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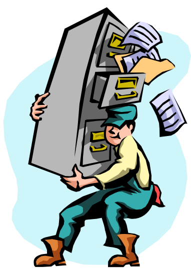
Memorandum to Clients

April, 2008 — *News and Analysis of Recent Events in the Field of Communications* — No. 08-04



Once more, with filing

395's – On The Comeback Trail?

FCC seeks comments on annual employment report form

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For those of you who can't wait for "enhanced" programming reporting requirements to kick in, here's something else to look forward to: the possible return of annual *employment* reports! That's right, the Commission appears to be moving the reinstatement of FCC Form 395-B back up to the front burner.

Form 395 is a classic that broadcasters were required to file annually for at least three decades. But in January, 2001, the Commission discontinued the use of the form as a result of an adverse decision by the U.S. Court of Appeals for the D.C. Circuit. While the Court did not specifically outlaw the annual reporting requirement, its decision was critical of a number of aspects of the Commission's EEO rules and policies.

Since then, the possible re-imposition of the reporting requirement has been alluded to periodically by the FCC, although the Commission has not made any explicit moves in that direction. But now we are seeing some movement.

The Commission's request for comments about EEO reporting forms certainly indicates that that is moving up on the FCC's to-do list.

In April the Commission issued a notice seeking comment on possible revisions to Form 395-B (and corresponding Form 395-A, to be used by multichannel video program distributors). Those forms were originally designed to conform to the racial and employment categories used in "Form EEO-1 Employer Information Report", which is issued by the Equal Employment Opportunity Commission (EEOC). The EEOC form, though, has been revised (it was most recently revised, apparently, in January, 2006 – more than two years ago) and, as a result, the Commission is now asking the public to take a look at the current version of the EEOC form and let the Commission know whether the EEOC's revised standards should be incorporated into the FCC's Form 395. The Commission also asks whether the proposed changes would be consistent with the Communications Act.

The EEO reporting requirement, as those of you who were around prior to 2001 will no doubt recall, called for the provision (on Form 395-B, for broadcasters) of the racial and gender composition of each broadcast employment unit according to job category. The EEOC revisions do not appear to work any major changes to the employment categories used by the FCC in the past. The only obvious change appears to be the EEOC's refinement of the "Officials and Managers" category, which it has now broken down into two gradations of officials and managers: "Executive/Senior Level" and "First/Mid Level". According to the EEOC's instructions, "Executive/Senior Level" folks "resid[e] in the highest levels of organizations" where they "plan, direct and formulate policies, set strategy and provide the overall direction." By contrast, "First/Mid Level" managers take directions from "Executive/Senior Level" managers. Examples of "First/Mid Level" positions are vice presidents, treasurers, operations managers, and the like.

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The Scoop Inside

This door swings both ways – NOT!

Radio Market Changes Deemed Effective Immediately In Some Situations

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Radio market definition is ***not*** a two-way street. So while changes in a market's make-up that might *help* an applicant have to be in place for at least two years before the applicant can take advantage of them, changes that *hurt* the applicant's chances kick in *immediamente.* Who knew?

Students of the multiple ownership rules will recall that, in its effort to simplify things on the radio side, the Commission opted to rely on Arbitron market definitions and related BIA data to determine local radio multiple ownership compliance. That saved the Commission considerable hassles in developing and maintaining its own set of market definitions.

One problem with relying on Arbitron/BIA, though, is the fact that Arbitron has its own internal procedures by which licensees can petition for market changes. By manipulating markets in various ways (*e.g.*, including additional stations in them, or removing stations from them), an interested licensee might be able to open up new opportunities for itself under the Commission's multiple ownership rules.

For example, let's say a market consists of 14 stations, according to Arbitron/BIA. That would cap the number of in-market stations that any one licensee could hold at five. And let's also say that an in-market licensee has its eye on owning a total of six stations, which would be prohibited under the rules. Well, if the market were to be expanded by one station, under the rules the max would be raised to six, and the licensee would be golden. So the licensee petitions Arbitron to include in the market one or another nearby station which had previously not made the cut, Arbitron agrees, and away we go.

Recognizing the potential for such manipulation, the Commission imposed a restriction on the use of amended market data: Broadcasters filing applications with the Commission may *not* rely on any changes to market definition *until* the amended definition has been in effect for a minimum of two years. The two-year delay period is designed to dull the potential impact of market manipulation.

But in a recent decision by the Commission's Media Bureau, the Commission made clear that, where a change in market definition might *hurt* an applicant, the Commission would put the hurt on right away. That is, the two-year waiting period cannot be used to shelter a deal which, under the new market definition, would not otherwise be permitted. The Commission held that where an Arbitron market has been changed, an applicant must provide the most current data available and may not rely on "outdated, historic market data."

The Media Bureau's decision concerned an application for a transfer of control that would arguably have complied with the Commission's multiple ownership rules based on the relevant market as defined five months or so before the application was filed. However (as you might have guessed from the preceding sentence), four months prior to the filing of the application, the market in question had been modified in a way which would have barred the proposed ownership under the multiple ownership rules.

The transaction involved a station which, in August, 2004, was included in the Manchester, New Hampshire, Arbitron market, along with 17 other stations. That total number would allow any one licensee to hold up to six commercial stations in the mar-

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Focus on FCC Fines

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FCC Levies $9 million in DTV fines – The FCC started off April by issuing several fines for DTV violations. With this latest spate of fines, the FCC continues to demonstrate that it prosecutes those who make and sell DTV receivers as well as those (*i.e.*, broadcasters) who transmit the signals that those receivers receive (assuming, of course, that they transmit bad stuff, like indecency or uncredited VNRs). As reported in this column last December, the FCC is stepping up efforts to ensure both that broadcasters are ready for next February's transition and that viewers are kept fully aware that those old pesky analog-only receivers will stop receiving full service TV stations when the transition finally gets here.

The FCC's latest targets were several large retail stores and manufacturers. Among them, Sears, K-mart, Wal-Mart and Target Stores have been presented with fines totaling more than $2.3 million for trying to sell televisions which weren't properly labeled to alert the potential buyer that, come next February, the TV would serve better as a paperweight than as a TV set. Department stores were not the only shops caught in the cross hairs: Best Buy, Circuit City and Fry's Electronic are looking at more than $1 million in fines for failing to label receivers.

Related to the DTV tuner problem is the FCC's requirement that televisions with V-Chips must be capable of upgrading the V-Chip for new technology. Manufacturers including Panasonic, Philips, Polaroid and LG have been spanked with fines of more than $4 million for overlooking that detail. And in a move reminiscent of Prohibition, the feds busted up a ring of analog-only TV sales persons and issued fines of $1.6 million.

As broadcasters continue their efforts to migrate toward the next great frontier in the television industry, the FCC is seeking to ensure that signals can be viewed by something other than a local cable head-end. The FCC's consumer education push is on and its attempts to minimize the adverse impact of non-DTV equipment in the current sales inventory is splashing across headlines.

Excess paper, petition returned – The February *Memo to Clients* contained a detailed discussion of the recent FCC indecency enforcement efforts. A highlight of those efforts was a 30-page order that whacked multiple Fox TV stations with $7,000 fines each for broadcasting an episode of "Married by America". In response to the FCC's Order, Fox and its targeted stations filed a petition for reconsideration of the February order, arguing at length and in detail precisely why the order was wrong. But then the FCC counted the number of pages in the petition and issued a very brief three paragraph order announcing that the petition had too many pages and would not be accepted by the FCC. The petition for reconsideration was returned without consideration and the Fox folks were left out in the cold.

Although there is a procedure for seeking a waiver of the FCC's maximum page rule, the Fox pleading did not follow the procedure. As a result, it took the FCC very little effort to return the Fox paperwork to Fox. As with the FCC's technical broadcasting requirements, the agency also has published regulations about the required method in which paper will be pushed around by the government. Readers should ensure that they comply with all FCC rules (currently five volumes of printed material), including the purely administrative regulations.

While it is true that the Fox petition ran over the limit a tad (it was 39 pages long; the rules permitted 25 pages), let's be fair about this. Each of the eight separate Fox stations that had been targeted in the forfeiture order had a right to file its own separate petition – so Team Fox could have dumped (let's see, eight times five, carry the four . . .) some 200 pages of argument on the Commission's doorstep, had they been so inclined. Under those circumstances, consolidating their filing into a trim little 39-page package not only made sense, but also saved the Commission some trouble.

And the page overage wasn't the real basis for giving the petition the hook. Rather, the Commission chose to focus on the fact that Team Fox hadn't bothered to ask for a waiver of the page limit at least ten days before it filed its petition. We looked it up and, sure enough, that ten-day provision is in fact in the rules, but Fox might be forgiven for overlooking it, since a quick review of FCC decisions over the last, um, several years does not turn up any instances where the Commission chose to invoke it. Oh well.

As it turns out, though, the rejection of the Fox petition was likely a pre-ordained result in any event. We can say that because almost immediately after the petition was dismissed by the FCC, lawyers for the Department of Justice filed lawsuits in a number of U.S. District Courts around the country in separate efforts to enforce the various fines against the various Fox stations. Since that kind of multi-defendant, multi-jurisdictional filing almost certainly requires more than a little preparation and coordination, it's a good bet that the FCC/DOJ move had been totally orchestrated long before. Which means that Fox's petition was doomed from the get-go – and the failure to ask for waiver of the page limit was

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Four-year phase-in for local-into-local HD

FCC Deals Dynamic DBS Duo Desired HD Delay

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At the suggestion of Dish and DirecTV, the Commission has agreed to phase-in the must-carry obligations of satellite TV program deliverers with respect to carriage of local HD signals.

For broadcasters, it means that some, possibly many, viewers probably won't be able to benefit from retransmitted HD signals for some time to come.

Under existing must-carry rules, nationwide satellite video operators – of which Dish and DirecTV are the two primary U.S. examples – are subject to must-carry obligations similar, but not identical, to must-carry on the cable side. Generally, if a satellite service transmits one local television station to its home market pursuant to the compulsory copyright associated with must-carry, the satellite service must carry ***all*** local stations in that market. This is the so-called "carry-one, carry-all" requirement.

DBS providers will get to choose which HD signals they will deliver – with their discretion to pick and choose phasing out completely only on February 17, 2013.

The same requirement will apply once the DTV transition is completed, as satellite services will be required to carry the digital signals of local stations they are retransmitting. But a potential problem arises when it comes to retransmitting HD signals (as opposed to mere standard digital signals). The bandwidth required for HD is considerably greater than for SD. Thus, if the satellite folks were required, immediately, to assure carriage of all HD signals that might be eligible, they would have to re-jigger their available facilities to try to accommodate the very substantial additional load that would entail.

In an FCC Report and Order released late last month, the Commission was sympathetic to the satellite operators' claims that they currently lack the facilities to deliver HD and SD signals from all stations entitled to satellite delivery in DBS local-into-local markets. The necessary capacity will apparently not be available until more satellites are successfully launched over the next few years.

As a result, DBS providers will get to choose which HD signals they will deliver – with their discretion to pick and choose phasing out completely only on February 17, 2013. And the ultimate outcome won't even ensure HD for all. That is, the HD must-carry requirement will kick in only if the satellite provider elects to carry local-into-local HD programming (upon which election the provider would have to carry *all* local HD programming). So it's at least conceivable that Dish and DirecTV could avoid the issue altogether by declining to carry *any* HD signals. As a practical matter, though, that is unlikely because of competitive pressures in the multichannel video market – if the local terrestrial video delivery services are offering local HD, it is hard to imagine that the satellite folks won't be champing at the bit to make the same service available.

Under the DBS industry proposal adopted by the FCC, DirecTV and Dish will have no local HD carriage obligations until Feb. 17, 2010, at which point they will be required to provide carry-one, carry-all HD parity in only 15% of their local-into-local markets. By February 17, 2011, that requirement would apply to 30% of local-into-local markets; it would rise to 60% by February 17, 2012, and hit 100% only by February 17, 2013.

The NAB opposed the DBS industry plan, but has not indicated whether (and if so, how) it plans to challenge it on behalf of the broadcast industry.

In a bit of related housekeeping, the FCC also ordered DBS providers to carry digital-only TV stations in local-into-local markets if they meet signal quality and other technical requirements at the DBS system's local headend. This reverses a prior ruling in which the FCC turned down efforts by Stuart, Florida's WHDT-DT, a non-network station, to be included in DirecTV's local-into-local package. As long as your signal is good enough, your station cannot be excluded from carry-one, carry-all policies.

This change comes just ahead of the opening of the triennial window during which stations in local-into-local markets must either (a) choose mandatory must-carry, or (b) try their hand at negotiating a better deal through the retransmission consent option *To qualify for any DBS carriage, whether analog, SD or HD, existing full power broadcast stations in DBS local-into-local markets must make a formal choice* ***by October. 1, 2008****.*

This FCC decision also sought comment on a couple of

(Continued on page 5)

Six Fix Nixed

No NCE-FM by-pass around Channel 6 interference clearance

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The Audio Division has given the big thumbs down to at least one NCE-FM application submitted last Fall that sought a creative way around possible Channel 6 interference problems. Other applications that relied on similar approaches to the Channel 6 issue will likely suffer the same fate.

Family Life Educational Foundation (FLEF), licensee of NCE Station KFLO-FM, Blanchard, LA, filed a minor change application in September, 2007, seeking to improve facilities and gain cut-off protection from applications filed in the October, 2007, NCE window. FLEF acknowledged in its application that the proposed change would not satisfy Channel 6 protection requirements under Section 73.525 of the Rules; but FLEF included a letter from its engineer to the nearby Channel 6 station stating that KFLO-FM would not begin operations until the Channel 6 folks ceased Channel 6 transmission, which they are scheduled to do on or before February 17, 2009, as part of the DTV transition.

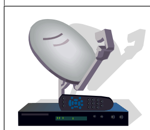
The Division found that acceptance of applications seeking to take advantage of the expected vacation of analog Channel 6 operations in the digital transition reeks of fundamental unfairness.

The Media Bureau determined that the FLEF application was an impermissible contingent application and that a waiver of 73.525 in this instance would not be in the public interest.

FLEF's approach to the Channel 6 problem was not totally crazy. After all, Congress has mandated that full service analog TV operations must cease no later than February 17, 2009, and, as part of the transition process, the nearby Channel 6 station has made clear that its DTV operation will be on a channel other than 6. Moreover, given the facts that (a) most of the NCE mod applications filed in September, 2007, still have not been acted on, and (b) when and if they do get granted, the lucky permittees will have three years in which to build, it's pretty obvious that such permits will have a shelf life well into 2011, more than two years *after* the DTV transition. That being the case, as long as the successful NCE permittee is willing to commit to not commencing operation until after February 17, 2009 – not a particularly onerous condition – there should be no reason to worry about possible Channel 6 interference problems.

In dismissing the application, the Division found that acceptance of such applications seeking to take advantage of the expected vacation of analog Channel 6 operations in the digital transition reeks of fundamental unfairness. "Accepting this application – or any application that relies on a similar contingent consent agreement from a potentially impacted Channel 6 station – could foreclose filing opportunities of other potential applicants and licensees that desire to file new station and modification applications based on the forthcoming vacation of analog Channel 6 allotments but have deferred such filings based on the recognition that it is not presently possible to file rule-compliant proposals." The Division noted in particular that permitting such Channel 6 contingent agreements in applications filed in the October NCE window for new NCE stations would likely skew the fair distribution analysis in mutually exclusive groups against applicants who ensured compliance with Section 73.525.

Conversations with Commission staff since the release of this letter decision have confirmed that this policy will be applied broadly to dismiss any NCE window applications that sought to bypass Channel 6 protection requirements by offering a consent agreement in which the applicant claims it will not begin operation until after the Channel 6 operations cease in 2009. The application rules are clear: the proposed station must be in compliance with all rules as of the "snap-shot date", *i.e.*, the date on which the application is filed. An agreement to "protect" Channel 6 simply by refraining from operating until such time as any potentially affected Channel 6 station vacates the airwaves necessarily makes the application contingent on the other station's actions, and thus fails the "snap-shot" test.



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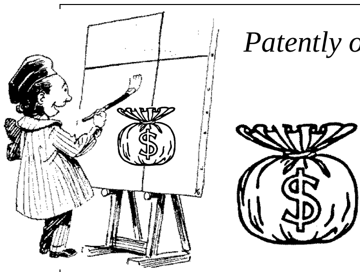
questions on carry-one, carry-all regulation. For example, the Commission wants to know whether DBS carriage requirements should include carriage of both HD *and* SD signals of all local stations if any one station's HD and SD signals are both carried. While such dual carriage would increase the load on the DBS system, it might be appropriate in view of the likelihood that many audience members may not be equipped to receive HD signals. *Comments on these questions are due 30 days after publication in the Federal Register (which has not yet happened). Reply Comments are due 15 days later.*



Patently offensive?

Rembrandt Tries To Paint Itself Into The DTV Picture

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As the Transition Train chugs steadily along toward Digitaltown, lurking around the bend between here and there is a merry band of brigands looking to hop on board for a very profitable ride. Whether or not this latter-day railroad raid will affect the digital transition remains to be seen, but you probably ought to know about it in any case.

Unlike most DTV transition stories, this is not an FCC tale. Rather than rules and regulations, it involves patents, contracts and litigation.

A company called Rembrandt , Inc., holds a patent covering a technology for signal interleaving. That technology, as it turns out, is crucial to the transmission and reception of DTV signals. Rembrandt is therefore claiming – in a series of patent infringement suits pending in Delaware – that it is entitled to royalties amounting to 0.5% of "all revenues derived from the use of ATSC standard", or, basically, 0.5% of all revenues derived from digital television. Staring down the wrong side of those suits are all four major television networks (CBS, NBC, ABC and Fox), several big league cable companies (Comcast, Cablevision, Adelphia, Charter, and Time Warner) and one DTV manufacturer (Sharp).

Rembrandt is an opportunistic enterprise.

Meanwhile, perhaps on the theory that the best defense is a good offense, Harris Corp. sued Rembrandt, but it was unsuccessful and, when the Harris case got tossed by the court, Rembrandt turned around and brought its own suit attacking Harris's arguments.

And the American Antitrust Institute (AAI) filed a complaint against Rembrandt with the FTC.

We're in litigation heaven.

The story starts back in 1993, when AT&T obtained the original patent in question. (Its technical name is U.S. Patent Number 5,243,627, but we'll just call it the 627 Patent.) Subsequently, AT&T became part of the "Grand Alliance" of television industry folks working under the auspices of the Advanced Television Systems Committee (ATSC), a private organization dedicated to devising a standard for DTV operation.

When it comes to setting industry-wide standards, the law tends to be pretty rigorous. Because such standards affect all participants in the industry which will be subject to the standards, anyone involved in the standards-setting activity is normally required to check his/her private interests at the door. The theory is that standards should be adopted for the overall public benefit, not for the private benefit of the standard-setters.

In keeping with that concept, AT&T agreed to license any of its own technology critical to delivery of DTV signals on reasonable and nondiscriminatory (RAND) terms. As an AT&T executive told Congress, once a standard was adopted, "the technology behind it will be required to be licensed to anyone on reasonable terms." That is SOP when it comes to standards-setting activities.

The Grand Alliance did adopt standards in which the 627 Patent was an essential element. The patent's importance was further cemented when the FCC adopted the Grand Alliance's standard, making that standard the only game in town for U.S. DTV operations. Thus, Patent 627 was now integral to the one and only method of DTV transmission permitted in the U.S of A. The FCC's adoption of this standard was explicitly conditioned upon all members of the Grand Alliance agreeing to license their technologies on RAND terms.

Meanwhile, Patent 627 was transferred through a couple of AT&T subsidiaries and, in 2004, Rembrandt bought it.

At this point, it might be helpful to introduce Rembrandt. Rembrandt is an opportunistic enterprise. Rembrandt had nothing to do with originating Patent 627, or any other patent for that matter. Rembrandt does not produce anything. It does not sell anything bought or processed, nor does it buy anything sold or processed, nor does it process anything sold, bought, or processed, nor does it repair anything sold, bought, or processed. As a business operation, it does not do any of those things.

All the company does is speculate on patents, which it purchases on the secondary market in the hope that one such patent will hit it big. And Patent 627 looked like a good chance to grab the gold ring.

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Since AT&T had clearly committed itself to RAND terms, presumably AT&T did not see any significant profit potential from Patent 627. But that didn't stop Rembrandt. Once it got its hands on the patent, Rembrandt initiated the infringement actions mentioned above and, not content to wait for a result in that litigation, it has written letters to each of the networks demanding 0.5% of all revenues earned by these networks through their use of Patent 627 as a part of DTV transmission.

So the main question is contractual: when Rembrandt bought the patent from AT&T, was Rembrandt contractually bound by the commitments which AT&T had made, or could Rembrandt simply grab the patent and leave behind the pesky RAND commitment which would otherwise limit the patent's value? AAI is arguing to the FTC that Rembrandt cannot disclaim the RAND commitment because, as a successor-in-interest to AT&T, it stepped into AT&T's shoes, RAND and all. AAI is also claiming that Rembrandt is violating the Sherman Antitrust Act by wielding unlawful monopoly power in a way that did not arise from the growth or development of a superior product. Specifically, AAI alleges that Rembrandt engaged in "exclusionary conduct" by unequivocally repudiating AT&T's promise to license the patent on a RAND basis (and in violation of an FCC mandate) and further requesting unreasonable royalties that will harm the entire competitive process. According AAI, Rembrandt has also acted in bad faith.

The paydays to Rembrandt would be extraordinary, and they would last as long as the patent.

It is not clear who will ultimately prevail in the courtroom. It is equally unclear what effect, if any, this will have on the DTV transition.

If Rembrandt were to win, the cost of DTV operation and equipment would go up, as operators and manufacturers would find themselves liable for a 0.5% charge on all their revenue – a charge that they would likely pass along to consumers. While 0.5% might seem a relatively small amount, remember that that's 0.5% of ***all*** revenues earned by anyone through DTV operations. The paydays to Rembrandt would be extraordinary, and they would last as long as the patent. That money would have to come from somewhere, and the most likely source would be the public's pocket. Questions over whether any patent liability does in fact exist and, if so, how it should be paid and by whom could cloud the DTV horizon for a long time to come. (IMPORTANT CAVEAT: Such questions are not at all likely to derail the FCC's efforts to wrangle the TV industry into the DTV corral by February 17, 2009.)

Ironically, the FTC recently lost an appeal involving roughly similar allegations which it had brought against the designer of computer memory. That designer had initially been involved in industry-wide standard setting activities relative to memory chip design, but had removed itself from that process. When the final standards were set, they incorporated elements for which the designer held some patents. The designer sought to protect its patent interests, the FTC initially found the designer guilty of misconduct, and the U.S. Court of Appeals in Washington reversed in favor of the designer.

While not identical to the Rembrandt situation, that recent court decision may discourage the FTC from taking on this fight just now. That would leave the resolution to the courts in which Rembrandt and its various adversaries are currently duking it out.

When any further news of Rembrandt's situation comes to our attention, we'll let you know.

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just the most convenient way for the FCC to brush the petition aside in order to get to the courthouse *tout de suite.*

No word yet as to what the time-line on the various DOJ actions is likely to be. Given the fact that the Supreme Court will be considering the indecency issue in the Fall, it is at least possible, if not highly likely, that the District Courts may choose to hold things in abeyance pending any guidance that the Supremes may choose to provide. We shall see.

FCC cancels fines for the penniless – Last autumn, the FCC fined a New Mexico station for public file violations and an Oregon station for EAS deficiencies. In each case the FCC proposed an $8,000 fine for the violations. In response to the proposed fines, the target licensees pointed out a salient fact to the FCC: the licensees had no money. In fact, the licensees had no money, no assets, no bank accounts – come to think of it, they weren't even licensees anymore! In both cases the FCC had fined a former licensee which had since sold its station, cleared out the bank accounts and closed up shop. In fact, the New Mexico licensee – er, we mean former licensee – provided evidence that it had dissolved its very existence. The FCC eliminated the fines but, clinging to the fact that some official punishment should occur, admonished the ex-licensees for their actions. An admonition can be thought of as a stern wagging of the FCC's finger accompanied by an official, federal "tsk, tsk, tsk".

Three years still means three years

Commission Continues Hard Line On CP Tolling Requests

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Back in the day, when most construction permits lasted 18 month or less, the FCC entertained applications for CP extensions. After several decades of listening to a wide variety of sob stories offered up in justification of extension requests, however, the Commission shifted its approach at the turn of the century: henceforth, all permits would have generous three-year terms, ***but*** the trade-off would be that they could not be extended.

The Commission did include a safety valve of sorts. It recognized that, in some relatively rare circumstances a failure to construct might be attributable to forces beyond the permittee's control. For situations like that, the FCC provided a "tolling" mechanism through which a permittee could seek to suspend (or "toll", in FCC legal-speak) the CP deadline.

The FCC rejects most of the tolling requests it receives. Recently, the holder of a permit for a new public television station learned this the hard way. The permit holder's request to toll its construction deadline until after the DTV conversion date (February 17, 2009 for those among you who have been living under the proverbial rock) was denied by the FCC's staff.

The limited list of legitimate grounds for tolling of construction permit deadlines are found in section 73.3598(b) of the FCC's rules. In a nutshell, there are three valid justifications for tolling: (i) construction has been prevented by natural disasters (*i.e.*, earthquakes, floods, etc.); (ii) the permit grant is subject to administrative or judicial review; or (iii) construction has been delayed by actual pending lawsuits relating to necessary local, state or federal requirements for the station (*e.g.*, zoning or environmental permits). For any of these justifications to work, they must be beyond the control of the permit holder. The FCC also recognizes that public TV broadcasters face unique issues related to the DTV conversion, and accordingly the FCC "may" decide to give them special relief if the Commission thinks the circumstances are sufficiently rare and exceptional.

In the recent decision, the permit holder's three-year construction permit was set to expire on November 9, 2007. The permit required, however, building a station to broadcast on Channel 56, one of the UHF channels that must be abandoned by full service stations on the DTV conversion date. Since this was a new television station, it didn't have the paired DTV channel that existing stations received to permit dual broadcasting until then. In other words, its only option was to build a new station on Channel 56.

The permittee estimated that it would cost about $2 million to build facilities to broadcast on Channel 56. Since there were only about 16 months between the expiration of the construction permit and the DTV conversion date, the permittee requested that it be permitted to forego construction on Channel 56 and just construct its Channel 10 DTV facilities after February 17, 2009. Conserving limited financial resources (*i.e.*, saving money), however, is not one of the enumerated reasons under the FCC's tolling rules. The staff, therefore, rejected the request. The staff also determined that, although the permittee was a public TV broadcaster, saving money does not qualify as an exceptional circumstance justifying exceptional relief. Unfortunately for the permittee, denial of this tolling request had the effect of canceling its construction permit for the station on either Channels 56 or 10, since the permit's expiration date had long since passed.

The FCC is insisting that this permittee build and operate a station which by definition cannot operate beyond February 17, 2009, on a channel which the FCC has been actively encouraging broadcasters to vacate.

The denial here is ironic. The Commission is insisting that this permittee proceed to build and operate a Channel 56 station which by definition cannot operate beyond February 17, 2009. And yet, for several years the FCC has been actively encouraging broadcasters to vacate the same upper UHF channels so they can be used by the winners of FCC auctions for this spectrum.

But the rejection of the tolling request here appears to be in keeping with the Commission's hard-nosed approach to tolling in general. Earlier this year, the full FCC released two orders affirming rejections (by the staff) of other tolling requests. This clearly demonstrates that tolling stinginess is not just a quirk of staff policy, but is an approach embraced and supported by the full Commission.

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In an order issued in January, the Commission affirmed that it would not allow tolling of a construction permit for an unbuilt AM station in California. The station's permit holder had a letter from its attorney predicting that local authorities would not issue a zoning permit for the station's authorized site. A real estate agent also advised the permit holder that no suitable alternative sites were available. On the basis of these two pieces of information, the permit holder submitted a request to the FCC for tolling of the three-year deadline to construct the station. The FCC denied that request on the grounds that mere opinions speculating about denial of a possible zoning application were not enough to justify tolling – particularly when the permit holder hadn't even applied for a zoning permit yet.

Undaunted, the permit holder found a new site, but that site happened to be the subject of some pending litigation. The litigation was over whether the local authorities could require a special use permit for the transmitter site instead of an ordinary building permit. So the permittee filed another tolling request. The FCC denied that tolling request as well: according to the Commission, the litigation did not affect the permitted site, but rather just an alternative site which the permittee had not yet formally proposed to move to.

The Commission means business when it designates a construction term, and permittees should not assume that that term can or will be extended at all.

No problem, figured the permittee. It proceeded to file a modification application specifying that litigation-challenged site, and then it submitted a third tolling request based upon new zoning-related litigation at the new site. Strike three! The FCC rejected Tolling Request Number Three on the ground that the litigation was not about a matter beyond the permit holder's control – a requirement under the FCC's rules to qualify for tolling. According to the Commission, the litigation focused on the cost of zoning compliance rather than the ability of obtaining actual zoning approvals for construction of the station's facilities; accordingly, the FCC reasoned, the litigation was not the type of litigation that qualifies for tolling relief.

In another decision issued in January, the full Commission decided that the permittee of a new AM radio station had legitimate reasons to grant tolling of the three-year deadline, but that such tolling should start with less than 5 months left to complete construction. The station's construction permit was issued in 2002 with a three-year deadline to build an AM station with separate daytime and nighttime transmitter sites. Almost immediately after the FCC permit was issued, the permit holder had zoning problems with the site specified for the daytime transmitter. The city issued a temporary moratorium on all construction in the area planned for the transmitter site. This moratorium was subsequently extended and the city ultimately adopted a new zoning ordinance for the area prohibiting construction of tower structures.

While the permittee could have brought these local headaches to the Commission's attention when they first arose, it apparently chose not to (possibly in the hope that everything would work out for the best locally). The permit holder waited until only about four months remained on its permit. At that point, the permittee filed a lawsuit against the city challenging the constitutionality of the local zoning actions. Only after filing the lawsuit did the permittee request that its construction permit period be tolled.

Since one of the recognized reasons, under the FCC's rules, for allowing tolling of construction periods is pending lawsuits involving zoning, the FCC's staff granted the tolling request. That was the good news. But the bad news was that the staff stopped the construction permit "clock" as of the date the permit holder filed its local zoning lawsuit (with a meager 131 days left remaining on the permit), instead of setting the clock back to the time when the city building moratorium first started. The permit holder found a new site and the FCC approved a modification of the construction permit – but the modification was subject to the same 131-day construction period.

The permittee asked the full Commission to have a heart and give it at least 26 more months to complete construction. On appeal, the Commission affirmed the decision to keep the 131-day limit for two reasons: first, the permit holder failed to request tolling immediately after the zoning moratorium began; and, second, a zoning moratorium, by itself, does not qualify under the FCC's rules as the type of legal action that justifies tolling. Only the filing an actual lawsuit against the city was sufficient to suspend the construction period deadline. A key factor in the FCC's decision in this case was that the permit holder did not aggressively pursue resolution of its zoning issues until the construction permit period had almost expired.

The take-home message of all these decisions should be clear. The Commission means business when it designates a construction term, and permittees should not assume that that term can or will be extended at all. If a permittee runs into problems which prevent it from constructing, it should take immediate steps to insure that any claim that it might have to "tolling" can be advanced effectively.

(Continued from page 1)

While assigning employees to the finer gradations of “management-level” categories may be slightly more work than the FCC’s Form 395-B historically called for, that extra work does not appear to be undue.

As to the racial classifications, the EEOC form provides a couple of more classifications than the FCC previously did. When last the FCC called for racial identifications, it required allotting employees to the following categories:

White, not of Hispanic Origin.
Black, not of Hispanic Origin,
Hispanic**,**
Asian or Pacific Islander, and
American Indian or Alaskan Native

Under the EEOC system, the reportable categories are:

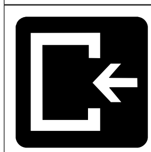
White (Not Hispanic or Latino),
Black or African American (Not Hispanic or Latino),
Hispanic or Latino,
Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino),
Asian (Not Hispanic or Latino),
American Indian or Alaska Native (Not Hispanic or Latino), and
Two or More Races (Not Hispanic or Latino)

While these two lists are by no means wildly divergent, there are still some distinctions between the two. The FCC, for example, did not provide for individuals of multi-racial backgrounds. And the EEOC apparently feels that when one identifies oneself as Hispanic or Latino, one excludes any further racial categorization. Still, in the greater scheme of racial and ethnic classifications, the slightly more detailed EEOC approach is probably not any more burdensome than the FCC’s original approach.

The question of whether any changes to Form 395-B – even the apparently benign changes that would be needed to conform it to the EEOC form – would be permitted by the Act is a more troublesome question. Section 334 of the Act expressly prohibits the Commission from revising any EEO reporting forms. A subsection of Section 334 does provide the Commission with latitude to revise its EEO “regulations”, but that exception says nothing about revised “forms”. A strict reading of Congress’s language could lead to the conclusion that the FCC is stuck with the forms as they have always been.

If you have any interest in commenting on Form 395-B, you have until May 22; reply comments are due June 6.

The Commission’s request for comments is not a slam-dunk indication that the EEO reporting requirement is about to be reinstated, but it certainly does indicate that that requirement is moving up on the Commission’s to-do list. In view of the flurry of new and “enhanced” reporting conditions that the FCC has announced in recent months, it should not be surprising that employment reports may also be making a come-back. Stay tuned.



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ket (no more than four in a given service). Since the proposed buyer already held three stations in the market, things looked good.

The application was filed in January, 2005. But the Commission’s eagle-eyed staff noted that the Arbitron markets in the Manchester area had changed in September, 2004. As a result of the change, three of the buyer’s stations which had been listed in Manchester were moved to the new Concord market, where the buyer already owned five other stations – which put the buyer at the max already in Concord, before the proposed acquisition (which was also charged to the Concord market) was thrown into the mix.

The applicant argued that it should be entitled to take advantage of the two-year lag time on Arbitron market changes. After all, if “helpful” changes would not be deemed to take effect for two years, why should “harmful” changes be given immediate effect?

The Commission wasn’t persuaded. As it explained, the two-year waiting period was designed with only one thing in mind – discouragement of possible manipulation of Arbitron market definitions. Such manipulation would logically occur only when an applicant was trying to game the system to its own advantage. In the Manchester/Concord situation, no such manipulation was at issue. To the contrary, the application in question was filed in the hope of getting in under the wire and thereby avoiding the adverse regulatory effect of the market change of which the applicants were apparently fully aware when they filed their application.

The bottom line here is that the Commission plans to use only the most current, and therefore most accurate, market data in resolving this kind of situation – the only exception being that recent changes that would be helpful to an application will still be subject to the two-year waiting period.

Quality, not quantity, counts

Commission Criticizes EEO Recruitment Efforts

One source may be enough . . . but even several may *not* be enough

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The Commission has admonished Cumulus and Entravision for violating the Equal Employment Opportunity (EEO) rules after a random audit of several of their Texas-based stations. According to the Commission, neither licensee's job recruitment efforts were adequate by Commission standards.

Under the regulatory microscope for Cumulus was its seven-station cluster in the Midland-Odessa area. The FCC found that, in its annual EEO report covering April, 2003-March, 2004, Cumulus indicated that it had had nine job vacancies at the station. However, Cumulus apparently failed to list the total number of interviewees and the number of interviewees referred by each of the unit's recruitment sources for each of those vacancies. That was its first problem. And then the following year (April, 2004-March, 2005), its report demonstrated that Cumulus "failed to recruit widely" (to use the FCC's phrasing) for four of the seven full-time positions it filled that year. According to the Commission, Cumulus relied on "employee referrals, on-air advertisements and walk-ins for recruiting". Problem Number Two.

The FCC expects you to rely on more than in-house referrals, walk-ins, word of mouth, on-air ads and your own web sites when it comes to employee recruiting.

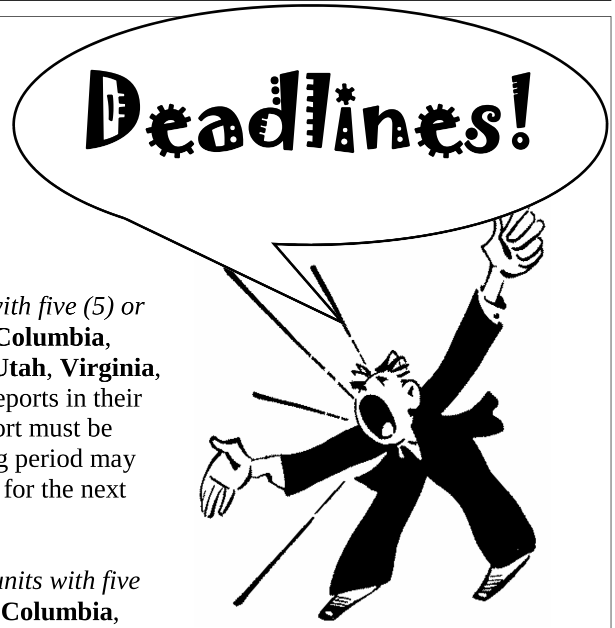
The story was largely the same with Entravision, whose four-station cluster in the Brownsville area got the once-over from the Commission. During the April, 2003-March, 2004, reporting period, the Commission found that Entravision had failed to "recruit widely" enough for eight of its nine vacancies – and the following year, it made the same mistake with all four vacancies it tried to fill.

According to the Commission, Cumulus's recruitment sources consisted of employee referrals, its stations' on-air advertisements, and walk-ins as recruitment sources. And Entravision's consisted of pretty much the same: its corporate Internet web site, its stations' on-air advertisements, walk-ins, word-of-mouth, unsolicited job applications, or internal job postings.

The take-home message here is obvious: the FCC expects you to rely on more than in-house referrals, walk-ins, word of mouth, on-air ads and your own web sites when it comes to employee recruiting. The Commission's standard here appears to be that a licensee's recruitment sources must "reasonably be expected, collectively, to reach the entire community". The FCC says that even a single source might, in some instances, meet that standard – but it doesn't say this very convincingly, or with any particular illustrative examples. While we can understand why the Commission would not look kindly on a recruitment policy based on "walk-ins" – which would be, in effect, not really a "recruitment" policy at all in any meaningful sense – it's hard to see how on-air ads and web site postings would not do the trick. But, it appears, they don't do the trick as far as the Commission is concerned. Note in particular that the Commission's letters to Cumulus and Entravision indicate that the Commission *requires* licensees to use non-Internet sources (over and above any on-line sources the licensee may choose to use).

EEO violations like these could trigger fines, but Cumulus and Entravision both caught a break, thanks mainly to the snail-like pace of the FCC's processes and the fact that, it seems, the left hand doesn't always talk to the right hand at the Commission. The EEO audits here had been submitted back in 2005, so the ball has been in the FCC's court to review them and decide whether they presented any problems for about three years. In the meantime, though, the Media Bureau had gone ahead and renewed all the licenses in question. Once the licenses were renewed, the statute of limitations on the EEO violations was one year, which meant that the violations which the FCC has now identified – all of which occurred prior to April, 2005 – could no longer lead to fines. Hence, the FCC dealt out letters of admonishment – the bureaucratic equivalent of a slap on the wrist – and is requiring both Cumulus and Entravision to file annual EEO reports with the Commission for the next three years.

Random audits like the one that ensnared these licensees are conducted by the FCC on 5% of all stations annually. The most recent round of audits was announced recently. While it is always good policy to strive for compliance at all times, the fact that the Commission may, and very likely will, come knocking on your door some day to check on your EEO efforts should give you even more incentive to stay on top of this.



May 29, 2008

DTV PSIP Compliance - All *DTV facilities* must comply with the new Program System and Information Protocol by this date.

June 1, 2008

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

EEO Mid-Term Reports - All *television station employment units with five (5) or more full-time employees* and located in the **District of Columbia**, **Maryland**, **Virginia**, or **West Virginia** must file EEO Mid-Term Reports electronically on FCC Form 397. All *radio station employment units with eleven (11) or more full-time employees* and located in **Michigan** or **Ohio** must file EEO Mid-Term Reports electronically on FCC Form 397. For both radio and TV stations, this report includes a certification as whether any EEO complaints have been filed and copies of the two most recent EEO Public File Reports for the employment unit.

Television *Ownership Reports* - All *television* stations located in **Arizona**, the **District of Columbia, Idaho**, **Maryland**, **Nevada**, **New Mexico**, **Utah**, **Virginia**, **West Virginia**, and **Wyoming** 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.

Radio Ownership Reports - All *radio* stations located in **Michigan** and **Ohio** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323 or 323-E.

June 19, 2008

DTV Construction Permit Extension Applications - All *DTV permittees* which have a construction deadline of August 18, 2008, and which will require an extension of time in which to complete construction must file an extension application on FCC Form 337.

DTV Construction Permit Applications I- All *television stations with a DTV construction deadline of February 17, 2009*, must file applications for construction permit to implement DTV facilities on their final channels.

July 10, 2008

DTV Consumer Education Quarterly Activity Reports - All *television* stations must file a report on FCC Form 388 and list all station activity to educate consumers about the DTV transition. This will be the second such report but the first to cover an entire quarter. The period to be included is April 1 through June 30, 2008. The report must be filed electronically through the FCC's Electronic Comment Filing System.

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

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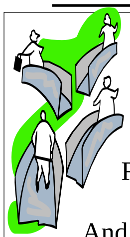


FHH - On the Job, On the Go

On April 7, **Kevin Goldberg** and **Ron Whitworth** participated on an FCBA Law School Career Panel at The Catholic University of America.

On May 20, **Frank Montero** will moderate a panel at the Radio Ink Hispanic Radio Conference in Miami entitled “Legal Lowdown”. **Frank** serves on the advisory board for the conference.

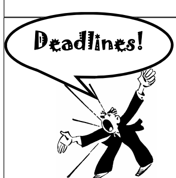
And on May 23, **Frank M** will be in Puerto Rico for the Puerto Rico Broadcasters Convention, where he will make a presentation entitled “Washington Update”. **Frank** is Washington counsel for the PRBA.

On May 31, **Vince Curtis** and the **Other Frank** – that would, of course, be **Frank Jazzo** – will join the FCC’s **Roy Stewart** on a panel at the New Mexico Broadcasters Association Annual Convention in Albuquerque. They’ll be on a panel updating participants on recent FCC activity.

But when it comes to Hard Travelin’, this month nobody but nobody beats **Kevin G**, who will be in Venezuela in May in connection with the American Society of Newspaper Editors, which would ordinarily take the long-distance prize, but then in June **Mr. G** is heading to Africa (Zambia and Swaziland, to be exact) to present lectures set up by the State Department on Freedom of Information laws.

And this month’s co-*Media Darlings of the Month* are (the envelope, please), **Frank M** and **Michael Richards**. **Frank M** was quoted as a media and broadcasting maven by the Miami Herald in an article about a lawsuit between Univisión and Televisa.

Michael was interviewed during two installments of “It Seems To Me”, a weekly program broadcast on the American Christian Network on stations in Washington and Oregon. You should be able to access archive versions of the shows at http://www.mutualnetwork.net/It%20Seems%20To%20Me%20Programs.htm.



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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.

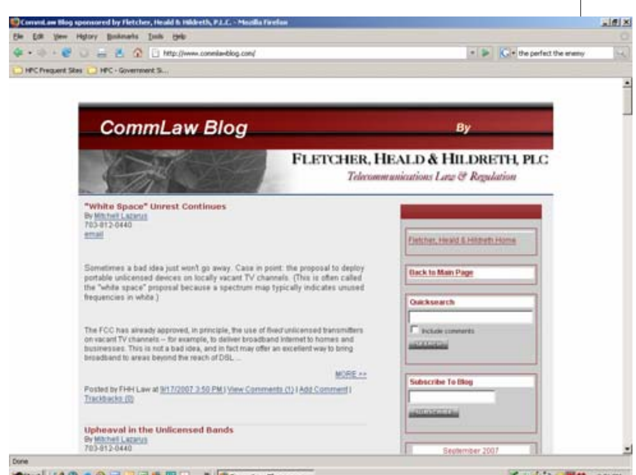
Issues/Programs Lists - For all *radio*, *television*, and *Class A television* stations, a listing of each station’s most significant treatment of community issues must be placed in the station’s local public inspection file. The list should include a brief narrative describing the issues covered and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

Late Breaking News???

If you’re looking for information and insight about late-breaking developments (f’rinstance, the FCC’s about-face on the culling of pending translator applications), check out the Fletcher Heald blog. You can find it at:

www.CommLawBlog.com

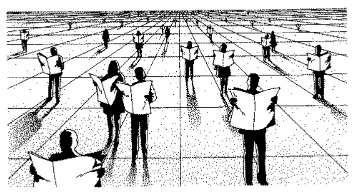
We cover the gamut of communications issues — plus, if you feel so moved, you can submit your own views for posting. We’ve had more than 70,000 visits to our site to date! Click on over and see why.



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

Updates on the News

Translator dismissals put on hold – Remember last issue when we reported that the Commission was forcing folks with more than ten pending short-form FM translator applications had to tell the FCC which ten they wanted to continue to prosecute (with any others being dismissed)? In the words of Emily Litella, "Never mind". A couple of days after the deadline by which applicants were to tell the Commission which of their applications were to be whacked, the Commission had a change of heart. It suspended the dismissal process, and indicated that any applications that might have been dismissed pursuant to its March, 2008, notice would be reinstated. According to the latest word from the Commission, at least four petitions for reconsideration objecting to the ten-application limit were filed – so we figure that the Commission wants to hold off on taking any irreversible actions on any applications until it has had a chance to consider those petitions. Meanwhile, the staff will continue to process applications from applicants with ten or fewer translator applications on file as of March 4.



FCC FM DIY – In case you thought it was difficult to find vacant FM channels that you can allot to a given community, think again. Why, that's as easy as pie, if you use the FCC's crackerjack new "FM Allotment Finder Tool". Take it for a test drive or two at http://www.fcc.gov/mb/audio/allotmentfinder.html.

In the Localism Proceeding, the Commission directed the staff to develop some means of assisting the Great Unwashed in locating "suitable available commercial FM spectrum". The result is this Do-It-Yourself on-line "tool". All you have to do is enter a set of coordinates (using NAD 27), hit the button, and voilà, with the approximate speed of a Magic Eight-Ball the tool lets you know whether any commercial FM spectrum might be available there. If you choose, it will also list all the stations that factored into its determination. We tried a couple of sets of coordinates – purely in the interest of solid investigative journalism, of course – and it told us that there apparently aren't any channels available in New York City or Boston, so it's batting 1.000 as far as we can tell.

The Commission makes sure that its new tool does not create any unrealistic expectations. Over and above a blanket disclaimer that a successful search does not guarantee the actual availability of any channel at all, the FCC also provides a batch of additional, more nuanced, disclaimers that would do a pharmaceutical ad proud. For instance, the "finder tool" does *not* consider a wide variety of factors that might disqualify the use of the site (*e.g.*, land use restrictions, the fact that the site is in the middle of water, environmental considerations). Plus, the FCC acknowledges that the tool pulls its data from CDBS, which means that the tool is shooting at a constantly moving target (since each first-come-first-served applications alters the allotment landscape upon filing, even if it sometimes takes a week or two for applications to surface in CDBS). And let's not forget that the tool's calculations are based on a number of "reasonable assumptions" about pending applications, rule making proceedings, outstanding authorizations and the like.

While it's possible that the "finder tool" will prove to be an effective means by which the Public will be able to ferret out vacant lots in FM land, we are doubtful. If any readers want to try their hand at the tool and report on their results, we would be most interested.

Congress on Localism – Initial comments on the Commission's Localism proposals were filed at the end of April. More than 30,000 items have been filed in that docket since the beginning of the year. Perhaps the two most significant, though, arrived in late April. Letters from (a) a number of Senators and (b) a number of Congresspeople showed up on the side of broadcasters. The legislators made clear to the Commission that its proposed reregulation is not necessarily viewed with favor on Capitol Hill. In the politicized FCC environment, these two letters may go a long way toward counterbalancing tens of thousands of submissions on the other side. We shall see.

No stone unturned – As reported in this month's article on recent fines/forfeitures, the FCC has been cracking down on retailers who are selling TV sets in ways that don't quite comply with the Commission's DTV educational initiatives. And make no mistake – the Commission is really, really serious about all this. In addition to the fines which are ably described elsewhere in this issue, the Commission also recently issued a pre-forfeiture "citation" notice to CVS, the drug store company. According to the notice, a hawk-eyed G-man from the FCC's Detroit office happened by a local CVS and observed that they were selling equipment with an analog tuner *but no digital tuner*, and there was nary a Consumer Alert label in sight. Holy rabbit ears, Batman!! Within 48 hours the citation notice was on its way to CVS, alerting them that if they persisted in their wrong-doing, they were looking at possible five-figure forfeitures. And just what were the items being displayed? Four black-and-white TV sets with five-inch screens – just the type of gear that an HDTV-hungry public could easily be duped into buying. We can all sleep better at night knowing that the FCC is busy protecting our safety and well-being so thoroughly.

FM ALLOTMENTS ADOPTED –3/25/08-4/21/08

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
OK	Clayton	184 miles SE of Oklahoma City, OK	262A	07-227	TBA

FM ALLOTMENTS PROPOSED –3/25/08-4/21/08

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
WY	Basin	132 miles S of Billings, MT	300C3	08-43	Cmnts due:5/19/08 Reply due: 6/3/08	Backfill 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.

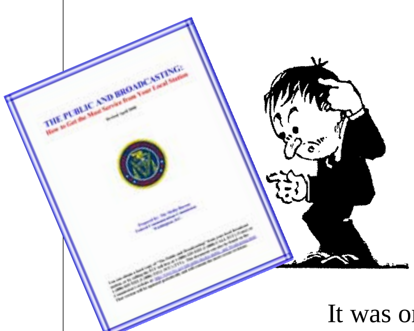
Fletcher, Heald & Hildreth, P.L.C.
11th Floor
1300 North 17th Street
Arlington, Virginia 22209

First Class

Hot off the presses!!!

FCC Issues Updated Edition of "The Public and Broadcasting"

The Media Bureau has released the latest revised version of The Public and Broadcasting. ***This is a Commission publication that ALL licensees are required to have in their local public inspection files.*** You should download a copy at



http://www.fcc.gov/mb/audio/decdoc/public_and_broadcasting.pdf

and place it in your public file as soon as possible. You should also include a link to it on your website, if you have one.

This publication was first introduced by the FCC in the 1970s, with the subtitle "A Procedure Manual". It was last revised in 1999. In the Localism Proceeding the FCC instructed its staff to dust it off, spiff it up and try to get it back on everybody's radar screen.

It was originally intended to serve as a kind of primer about FCC licensing policies and practices for the average listener/viewer. Its new subtitle ("How to Get the Most Service from Your Local Station") suggests that the Commission may be trying to use it more aggressively to spur public involvement in the licensing process. In conjunction with the release of this latest version, the Commission has also announced that it is designating two people who will be available on the FCC's Help line to assist callers-in in dealing with their local broadcasters.

Time will tell if the FCC's new approach will have any noticeable effect on anything.