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

# Memorandum to Clients

August, 2007 | *News and Analysis of Recent Events in the Field of Communications* | No. 07-08

*Congress pulls FCC's strings, FCC pulls broadcasters' strings*

## DTV Conversion: "On-air Education Efforts" in the Offing

### More Media Measures May Be Mandated

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TV broadcasters may need to adjust their budgets just a tad more for the upcoming DTV transition. It's possible that they'll be having to cough up air time for spots to inform the 10-to-15 percent of TV households without cable or satellite service that their 30-year-old Zeniths may show nothing but snow once D-Day arrives.

In defense of the FCC, the Commission did not come up with this idea – or, more accurately, this inchoate bundle of concepts that might someday congeal into a coherent idea – on its own. Rather, the idea arrived in the mail, in a letter from a couple of influential (read: Committee Chairmen) members of the House of Representatives. They suggested that, with the DTV transition fast approaching, it might be a good idea for the Commission to "require television broadcasters to air periodic public service announcements and a rolling scroll about the digital transition."

*The Commission plans to impose on TV licensees the obligation to conduct "on-air consumer education efforts". But what, exactly, does the FCC have in mind?*

Demonstrating the propensity of semi-liquid substances to flow downhill, the Commission has passed that suggestion along to the broadcast industry in the form of a Notice of Proposed Rulemaking (NPRM). Obviously intent upon placating its Congressional overseers, the Commission makes clear that it does indeed plan to impose on TV licensees the obligation to conduct "on-air consumer education efforts". But what, exactly, does the FCC have in mind?

It's hard to say. Instead of outlining any specific proposals, the NPRM merely whips Congress's one-sentence vague suggestion into an impressive series of thirteen vague questions (*see* the NPRM excerpt quoted verbatim in the sidebar) and directs the downhill flow to broadcasters. And then, recognizing that many viewers will likely *still* need "additional assistance in preparing themselves" for the DTV transition (notwithstanding the salutary effects anticipated from the sure-to-be-mandated "on-air consumer education efforts"), the NPRM asks for more suggestions on steps the Commission and industry might take to assure that consumers "have access to the information and assistance they need."

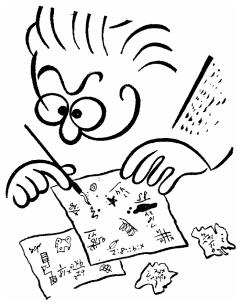
But wait, there's more. The Congressional letter also suggested that it might be a good idea for the FCC to impose a reporting requirement on broadcasters relative to their consumer education efforts – you know, maybe a report to be filed every 90 days, listing the "time, frequency and content" of all transition-related PSA's broadcast. Oh yeah, and Congress also suggested "civil penalties for noncompliance".

*(Continued on page 8)*

## The Scoop Inside

*Bringing AM radio into the 21st Century?*

# FCC Opens AM Improvement Proposal For Comment



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There may be some daylight at the end of the tunnel for nighttime-only AM stations. Over and above a separate proposal to allow AM stations (including daytimers) to rebroadcast on FM translators (*see* article on page 13 of this issue), the FCC has invited comments on a petition for rulemaking – filed by long-time consulting engineer Ted Schober – which proposes a number of improvements to the post-sunset service rules on the AM side. (We noted the initial filing of the petition in the March *Memo to Clients*, and then again in last month's issue. It took the FCC until mid-July to invite comments.)

As Schober's petition notes, the current rules lag behind the technical advances made in AM broadcasting since they were last updated in 1992. Operating with the greatest allowable power during post-sunset service is of utmost importance to AM broadcasters because the lucrative drive-time hours occur in non-daytime hours for much of the year. Schober suggests that the changes he proposes would allow AM broadcasters to increase their coverage without causing any additional risk of interference.

Schober's proposals include the following:

- Eliminate the 500 watt nighttime power limit on PSSA (currently contained in §73.99) ***as long as*** operation with power above 500 watts would not cause any interference. According to the petition, computer models are now better able to predict interference at these levels than in 1992 when the rules were issued.

- Make all Class B and D AM stations eligible for extended hours service, again ***as long as*** such operation would not cause any interference.

- Require more accurate contour mapping of Class A stations than was available in 1992. More accurate mapping of these station's contours would allow other stations to operate without interference to the Class A station's *actual* coverage area.

- Give stations flexibility in choosing which antenna or combination of antennas to use for expanded hours service. The proposed rule would allow for the use of the daytime, nighttime, critical hours and/or auxiliary antenna.

- Require that all interference calculations, including expanded nighttime service, use the formula set out in §73.182 of the Commissions rules currently used for allocating AM service.

- Allow daytime AM broadcasters to file for extended hours operation as a minor change application, with a corresponding filing fee to cover the administrative burden of handling those applications.

The likelihood that any of these proposals will be adopted is unclear. But the good news is that the FCC does appear seriously interested in examining the plight of AM daytimers. Such examination is clearly in order. Daytime AM service was developed decades ago, when transmission and receiving equipment was incredibly crude by today's standards. If modern technology permits the expansion of operating hours without any significant risk of causing interference, it should be a no-brainer for the FCC to take such steps. Whether it will do so – and if so, when – remain to be seen.

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# Focus on FCC Fines

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***Checking box on FCC form costs $10,000*** -- When it comes to filling out renewal applications and standard FCC forms, there may be a temptation to let your eyes glaze over when staring at lengthy questions followed by either a "Yes" or "No" box. *Don't succumb to that temptation!!!* Pay attention, make sure that you understand the question and, perhaps most importantly, make sure that you are 100% that your answer (whether it's "Yes", "No" or "N/A") is absolutely correct. Failure to do so – even if your failure is innocent – can cost you $10,000 or more. Cumulus and a New York religious broadcaster were hit with the fines this month for checking the wrong box.

Cumulus was stung with a $20,000 fine for two stations. In its 2003 renewal applications for two stations in Florida and Georgia, it checked the box claiming that the stations' public files contained all required materials. Objections were filed in 2003-2004 claiming that the public files were not complete; Cumulus denied the charge. In 2006, an FCC inspector from the Enforcement Bureau determined that the public files were not complete and fined Cumulus $4,000 a piece for each station. Cumulus objected, claiming that its files were complete and, at most, it had innocently misinterpreted the public file rule. Nevertheless, the Enforcement Bureau hung tough with the $4,000 fines, and Cumulus paid them.

However, the fines did not end there. The Media Bureau turned around and whacked Cumulus with two $10,000 fines for checking the "Yes" box on each renewal application. The Media Bureau reasoned that, since the public files had apparently not been complete (at least that's what it concluded from the Enforcement Bureau action), then Cumulus's "Yes" answers constituted "false certification". The FCC chose to renew the Cumulus applications (likely disappointing the person who filed the initial objection to renewal) because it could find no evidence of an intent to deceive – but the fact that the answers were wrong was enough to justify a $20,000 spanking. (More detailed discussion of the Cumulus case may be found on our blog at www.CommLawBlog.com – *see* "$20,000 Fine for False Certification".)

A New York City religious broadcaster faced a similar circumstance. A September, 2005, FCC inspection of the station turned up problems with the station's public file. The station contested the inspection, arguing that its public file was complete. During the drawn-out debate between the FCC and the station, the station submitted its renewal application in January, 2006, and checked the "Yes" box claiming that its public file had been in order. Eventually, in July, 2006, the FCC insisted that its inspection was correct and fined the station $4,000. This month the FCC got around to renewing the station's license but, because the station had marked "Yes" relative to the completeness of its public file when the licensee knew that at least somebody at the FCC disagreed with that answer, the Commission fined the station an additional $10,000.

These cases appear to reflect a shift in Commission policy. Historically, the FCC was most concerned about misrepresentation, *i.e.*, efforts by applicants to intentionally deceive the Commission. Occasional, non-deceitful mistakes might warrant a "tut, tut", but seldom was significant punishment meted out. These recent actions, however, suggest that mistakes may be penalized even if they were made innocently. This underscores the need for extreme care in the preparation of anything (including seemingly simple "yes/no" forms filed electronically) that is to be submitted to the Commission.

***FCC goes after former licensees*** – Selling or shutting down a station does not stop the FCC's efforts at collecting fines from licensees. Former licensees in Virginia and California discovered this after they ceased operation but ended up with bills from the FCC.

In May, 2006, an AM licensee in rural Virginia agreed to sell his station for $25,000. The very next month, the FCC inspected the station and found problems with the EAS equipment and public file. The licensee filed an application to sell the station and the application made its way through the FCC, eventually getting granted on October 12, 2006. Eight days later, after the licensee already had consummated the $25,000 sale and no longer was a licensee, the FCC presented the now former licensee with an $18,000 bill for the EAS and public file violations. The FCC was not receptive to the former licensee's claim that the fine would pose a financial hardship; the FCC knew that the station had just been sold for $25,000. Net gain to the seller – $7,000; gain to the FCC - $18,000. (Note that it is not clear that the FCC had the statutory authority to go after the former licensee in the manner that it did – the fine/forfeiture provisions of the Communications Act are somewhat arcane on this point. However, it does not appear that Mr. Former Licensee raised this potential objection.)

*(Continued on page 4)*

*A Memo to Clients Clip & Save Extra!!!*

# What To Do When the (Tower) Lights Go Out

Over the past two years, the FAA has been consolidating and decommissioning its remaining 58 flight service centers, reducing the total number of such centers to fewer than two dozen. And, as part of that effort, the FAA is centralizing its system for reporting lighting outages on broadcast towers. As a result, in recent months broadcasters may have encountered difficulty in locating their local center to report lighting outages.

FCC rules require antenna owners to *immediately* notify the FAA of extinguished or improperly functioning tower lights. In turn, the FAA passes the information along to pilots to warn them of the hazard.

While many stations may have a page from an old phone book pinned up in the engineer's office or a number taped by the back door, the old phone numbers likely don't work anymore as a result of the FAA's push toward centralization. If the need arises for you to notify the FAA of an outage and you encounter difficulty reaching your local service center, you should call the FAA's nationwide phone number with the following information (feel free to cut this out, make multiple copies, and post them in handy places for reference as necessary):

**If you observe a lighting outage on your tower, report it immediately to the FAA. The FAA's nationwide number is:**

**877-487-6867**

**When you call, you will need to provide the following information:**

- **Name of the airport nearest to the tower:** _____
- **FCC Antenna Structure Number of the affected tower:** _____
- **The height of the structure (AMSL and AGL):** _____
- **The condition of the light(s) and an explanation of how they ended up that way. You must also report the probable date of restoration. Your report must be updated every 15 days and must be cancelled when the problem is resolved.**

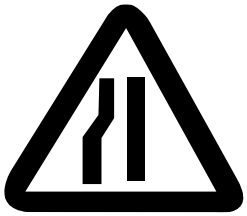
**(Helpful hint: We recommend that you insert the correct information for the first three items *now* so that you will have that information at your fingertips should an outage occur.)**

*(Continued from page 3)*

A community organization that held a low power TV license in California forgot to renew its license but nonetheless continued to operate its station for several months after expiration. The FCC sent the organization a letter advising it of the lapsed license. In response, the station wrote back to tell the FCC that while it did operate for a while after the license had expired, its transmitter failed. After that failure, the organization chose to shut down rather than replace the broken equipment. The FCC was not swayed by the organization's community purpose or the fact that it decided to cease operations. Instead, the FCC fined the station $3,000 for not renewing the license (that it was no longer using) and $5,000 for broadcasting after its license had expired.

On the flip side of the FCC's strict enforcement, a Georgia licensee avoided fines when it pointed out that it had just bought the stations. The FCC swept into the station's studios in May and demanded issues/programs lists. The station staff produced only a few months worth of issues/programs lists. The FCC proposed fining the three stations $4,000 apiece for not having all necessary lists in their respective public files. In response, the licensee pointed out that when the FCC inspected the files, the owners had been in control of the station for less than four months. The FCC accepted that explanation and erased the $12,000 fine.

*E pluribus unum, v. 2.1*



# Ownershipalooza 2007

## Ownership Studies, SDB Proposals On the Table for Comment

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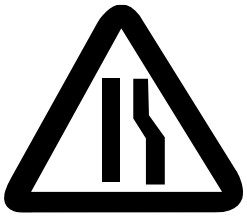

In recent months, the FCC has been inching forward on its review of various media ownership rules. Public hearings in Harrisburg, Pennsylvania, and Tampa, Florida, generated some sound bits, if little actual progress. More recently, the FCC released ten research studies on media ownership and a new "Further Notice of Proposed Rulemaking" seeking comment on media ownership generally and minority media ownership in particular. And in a separate but related action, the Commission issued a Second Further Notice of Proposed Rulemaking (SFNPRM) seeking comment on proposals relating to efforts to expand ownership opportunities for minorities, women and small businesses.

The release of the studies stems from the revised media ownership rules issued by the FCC in June, 2003. As you doubtless recall, those rules were challenged on several fronts, ultimately leading to the June, 2004 decision of the U.S. Court of Appeals for the Third Circuit in Philadelphia, which reversed substantial portions of the FCC's new rules and shipped them back to the FCC for further consideration. The newly-released reports and proceedings are part of that further consideration.

One of the Court's problems with the FCC's revised ownership rules was that the FCC did not have a broad enough evidentiary base on which to rest its various assumptions and conclusions. To help remedy that problem, the Commission commissioned several research studies on different aspects of media ownership. On the last day of July, the FCC announced the release of ten such research studies on media ownership and invited the public to review and comment on the studies. The FCC also announced that the studies would be subject to "peer review." The research studies and the public comments on the studies will become part of the record on which the FCC will make its next attempt at rulemaking.

The research studies, which are available on the web at http://www.fcc.gov/ownership/studies.html, were conducted by FCC staff members and outside researchers. The topics of the studies vary but include (among other things): surveys of how consumers obtain news and information; studies of the current state of media ownership; an analysis of the effect of media ownership on the quantity and quality of different types of TV programming; a study of the impact of media ownership on news operations; an examination of the relationship between ownership and radio programming; and studies on minority and female ownership of media enterprises. The FCC set the deadline for comments at 60 days from the date of release and the deadline for reply comments fifteen days after that.

Any research study on media ownership is bound to generate criticism of one kind or another. In general, industry supporters tend to find fault with reports that claim to show any harmful effects of consolidation of media ownership. Conversely, "public interest" groups roundly condemn any study that fails to show the harmful effects of media consolidation. These studies are no exception – various groups decried the studies within days of their release.

*Any research study on media ownership is bound to generate criticism and these studies are no exception – various groups decried the studies within days of their release.*

Public interest advocates from Consumer Federation of America, Free Press and others asserted that the reports were inherently biased towards the administration's preferred outcomes. According to those groups, the FCC chose to execute only studies that seemed likely to produce such outcomes. More unusually, Democratic FCC Commissioners Michael J. Copps and Jonathan S. Adelstein did not directly object to the studies but dissented to the amount of time allowed for public comment. In a joint statement, they noted that the ten studies were compiled over an eight-month period and contained many data points (in one case millions), yet the public was given just 60 days to review, analyze, and prepare comments on such complicated material.

In a separate ownership-related action, the FCC issued the SFNPRM which described in some detail several proposals by a coalition of groups seeking to expand media ownership opportunities for minorities, women, and small businesses. Although some of these proposals were included in prior notices, the coalition had objected to those earlier notices, asserting that they failed to provide enough of the details of the proposals to allow substantial public comment.

Among the issues and policies raised in the SFNPRM is how to define the universe of "Social and Economically Disadvantaged Businesses" (or "SDBs") that should be

*(Continued on page 15)*

*Leveling off and heading down, mostly*

# FCC Announces Final 2007 Regulatory Fees

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Mark your calendars for ***September 19***. That's the deadline for filing annual regulatory fees this year. It's an important date, because if you don't get your reg fees paid by 11:59 p.m. on September 19, the FCC will tack on a late-filing fee of 25%. That's a hefty price to pay for being late.

This year's fees are set out in the table on the next page. They are the same as the fees which were originally proposed by the Commission back in April. As we reported in the April *Memo to Clients*, this year's fees reflect a refreshing trend downward: of 61 categories of fees, only nine showed any increase at all over last year, and more than half – 32 – actually went down.

As has been its practice in recent years, the Commission is notifying each licensee of the reg fees due for its primary facilities. Unlike past years, this year that notice is contained in a letter, rather than a postcard. You should be on the lookout for your letter notice – but even if, for whatever reason, you don't get the notice from the FCC, you will still be expected to pay the fee by the deadline.

The FCC is also providing a useful search engine at its website to help determine reg fees. Go to http://www.fccfees.com/request_all.htm and enter either a call sign or an FCC Facility ID Number, and you will get the fee due for that station. Note, however, that the fee shown relates ***only*** to that particular station's main authorization. It does ***not*** include any additional fees which might be owed for auxiliary licenses (*e.g.*, STL's, remote pickups) or translators used in connection with the main station. In other words, before paying the Commission, you would be smart to doublecheck your records to identify ***all*** authorizations for which a reg fee is due.

Fees may be mailed to the Commission, but they may also be filed on-line. On-line filing has the advantage of providing assurance that the fee has in fact been received by the Commission when you file it (the system provides an on-screen confirmation that can, and should, be printed out and saved).

*The payment deadline is an important date, because if you don't get your reg fees paid by 11:59 p.m. on September 19, the FCC will tack on a late-filing fee of 25%.*

As has been the case for the last several years, the Commission's "red light" system also remains in place. 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 may 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 a licensee late in paying its reg fees, we urge everyone subject to such fees to be sure to pay up in a timely manner.

## FHH - On the Job, On the Go

It's September, which can mean only one thing – the NAB Radio Show. This year FHH will be ably represented at the Charlotte confab by **Jim Riley**, **Howard Weiss**, **Scott Johnson**, **Susan Marshall**, **Lee Petro**, **Joe Di Scipio**, **Jeff Gee**, **Steve Lovelady**, and, of course, the **Franks** (**Frank Jazzo** and **Frank Montero**). **Frank J** will be a panelist during the legal session titled "We've Got It Covered: Radio's Hottest Legal Issues Discussed" on Thursday, September 27, from 3-4:15 in Room 213D of the Charlotte Convention Center. **Frank M** will also attend the ISBA reception and board meeting on Wednesday. FHH Central will be the Westin Hotel. Plan to stop by and say hi if you're going to the Show.

And this month's *Media Darling of the Month* is (drum roll, please) **Bob Gurss**, who was quoted by the *Wall Street Journal* in an August 7 article about the FCC's continuing efforts to improve emergency communications.

| FEE CATEGORY | FY 2007 Annual Regulatory Fee (USD) |
|---|---|
| **TV VHF Commercial Stations** | |
| Markets 1-10 | 64,300 |
| Markets 11-25 | 46,350 |
| Markets 26-50 | 31,075 |
| Markets 51-100 | 20,000 |
| Remaining Markets | 5,125 |
| Construction Permits | 5,125 |
| **TV UHF Commercial Stations** | |
| Markets 1-10 | 19,650 |
| Markets 11-25 | 19,450 |
| Markets 26-50 | 10,800 |
| Markets 51-100 | 6,300 |
| Remaining Markets | 1,750 |
| Construction Permits | 1,750 |
| Low Power TV, TV/FM Translators/ Boosters | 345 |
| **Other** | |
| Broadcast Auxiliary | 10 |
| Earth Stations | 185 |
| **Satellite Television Stations** | |
| All Markets | 1,100 |
| Construction Permits | 550 |


| FY 2007 Schedule of Regulatory Fees for Commercial Radio Stations (USD) | | | | | | |
|---|---|---|---|---|---|---|
| **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 | 475 | 400 | 475 | 575 | 725 |
| 25,001 -75,000 | 1,225 | 925 | 600 | 725 | 1,150 | 1,250 |
| 75,001 -150,000 | 1,825 | 1,150 | 800 | 1,200 | 1,600 | 2,300 |
| 150,001- 500,000 | 2,750 | 1,950 | 1,200 | 1,425 | 2,475 | 3,000 |
| 500,001 -1,200,000 | 3,950 | 2,975 | 2,000 | 2,375 | 3,900 | 4,400 |
| 1,200,001- 3,000,000 | 6,075 | 4,575 | 3,000 | 3,800 | 6,350 | 7,025 |
| >3,000,000 | 7,275 | 5,475 | 3,800 | 4,750 | 8,075 | 9,125 |
| AM Radio Construction Permits | 400 | | | | | |
| FM Radio Construction Permits | 575 | | | | | |

*(Continued from page 1)*

Needless to say, the Commission has included that suggestion in the stream of "proposals" set out in the NPRM. Again, the NPRM offers little of substance, relying instead on a series of vague questions. (*See* the aforementioned sidebar.) The FCC also proposes similar informational obligations for multichannel video programming providers and consumer equipment manufacturers.

Of course, the TV industry has a horse in this race. The last thing anyone in the TV biz wants is to lose the eyeballs of consumers caught unawares by the coming DTV transition. There's money to be made – and potentially lost – from any transition failures.

But the crux of the rulemaking is to codify what the industry *must* do, by government fiat – and, consequently, what resources stations must cough up for public education, resources over and above of the millions of dollars already invested in new equipment and spent on maintaining duplicative digital transmissions long before DTV receivers were widespread. A number of smaller market operators, in particular, have struggled to meet these expensive technical demands given the smaller ratio between ad revenues and DTV equipment investments.

While it's true that digital multicasting may improve over-the-air TV's competitive position, many smaller operators have had to mortgage the farm in order to seed a not-yet-sure DTV harvest – a harvest which is particularly unsure as new digital technology increasingly makes video entertainment and information available from sources other than licensed stations.

On the other hand, it is in the broadcast industry's interests to make D-Day as painless as possible. In a world of 500 channels and virtually limitless Internet content choices, customer retention is not just a good idea, it is mandated by the unyielding laws of survival. So the industry should be taking steps. But whether FCC-mandated requirements will help out is another story entirely.

The FCC is seeking public comment on its "proposals" – *i.e.*, the questions set out in the sidebars elsewhere on this page. If you would like to chip in your two cents' worth, the docket is open for comments until September 17, 2007. Replies to those comments are due by October 1, 2007.

## The FCC's "Proposal", in the FCC's own words . . .

If you think that the Commission has any concrete idea of precisely what new PR and reporting obligations TV licensees should shoulder as Conversion Day approaches, think again. The following lists of questions comprise the totality of the "substance" of the NPRM.

***As to the PSA proposal***:

"We propose to require television broadcast licensees to conduct on-air consumer education efforts. Such on-air efforts, we believe, are the most effective and efficient way to reach over-the-air television viewers about the coming digital switch-over. What should these announcements include, and when and how often should they run? Should we impose similar requirements on all television broadcast licensees or should there be distinctions made among licensees? Should the Commission produce an announcement or group of announcements to be used by all broadcasters, or simply provide a list of points that must be conveyed in any compliant announcement? What text or images should the rolling scroll include? Would it be constant or intermittent? On what date would it begin to run, and during which hours would it be required? Would the on-air education requirements increase as the transition date approaches? How would we track the effectiveness of the outreach efforts? Should broadcasters be required to formally assess and report on consumer awareness and preparedness, particularly in certain communities? If so, which communities warrant special attention? Should there be some mechanism for making adjustments in our requirements to reflect these ongoing assessments? Should we adopt certification requirements to ensure that broadcasters are complying? Would forfeitures for noncompliance be appropriate in this area? If so, how would they be calculated?"

***As to the reporting proposal***:

"What level of detail should reports to the Commission on consumer education efforts contain? What additional burdens would preparing, submitting, and retaining such reports place on licensees and permittees? Could these burdens be met by small broadcasters and NCE stations? Is there an alternative to requiring the filing of such reports with the Commission? For example, could broadcasters publicly summarize and describe their consumer outreach efforts via web pages, press releases, in their public file, or otherwise? How would this approach be monitored and enforced by the Commission? What benefits would these reports create for the government and public? How should any forfeitures for noncompliance be calculated?"

*Tick … tick … tick … tick*

# Final DTV Allotment Table Released, FCC Knocks White Space Black Boxes

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One gets the feeling that folks are starting to pay attention to the DTV Transition at the FCC and on the Hill. With scarcely more than 500 days before the statutorily-imposed End of Analog Television Broadcasting As We Know It (except, of course, for the thousands of Class A LPTV, LPTV, and TV Translators), a new and steady drumbeat of activity reflects the urgency of the situation.

First, as reported on page 1 of this issue, the FCC has solicited comment on a number of proposals intended to increase consumer understanding of the benefits and nitty-gritty details of the DTV Transition.

At the same time, the Commission advanced the technical component of the DTV transition in a couple of ways. Most significantly, the Commission adopted the final DTV Table of Allotments. The final DTV Table lists the specific technical parameters (channel, location, power and tower height) for each authorized full-power television station. In adopting the Order, the Commission approved changes to technical parameters for specific stations in order to resolve certain discrepancies which had cropped up relative to aspects of their DTV facilities over the course of the long march toward transition. Finally, the Commission sought further comment on a small numbe of DTV allotment specs that were either authorized too late to be included in the proposed final DTV Table or that involved modifications which, in the FCC's view, required further comment.

*Give-and-take between the proponents and the FCC is exactly the process that should be expected in the development and deployment of a new technology.*

Meanwhile, in the White Space proceeding, the Commission's Office of Engineering and Technology released its "Initial Evaluation" of two prototype White Space devices. As you may recall, on the eve of Chairman Martin's reconfirmation hearing last year, the Commission released a time-line relating to the consideration of the proposals to permit unlicensed devices to operate in unused portions of the TV Band. Once left for dead, the proposal experienced a Lazarus-like resurrection aided no doubt by the lobbying efforts of Microsoft and Intel. The FCC sought the submission of prototype devices so that their technical viability could be quantifiably measured by the expert agency.

The results of the testing were, um, surprising in light of the repeated assurances – offered up to both Congress and the FCC by the devices' proponents – that their devices would work. The Commission concluded that the devices "do not consistently sense or detect TV broadcast or wireless microphone signals . . . [and are] . . . capable of causing interference to TV broadcasting and wireless microphones." The Commission noted that several of the features touted by the White Space proponents, such as dynamic power control, were not included in the prototypes, so the Commission determined that further testing was not appropriate at this time. Clearly, this is not what the White Space proponents had expected.

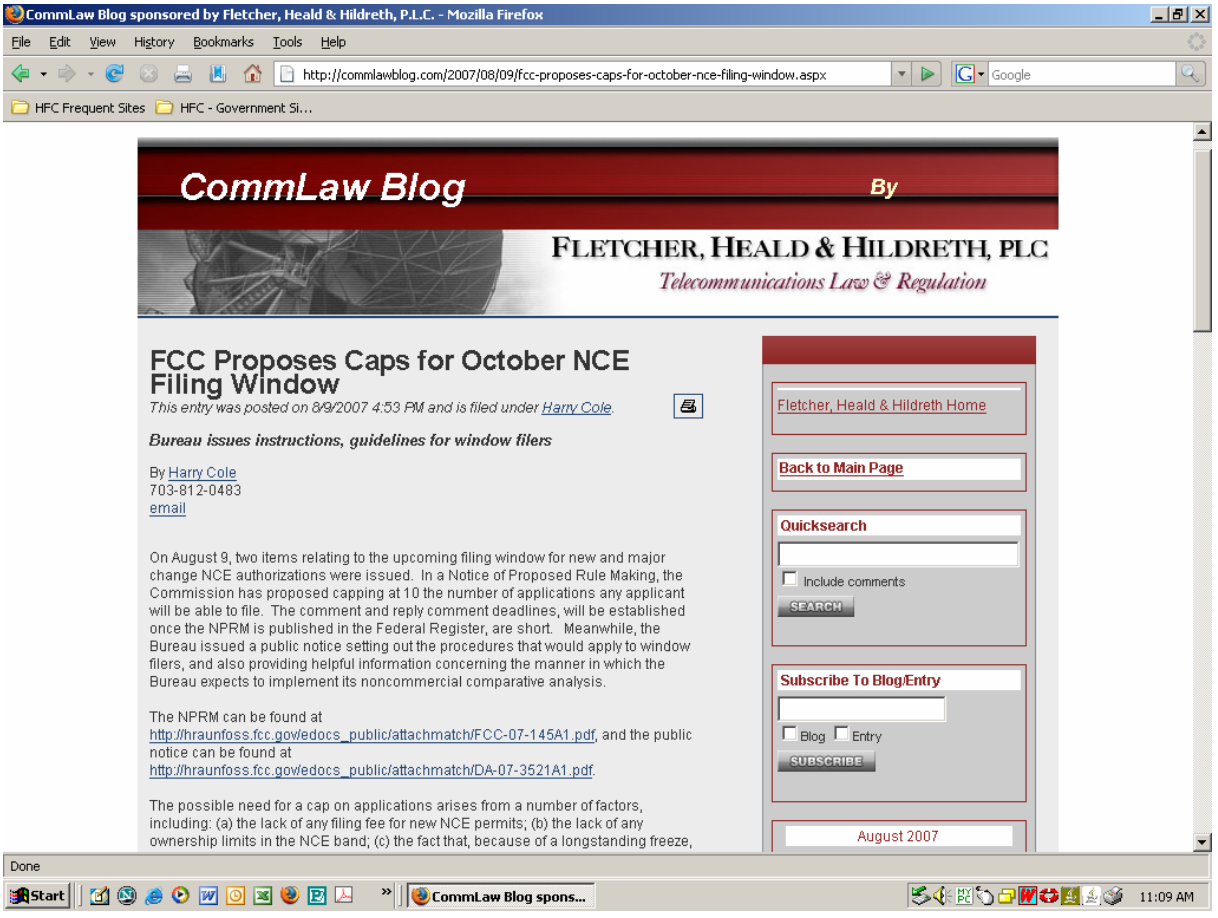
The proponents have reportedly conceded that the first prototype device which they had offered for testing was in fact defective – oops – but they then pointed to a second version of the device which they were confident really would do the trick, even thought they acknowledged that some tweaking might still be required. (The proponents also pointed out that the FCC didn't bother to notify them when the concededly-defective item produced unacceptable results – as if the bad results should be discounted because they didn't have a chance to try to fix their gear in mid-test.)

But the concept of mobile white space operation does not allow for the possibility of required tweaking, much less defective components. For white space technology to work as promised – *i.e.*, to work without interference to licensed operations (including broadcasters) – the mobile white space gear has to work perfectly all the time. When white space equipment is on the move, it will be virtually impossible to track down interference sources if and when interference occurs. That is why broadcasters have supported fixed, but ***not*** mobile, white space operations.

Still, this give-and-take between the proponents and the FCC is exactly the process that should be expected in the development and deployment of a new technology, and this case reflects what many observers have been saying over the years: the FCC is the expert body that should be evaluating the White Space issue, and ***not*** Congress, which lacks both the staff *and* the technical know-how to properly evaluate claims by lobbyists (who may or may not understand what they are selling). Now that the Commission has committed itself to give the White Space proposal a "hard look", it may be hoped that Congress will sit back and let the FCC develop technically sound, effective and realistic rules.


## Editor's Note

Reproduced on this page are portions of two articles which were posted this month on the FHH

*BAS buy-out bulletin*

### Sprint to LPTV/Translator Licensees:

# Let's Make a Deal . . . Real Soon


*By: R.J. Quianzon*
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As many broadcasters are aware, Sprint has been negotiating with stations all over the nation to replace certain broadcast auxiliary equipment and reconfigure frequency use at 2 GHz. While negotiations with full-power broadcasters have been underway for quite some time, discussions with other affected groups – including LPTV and translator licensees and operators of unlicensed remote pick-up equipment (operated without license under the 720-hour rule) – had not even begun as of July 31. But ***as of August 1 that has changed: Sprint has agreed to negotiate with the latter group but has set a very limited time frame for negotiations***. Anyone with any interest in this matter should read the following:

*As of August 1, Sprint has agreed to negotiate with LPTV and translator licensees and operators of unlicensed auxiliary equipment – but Sprint has set a very limited time frame for negotiations.*

***Full-Power and Class A Stations*** – Full-power television stations, including Class As, that have licenses for 2 GHz broadcast auxiliary equipment likely already have begun negotiations with Sprint or have attended a Market Kickoff meeting to discuss the migration process within their DMA. Stations with 2 GHz licenses that have not yet begun the process should contact counsel or Sprint to get the ball rolling.

Broadcast auxiliary service (BAS) equipment can include studio-to-transmitter links, relay stations and remote pickup units (usually vans, trucks or choppers). Sprint reimburses television stations to stop using BAS channels 1 and 2 (which are located at 1990-2025 MHz). Television stations must move off of these channels so that the spectrum can be used for mobile phone and other new operations. The FCC has endorsed a plan that requires television stations to cooperate in the move but also requires Sprint to reimburse the television stations for their cooperation.

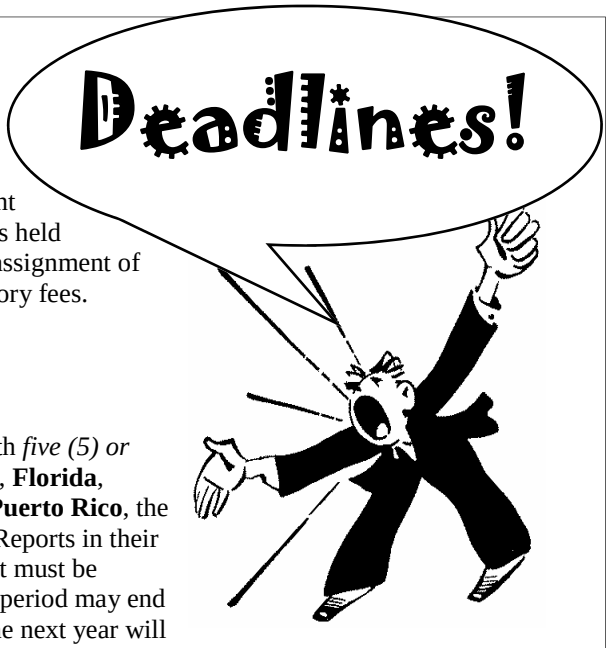
Most stations have licensed their BAS equipment with the FCC to ensure primary operations. However, FCC rules allow full-power broadcasters to operate BAS equipment on a short-term basis of up to 720 hours per year without obtaining a BAS license. Based upon a recent FCC ruling, Sprint has announced that it will reimburse stations with unlicensed BAS equipment that was purchased before November 22, 2004.

Before ***October 30, 2007,*** television stations must provide Sprint with an inventory and proof of pre-November 2004 purchase for unlicensed equipment. Proposed costs, replacement timelines and other deal terms must be submitted to Sprint prior to March 12, 2008. If a station does not meet these deadlines, it will still be required to discontinue use of the unlicensed equipment, ***but*** the cost of replacement equipment will ***not*** be reimbursed.

***LPTV/Translator Stations*** – LPTV/translator stations using auxiliary equipment in the 2 GHz band have been provided a very limited window during which to acquire new equipment and have Sprint pay for it. This opportunity arises as part of very detailed and lengthy negotiations between Sprint and the FCC which originally were designed to relocate certain Sprint mobile phone frequencies.

After several years of negotiations, the LPTV/translator portion of this deal has finally been struck. The FCC is reassigning the 1990-2025 MHz frequencies that broadcasters use for auxiliary operations. In order to assist LPTV and translator broadcasters who are using these frequencies, the FCC has given Sprint the option of reimbursing LPTV and translator stations to move their equipment off of these frequencies. In return, Sprint will be able to use part of the newly-cleared frequencies without any interference.

LPTV and translator stations who use broadcast auxiliary equipment should immediately verify the frequencies on which the equipment operates. Broadcast auxiliary equipment can include studio-to-transmitter links, relay stations and either licensed or unlicensed remote pickup units (usually vans, trucks or choppers). If you have equipment using 1990-2025 MHz, you should contact your counsel or Sprint as soon as possible. Sprint needs to be advised of your intention to participate in the relocation program. A full inventory of your equipment must be submitted to Sprint by Friday, ***September 14, 2007.*** You must submit your proposed costs, timeline and other deal terms to Sprint by January 12, 2008. Failure to meet the deadlines will not eliminate your obligation to move from the frequencies, but it will foreclose any opportunity for you to get Sprint to pay for the move.




**September 19, 2007**

***Regulatory Fees*** - All regulatory fees for Fiscal Year 2007 must be paid to the FCC in Pittsburgh by 11:59 p.m. Fees not paid by this deadline will be subject to a 25 percent late payment penalty. Fees are generally applicable to all FCC authorizations held as of October 1, 2006, and all such authorizations acquired by assignment of license or transfer of control prior to the due date of the regulatory fees.

**October 1, 2007**

***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.

***EEO Mid-Term Review*** - All *radio* stations *with eleven (11) or more full-time employees* located in **Florida**, **Puerto Rico**, or the **Virgin Islands** must file Broadcast Mid-Term Reports on FCC Form 397 and attach the two most recent (2006 and 2007) EEO Public File Reports.

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

***Television Ownership Reports*** - All *television* stations located in **Iowa** and **Missouri** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323 or 323-E.

**October 10, 2007**

***Children's Television Programming Reports - Analog and Digital*** - For all *commercial television* and *Class A television* stations, the second quarter reports on revised FCC Form 398 must be filed electronically with the Commission, and a copy must be placed in each station's local public inspection file. Once again, information will be required for both the analog and DTV operations.

***Commercial Compliance Certifications*** - For all *commercial television* and *Class A 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.

***Website Compliance Information*** - *Television* station licensees must place and retain in their public inspection files records sufficient to substantiate a certification of compliance with the restrictions on display of website addresses during programming directed to children ages 12 and under.

***Issues/Programs Lists*** - For all *radio*, *television*, and *Class A television* stations, a listing of each station's most significant treatment of community issues must be placed in the station's local public inspection file. The list should include a brief narrative describing the issues covered and the programs which provided the coverage, with information concerning the time, date, duration, and title of each program.

*Found in translation?*

# FM Translators for AM Stations Proposed

## "Fill-in" translators would have limited nighttime origination role

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Reversing decades of resistance, the Commission has proposed that FM translators be permitted to rebroadcast the signals of AM stations. In a notice of proposed rulemaking (NPRM) released in August, the FCC took the first official step toward affording daytime-only AM licensees the opportunity to provide their audiences (or at least parts of their audiences) with nighttime service, albeit on the FM side. Under the proposal, AM licensees would be permitted to rebroadcast their signal on FM "fill-in" translators whose 60 dBu contour would be limited to the lesser of (a) the originating station's 2 mV/m daytime contour *or* (b) a 25-mile radius centered at the AM transmitter.

The Commission's proposal, and the regulatory history leading up to it, reflect intellectual acrobatics that verge on contortionism.

Historically, the FM translator service was strictly limited to rebroadcasting, or "translating", the over-the-air signal of an FM station (although the limitation was loosened somewhat for noncommercial operators to permit them to feed their translators with distant signals). On the commercial side, the dual purpose of the translator service has been either (a) to permit an existing FM station to fill in holes in its normally protected contour or (b) to permit the extension of the primary FM station's signal beyond its protected contour for the benefit of the audience in that extended area as long as the translator licensee in that latter circumstance is completely independent (financially and otherwise) of the licensee of the primary station.

The Commission rejected (in 1981 and 1990) at least two proposals to allow FM translators to rebroadcast AM signals. But faced with new proposals advanced by, among others, the NAB in July, 2006, the Commission has now tentatively concluded that it would be in the public interest to permit AM licensees to use FM translators to provide "fill-in" service, *including* service at night when AM daytimers would not ordinarily be operating. In the FCC's view, the AM service suffers a number of technical limits which hinder its ability to compete with FM. Those limits are especially acute for daytime-only AM stations, which are by definition able to operate for only about half the time of their FM counterparts. FM translators provide a possible crutch.

*While the FCC seems favorably disposed, at least tentatively, to allowing FM translators to rebroadcast AM signals, a considerable number of difficult questions remain.*

While the NPRM makes clear that the FCC is favorably disposed, at least tentatively, to allowing FM translators to rebroadcast AM signals, there are a considerable number of difficult questions that will need to be resolved in connection with that change. They include:

- **?** How should the change be phased in? Should the opportunity to use FM translators be made available to all AM licensees at once, or should it be phased in based on, *e.g.*, the class or operating facilities of the AM station?

- **?** What effect should multiple ownership have? Should an AM licensee's access to an FM translator be affected by the fact that the AM licensee also owns one or more FMs in the market? Should there be a limit on the number of FM translators an AM licensee could own (and would that limit vary based on the class of the AM station)?

- **?** Should AM licensees be permitted to broker time on an independently-owned FM translator which provides only "fill-in" service?

- **?** Should *de minimis* extensions of FM service outside the 2 mV/m daytime contour of the AM be permitted?

- **?** Should the 25-mile radius limitation be expanded to 35 miles in Zone II?

- **?** Should the 2 mV/m contour be based on measured conductivity, or should it be determined by Figure M-3?

And those are just the questions the FCC was willing to consider. In a footnote, it acknowledged a number of other thorny issues that it declared to be "beyond the scope of this proceeding". Those issues include eligibility for auctions of FM translators and the priorities, bidding credits, etc., that would apply in such auctions.

Perhaps the biggest conceptual conundrum here arises in connection with daytime-only AM licensees, the folks the Commission seems most inclined to help out. After all, a daytime-only station does not operate at night – so how

*(Continued on page 18)*

*The next big thing or just a one-hit wonder?*

# Performance (Royalty) Anxiety

## Record companies push for new copyright burden on broadcasters

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As radio broadcasters continue to wage an uphill battle against the sharply increasing royalty rates for performing copyrighted music over the Internet, they now face the prospect of having to fight on a second, possibly more devastating, front in the copyright wars. Some segments of the music industry have begun to push for copyright royalties for over-the-air terrestrial broadcasts. This development takes the already high-profile discussion regarding the royalties to an entirely new level.

By way of background, it is important to understand that every song we hear on the radio consists of two separate copyrights. First, there is the copyright in the underlying musical work – the music and lyrics that are put on paper. These are owned by the songwriter – the tunesmith who came up with the song in the first place. (Note that, in most cases, the songwriter has assigned his/her interest to a music publisher, and in any event the songwriter's interest vis-à-vis broadcasters is almost invariably represented by one of the music licensing organizations, *i.e.*, SESAC, ASCAP and BMI.)

*Historically, broadcasters have never had to pay performance royalties – because it has been assumed that broadcasters and recording artists enjoy a mutually-beneficial symbiotic relationship.*

But in addition there is also a copyright in the actual performance of that song. This is the "sound recording" or "performance" copyright. It belongs to the musical artist though, again, it is often transferred to a corporate entity such as the artist's recording label.

The best way to explain this might be through a real world example. The Beatles song "Yesterday" reportedly has the most cover versions of any song in history (over 2,500 registered covers). The copyright in the original musical work (before that right was later sold) was owned by the songwriters, John Lennon and Paul McCartney. They, along with the rest of the Beatles, also owned a copyright in the sound recording of their version of "Yesterday" (released both as a single and as an album track).

When Ray Charles recorded a version of "Yesterday" in 1967, he had to pay royalties to Lennon and McCartney for use of their musical work, because they wrote the song. But he obtained his own sound recording (or "performance") copyright in his cover version.

Historically, broadcasters have always had to pay composer royalties for any copyrighted musical work they air, ***but*** they have never had to pay performance royalties. That's because it has been assumed by everyone involved that broadcasters and recording artists enjoy a symbiotic relationship: broadcasters use recorded music for content, and recording artists derive substantial promotional benefits from the broadcast of their works. Since both sides of the deal get something out of it – the broadcasters get free content, the artists get free promotion – broadcasters have thus far not been required to fork over royalties for performance rights.

So, going back to our example, any radio station which plays the Ray Charles version of "Yesterday" would have to pay royalties to Lennon/McCartney (for the underlying musical work), but *not* to Ray Charles (for the sound recording performed by the station). But if, for example, an advertising agency were to use Charles's version of "Yesterday" in an ad campaign, the agency would have to pay both Lennon/McCartney ***and*** Charles for their respective, distinct, copyright interests.

Payment of royalties for the underlying musical work has always been relatively simple. Most, if not all, radio stations obtain licenses from ASCAP, BMI and SESAC which allow them to perform the underlying musical work over the air and on the Internet so as to avoid negotiating for that right with every single songwriter or publishing company.

Payment for the sound recordings, on the other hand, is something entirely different.

In 1995, the music industry scored a victory with the passage of the Digital Performance Right in Sound Recordings Act, which contained a performance royalty requirement for the broadcast of sound recordings over the satellite and cable radio (but not over-the-air terrestrial broadcast stations). Performers made further headway in 1998 when the Digital Millennium Copyright Act created a similar royalty payment for performing sound recordings over the Internet – these are the payments made to SoundExchange, Inc. (which was, not coincidentally, formed as an unincorporated arm of the Recording Industry Association of America and later spun off as a separate entity).

*(Continued on page 15)*

*(Continued from page 14)*

No doubt emboldened by their successes so far, a number of recording artists (presumably backed by the major record companies) are now aiming for bigger game: they want to impose a performance royalty requirement for over-the-air broadcasts. The recording industry has formed the Music First Coalition (MF Coalition), whose mantra is "it is time to give performers the right they deserve." According to the MF Coalition, the radio industry has been built on the back of musical artists who are not compensated for their works, and the lack of a performance right for these artists is a glaring omission in the Copyright Act when the same artists are paid when their works are performed on satellite or cable radio. The MF Coalition also claims that those musicians are the sole type of artist not fully compensated for their talents under the Copyright Act, and that the U.S. is the only country in the world that does not require payment for the performance of sound recordings on over-the-air radio.

*Record company witnesses claimed that musicians do not benefit from free airplay as much as broadcasters believe and that artists often must continue to tour to make a living.*

Several coalitions are also forming to counter those arguments. They include many of the same groups, individuals and companies that are opposing the sharp increase in the royalty rates for Internet radio. One key player on this side of the equation is, of course, the National Association of Broadcasters, which has for years opposed imposition of the "performance tax" (as those opposed have termed these royalty payments). In addition, several small-to-midsized radio companies have formed the "Free Radio Alliance". Collectively, these groups argue that payment of royalties for over-the-air performance of sound recordings is not necessary because recording artists already benefit from free airplay. They also note that the comparison to other countries where there is already payment for over-the-air performance of sound recordings is not apt because many of the radio stations in those countries are subsidized or run by the government, which eases the financial impact of such a royalty payment.

While there have been legislative proposals for an over-the-air performance right in recent years (the "PERFORM Act"), the creation of these coalitions is the musical equivalent of reinforcing the troops at the battle lines.

And the first "Battle of the Bands", so to speak, was held in the Subcommittee on Courts, the Internet, and Intellectual Property of the House Judiciary Committee on July 31. Though the hearing did not focus on any specific legislative proposal, it was clear that sympathies on the Subcommittee lie with the recording industry. Four of the five witnesses at the hearing – including musical artists Judy Collins and Sam Moore (of "Sam and Dave" fame) – advocated creation of a performance right.

Alone in opposition on the dais was a radio executive who testified on behalf of the NAB. His main argument – that creation of a performance right would simply result in more money in the pockets of major record labels – was largely drowned out by the repeated cries of fellow witnesses that musicians do not benefit from free airplay as much as broadcasters and the public believe and that artists often must continue to tour long after they otherwise would have retired in order to make a living.

Given the committed opposition of the NAB and radio broadcasters around the country, creation of a performance right is not a done deal. This reportedly is a major legislative priority for the NAB. And several Representatives at the hearing did appear to be moved by the impact that institution of a performance royalty obligation would have on smaller to mid-sized broadcasters. Congress likely also took notice that several similarly-situated radio broadcasters stopped Internet webcasting operations when the new rates went into effect on July 15; they may not want that blood on their hands just to compensate musical artists who generally do pretty well already, and they almost certainly will not want to line the pockets of the corporate labels that represent those artists.

In other words, while there is some buzz about an over-the-air performance right, it's not yet on the Billboard Top 100. I'd give it about a 4.5 – it's got a little bit of a beat, but nobody really wants to dance to it just yet.

*(Continued from page 5)*

targeted by any new rules. The SFNPRM also described over two dozen proposals and suggestions for expanding media ownership by minorities, women, and small businesses. These proposals range from waivers of ownership rules for sales to SDBs to opening new spectrum for new entrants. The FCC also requested comment on its legal authority with respect to its ability to address diversity matters.

Given the number of issues raised, the FCC set a relatively short comment period (60 days for comments, 75 for reply comments), drawing another dissent from Commissioners Copps and Adelstein on the short amount of time given to respond to highly complex issues.

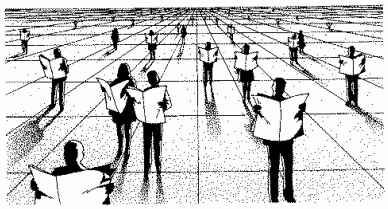
Comments on the ten media ownership studies currently are due on or before October 1, 2007, and reply comments are due by October 16, 2007. Likewise, comments on any of the proposals or suggestions made in the SFNPRM are rule are due on or before October 1, 2007, and reply comments are due by October 16, 2007. Please call your communications counsel if you are interested in learning more or filing comments.

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

# Updates on the News

***Digital radio rules published*** – In June we reported that the Commission had, at long last, released the text of the digital radio decision which had been adopted three months earlier. Now, two months later, that decision has been published in the Federal Register, which means that the new rules will become effective on September 14, 2007. Also, comments on the various additional amendments to the digital radio rules are now due on October 15 (with reply comments due on November 13).

***NCE application cap proposed*** – If you read our blog at www.CommLawBlog.com (or if you looked at the excerpt of the blog reproduced on page 10 of this issue of the *Memo to Clients*), you would know that the FCC has proposed to limit to 10 the number of applications which may be filed by any applicant (including related entities) in the upcoming October NCE FM filing window. Comments on that proposed cap are due by September 6, and reply comments by September 17. The smart money says that, even though the FCC has invited comments on the proposed 10-application cap (the suggestion being that the ultimate cap might turn out to be some different number), the very strong odds are that the final cap will be 10 – no more, no less. So go on ahead and chip in your two cents' worth if you want, but don't hold your breath waiting for some different limit to be imposed.



***AM antenna modeling reply comment deadline extended*** – Back in May the FCC asked for comments on a highly technical proposal advanced by a cohort of broadcasters, manufacturers and consultant engineers. Under the proposal the FCC would accept moment method computer modeling to demonstrate, and confirm, the performance characteristics of directional AM antennas. This could lead to substantial savings in time and effort, since the traditional hand-crank method for such proofs is undeniably labor-intensive. A couple of dozen or so comments were filed, and the proponents (and anybody else, for that matter) have now been granted extra time – to September 7 – to respond.

***More flip-flop on the tolling front*** – We have previously advised of the FCC's willingness to enter into "tolling agreements" which can free up pending applications for prompt action *as long as* the applicant agrees to waive the statute of limitations which otherwise would limit the Commission's ability to fine the applicant for possible violations that may have occurred somewhere along the way. Originally the Commission's standard tolling agreement, as presented to would-be tollers, called for a three-year extension of potential exposure to a fine or forfeiture. But then it turned out that the FCC's staff was willing to reduce that to a two-year exposure. And then (as reported in these pages last June), we got word that the Commish's tolling agreement template had been changed to provide for an open-ended extension of potential exposure. Now comes the news that, while the template the FCC is currently ending out may be open-ended, the staff has apparently expressed some willingness to limit that to three years. So we may be back where we started, at least for a while.

***Seriously, though*** – While we would like to take credit for making some of this stuff up, we really can't. We're talking about informal objections that were filed against a couple of renewal applications. One objector targeted a Fox TV affiliate. He claimed that the station broadcasts Fox News Network material and, as a result, "subscribes to the advertising slogan 'fair and balanced.'" But, according to the objector, the Fox News Network is ***not*** really "fair and balanced", so use of the slogan is "deceptive, false and misleading." In response, the station denied using FNN programming (except in very limited instances) and asserted that it does not in any event use the term "Fair and Balanced" to promote its news. The Commission tossed the objection.

And in another case, a noncommercial FM station's renewal was challenged by an objector who claimed that the station's NPR affiliation warranted denial of its renewal. According to the objector, NPR is a "propaganda organ" and a "Zionist organ" which "is staffed by Zionists, Jews, homosexuals, purveyors of popular culture . . . promoting their personal ends." Curiously, the objector also complained about the station's broadcast of Christmas music. Again, the Commission tossed the objection.

While these objections may seem bizarre, what is *really* bizarre is the fact that it took the Commission almost three years to resolve these cases. So the Fox TV station's renewal had been pending since July, 2004, and the NCE FM's since February, 2005. It is difficult to figure exactly what could possibly take the Commission three years to conclude that these objections were without merit.

***Between the cracks?*** – And finally, we have the surprising tale of the unbuilt LPTV station in Hawaii that filed for a call sign. Now, back in the day, you would type up your call sign request in a nice letter and send it in to the FCC, where some live person would read it and process it. While

*(Continued on page 17)*

**FM ALLOTMENTS ADOPTED –7/24/07-8/21/07**

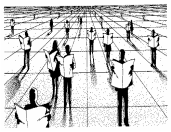
| State | Community | Approximate Location | Channel | Docket or Ref. No. | Availability for Filing |
|---|---|---|---|---|---|
| **OK** | Waukomis | 76 miles N of Oklahoma City, OK | 292A | 06-46 | TBA |
| **CO** | Dinosaur | 207 miles E of Salt Lake City, UT | 262C0 | 07-79 | TBA |

**FM ALLOTMENTS PROPOSED –7/24/07-8/21/07**

| State | Community | Approximate Location | Channel | Docket No. | Deadlines for Comments | Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal) |
|---|---|---|---|---|---|---|
| **MT** | Charlo | 169 miles NW of Helena, MT | 251C3 | 07-143 | Cmnts: 9/17/07 Reply: 10/2/07 | Drop-in |
| **AZ** | Peach Springs | 155 miles SE of Las Vegas, NV | 268C3 | 07-164 | Cmnts: 10/1/07 Reply: 10/16/07 | Accommodation Substitution |
| **CO** | Blanca | 144 m SW of Colorado Springs, CO | 249C2 | 07-165 | Cmnts: 10/1/07 Reply: 10/16/07 | Drop-in |
| **TX** | Markham | 97 miles SW of Houston, TX | 235A | 07-163 | Cmnts: 10/1/07 Reply: 10/16/07 | Drop-in |
| **CO** | Walden | 143 miles NE of Denver, CO | 226C3 | 07-174 | Cmnts: 10/8/07 Reply: 10/23/07 | Drop-in |
| **NE** | Humboldt | 88 miles SE of Lincoln, NE | 272C3 | 07-176 | Cmnts: 10/8/07 Reply: 10/23/07 | Drop-in |

**Notice Concerning Listings of FM Allotments**

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



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the Commission never published a list of call signs that it would not grant, anecdotal experience indicated that at least some call signs (KSEX, for one) were *verboten*, presumably because of a perceived need to protect the delicate sensibilities of the broadcast audience. With the arrival of on-line applications, though, the personal touch has been lost, and the call sign request process is now a purely mechanical, impersonal experience. Gone, too, apparently, is any FCC effort to keep our call signs clean. We say this because the Hawaii permittee reportedly requested, and was granted, a call sign which, we venture to say, would not have made it through the old-fashioned hands-on process. Perhaps the permittee was an alum of the ***U***niversity of ***N***orth ***T***exas and wanted to honor that fine institution. Perhaps the permittee wanted to recognize Alex Haley's progenitor from *Roots* by using as many letters of his first name as would fit into a call sign. Who knows? In any event, when the issuance of the call sign became public knowledge, press attention led the permittee to change its calls to something more, um, conventional. Had the call sign been left undisturbed, we wonder whether the station would have been subject to an indecency fine for every top of the hour station ID it broadcast.

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First Class

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could a translator ***re***broadcast a signal at night when there would be no such signal to begin with? Obviously, in such instances if the translator is operating at night, it would be originating programming – and program origination by translators has long been forbidden. In the FCC's view, the possible provision of nighttime service to a daytimer's core audience may warrant the elimination of that prohibition.

But that effectively would create a new class of station, somewhere between a translator and a low power FM station. It would have origination rights (at least at night), but it would not be subject to the regulatory constraints imposed on LPFM stations.

From the NPRM, it appears that the Commission has already decided that it will let AMers use FM translators, even though a considerable number of practical questions must still be resolved. Even if that decision has been made, though, there may be some rough water ahead. We know, for example, that the LPFM lobby has been extremely effective in slowing down the translator authorization process. In the view of many LPFM advocates, translators tend to preclude opportunities for new LPFM stations, and therefore translators are undesirable. But if AM folks are allowed to use FM translators, we can all expect a land rush for new translators. So we may expect resistance from the LPFM lobby.

The deadlines for comments and reply comments on the NPRM had not been established as of press time. Until new rules are established, the Commission has made clear that AM licensees may still seek STA's to use FM translators in the meantime. You can find information about such STA's at the FHH blog site, www.CommLawBlog.com (look for the article entitled "Found in Translation", posted August 9, 2007).