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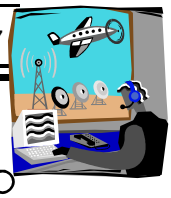
Memorandum to Clients

July, 2006 | *News and Analysis of Recent Events in the Field of Communications* | No. 06-07



Red (tape) alert!!!

FAA Proposals Could Give New Meaning To "Hazards"

By: Ann Bavender
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The Federal Aviation Administration (FAA) has proposed major changes to the factors it considers in determining whether proposed construction of new towers or modifications to existing towers are a hazard to aircraft navigation. The proposed changes could have a significant ripple effect on broadcasters: before they can get FCC approval, all applicants for new or modified FCC authorizations must demonstrate that any tower from which the service proposes to transmit its signal will comply with all FAA tower regulations.

Adoption of the proposals would likely make it harder for those proposing tower construction or modification to obtain FAA approval.

Broadcasters currently must notify the FAA of any proposed new tower construction or modification which is 200 feet or higher or which lies within certain specified airport approach paths. Initially the FAA evaluates the notification to determine whether the tower is a potential physical obstruction to aircraft and, in the case of FM radio and VHF TV facilities, whether the facility will potentially cause electromagnetic interference (EMI) to aircraft navigation equipment. If the FAA determines that a proposed tower or modification will not be a hazard, the FAA issues a determination of no hazard to aircraft navigation.

If the FAA determines that a proposed tower or modification *may* be a hazard to aircraft navigation, the FAA studies the proposal in depth to determine whether the tower construction or modification will in fact result in adverse effects on aeronautical operations. And if that further study discloses that such adverse effects will occur to aeronautical operations, the FAA issues a determination of hazard to aircraft navigation. Issuance of a determination of hazard means that the FCC will deny any required FCC construction permit for the tower. It will often result in local authorities denying required permits for construction of the tower or modification, although without an FCC permit the question of local approval may be a moot one.

Electromagnetic interference (EMI) is of concern to the FAA since the FM band (88-108 MHz) is immediately adjacent to the FAA's navigation/communications band (108-136.5 MHz) and FM stations transmit with a much greater power than the FAA's communications systems. In addition, the VHF TV bands (54-72 MHz, 76-88 MHz, and 174-216 MHz) are adjacent to the FAA communications navigation bands for marker beacons (75 MHz), government land mobile facilities (162-174 MHz), and bands used for communication with military air traffic (225-328.6 MHz).

The FAA is proposing to expand the factors it considers in determining whether a proposed tower or tower modification is a hazard to aircraft navigation. If the proposals are adopted, the number of notifications which proponents of

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The Scoop Inside

The FCC plays the old "Hurry-Up-And-Wait" game

Hundreds Of Stations Seek Waivers As DTV Max/Rep Deadline Passes

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The July 1 deadline for all stations to commence operation of their digital television (DTV) facilities with either replication or maximized facilities or face the loss of interference protection has now come and gone. A review of the FCC's records shows that a significant percentage of stations, numbering into the hundreds, apparently could not meet that deadline and filed waiver requests by the extended July 7 deadline. All such stations that have been operating with reduced power were also required to file requests for extensions of their current Special Temporary Authorizations (STA's), as FCC had previously set July 1 as the expiration date for all such STA's.

Predictably, many of the waiver requests were filed at or near the last minute. The situation was not improved by the fact that the Commission waited until June 14 to release a public notice describing the steps to be taken with regard to meeting or requesting a waiver of the original July 1 deadline.

The instructions which the FCC finally provided were not a model of clarity. For example, while the public notice seemed to indicate that stations with reduced power STA's needing a waiver of the deadline would have to file an application for extension of their DTV CP's in addition to the waiver request, the staff informally advised that such stations should file either an extension application or a waiver request, but not both. Compounding the overall uncertainty, the week before the initially set filing deadline, the FCC's designated contact person for this matter was out of the office.

The timing issues were further complicated by the fact that the last day of the postponed filing window for Class A television, LPTV, and TV translator stations to seek digital companion channels coincided almost exactly with the replication/maximization deadline. Thus, many were trying to finish construction and file license applications for DTV stations, file modification applications for stations that elected to go back to analog facilities and to operate with 80% replication facilities in the meantime, and file companion channel applications, all at the same time. In light of the confusion and huge flurry of activity, all right before and during the July 4 holiday weekend, the Commission decided at the last minute to postpone the filing deadline with regard to the replication/maximization deadline until July 7.

Now that all of the waiver requests are on filed, we believe (based on last year's experience) that it is likely that those requests will sit without action for some time. It is bruited about that an item calling for penalities for broadcasters who have failed to build full-power facilities is circulating among the Commissioners, but it is not clear what the final contents of that item will be. There also is talk that the Commission may question stations that initially certified that they would build maximized or replication facilities and now are seeking modified authorizations for something less. The thought is that those stations may have made false certifications when they stated that they would build more powerful facilities. Of course, the obvious response is that stations initially believed that they would need greater power levels, but after actual experience with lower power operations, discovered that the bigger facilities would be an unnecessary expense.

We will keep you posted on any actions the FCC may take. Thus far, there has been little, if any, action on the waiver requests filed last year. The staff appears to have been slow to act in the hope that stations would go ahead and complete construction of their full-power facilities, thereby rendering their waiver requests moot and eliminating the need for any decision of record. While the waiver request is pending, the replication/maximization deadline is automatically extended. We will have to wait and see whether the Commission takes the same approach this year.

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Focus on FCC Fines

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Pirate is a day late and $10,000 short – Both Congress and the FCC have been very specific when setting procedural rules about how persons and stations deal with the FCC. Among those mundane nitty-gritty details dictated by the Feds is the deadline by which a party may seek reconsideration of an agency decision. If you don't like what the Commission did and you want to ask them to give it another look-see, you've got to get your petition for reconsideration on file within 30 days or else.

In July, 2004, the FCC fined a Florida man $10,000 for operating a pirate FM station. The guy had until August 30, 2004, to file a petition for reconsideration of the fine. He filed a petition, but it didn't get to the Commission until August 31, 2004 – the day ***after*** the deadline. A petition is considered filed on the date that the FCC receives it rather than the day that it is sent. Although it took the FCC nearly two years to announce that the pirate was not prompt enough – how's that for irony? – the FCC released an order this month announcing that it cannot consider the petition because it was filed a day late. The petition was accordingly dismissed, and the pirate stays on the hook for the $10,000 fine.

FCC is 9 months late and $7,000 short – Fortunately for a Kansas FM station, the pendulum of Congressional deadlines swings in both directions. Congress has limited the FCC's ability to fine broadcast licensees if a violation occurred prior to the earlier of either (1) more than one year prior to the FCC's release of a notice of apparent liability or (2) prior to the commencement of a station's current license.

The permittee of a new Kansas FM built its station in 2002, with the new station's main studio collocated with an existing station's studio. As the permittee was aware, the studio location violated the Commission's main studio rule as far as the new station was concerned, so the permittee asked for a waiver of the rule. Despite the fact that that waiver had not been granted, the permittee commenced operation of the station in March, 2002. The permittee filed for a license to cover its operation, and also prodded the Commission to grant the main studio waiver (even though, again, the station was already operating from the less-than-legal studio). The FCC granted the waiver in October, 2002, and at the same time granted the permittee's license application.

More than a year later, the FCC got around to inquiring about the main studio violation which existed prior to the waiver. The FCC sent the station a bunch of nosy questions seeking nine categories of information and documents. The station responded to two of the categories. Not too happy with either the main studio violation or the failure to answer all of its questions, in July, 2004, the FCC fined the station $10,000 ($7,000 for the main studio violation and $3,000 for the failure to completely respond to the inquiry).

Not so fast (more irony there), the station fired back – the FCC's original forfeiture notice was issued more than one year after the October, 2002, license date and therefore the FCC was itself impermissibly late. The FCC has now agreed that they were late in hitting the station for the main studio violation; as a result, the $7,000 portion of fine attributable to the main studio violation has been deep-sixed. However, the FCC was still in time to fine the station for its failure to fully respond to the FCC request – so it let the $3,000 fine ride. The FCC also took the opportunity to remind the station that it could still admonish the station and that the FCC may consider the violation at renewal time.

Texas station changes antenna but doesn't tell FCC – A Texas low power FM station is on the line for a $3,000 fine due to its change of antenna. While FCC rules permit certain changes in licensed equipment without prior Commission approval, some of those changes must be followed up with formal notification to the Commission. In this case, the station swapped out a three-bay antenna for a new four-bay antenna – a "permissible" change which required the follow-up filing of a Form 319.

The station never got around to filing the form, but the FCC found out about the change anyhow. Although the station claimed that it did take remedial action, the FCC noted that that remedial action came only ***after*** a complaint had been filed and an investigation commenced, so the Commission wasn't convinced that the remedial effort was all that meaningful. Bottom line - the station was whacked with a $3,000 fine.

EAS equipment results in $8,000 fine – As frequently reported in this column, towers and EAS are easy targets for an FCC inspector. There is nothing that a station can do to hide a broadcast antenna and very little that can be done to alter EAS records when an inspector is in your lobby. An Arizona FM station found this out the hard way recently. The station had EAS equipment. That equipment was sitting right there for the inspector to check out – the bad news was that it was-

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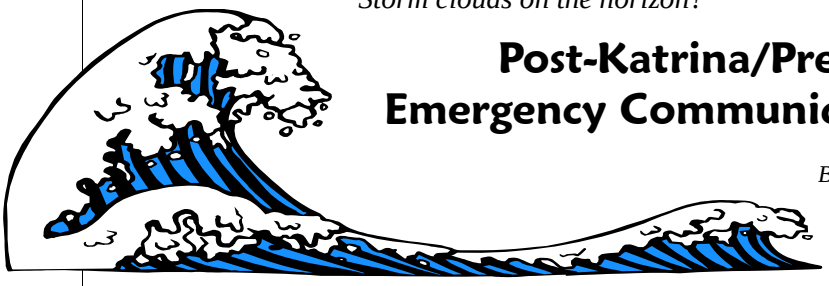
Storm clouds on the horizon?



Post-Katrina/Pre-election Changes In Emergency Communications Systems Considered

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The windy season is upon us. Hurricane season, for sure. But also the political season ,with Congressional elections just ahead. Put them together, and a mighty gust can be expected from the nation's capital – especially this year, after the administration's much criticized performance responding to last summer's Hurricane Katrina.

Late last month, the White House proposed moving the locus of power over the emergency alert system (EAS, for short) from the FCC to the Department of Homeland Security – the same folks in charge of the Federal Emergency Management Agency during Katrina. Homeland Security is also in charge of border control and airport security.

While many a wag might wonder if this means broadcasters will be required to take their shoes off before taking to the air, the proposal could create another regulatory regime and bureaucracy to which broadcasters must answer.

The details haven't been worked out yet, but the perfect storm in which the party in power faces a tough election season coupled with the reality that recent weather patterns have produced unusually strong and numerous tempests, suggests this proposal may actually lead to action before the hurricane and election seasons end in November.

This White House announcement shortly preceded release of a report by an FCC panel looking at ways to improve communications in the face of natural disasters. It, too, was a response to Hurricane Katrina and its aftermath.

The panel found, to no broadcaster's surprise, that the airwaves remain an important means of mass communication when disasters knock out most everything else. Radio, as you'd expect, is especially significant, as portable radios remain common (even some MP3 players are equipped with an FM receivers) and delivering the spoken word requires fewer human and technological resources than other means.

The panel found, to no broadcaster's surprise, that the airwaves remain an important means of mass communication when disasters knock out most everything else. Radio, as you'd expect, is especially significant.

But the panel also found that broadcasters weren't always treated as if they were any more essential to public well-being than an electronic entertainment arcade. Broadcast employees were typically not given status as essential emergency workers, despite broadcasting's role as a lifeline when disaster strikes. Nor were many broadcast stations given any priority for scarce fuel supplies, electricity hookups, emergency repairs or food and beverages for personnel – all necessary to keep essential information on the air. Lacking status as essential service personnel, many news gathering teams were similarly excluded from disaster areas – even when they were trying to gather information for broadcast dissemination in the immediate disaster zone.

The panel also found that government emergency management officials often failed to distribute evacuation notices or other critical information by EAS – even though it was designed to serve that purpose.

Whether a product of the current political culture, in which the fourth estate is increasingly characterized as nothing more than a special interest group, or the result of a lack of planning care or competence on the part of public officials, the effect is the same: the public did not get vital information needed during a major disaster.

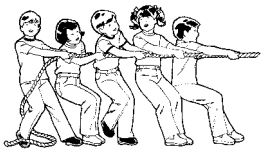
The FCC has invited comments on its Report. This gives broadcasters an opportunity to stress that their public service role is as important as ever. In issuing the report, the FCC also released a notice of proposed rule making to craft measures to prevent future communications system failures, of Katrina's scope, in times of disaster.

Comments are due by August 7, 2006. Replies may be filed until August 22, 2006.

Another crack at profanity?

In Second Circuit, FCC Seeks Second Shot

TV nets, affiliates split over FCC request



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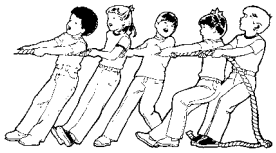

The FCC has asked the U.S. Court of Appeals for the Second Circuit in New York for a chance to take another look at its recent decisions on broadcast profanity.

Over the past few years, the FCC has conjured up the concept of "profanity" as a category separate and distinct from "indecent" in the lexicon of material that you're not supposed to broadcast. Unlike indecency, which focuses on the relative offensiveness of a depiction or description of sexual or excretory acts or body parts, the FCC's conception of profanity is that certain words involving sex or excretion are, in and of themselves, so offensive as to constitute an impermissible nuisance. Precisely defining this concept for practical application, however, has proven difficult.

Reportedly, the FCC flatly refused a stay of enforcement, calling it a "two-month free pass" for broadcasters to broadcast profanity.

The FCC has now requested that the Second Circuit send back to the FCC four cases involving broadcast profanity that are currently on appeal before that court. The FCC's move has drawn opposition from the CBS and NBC networks and the Fox network and its affiliates. The network affiliate associations for ABC, CBS, and NBC, along with the ABC network, on the other hand, are supporting the FCC's request. Depending on whom you ask, shipping the matter back to the FCC (as the FCC has requested) will either (a) speed up the process of clarifying the FCC's still-shifting definition of profanity or (b) further delay and muddle the situation.

As you may recall, in its "omnibus" indecency ruling back in March, the FCC found that four broadcast programs had featured impermissible profanity. The programs included an episode of *NYPD Blue* (in which the word "bullshit" was used), two *Billboard Music Awards* shows (Cher used the word "fuck", and Nicole Richie used "the F-Word" and the "S-Word", as the Commission so delicately reported), and a broadcast of *The Early Show* (a contestant on "Survivor" described another contestant as a "bullshitter").

The FCC found that all these broadcasts violated the FCC's newly-revised profanity standards. ***But*** it also recognized that, at the time of the broadcasts, stations were not on notice that isolated or fleeting profanities would be subject to enforcement action. Accordingly, the FCC chose *not* to fine the stations in question and promised not to hold the violations against them at renewal time. Because the FCC did not issue Notices of Apparent Liability to the stations in question (no fine, no NAL), the stations had not had any opportunity to address the Commission's reworked interpretation of "profanity" before the Commission announced it. Once the decision was announced, the affected stations had the option of asking the FCC to reconsider the matter or, instead, heading to court to let the FCC defend its decision there. The stations took the latter course.

The FCC now wants an opportunity to re-think its "profanity" decision and to give the stations targeted in that decision the opportunity to plead their cases before the FCC before letting the court get its hands on the matter. If the Commission were given this opportunity, in theory it could reconsider its rationale and reverse its rulings. On the other hand, the FCC could use the opportunity to strengthen its arguments and impose the fines and penalties it forgave in the prior cases.

In asking the Court to give it a second whack at the "profanity" analysis, the FCC promised to conclude its

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n't working. Also, licensees are required to maintain logs relating to EAS activity, logs which track, among other things, how the system has been tested and it's been working.

There was little that the Arizona FM station could do when the FCC showed up and observed not only that the EAS equipment was not working, but also that, according to the station's logs (or, more accurately, the lack of entries in those logs), the equipment may not have been working for more than a year. The FCC hit the station with an $8,000 fine for the EAS violation.

*Myth or legend? **You** make the call.*

Stalking The Elusive Two-Page Contract

By: Steve Lovelady
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We hear it all the time: "This is a really simple deal . . . all we need is a two-page contract." Also (and we got this one again just last week): "Don't over-lawyer this deal."

Why do clients and their lawyers constantly disagree about how many pages a contract should be? Clients usually want to follow the "KISS" acronym: Keep It Simple, Stupid. But lawyers have a professional responsibility to zealously represent their clients. In most lawyers' minds, zealous representation means that contracts should protect their clients in all reasonably foreseeable circumstances. Clients want to save money on legal fees. Lawyers want to . . . well, let's just leave that subject alone. Can't we all just get along?

*It is possible for a contract to be too detailed. . . **BUT** there is a healthy balance to be struck somewhere between two and two hundred pages.*

Seriously, it is theoretically possible to write a two-page contract, and not by just using a microscopic font in the word processing program. The basic elements of a contract are: who, what, when, where and how (or how much). For example, in the sale of a radio station, all that is really required are the names of the seller and buyer, the call sign of the station, the date of closing, the location of the assets to be sold, the amount of the purchase price and how it will be paid – and, of course, a provision making it clear that the parties wouldn't even think about closing the transaction unless and until the FCC has granted appropriate applications for consent to the deal.

Why, then, is a standard radio station asset purchase agreement (*i.e.*, the kind that most law firms, including our own, produce in the first go-around) about 30 pages long (not including schedules such as a lists of equipment, contracts, etc.)?

A couple of reasons: (1) to clarify the answers to our basic "who, what, when, where and how" questions, and (2) to handle certain common problems that arise during sale transactions.

For the record: Yes, it *is* possible for a contract to be too detailed. We have been given contracts to review, every now and then, that even we think are overly long and complicated. . . . ***BUT*** there is a healthy balance to be struck somewhere between two and two hundred pages.

Normally, in our view a purchase agreement should go into detail about exactly which assets are being sold (studio equipment, contracts, leases, etc.), and which are not (accounts receivable, programming agreements, business records, CD libraries, etc.). It should also include details about the security deposit, methods for payment of the purchase price (all cash, or part cash and part debt, etc.), the financial performance history of the station, approval of the transaction by the seller's and buyer's boards of directors, whether there are any liens on the station's assets, how much the employees are paid, whether there are any tax liens, pending lawsuits or FCC investigations, and other relevant issues. The seller of the station may have provided this information to the buyer when they were negotiating the price, but unless it is in the contract in writing, it could be hard to prove in court later whether the buyer knew about certain problems with the station or not. The worst case scenario for a buyer is a short "as-is" agreement with a clause at the end stating that the contract is the entire agreement between the parties regarding the sale of the station. If there is a problem later with, for example, unpaid rent for the main tower site, the seller could argue that the buyer agreed to assume the obligation to pay back-rent along with the lease.

In our view, an asset purchase agreement should also cover how station operations will be conducted after the contract is signed (no call sign changes, no new ten-year programming agreements, etc.), who will file the FCC application for assignment of the station's license and when the application must be filed, what conditions must be met before the closing will occur (for example, consent of landlords, if necessary), a "no-shop" clause that prevents the seller from continuing to seek buyers for the station, and many other details. It should also address the not-so-common occurrences such as what happens if the studio equipment is damaged by fire or if part of the tower site is condemned by the local town for a new road.

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Finally, an asset purchase agreement should contain several pages of legal "boilerplate" at the end that should be included in ***any*** contract involving more than a few bucks. These are the normal mundane contract provisions such as: which state's laws will govern a dispute between the buyer and seller; where and how notices are to be delivered between the parties; rules for interpreting the contract if there is a dispute over the meaning of certain wording; whether the contract can be assigned and, if so, to whom; and other equally boring topics. This legal boilerplate, often glanced over without serious consideration by a reader struggling to stay awake through the final pages of the contract, can actually be extremely important if there is ever a dispute between the parties. What's so bad about including these three or four extra pages of provisions in a contract?

Lawyers who draft contracts are not psychics, but we do try to anticipate the future and protect against the consequences of reasonably foreseeable problems

Oh, and let's deal with the issue of legal fees anyway. Clients may think they save money telling their lawyers to craft shorter agreements. But the reality is that most lawyers already have standard comprehensive agreements stored in their computer systems. It is actually quicker in most cases (and time is definitely money when it comes to legal fees) for a lawyer to use a reasonably well-developed, tried-and-true model more or less in its well-developed, tried-and-true form (and length) than to go through the document page by page and make selective edits to try to cut it down into a shorter agreement. Each clause the lawyer removes must be considered, weighed and either kept or deleted depending upon its importance to the transaction.

In short (no pun intended), it is harder and likely more expensive for lawyers (at least those of us who care about our professional responsibility to our clients) to draft a good two-page agreement than to fill in the blanks in a standard agreement that comprehensively covers the transaction. Even a standard agreement must be custom-tailored to each transaction, but that is far quicker to do than trying to put together a really short agreement that does a good job protecting the client.

In conclusion, lawyers who draft contracts are not psychics, but we do try to anticipate the future and provide our clients with protection from the consequences of reasonably foreseeable problems, to the best of our ability. This usually means that the contracts we prepare will be more than two pages long.

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reconsideration within 60 days. The FCC also suggested that a decision on remand could moot some or all of the case, meaning that it could reverse some portion of its prior decisions.

This wasn't good enough for CBS, NBC, and Fox, who argued that the FCC has been sitting on its review of the Golden Globes case for over two years. In that case, which concerned Bono's use of a variation of "fuck" (*i.e.*, "fucking brilliant"), the FCC reversed its long-standing position that isolated or "fleeting" utterances of four-letter words would not be punished. The request for remand, the networks argued, is just another ploy to avoid and delay judicial review of an unconstitutional policy.

By contrast, the network affiliate groups and ABC, as noted above, are taking a different tack. While they still maintain that the FCC incorrectly decided the four cases, they have filed motions supporting the FCC's request for remand of the case. The motives behind this filing are not entirely clear. Some press reports have suggested that their support may be payback for FCC Chairman Martin's broadcaster-friendly stances on ownership restrictions and multicast must-carry. The remand also gives those stations the opportunity to argue their case before the FCC and, perhaps, develop better policy on profanity.

The affiliates should not, however, hold out much hope for restoring the old exception for "fleeting" profanities. The networks claim that they would have supported the remand if the FCC had agreed not to enforce its new profanity standards while they are under review. Reportedly, however, the FCC flatly refused such a stay of enforcement, characterizing it as a "two-month free pass" for broadcasters to broadcast profanity, so long as they could argue that the profanity was not repetitive. This suggests that, whatever other fine tuning the FCC may be considering, a return to the "fleeting utterance" exception is not likely.

Regardless, even if the Court grants the requested remand, a return to the appeals court seems inevitable. A decision to remand the cases back to the FCC, however, may give us yet another definition of profanity while we wait for the courts to sort this out.

Up, up and away!!!

FCC Announces Final 2006 Regulatory Fees

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The Commission has released its Report and Order establishing the annual regulatory fees which will be imposed for Fiscal Year 2006. This year we have something of a double surprise – not only did the fees go up from last year's level, but this year the fees which the Commission just adopted are, in all but a small handful of cases, noticeably higher than the fees which the Commission proposed just a few months ago! Go figure. We provided an analysis of the proposed fees in the March, 2006 *Memo to Clients.* As we noted then, the majority of broadcast licensee regulatory fees were slated to go up for 2005. And sure enough, they have gone up. The new fees are set out on the next page.

The only fee categories that did not increase over last year are for the broadcast auxiliary service, where licenses still cost $10 a pop, and AM Class A stations serving 75,000 or fewer folks, where licenses stayed put at $625 (for pops up to 25,000) and $1,225 (for pops between 25,001-75,000). Other Class A AM stations felt the sting of inflation, with increases in the 0.9%-1.3% range. But that was nothing compared to the fees for VHF TV licenses in Markets above 50 (which zoomed up more than 8.5% over last year), and fees for UHF TV licenses in Markets 11-50 (which increased by about 9%). The overall winner, though, was the AM CP category, fees for which rocketed up a breathtaking 27%.

At press time, the Commission has still not officially announced the deadline for payment of reg fees this year. As in previous years, the Commission will be sending out postcards to each licensee specifying the reg fee(s) due. (Fees are also searchable on the FCC's website.) You should be on the lookout for the postcard from the Commission; if you don't receive one, feel free to contact us so that we can track down your reg fee obligation. But remember - reg fees will be due whether or not you receive the postcard, and it is the licensee's responsibility to assure that timely payment is made.

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

Remember - reg fees will be due whether or not you receive the postcard from the Commission, and it is the licensee's responsibility to assure that timely payment is made.

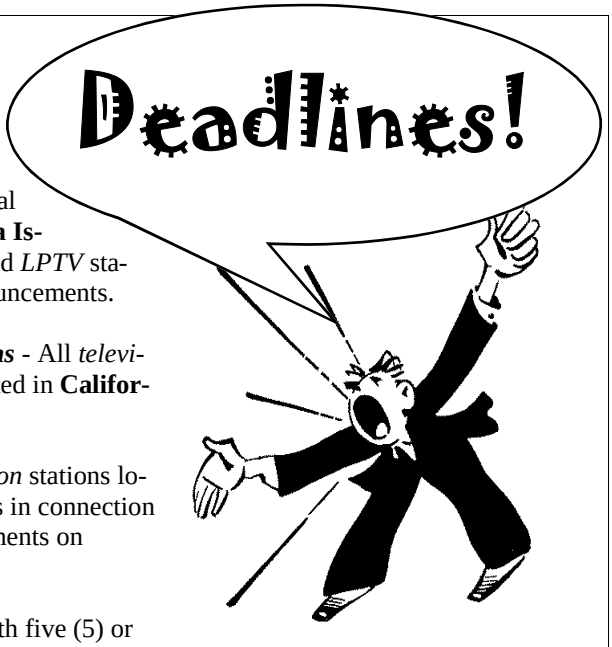
Payment of reg fees has always been important, but it has become even more so since the implementation of the "red light" system in late 2004. Under that system, a licensee which fails to pay the required reg fee is "red lighted". When that occurs, the licensee will not be granted any new authorization unless and until the "red light" is cleared either by payment of the outstanding fee or the making of appropriate arrangements with the Commission for such payment. If a delinquent licensee files an application of any kind, that application will be dismissed if the delinquency is not cleared up within 30 days. Even more troubling, applications which are granted when a fee is due but not paid may be ungranted — that is, the grants may be rescinded. And when an application has been dismissed or a grant rescinded under these circumstances, we understand that the FCC's policy is ***not*** to allow those applications to be reinstated with the filing of a petition for reconsideration once the fees have been paid. Rather, the applicant has to submit a whole new application.

In view of the clearly undesirable - and potentially dire - consequences which could befall an applicant late in paying its reg fees, we urge everyone subject to regulatory fees to be sure to pay up in a timely manner.

FEE CATEGORY	FY 2006 Annual Regulatory Fee (USD)
TV VHF Commercial	
Markets 1-10	64,775
Markets 11-25	47,775
Markets 26-50	32,875
Markets 51-100	20,450
Remaining Markets	5,025
Construction Permits	3,400
TV UHF Commercial	
Markets 1-10	20,750
Markets 11-25	19,100
Markets 26-50	10,975
Markets 51-100	6,500
Remaining Markets	1,775
Construction Permits	1,775
Low Power TV, TV/FM Translators/ Boosters	420
Other	
Broadcast Auxiliary	10
Earth Stations	215
Satellite Television Stations	
All Markets	1,150
Construction Permits	570

FY 2005 Schedule of Regulatory Fees for Commercial Radio Stations						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	625	500	400	475	575	750
25,001 -75,000	1,225	950	600	725	1,150	1,325
75,001 -150,000	1,850	1,200	800	1,200	1,575	2,450
150,001- 500,000	2,775	2,025	1,200	1,425	2,450	3,200
500,001 -1,200,000	4,000	3,100	2,000	2,375	3,875	4,700
1,200,001- 3,000,000	6,150	4,750	3,000	3,800	6,325	7,500
>3,000,000	7,375	5,700	3,800	4,750	8,050	9,750
AM Radio Construction Permits	395					
FM Radio Construction Permits	575					

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.

October 1, 2006

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

Television Renewal Post-Filing Announcements - All *television* stations located in **Alaska**, **American Samoa**, **Guam**, **Hawaii**, **Mariana Islands**, **Oregon**, and **Washington** must begin their post-filing announcements in connection with the license renewal process, and continue such announcements on October 16, November 1 and 16, and December 1 and 16.

EEO Public File Reports - All *radio* and *television* stations with five (5) or more full-time employees located in **Alaska**, **American Samoa**, **Florida**, **Guam**, **Hawaii**, **Iowa**, **Mariana Islands**, **Missouri**, **Oregon**, **Puerto Rico**, the **Virgin Islands**, and **Washington** 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.

(Continued on page 11)

FM ALLOTMENTS ADOPTED –6/20/06-7/19/06

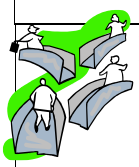
State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
IL	Altamont	95 miles SE of Springfield, IL	288A	05-86	TBA
KS	Americus	58 miles SW of Topeka, KS	240A	05-139	TBA

Notice Concerning Listings of FM Allotments

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

(Continued from page 10)

Radio and Television Ownership Reports - All *radio* stations located in **Iowa** and **Missouri** must file a biennial Ownership Report (FCC Form 323 for commercial stations or Form 323-E for noncommercial stations). All *television* stations located in **Alaska**, **American Samoa**, **Florida**, **Guam**, **Hawaii**, **Mariana Islands**, **Oregon**, **Puerto Rico**, the **Virgin Islands**, and **Washington** must also file a biennial Ownership Report. All reports filed on FCC Form 323 or 323-E must be filed electronically.



FHH - On the Job, On the Go

On July 13, **Frank Montero** moderated a panel entitled *How to Find and Secure Senior and Mezzanine Financing* at the annual MMTC Access to Capital and Telecom Policy Conference in Washington, D.C. And later that week Frank spoke on an NAB Educational Fund-sponsored panel entitled *Ownership and Convergence: Are We Getting Pushed Out?* at the annual NAMME Conference which was also held in Washington.

On August 10, **Lee Petro** will participate on a panel at the BMO Capital Markets *eMerging Music Summit* in New York City.

On August 11, **Howard Weiss** will join **Kris Monteith**, Chief of the FCC's Enforcement Bureau, in a legal workshop on *Hot Topics in Washington: The Regulators Turn Up The Heat*, at the annual convention of the Nebraska Broadcasters Association in Lincoln.

Frank Jazzo will participate in an FCC update session at the annual convention of the Arkansas Broadcasters Association in Little Rock on August 14, along with **Roy Stewart**, Senior Deputy Chief of the FCC's Media Bureau, and **Ann Bobeck** of the NAB. Frank J has also been named Co-Chair of the Professional Responsibility Committee of the Federal Communications Bar Association.

And finally, who's the *Media Darling of the Month*? The envelope, please (drum roll) – this month it's **Frank M**, who managed a trifecta by (a) being interviewed on NPR (*Latino USA*) in a piece about the sale of Univision ***AND*** (b) being interviewed in a *Billboard Radio Monitor* article about allegations of indecent programming on Spanish-language stations ***AND*** (c) then having his quote in the latter article read on-the-air (with attribution to Frank and FHH) by none other than Howard Stern.

(Continued from page 1)

tower construction or modifications must file with the FAA will increase. Worse, adoption of the proposals would likely make it harder for those proposing tower construction or modification to obtain FAA approval. At a minimum the new rules would likely interject very significant delays into the construction timetable of otherwise routine towers. Companies who construct towers regularly (or who rent space on their towers) will be adversely affected if these rules are adopted and may wish to consider submitting comments on the proposals to the FAA.

Among other changes, the FAA proposes:

- to require notice of ***all*** proposed new construction of any man-made structure (tower, building, etc.) which will support a radiating element used for radio frequency transmission on the following frequencies: (i) 54-108 MHz, (ii) 150-216 MHz, (iii) 406-420 MHz, (iv) 932-935/941 MHz, (v) 952-960 MHz, (vi) 1390-1400 MHz, (vii) 2500-2700 MHz, (viii) 3700-4200 MHz, (ix) 5000-5650 MHz, (x) 5925-6525 MHz, (xi) 7450-8550 MHz, (xii) 14.2-14.4 GHz, and (xiii) 21.2-23.6 GHz.

- to require prior notice of any change to a communications facility operating on any of the above frequencies, if the communications system was specified in a previous FAA determination, including (i) a change in frequency, (ii) addition of a frequency, (iii) an increase in effective radiated power (ERP) equal to or greater than 3 decibels (dB), and (iv) modification of a radiating element which increases the height of the antenna mounting location 100 feet or more, changes the antenna specifications (including gain, beam-width, polarization, or pattern), or changes the antenna azimuth/bearing (point-to-point microwave).

- to require prior notice of any change in the type of antenna used by a communications facility operating on any of the above frequencies, if the antenna type was specified in a previous FAA determination.

- to require an in-depth study of all notifications of a radiating element which will transmit on any of the above frequencies.

- to require prior notice of any proposed new tower construction or modification on or near a private use airport or heliport which has at least one FAA-approved instrument approach procedure (IAP). Notice of proposed new tower construction or modification on or near a private use airport or heliport is not currently required.

- to modify some of the five "airport runway imaginary surfaces" (horizontal surfaces, conical surfaces, primary surfaces, approach surfaces, and transitional surfaces) the FAA uses to initially determine whether a proposed tower construction or modification may potentially be a hazard to aircraft navigation. This proposal will make the surfaces applicable to an increased number of proposed new tower constructions or modifications. Since an in-depth study is required for all proposed new tower constructions or modifications to which "airport runway imaginary surfaces" are applicable, this will result in the FAA conducting an in-depth study of more tower proposals.

The FAA is proposing to make all determinations of no hazard effective 40 days after issued by the FAA, absent any timely petition for review. Currently, the effective date is generally the same date the determination is issued.

- to consider the effect on planned or proposed airports for which the FAA has received actual notice anytime prior to issuance of an FAA determination regarding the notification, regardless of whether the "comment period" has closed. In evaluating a notification, the FAA currently considers the effect of the proposed tower construction or modification on planned or proposed airports for which the FAA has received actual notice prior to the closure of the "comment period" for the notification.

- to require notices of proposed tower construction or modification to be filed 60 days before construction begins. Currently, notices must be filed 30 days before construction begins.

- to make all determinations of no hazard to aircraft navigation effective 40 days after issued by the FAA, if no petition for review is received by the FAA within 30 days of issuance. Currently, the effective date is contained in the determination and is generally the same date the determination is issued.

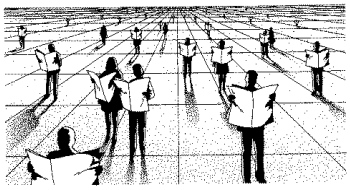
- to modify its rules regarding extension of a determination of no hazard to aircraft navigation.

The FAA has solicited comments from the public regarding its proposed changes. Comments are due September 11, 2006.

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

Updates on the News

How's that again? The FCC has issued a "reminder" to all video programming distributors – a universe which includes, obviously, television broadcasters – concerning their obligation to make emergency information available to persons with hearing and vision disabilities. This requirement has been around for a while, but in recent years it has been invoked with a seeming draconian vigor. Substantial fines for the failure to make 100% of all emergency announcements accessible to the hearing-impaired were described in the March, 2005, and June, 2005, issues of the *Memo to Clients*. Note that when the FCC says 100%, they mean 100%. As our earlier coverage indicates, even when a station has, over the course of marathon reporting on major news events, diligently captioned just about everything, an ad lib oral comment which is arguably emergency-related but which doesn't happen to get captioned can trigger a healthy five-figure fine. The FCC's July, 2006 "reminder" is intended to let everybody know that things haven't changed. The "reminder" also provides helpful tips for anyone who might want to file a complaint. So as we get farther into the hurricane/wildfire/[fill in any emergency condition that might apply to your area] season, consider yourself reminded.



Satellite jammers jammed? As we have previously reported, there has been a surge of complaints – particularly by folks at the noncommercial end of the FM band – about interference apparently caused by mini-transmitters used in satellite radio (*i.e.*, Sirius and XM) receivers to send the satellite signal to, say, a conventional car radio. Last month we reported that XM had asked suppliers of some of its models to suspend shipment because their units weren't in compliance with FCC emission limits. Now come published reports that Sirius has put the kibosh on a couple of its units, apparently for the same reason.

Steering clear of program regulation In three separate and unrelated cases, the Commission declined opportunities, presented by petitioners against particular applications, to wade into the deep and murky water of program content regulation. In one case, the petitioner (against a TV renewal) claimed that the station had broadcast a couple of editorials which had been "motivated by the station's undisclosed financial interests". The station denied that its editorials were intended to promote its own private interests, and it emphasized that the editorials were in any event "not incompatible with the public interest". The Commission concluded that the station had in fact properly exercised its good faith discretion in airing the editorials. With respect to the "private interest" argument, the Commission held that not all actions which further a private interest necessarily violate the public interest – and, unless it can be shown that the private risk poses "a substantial risk of serious harm to listeners", the FCC will generally keep its regulatory mitts off. The petitioner here didn't come close to making such a showing. Petition denied.

In an FM renewal case, a petitioner asked the FCC to yank the ticket of a station which (according to the petitioner) refused to replace its regular classical music programming with informational programming during the September 11 terrorist attacks. The FCC had no trouble rejecting the petition based on the "broad discretion" given all licensees to determine what program best responds to community needs and interests.

And finally, in the "Uke! Can't always get what you want?" category, an informal objector complained that an application for an LPFM license should be denied because the permittee had breached certain "oral agreements" relating to its programming. According to the complainant, the LPFM's community of license is approximately 80% Spanish-speaking, but the permittee plans to program the station – and we're not making this us – "only with Hawaiian music", even though the permittee had supposedly advanced different programming proposals in its permit application and to community representatives. Again, however, the FCC refrained from intruding into programming judgments. Objection denied.

Dead men file no petitions And last but not least, there's the story of a Florida AM station whose renewal was granted earlier this year. An objector had argued that that application shouldn't be granted because of an alleged "usurp[ation]" of control of some other station by the renewal applicant, but the Commission rejected that objection because, well, it didn't have anything to do with the station whose license renewal was the subject of the application. Never saying die – literally – the objector sought reconsideration with a petition supposedly signed by the objector himself on April 3, 2006. We say "literally" there because, in its opposition to the petition, the renewal applicant demonstrated that Mr. Objector had in fact died in June, 2004, almost two years before his "signature" appeared on the reconsideration petition. Since the uncontradicted evidence (the Objector, surprisingly enough, didn't respond to the charge that he was, in fact, dead) established that the Objector's death predated the filing of the petition, the Commission dismissed the petition.