislative issue of public importance", or (4) a "political matter of national importance" for the same periods prior to elections.

This record-keeping obligation is not technically imposed by the FCC; rather, the obligation derives directly from the McCain-Feingold Campaign Reform Act. Regardless of the provenance of the obligation, though, broadcasters are still required to satisfy it.

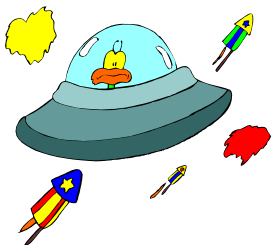
The McCain-Feingold Campaign Reform Act's "political public file" requirements were enacted by Congress in 2002, but did not become effective until after the U.S. Supreme Court upheld them in late 2003.

Specifically, broadcasters must place in their "political public file" the following details on each request to purchase air time:

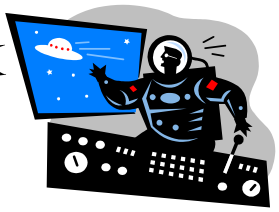
- whether the request was accepted or rejected;
- the rate charged for the air time;
- the date and time the air time actually ran;
- the class of time purchased;
- for air time relating to a candidate, the candidate's name and the office he/she is seeking;
- for air time relating to a federal election (but not to a specific candidate), the office being filled;
- for air time relating to a "national legislative issue of public importance" or a "political matter of national importance", a brief description of the issue or matter;
- for air time requested by or on behalf of a candidate, the name of the candidate, the authorized committee of the candidate, and the committee's treasurer; and
- for air time not requested by or on behalf of a candidate, the name of the person purchasing the air time, the name, address, and phone number of a contact person for the purchaser, and the names of the chief executive officers or members of the executive committee or board of directors of the purchaser.

The information must be kept in the station's "political public file" for two years.

This record-keeping obligation is not technically imposed by the FCC, which has not amended its local public inspection file rules (Sections 73.3526 and 73.3527) to include the additional political information. Rather, this obligation derives directly from the McCain-Feingold Campaign Reform Act. Regardless of the provenance of the obligation, though, broadcasters are still required to satisfy it. And, since political candidates tend to (a) be well-informed about such things and (b) have a major league personal stake in assuring that all election-related niceties are complied with, it is a good idea to make sure that broadcasters dot all their i's and cross all their t's when it comes to complying with these political record-keeping requirements.



ENTERCOM STRIKES BACK



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Meanwhile, back on the payola front . . .

To recap, ever-vigilant New York Attorney General (and presumed would-be gubernatorial candidate) Eliot Spitzer has been on a one-man campaign against what he sees as deceptive programming practices involving (cue ominous organ music) payola. By rattling his NYAG saber really hard, he has thus far managed to wheedle multi-million dollar settlements from record label giants Sony BMG, Warner Music Group and Vivendi Universal. But when he went after broadcasters Entercom Communications, they declined to knuckle under, so he sued them. Now, for this month's installment of *As The Turntable Spins* . . .

Faced with the NYAG lawsuit, Entercom has struck back by filing a motion to dismiss the suit. In its motion Entrecom pointedly hints that, because that the NYAG lacks the power to enforce payola laws, he had to find some Plan B that would let him extend his regulatory powers into that area by some other route. And *voilà* – the New York State consumer protection laws, laws which the NYAG clearly has the authority to enforce and which, at least in Mr. Spitzer's view, encompass radio programming practices.

But according to Entercom's motion, before he can successfully invoke those laws, the NYAG must show that Entercom's actions were materially deceptive and caused actual harm to consumers. Not surprisingly, Entercom argues that Spitzer satisfied none of these standards, and, moreover, that Entercom, *sometimes, at least*, did comply with payola laws, which (at least according to Entercom) gives it an *iron-clad* defense to the state consumer protection laws!

Entercom concedes that the NYAG's complaint does include numerous accounts of deceptive practices by Entercom. Without commenting on the truth of several of those allegations, Entercom declares that the complaint nevertheless utterly fails to show that any harm to consumers resulted from any of its actions. In Entercom's view, consumers suffered no pecuniary harm because they paid nothing for the programming. Noting that New York case law rejects the idea that deception is itself the injury and that conflating the two is "legally flawed", Entercom also argues that supposedly preventing consumers from making free and informed choices is entirely too "ephemeral" a consideration to constitute real harm.

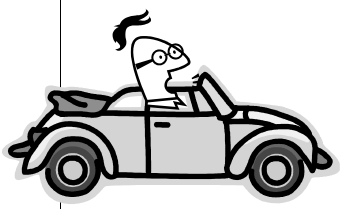
According to Entercom's motion, before the NYAG can successfully invoke those laws, he must show that Entercom's actions were materially deceptive and caused actual harm to consumers. Not surprisingly, Entercom argues that Spitzer satisfied none of these standards.

On the question of material deception, Entercom asserts that the NYAG hasn't bothered to explain how the supposedly illegal airplay strategies misled or affected consumer behavior at all. On this point, Entercom advances the surprising observation that it's unlikely that pay-for-play programming has any negative impact on listeners because "[w]hen people today do not like the music played on a radio station, they change the station—or they download music from the Internet, listen to satellite radio, a CD or an MP3 player, or use any of the other listening options available" to them. While this may be true, it seems a strange argument for a radio licensee to be advancing, since the argument plainly suggests that radio is merely one of a number of essentially fungible music delivery "options".

The remainder of Entercom's motion focuses on two specific programs – *CD Preview* and *CD Challenge* – highlighted in Spitzer's complaint. Entercom characterizes both programs as paid advertisements in which proper sponsorship identification was made. It points out that, whether or not those programs affected airplay monitor-

(Continued on page 7)

The devil, in the details



Indecent Exposure?

Satellite service transmitters deliver Stern on non-com frequencies, to listeners' surprise

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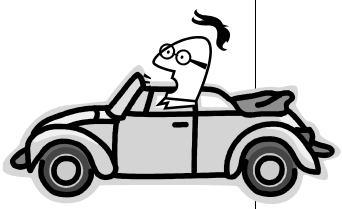


Back when "shock jock" Howard Stern was still on FM radio, smut-averse listeners could avoid his salacious spiel just by tuning to some other station. Ironically, though, now that Stern has left FM for satellite radio, listeners who don't like his style are finding him harder to avoid.

"I was in the car with my children," begins a typical complaint to the FCC, "listening to Bible readings on a religious station. A car pulled up next to us, and suddenly Howard Stern was blasting out of the speakers in *my* car, using words I don't ever want my children to hear. The FCC should do something!"

How does satellite radio get into a listener's FM receiver if the listener doesn't happen to be a satellite subscriber? The answer lies in the technology by which some satellite subscribers manage to get service while in their cars.

Some satellite radio receivers are wired directly into the car's sound system, and cause no problem. But others use a miniature FM transmitter to send the satellite audio to the car's FM radio. These are perfectly legal, ***if*** the power is low enough. The FCC sets an upper limit of 19 ***billionths*** of a watt, which ordinarily will travel just a few feet. But an overpowered FM adapter can send a satellite-derived signal to an FM radio in another nearby car – say, the guy who just pulled up next to you at that long stop light.

The FCC is investigating, but in the meantime, short of switching to HD digital radio, there is not much that 88.1 MHz broadcasters or listeners can do to protect themselves.

Making matters worse, many adapters come pre-set to 88.1 MHz FM, and can be adjusted only in the 88 MHz range. All FM frequencies below 92 MHz are reserved for non-commercial stations, including religious broadcasters. So a malfunctioning adapter has a good chance of intruding on religious, classical-music, or NPR listeners.

The FCC is investigating, and will do what it can to remove overpowered adapters from the market. In the meantime, short of switching to HD digital radio, there is not much that 88.1 MHz broadcasters or listeners can do to protect themselves. But you satellite radio users can help. Just make sure your FM adapter is not set to the same frequency as a local station. If you need technical help, call on a local teenager – who will likely also explain those unfamiliar words in Stern's broadcasts.

(Continued from page 6)

ing results, tracked by a third party and made public, should have no bearing on Entercom's actual liability under New York laws. Additionally, because Entercom complied with Federal payola laws with respect to these programs – by including proper sponsorship identification – Entercom asserts that the New York consumer protection statutes actually provide it with a complete defense to liability.

Some noteworthy points: Entercom's motion carefully emphasizes the instances when Entercom disclosed payments made by record companies for certain programming and, as noted above, avoids discussing alleged failures to disclose certain other payments and gifts made to its employees. However, the motion leaves open the question of whether there may be some truth to the accusations of good, old-fashioned pay-for-play activity buried in the NYAG's complaint. Intentionally or not, Entercom has not only lobbed one ball back to Spitzer, but it has sent another into the FCC's court.

Tune in next month for the continuing saga of *As The Turntable Spins . . .*

(Continued from page 1)

either side will be willing to bend to the other's view is far from clear.

Beyond indecency, a more comprehensive take on telelcom legislation comes from Senate Commerce Committee Chairman Ted Stevens (R-Alaska).

In early May, Stevens introduced a wide-ranging bill that proposed reform in several areas of the law, including Universal Service Fund reforms, cable and satellite access to sports programming, regulation of municipal broadband services, and "net neutrality". Of particular interest to the media industry, the Stevens bill also provides for substantial changes in video franchising procedures, authorizes FCC action on the broadcast flag and video descriptions, and promotes certain "white space" proposals and the DTV transition.

With respect to the operation of unlicensed devices in television "white spaces," the Stevens bill explicitly permits such devices, while directing the FCC to create rules, certifications and standards that would protect broadcasters and public safety users. With regard to the DTV transition, the Stevens bill focuses on consumer education and protection, although the bill also would permit (but not require) cable operators to provide analog subscribers with an analog feed of broadcast DTV signals.

As noted above, the upcoming mid-term election season makes predicting the future of these measures even more difficult than usual. While some of the provisions of the Stevens bill are non-controversial, there are powerful lobbies at work promoting or opposing other provisions. Stalemates over such provisions may cause the Senate to defer this item until the next session.

The notion of attracting a segment of the electorate by appearing to be a Champion of Decency ready to take on the Satans of Smut may prove irresistible.

With regard to indecency, the Senate's action may generate some momentum for at least raising the fines broadcasters pay for violating indecency restrictions. Taking a stand against smut is a time-honored way of scoring political points before an election. In addition, several "family values" groups have promised to make life difficult in November for anyone that doesn't get with their program. On the other hand, the enormous differences between the House and Senate bills (not to mention the questionable constitutionality of certain of the House provisions) may make these items difficult to move before the election. But this ***is*** an election year, and the notion of attracting a segment of the electorate by appearing to be a Champion of Decency ready to take on the Satans of Smut may prove irresistible. As always, we will continue monitor these matters and keep you informed.

[*LATE BREAKING NEWS - As we go to press, published reports indicate that the House is preparing to adopt the Senate's approach to indecency. More on this next month.*]

(Continued from page 2)

soul-searching, the FCC agreed to a maximum 30-year term, subject to license renewals during the lease term and subject also to the educator being able to re-evaluate its educational needs for the service every five years after the 15th year. So much for prioritizing education.

- Build-out requirements were clarified to provide "safe harbors" of service provision levels which will assure renewal if attained. The service levels were somewhat higher than the levels established by the Commission in other comparable services (*e.g.*, 30% of the population must be covered if you provide fixed or mobile service). If these build-out and service levels are not reached by May 1, 2011, the licensee will have to be adjudged on a case-by-case basis – the last thing a licensee wants to go through.

- Although there was considerable comment in the Docket about the implementation of an auction to clear the band and assign vacant spectrum, the FCC tabled any decisions about this until the transition process is closer to completion. That unfortunately means that vacant ITFS spectrum which has lain fallow since 1995 must remain fallow for at least three more years.

- Regulatory fees were made more sensible. Now the fees will be assessed on the basis of market size (in three graduated tiers) and the amount of spectrum assigned rather than on a call sign by call sign basis.

- The Commission confirmed its belief that unlicensed low power operations, a handful of legacy point-to-point links, and certain MSS operations can coexist in the same band as BRS/EBS without interference.

While the new Order is itself far from perfect in many respects, it does seem to make it realistically possible for operators to proceed with the transition process. Low power cellularization will permit the intense re-usage of the spectrum necessary to maximize the number of simultaneous users. Maybe this time they did get it right.

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

Updates on the News

Wilkommen, Bienvenu, Welcome – You may have been wondering whatever became of Robert McDowell. McDowell, you will recall, was nominated to fill the long-empty fifth seat on the Commission a couple of months ago. Since the conventional wisdom was that a huge backlog of business has built up while Chairman Martin waited for a third Republican vote to assure him a majority, everyone seemed to think that the McDowell nomination meant that our long national nightmare was over. Not quite. After McDowell sailed through the Senate Commerce Committee in about the time it takes to listen to *In-A-Gadda-Da-Vita*, he and his nomination dropped off the face of the planet. The reason? Senator Rockefeller, from West Virginia, put a hold on the nomination until he (the good Senator) could wrest some concessions relative (apparently) to the universal service fund from the Administration. As far as we know, the Senator had no problem with Mr. McDowell, whose nomination became a collateral victim. So we were ready to go to press with an exposé, deploring the Congressional stranglehold on agency operations, yadda-yadda. We even had a way cool graphic ready to go. But then, as we were going to press, it was announced that the hold was lifted and McDowell's nomination was confirmed. Who knew? Welcome to the new Commissioner!!! (But we're still going to run the graphic.)

STOP THE PRESSES! McDowell has been confirmed!

Public inspection file proposal on the table – In January, long-time communications lawyer David Tillotson filed a petition for rulemaking suggesting that the Commission consider substantially modifying or (gasp!) abolishing the public inspection file rule. Mr. T's premise was an engaging one: the rule has "outlived whatever usefulness [it] may have had". It creates the risk of substantial fines without "in any way furthering any 'public interest' goal." That head-on approach is not new to Tillotson. He had famously – and probably accurately – argued (in response to a forfeiture imposed on one of his clients) that "the public has no interest whatsoever in the content" of broadcasters' public files. Well, *mirabile dictu!* The Commission has put the petition for rulemaking out for comment. Interested parties may submit their thoughts about this proposal by June 18. While the fact that comment has been invited on the proposal does not guarantee that the Commission will be favorably disposed to Tillotson's suggestions, it is at least a step in that direction. And certainly it would not hurt if the Commission were to receive an avalanche of comments from broadcasters who can attest, from their own personal experience and observation, that Tillotson's assessment of the public's interest in public files is correct.

A word to the wise from Joe Di Scipio

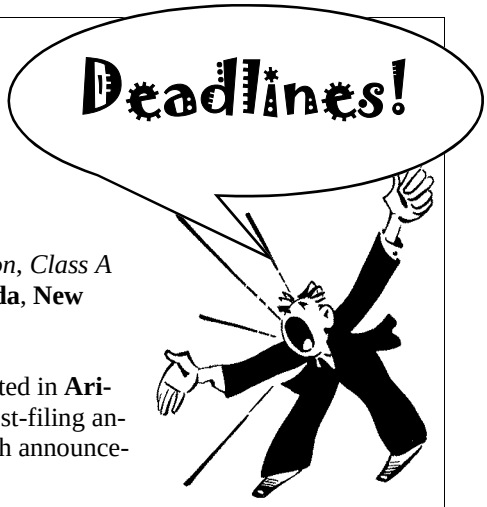
Media Ownership Slow Down?

From time to time in these pages we have discussed the media ownership rules and the status of the various court proceedings and FCC proceedings to revamp those rules. Not much has changed in the last two years since the court remanded the majority of the FCC media ownership rulemaking to the FCC for further review. That further review is stalled at the FCC because, according to various sources, the Commissioners cannot agree on the language for a further notice of proposed rulemaking, which is a necessary hurdle which it must get over before it can even think about issuing further rules. It is our best guess that the FCC will not issue a further notice until the fifth Commissioner is approved, and his nomination is on permanent (terminal?) hold in the Senate.

Nonetheless, Senator Dorgan of North Dakota has announced that he plans to introduce legislation that will slow the FCC down in its efforts to relax the media ownership rules. To which we respond, HUH? If the FCC has not done anything in two years, it is not clear how much slower things can move. As this is only an announcement of his intent to offer legislation, there is no actual legislation as we go to print.

We will, of course, keep you up to date on the status of the proposed legislation and the speed on which it moves through Congress.

June 1, 2006



Television Renewal Pre-Filing Announcements - *Television* stations located in **California** must begin pre-filing announcements in connection with the license renewal process. **California** *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 **Arizona**, **Idaho**, **Nevada**, **New Mexico**, **Utah**, and **Wyoming** must file their license renewal applications.

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

EEO Public File Reports - All *radio* and *television* stations with five (5) or more full-time employees located in **Arizona**, the **District of Columbia**, **Idaho**, **Maryland**, **Michigan**, **Ohio**, **Nevada**, **New Mexico**, **Utah**, **Virginia**, **West Virginia**, and **Wyoming** must place EEO Public File Reports in their public inspection files. For all stations with websites, the report must be posted there as well. Per announced FCC policy, the reporting period may end ten days before the report is due, and the reporting period for the next year will begin on the following day.

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

June 19-June 30, 2006

LPTV/Class A Television/Television Translator Filing Window - *LPTV*, *Class A television*, and *TV translator* stations may file applications for digital companion channels during this filing window in connection with the digital television transition. [*Note: This filing window was originally scheduled for May 1-12.]*

July 1, 2006

Digital Television Stations - **All** *commercial and noncommercial television* stations must complete construction of and begin operation with their full replication or maximization facilities or face the loss of interference protection beyond the signal contours of the facilities actually in operation as of that date. If a station is unable to meet this deadline, it musts file a waiver request prior to or on July 1.

July 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 sig-

(Continued on page 12)

FM ALLOTMENTS PROPOSED –4/20/06-5/18/06

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
NY	Odessa	79 miles SW of Syracuse, NY	238A	06-97	Comnt: 7/3/06 Reply: 7/18/06	Section 1.420(i)

FM ALLOTMENTS ADOPTED –4/20/06-5/18/06

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
CA	City of Angeles	Los Angeles	240A	05-316	None
VA	Keswick	62 miles NW of Richmond, VA	291A	05-292	None
WV	Marlinton	130 miles N of Roanoke, VA	292A	05-292	TBA
MI	Mattawan	16 miles W of Kalamazoo, MI	223A	05-269	None
MI	Allegan	27 miles NW of Kalamazoo, MI	265A	05-269	None
OK	Okemah	72 miles E of Oklahoma City, OK	279C1	05-166	None
OK	Wilburton	161 miles E of Oklahoma City, OK	267C1	05-166	None
CA	Alturas	144 miles NE of Redding, CA	277C	05-123	TBA
CA	Palo Cedro	9 miles E of Redding, CA	266C3	05-125	None
CA	Alturas	144 miles NE of Redding, CA	268C1	05-125	Accommodation Downgrade
NC	Hillsborough	42 miles NW of Raleigh, NC	273A	04-375	None

Notice Concerning Listings of FM Allotments

Consistent with our past practice, Fletcher, Heald & Hildreth PLC provides these advisories on a periodic basis to alert clients both to FM channels for which applications may eventually be filed, and also to changes (both proposed and adopted) in the FM Table of Allotments which might present opportunities for further changes in other communities. Not included in this advisory are those windows, proposed allotments and proposed channel substitutions in which one of this firm's clients has expressed an interest, or for which the firm is otherwise unavailable for representation. If you are interested in applying for a channel, or if you wish us to keep track of applications filed for allocations in your area, please notify the FHH attorney with whom you normally work.

Fletcher, Heald & Hildreth, P.L.C.
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Arlington, Virginia 22209

First Class

(Continued from page 10)

nificant 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.

August 1, 2006

Television Renewal Pre-Filing Announcements - *Television* stations located in **Alaska**, **American Samoa**, **Guam**, **Hawaii**, **Mariana Islands**, **Oregon**, and **Washington** must begin pre-filing announcements in connection with the license renewal process. **Alaska**, **American Samoa**, **Guam**, **Hawaii**, **Mariana Islands**, **Oregon**, and **Washington** *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 **California** must file their license renewal applications.

Television Renewal Post-Filing Announcements - All *television* stations located in **California** must begin their post-filing announcements in connection with the license renewal process, and continue such announcements on August 16, September 1 and 16, and October 1 and 16.

EEO Public File Reports - All *radio* and *television* stations with five (5) or more full-time employees located in **California**, **Illinois**, **North Carolina**, **South Carolina**, and **Wisconsin** 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 **Illinois** and **Wisconsin** must file a biennial Ownership Report (FCC Form 323 for commercial stations or Form 323-E for noncommercial stations). All *television* stations located in **California**, **North Carolina**, and **South Carolina** must also file a biennial Ownership Report. All reports filed on FCC Form 323 or 323-E must be filed electronically.