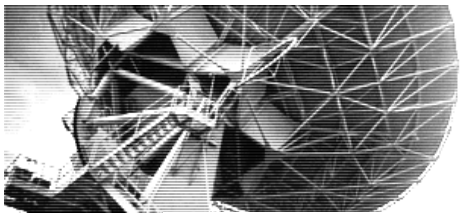

FLETCHER, HEALD & HILDRETH
Communications Law & Regulation

MEMORANDUM TO CLIENTS

News and Analysis of Recent Events in the Field of Communications

DTV Update

The FCC goes to

The 100-Day Drill

More requirements, more opportunities as the clock winds down

By Anne Goodwin Crump
crump@fhhlaw.com
703-812-0426

Believe it or not, November 10, 2008, marks the beginning of the last 100 days prior to the DTV transition deadline. When the DTV transition process hits that magic date, new public education requirements will kick in for many broadcasters, and stations will also have increased flexibility in determining how and when to complete their transition to all-digital operation.

As of November 10, 2008, new public education requirements will kick in for many broadcasters.

For stations that selected Option Two from the NAB's consumer education plan menu, November 10 is the first day on which stations must air new and additional 100-Day Countdown announcements. During the period from November 10 through the transition deadline, each Option Two station ***must*** air ***at least one*** of the following ***per day***:

- ***Graphic display*** – a graphic super-imposed during programming content that reminds viewers graphically there are "x number of days" until the transition and visually instructs them to call a toll-free number and/or visit a Web site for details. The length of time displayed may be from 5 to 15 seconds, at the discretion of the station.

- ***Animated graphic*** – a moving or animated graphic that ends up as a countdown reminder that there are "x number of days" until the transition and visually instructs viewers to call a toll-free number and/or visit a Web site for details. Again, the length must be between 5 and 15 seconds.

- ***Graphic* and *audio display*** – either a still or an animated graphic display which includes an added audio component and which lasts from 5 to 15 seconds.

- ***Longer form reminders*** – Stations can choose from a variety of longer form options to communicate the countdown message. Examples might include an "Ask the Expert" segment where viewers can call in to a phone bank and ask knowledgeable people questions about the transition or newscast segments during which an anchor or reporter asks questions of a DTV "expert" about the DTV transition deadline. The length of these segments may be from two minutes to five minutes, at the discretion of the station.

Stations choosing the other consumer education options also have increased obligations as the time draws closer to transition, but without the specific additional types of announcements. Stations that chose Option One have already had the number of PSA's and crawls that they must air in each quarter of the day increased to three of each. (That obligation went into effect as of October 1, 2008.)

As of November 1, 2008, noncommercial stations operating under Option Three must increase the amount of DTV consumer education time to at least 180 seconds per day and 22.5 minutes per month (6:00 p.m. - midnight).

Commercial stations that chose Option Two and noncom-

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October, 2008 **No. 08-10**

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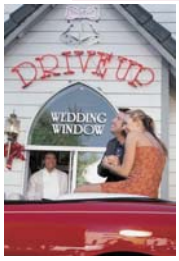

A match made in Washington?

Arranged Marriage For SDARS and HD?

Comments invited on satellite radio receiver design

By Davina Sashkin
sashkin@fhhlaw.com
703-812-0458

The Sirius/XM merger saga continues.

As you know, in approving the monopoly-spawning merger of the two SDARS (or "satellite radio," as most humans know it) providers in July, the FCC punted on the issue of HD Radio – and, in particular, on the issue of whether to require satellite radio receiver devices to include HD Radio receivers. The FCC acknowledged that a proposal for such a requirement was on the table, but it deferred to an unspecified later date any resolution of that question.

On August 25, the Commission issued a *Notice of Inquiry* pursuant to its mandate in the merger order, seeking advice from all comers as to whether the FCC should intervene (indeed, whether the FCC even has the *authority* to intervene) to promote the development of HD Radio in light of the competitive pressures from satellite radio. ***Comments are due November 10; reply comments will be due December 9***.

HD Radio, the digital broadcast technology standard for AM and FM radio developed by iBiquity and formally endorsed by the FCC in 2002, has struggled to find mainstream adoption in the marketplace. Not surprisingly, iBiquity and many other parties, including many senators and congressmen, as well as major media players such as NPR who have hopped aboard the iBiquity/HD bandwagon along the way, urged the Commission to consider the competitive impact of satellite radio on the fledgling HD Radio market. Congressmen Dingell and Markey led a coalition seeking a merger condition to require open access in the development of SDARS devices – in other words, to require the merged entity to allow device manufacturers to integrate SDARS receivers into other devices, including HD Radio devices and iPods, and vice versa. iBiquity and others went further, urging the FCC to require that SDARS device manufacturers integrate HD Radio chips into their devices.

In the end, the FCC accepted Sirius XM's voluntary commitment to open access conditions to allow third parties to develop and design SDARS equipment and not to bar the inclusion of audio technology, including HD Radio technology, in those devices. The FCC also noted it would open an inquiry to delve more deeply into the HD Radio-SDARS conundrum – hence, the August release of the *NOI*.

While broad in its overall scope, the *NOI* does present for comment a number of quasi-specific questions, including:

- ? What is the real state of HD Radio, is there a need for interference in light of marketplace developments, and would FCC-imposed requirements really work to facilitate deployment?
- ? Were the voluntary open access commitments that were adopted in the merger order sufficient to address any possible problems?
- ? Should the FCC require inclusion of HD Radio receivers in DSARS devices, and if so, should that requirement apply to all such devices or just those with the ability to receive analog terrestrial radio signals?
- ? Would mandating inclusion of HD Radio receivers in SDARS devices promote competition among Sirius XM, HD Radio, and other audio technologies, thus serving the public interest in lowering prices and increasing programming? Or would such mandates unduly burden the SDARS market?
- ? Should the FCC likewise mandate that all HD Radio devices incorporate SDARS

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FLETCHER, HEALD & HILDRETH P.L.C.

1300 N. 17th Street - 11th Floor
Arlington, Virginia 22209
***Tel*:** (703) 812-0400
***Fax*:** (703) 812-0486
***E-Mail*:** Office@fhhlaw.com
***Web Site*:** fhhlaw.com
Blog site: www.commlawblog.com

Supervisory Member
Vincent J. Curtis, Jr.

Co-Editors
Howard M. Weiss
Harry F. Cole

Contributing Writers
Anne Goodwin Crump,
Paul J. Feldman, Mitchell Lazarus,
Steve Lovelady, Frank Montero,
Lee G. Petro, R.J. Quianzon,
Davina Sashkin and Ron P. Whitworth

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Focus on FCC Fines

By R.J. Quianzon
quianzon@fhhlaw.com
703-812-0424

FCC goes after radio prank calls – A licensee of Florida and New York stations is being hit with a $16,000 forfeiture for a prank call that failed to meet the FCC's requirements. While the content of the call may have shocked the conscience of FCC staff, the fine was triggered not by the call's utter depravity but by the technical failure to announce that the call would be recorded and broadcast before station personnel proceeded to record and broadcast it.

Presumably it all seemed like a good idea at the time. The on-air personality was contacted by a woman who wanted to pull a prank on her sister. The station called the sister and pretended to be from the local morgue. Claiming that the morgue needed help in identifying two corpses, the radio host indicated to the woman that the bodies appeared to be those of her husband (who had supposedly been shot twice in the head because the victim was supposedly romantically involved with the shooter's wife) and her daughter (who had supposedly been hit by a car at the scene). The FCC released transcripts of the call indicating that, not unexpectedly, the woman sobbed, screamed and became hysterical upon being told of the apparent deaths of husband and daughter.

Three complaints directed at both the New York and Florida stations were sent to the FCC about the prank. The FCC imposed a fine of $4,000 per violation. Since the call was aired twice by each station, the grand total came to $16,000.

The licensee attempted to defend itself by stating that the on-air personality was an independent contractor. That defense went nowhere as the FCC reminded the licensee that the licensee remains responsible for its stations' on-air content, regardless whether that content is created by an employee or contractor. The station also claimed that the woman who was called consented to the broadcast of the call after she was told it was a joke. The FCC rejected that argument out of hand, pointing out that its rules forbid stations from broadcasting or recording a telephone conversation for later broadcast until the station has authorization to do so prior to the call – and a lack of prior authorization *cannot* be cured after the fact.

In another fine involving the broadcast of phone calls, a South Carolina station was hit with a $4,000 fine for calling local politicians to complain about local politics. In this case the radio station personality called a local government office and spoke to four different people about local taxi policies.

The personality claimed that he advised all of the persons that the call would be broadcast and also claimed that the victims of his calls were public officials. The FCC readily dismissed the claim that a victim's status as a public official somehow eliminates the requirements imposed by the Commission's rules. And the rules clearly require that, prior to the broadcast of (or the recording for broadcast of) a telephone conversation, the station ***must*** advise the other party of the intended use of the conversation and give that party the option to end the conversation – *regardless of the identity of the person the station is calling.*

With regard to the claim that the recipients of the calls had been advised prior to the recording, the evidence was against the station. The audio recording of the call indicated that one of the politicians specifically inquired whether the call was being broadcast. When the station admitted that it was being broadcast, the politician declared that the tactic was unfair and the station apologized. The station responded that there was a possibility that the audio recording could have been doctored. The FCC did not accept that defense, particularly because the politicians submitted sworn affidavits that they were unaware of the call.

Despite the fact that four different persons were called without notice (each of the two politicians had calls answered by a receptionist), the FCC considered the call to be a single event and fined the station $4,000 for a single violation.

Readers should ensure that both management and on-air staff are very familiar with Section 73.1206 of the FCC's rules, which sets out the specific requirements relating to recording and/or broadcast of telephone conversations. As the first case indicates, even if the party on the other end eventually consents to the broadcast, the consent must occur prior to the recording or broadcast.

AN IMPORTANT PUBLIC SERVICE ANNOUNCEMENT BROUGHT TO YOU BY THE *Memo to Clients*

The *Memo to Clients* Digital Transition is coming!!! Will you be ready? See the announcement on the back page of this issue if you can't read the following message:

White Space Oddity

Tests say "no", but FCC says "yes"

By Mitchell Lazarus
lazarus@fhhlaw.com
703-812-0440

It always looked good on paper. Every city has dozens of TV channels sitting empty. Why not use them for something? As Wi-Fi became popular, Wi-Fi-like unlicensed operation became the application of choice for these "white space" channels – so called because they show up in white on a frequency map. Big money signed on: Microsoft, Google, Motorola, and Intel, among others. Coalitions formed. Websites launched. Herds of dark-suited lawyers roamed the halls of the FCC.

As plans for digital TV took shape, the white space idea should have lost some of its gleam. Digital channels can be packed together much more tightly than analog – enough to have freed up 18 former TV channels for other uses. That leaves a lot less white space, and a lot less spectrum for white space devices. But this is Washington, after all, where policy routinely comes unhooked from the underlying facts. The proponents of white space devices continued to press their cause with undiminished fervor.

The prospect of millions of consumer-grade transmitters on TV frequencies makes two groups very nervous. One is the broadcast industry, which fears these products will stray into occupied TV channels and cause interference to viewers. Equally concerned are users of the wireless microphones licensed to TV and motion picture producers, and sometimes used also by other groups such as churches and live music venues. These microphones have long used vacant TV channels without causing harm, but are highly susceptible to interference from white space devices.

Not a problem! insisted the white space proponents. Their products, they said, could "sniff out" TV and microphone signals and thereby avoid any channels in use. To prove it, they handed over five prototypes to the FCC's engineers for testing. Earlier prototypes had failed badly – some did not seem to work at all – but the FCC tried again. It ran extensive studies both in its laboratory at Columbia, Maryland, and at twelve field sites: a downtown-area office building, three residences, several suburban and rural locations, and major sports and entertainment venues.

This week the FCC released the results. The devices actually work pretty well under laboratory conditions, in spectrum that is utterly quiet except for one clean TV or wireless microphone signal. So those people who live in shielded laboratory chambers should expect no problems.

But the rest of us may not fare as well. In particular, the presence of a TV signal on a channel adjacent to that being sensed tends to degrade performance badly. Suppose a white space is checking channel 21, say, while a station is broadcasting on channel 22. The device stands a good chance of missing an active TV station or wireless microphone on channel 21, leading it to think it was clear to transmit on that channel. It would thereby cause interference to viewers of the TV station or users of the microphones it had overlooked.

Back to the drawing board, one might think. After all, this batch worked better than the last ones, so maybe the next generation will actually pass. But the FCC does not think that way. This is Washington, where facts don't matter much. On the same day that it released the test results, the FCC announced plans for a vote at its November 4 meeting to authorize white space devices. There will be no opportunity for the public to study and respond to the test report first.

The tests established "proof of concept." But so did the Wright brothers at Kitty Hawk, yet no one was standing in line the next day to check luggage at O'Hare.

Perhaps because of doubtful results with the sensing approach, the FCC signaled its intent in authorizing an alternative: the "geolocation" option. Before transmitting, each white space device would locate itself via GPS and consult a database to identify unused TV channels in that area. But GPS works poorly indoors, or not at all. Moreover, the database will omit wireless microphones, except perhaps at certain very large sporting events. The only geolocation device that the FCC tested is the size of a microwave oven, and may not work as well in a portable version. Given these limitations, the FCC also plans to allow devices that rely on sensing TV and wireless microphone signals, if they can be shown to work properly in field tests. The all-important details have not been announced.

We can only speculate on the FCC's haste to authorize a technology that repeated and extensive testing has shown to be inadequate. True, the technical report found the tests had established "proof of concept." But so did the Wright brothers at Kitty Hawk, yet no one was standing in line the next day to check luggage at O'Hare. The election that coincides with the FCC meeting date may be a factor. And we have no doubt that Microsoft *et al*. handled the lobbying, if not the engineering, with great skill. But the Commissioners should understand the importance of making sure these gadgets work properly before unleashing millions of them on a nation just trying to watch TV in peace.

Agenda item pulled at last minute

Commissioners Kibosh Class A Cable Carriage

Martin dangles proposal, fails to deliver

By Lee G. Petro
petro@fhhlaw.com
703-812-0453

The stage was set.

After years of patiently waiting for the moment when the Commission would require cable systems to carry Class A Low Power stations, many members of the Class A universe made the trip to Nashville for an October 15 FCC Meeting to witness the momentous occasion. The proposed order had been circulated among the Commissioners for months. Since consideration of the item had been included in the agenda for the meeting, Chairman Martin apparently thought he had the three votes necessary to adopt a Notice of Proposed Rulemaking (NPRM) granting primary status to qualifying Class A Television stations and, thus, affording them must carry rights.

An NOI on the issue at least would have gotten the Class A carriage ball rolling by putting the issue out for comment.

However, the Chairman found out the hard way that there is no "I" in team. Somewhere along the way he lost whatever support he might have thought he hadfor the adoption of the NPRM. He responded by cancelling his travel plans to Nashville; he gave a press conference in Washington instead. While reports indicate that there were at least four votes for several of the separate sections of the draft proposed rules, Martin was apparently the only Commissioner who supported giving Class A stations primary status. The other four Commissioners reportedly wanted to split the carriage issue off into a separate Notice of Inquiry (NOI) – a gambit which would have delayed the actual implementation of that proposal for years, if it were to be implemented at all.

It is unclear why the Gang of Four would insist on taking the long NOI way around on this proposal. After all, many agree that low-power television licensees provide the type of diverse programming that the FCC has encouraged in other rulemaking proceedings. What better way to encourage such programming than to ensure that the programming is available to the 80% (give or take a few) of the households that receive their video programming via cable?

On the other hand, it is also unclear why, when it became clear that he didn't have the votes for an NPRM, the Chairman declined to release an NOI on the issue. That at least would have gotten the Class A carriage ball rolling by putting the issue out for comment. Not an ideal result, to be sure, but at least it would have constituted something akin to progress.

With the Presidential Election nearly upon us, it is unlikely that we will see any action on this until the second quarter of 2009 at the earliest. Of course, stranger things have happened. Stay tuned.

(Continued from page 2)

receivers?

? Does the FCC have statutory authority to require any receiver manufacturers to include certain technologies in receivers?

The last question, of course, might render *all* of the other questions moot. After all, if the FCC doesn't have the authority to order radio receiver manufacturers – over whom, it must be said, the FCC has not historically exercised any jurisdiction – to design their gear in a certain way, then it makes no difference whether anybody (including the Commission itself) might think such a requirement to be a good idea.

Not to worry – if the FCC does not yet have solid footing on the authority issue, the Radio All Digital Channel Receiver Act (H.R. 7157), introduced by Rep. Markey, would provide it. This bill, currently in committee, would amend Section 303 of the Communications Act to require that any device designed to receive both terrestrial and satellite audio also must be capable of receiving HD Radio signals, and would provide the FCC express authority to enforce this requirement. The prospects for Congressional passage of that bill are far from clear, and the current election season further fogs up the crystal ball.

In view of the radical nature of the FCC's proposal and the uncertainty that the election imposes on pretty much all things political, it's probably a good guess that we won't be seeing any FCC resolution of these questions until well into 2009, at the earliest. While that horizon may seem a long time off, remember that, if you want to try to influence the decision, the time to file comments is in November and/or December. We will be happy to help in that effort.

No subscriber left behind

Bureau Spanks CATV Giants For SDV Switch

Platform change violates "navigation device" rules

By Paul J. Feldman
feldman@fhhlaw.com
703-812-0403

The march of progress is all well and good, but apparently it's important to calibrate the pace of that march to insure that some don't get left behind while others race ahead. Cable giants Cox and Time-Warner learned that principle the hard way this month when the Enforcement Bureau proposed to fine them each tens of thousands of dollars for moving programming to Switched Digital Video (SDV) platforms. According to the Bureau, the move to SDV messed up certain subscribers' access to programming to which they were entitled.

SDV is a relatively recent innovation which allows cable operators to make more efficient use of available bandwidth. Traditional cable systems delivered *all* available programming on the system to the subscriber's TV set *all* the time. Since each set could generally tune to only one (or two) program sources at any given time, this approach resulted in considerable waste of bandwidth, as system capacity was taken up not only by the program(s) being watched, but also by all other available programs.

When a cable system moves programming to the SDV platform, that programming becomes unavailable to subscribers relying on UDCPs. And therein lies the rub.

SDV addresses that problem by delivering only a subset of the cable system's overall programming choices to the subscriber's set in the traditional way. The remainder of the system's programming – often the premium or "scrambled" choices – can be accessed through the use of SDV switching equipment located at a system hub. The SDV gear converts the signal of such programming and sends it to the subscriber's set once the subscriber signals the system that he/she wants to view programming available through the SDV switch. SDV is an astute and beneficial response to an increasing technological problem in many respects.

In many, but *not* all, respects – at least as the FCC sees it. As it turns out, in order to signal the SDV switch that a subscriber wants to view a particular program accessible only from the SDV platform, the subscriber has to have "upstream" or "bi-directional" signaling capability. Such upstream signaling capability is readily available in SDV-compatible set-top boxes that the cable operator will happily rent to the subscriber. But such capability is ***not*** available through a wide range of equipment already in use by many subscribers. And therein lies the rub.

Flashback to 1996. In the Telecommunications Act of 1996, Congress wanted to insure that the public could purchase their own "navigation devices" with which to interface with multichannel video programming distributors (MVPDs) like cable systems. Essentially, Congress did not want MVPDs to be able to require the subscriber to use a particular device – like a set-top box rented to the subscriber by the MVPD – to access the programming once the programming was delivered to the home through the cable connection. The goal was to spur competition and expand consumer choice in the navigation device area. Accordingly, in Section 629 of the Act Congress required the FCC to ensure the commercial availability of navigation devices.

For those of you unfamiliar with FCC-speak, a "navigation device" is a gadget or doo-dad into which the cable from the cable system gets plugged and which then enables the subscriber to access and navigate through the programming choices. The classic set-top box traditionally available from the cable operator is an obvious example. But thanks in part to the 1996 Act, alternatives have proliferated. Those include converter boxes, "cable-ready" television sets and digital video recorders (DVRs), of which TiVo is perhaps the best known.

In virtually all cases, such alternative navigation devices are "unidirectional digital cable products" (UDCPs) which provide one-way access to the programming. These work fine in a traditional cable delivery system where all programming is delivered to the set at all times.

But as noted above, SDV delivery requires bi-directionality, so that the subscriber can signal upstream to the SDV switch to effect the selection of certain programming. As a result, when a cable system moves programming to the SDV platform, that programming becomes unavailable to the subscriber who is relying on a UDCP.

SDV poses a second, related, problem. The FCC's rules governing navigation devices also require the cable operator to provide to all subscribers a one-way stream of data separate from the video programming. That stream normally transmits channel line-up and programming data to the UDCP. An MVPD using an SDV platform thus faces a dilemma: if the programming information transmitted on that data stream includes *all* programming on the system, including material accessible only through SDV, then folks with UDCPs will be seeing listings of program choices that they can't get to with their unidirectional equipment. One solution that Cox and Time-Warner (and presumably others) hit on was to redact the programming

(Continued on page 11)

FCC to private litigants: "What, Me Worry?"

Tell It To The Judge

FCC declines to resolve private disputes

By Steve Lovelady
lovelady@fhhlaw.com
703-812-0517

At times, the FCC may seem like a stern parent to broadcast station licensees, a parent with an eagle-eye for aberrant behavior and a swift hand to punish rule violations – whether accidental or not. It is understandable, therefore, that licensees might expect the FCC to listen and perhaps take action, as a concerned parent would, if a contractual dispute arises in connection with an FCC license transfer application.

Contrary to such expectations, however, the FCC actually adopts a *laissez-faire* posture when presented with legal squabbles of this nature. A couple of recent FCC decisions illustrate this point.

One decision involved a sale of a radio station in Little Rock, Arkansas, by Nameloc, Inc. to ABC Radio. Nameloc and ABC signed an Asset Purchase Agreement, but then Nameloc refused to follow through and file an assignment application with the FCC – there apparently was some dispute with ABC over the transfer of the station's tower lease. ABC sued Nameloc in Arkansas and won a court order forcing Nameloc to deliver a signed FCC license assignment application for the station to ABC. After the FCC's staff granted the assignment application, Nameloc filed a Petition for Review with the FCC and a Motion for Stay asking the Commission to reverse the grant and/or prevent the assignment of the license to ABC. Various other parties filed motions and petitions in support of Nameloc.

The FCC invoked its long standing policy that the Commission is not the proper forum for the resolution of private contract disputes.

In denying the various objections, the FCC invoked its long standing policy that the Commission is not the proper forum for the resolution of private contract disputes. Presented with a valid application for assignment of a station's licenses, the Commission considers only whether: (a) the proposed transaction complies with the law and the FCC's rules and policies; and (b) the assignee is qualified to hold an FCC license. In this case, Nameloc had argued in its petitions and in the court in Arkansas that ABC had engaged in anticompetitive practices in its dealings with Nameloc. Such conduct, if true, could *theoretically* have disqualified ABC from being an FCC license-holder. (We can't think of the last time that any licensee was *actually* disqualified for such conduct – certainly it hasn't happened in the last 20-30 years – but in principle it could conceivably happen.)

The Arkansas court did not find, however, that ABC's actions were anticompetitive, and neither did the FCC. Accordingly, the FCC dismissed all of the petitions, motions and objections that had been lobbed in by Team Nameloc.

Another recent decision involved a sale by the legal guardian of the estate of an incapacitated individual licensee of several broadcast stations in Texas. The guardian had elected to sell the stations to Buyer A. After appropriate assignment applications were filed with the FCC, another potential buyer (Buyer B) objected on the grounds that the sale to Buyer A was subject to the approval of a court in Texas under the guardianship proceeding. Buyer B alleged that he was willing to pay more for the stations, and the FCC should wait until the court in Texas sorted out all of the competing bids and other disputes. Adding a little spice to the dispute was the fact that the legal guardian for the estate was the daughter of the late licensee and Buyer B was her brother (*i.e.*, the son of the licensee). Shades of *Dallas*!! The daughter and Buyer A argued that the FCC should not delay acting upon what was otherwise a valid application.

The FCC's staff denied Buyer B's objections and granted the assignment application to Buyer A. Since Buyer B's petition did not allege that Buyer A was disqualified from holding FCC licenses, the FCC staff refused to consider the fact that there was a private dispute pending in the Texas courts. According to the FCC staff, absent a stay or injunction against the sale by a local court, FCC assignment applications are routinely granted even if they are the subject of private legal disputes.

Buyer B also argued that grant of the assignment application would prejudice his case in the local courts. The staff rejected this argument, explaining that grant of an application by the FCC is merely permissive – that is, a grant merely authorizes, or permits, the parties to close their transaction, it does ***not*** compel them to do so. Because of that, an FCC grant does not confer any rights on the applicant that would prejudice a local court's ability to find in favor of the objector. Since Buyer A was qualified, the FCC's staff denied the objections and granted the assignment applications.

So don't expect that the FCC will dismiss or delay a pending assignment application merely because there's a pending contract lawsuit in a local court. Absent proven facts establishing that a proposed assignee is not qualified to be the holder of an FCC license — or a stay by the court prohibiting the parties from moving forward prior to the court's resolution of the merits — the FCC will most likely be deaf to your protests and grant the application over your objections.

Congress to FCC: Just say "whoa"!

Hill Gets Vocal On Local

By Ron P. Whitworth
whitworth@fhhlaw.com
703-812-0478

According to at least one report coming out of the recent NAB Radio confab in Austin, Chairman Martin sought to blame Congress for the broadcast localism proposals currently under consideration. (*See* our *Memos to Clients* from November, 2007-February, 2008, for coverage of those proposals.) He apparently cited Congressional angst about broadcasters' performance as an important motivating factor behind the proposals.

If responsiveness to Congress is, in fact, a driving force at the FCC, the push toward increased regulation supposedly designed to promote localism should be receding. Certain interests on Capitol Hill have made clear that they are backing up the industry's claims that the proposed requirements could wreak havoc on broadcasters and lead to disastrous unintended consequences. In recent months, more than 150 members of the House of Representatives and 28 senators have echoed the broadcasters' concerns in letters sent to the Commission.

The letter noted that while the Commission's proposals are "well-intentioned," the unintended adverse consequences could be severe.

In early October, 27 members of the Congressional Black Caucus (CBC) wrote to the Chairman raising concerns about elements of the proposals that would harm minority broadcasters in particular. Of particular concern were: (1) the FCC's proposed reversion to the pre-1987 main studio rule, requiring the main studio to be located within a station's community of license; and (2) the proposed requirement that stations have personnel staffing their facilities during all hours of operation, effectively eliminating remote control operations currently permitted.

The CBC letter reminded Martin that the National Association of Black Owned Broadcasters (NABOB) and the Minority Media and Telecommunications Council (MMTC) have suggested alternatives to the proposals in their own localism comments that would protect broadcasters against what would be a "significant financial hardship...with little benefit to the public." The staffing requirement, according to CBC, is unnecessary because stations that can afford to staff their operations 24/7 (mostly in large urban areas) are already doing so. By imposing an FCC requirement making around-the-clock staffing mandatory, broadcasters in smaller markets will be faced with a significant and perhaps business-threatening expense.

"[I]n the ideal world perhaps such a requirement might be viable," CBC wrote. "[But] those stations that are not staffed 24 hours a day tend to be those that do not have a strong balance sheet, and simply cannot afford to do so."

CBC also contended that the main studio requirement would impose a significant financial strain on all broadcasters, and particularly on those that are already struggling to survive (many of which are minority-owned). "Many licensees have entered into long-term leases of their studio facilities based on more than 20 years of settled law," the members wrote. Forcing them to break their leases, acquire new space, and move their studios could well put some stations out of business."

The letter acknowledged that while the Commission's proposals are "well-intentioned," the unintended adverse consequences could be severe. "[It] would be particularly ironic if a community lost the service of a station altogether because it could not afford the extra expense of complying with this new regulation," the members wrote.

The CBC's is not the only voice from Capitol Hill speaking out on the issue. An Illinois Congressman sent a separate letter warning about the same problems identified by the CBC. Earlier this year, 123 members of the House of Representatives signed off on a letter to the Commission expressing concern that the Commission "is set to turn back the clock on decades of deregulatory progress," while other House representatives sent individual letters echoing the same concerns.

In view of these on-the-record Congressional expressions of concern, it is difficult to take seriously any claim – by the Chairman or anyone else, for that matter – that the FCC's effort to turn the calendar back by decades on the localism front is a response to the Congressional will. To the extent that Congressional pressure has been used as a justification for the proposals, the recent spate of Congressional *opposition* to those proposals puts the Commission in a difficult position.

Interestingly – and perhaps not coincidentally – there are some signs that the Commission may be re-thinking its damn-the-torpedoes-full-speed-ahead approach toward localism. Most noticeably, the Form 355 and related TV-public-file-on-the-website requirement – adopted by the Commission almost a full year ago – have still not gone

(Continued on page 9)

Federales turn up the heat out West

Muy Caliente: FCC Probes Payola In Spanish Radio

By Francisco Montero
montero@fhhlaw.com
703-812-0480

If you thought that the departure of Elliott Spitzer from the public scene might have put out the FCC's fire for enforcement of the payola rules, think again. That fire is still blazing. In October, the Enforcement Bureau has sent out letters of inquiry to a number of Spanish-language radio stations demanding responses concerning allegations of payola.

The claims arise from a lawsuit filed in Los Angeles two years ago. The plaintiff there, one Daniel Mireles, claims that he was wrongfully discharged from his position as Vice President of Promotions at Univision Music. (As always, the pivotal role of the "disgruntled former employee" should *never* be underestimated.) According to his complaint, Mireles was instructed by management-level executives of Univision and Fonovisa (a record label owned by Univision) to make "cash payments to the program directors and others at radio stations in order to increase the airplay of Fonovisa's records". While Mireles alleges that he resisted those instructions initially (apparently he had been involved in a payola investigation in the 1990s and was understandably gun-shy about going through the meat grinder again), he acknowledges that, between February-June, 2006, he was given some $720,000 to pay to "individuals at radio stations". The goal was apparently to "get Fonovisa's records played more frequently on the radio".

Mireles claims that, in drawing up his list of "individuals at radio stations", he spoke with people at "approximately fifty or more" stations.

Mireles claims that, in drawing up his list of "individuals at radio stations", he spoke with people at "approximately fifty or more" stations. He allegedly made deals to make payments ranging from $3,000-$10,000 per month.

The complaint does not identify any stations or station personnel. But it appears that, in the two years since the complaint was filed, some names and call signs have surfaced in the lawsuit. More importantly, it looks like those names and calls have found their way to the Commission. The Enforcement Bureau's inquiry letter to at least one station states that that station "is specifically mentioned in the [Mireles] lawsuit as having participated in the payola scheme".

The Bureau's letter asks standard questions relating to charges of payola as well as questions concerning, for example: (1) the station's relationship with, among others, Univision Music Group, and (2) the station's own internal policies and practices relating to awareness of and compliance with the sponsorhip ID rules. The letter also requires that the licensee turn over any responsive documents it might have in its files.

Of course, regardless of what may or may not have surfaced in Mireles's litigation, at present it appears that all we have on the table are allegations, pure and simple. As far as we can tell, Mireles's case has not to date generated any findings of misconduct by any radio station or station personnel and, of course, much more than mere allegations is needed to justify the imposition of any penalty.

It's not clear where this is going or how long it will play out. Just last year, the Commission shook a grand total of about $10 million out of Clear Channel, Entercom and CBS in "voluntary contributions" arising from the Spitzer-triggered payola inquiries launched a year or two earlier by the Commission. Whether the FCC will have similar luck this time around remains to be seen.

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into effect. That's because the FCC still has not received OMB approval of the new Form 355 – and that, in turn, is because the FCC apparently still hasn't even sent the form over to OMB for it to assess. If the FCC were really hot to get its localism machine running, it would presumably have shipped its showing to OMB months ago. The fact that it hasn't even started that process suggests at least some reluctance on the Commission's part.

If and when the Commission does send the form to OMB, the Commission will have to justify the extraordinary new burdens that the form will impose on broadcasters. (OMB review is mandated by something called "The Paperwork Reduction Act", after all.) At that point, interested parties – including broadcasters – will have a chance to chip in their two cents' worth. But at the rate we're going, we may never get to that point. We will keep you updated.

DTV Update

(Continued from page 1)

mercial stations that chose Option Three are also reminded of the obligation to air, between 8:00 a.m. and 11:35 p.m., at least one 30-minute informational program about the DTV transition by February 16, 2009. Many stations may have already fulfilled this obligation, but for those that have not, the time in which to do so is drawing shorter . Stations must air such programming on both their analog and primary digital programming streams. The program may air simultaneously on both, but it is not required to do so. The important thing to remember is that there is a *separate* 30-minute informational programming requirement *for each channel*. Both channels may air the same 30-minute program, either simultaneously or at different times, or they may air different programs on each channel, if they choose. But each of the analog and DTV channels must air a 30 -minute informational program.

During the last 90 days, if a station wishes to reduce or terminate either its analog or pre-transition digital service, advance FCC approval is not required.

As noted above, the final countdown to transition also opens some opportunities and increased flexibility. Taking advantage of that increased flexibility will require some advance planning, however. The Commission has determined that during the last 90 days before transition, if a station wishes to permanently reduce or terminate either its analog or pre-transition digital service, it need ***not*** obtain advance FCC approval. Rather, it must notify both the Commission and its viewers at least 30 days in advance of the termination or reduction in service. The notification to the FCC must be filed electronically and must include a showing that the station's action is necessary for the purposes of the transition.

The notification to viewers must take the form of on-air announcements which must be broadcast at least four times per day, including at least once during primetime. The announcements must include:

- the station's call sign and community of license;
- the fact that the station is planning to reduce or terminate its analog or pre-transition digital service prior to the general transition deadline (*i.e.*, February 17, 2009);
- the date of the planned reduction or termination;
- what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received and whether a re-scanning of the receiver's tuner or the converter box will be needed to pick up the channel and/or how a viewer may receive another affiliate of the same network serving the loss area;
- information about the availability of digital-to-analog converter boxes in the station's service area and the NTIA coupon program; and
- the street address, e-mail address (if available) and telephone number of the station where viewers may register comments or request information.

If, on February 18, 2009, a station will not be serving at least the same population as receives its current analog and DTV service, it must also notify viewers of the nature, scope, and anticipated duration of its post-transition limitations.

These notification announcements are in addition to and separate from the general consumer education spots required. The FCC has clarified, however, that the announcements for both purposes may be combined into one spot so long as all of the information required for both is included in the single announcement.

If you have questions about any of the heightened DTV requirements for the final 100 days, do not hesitate to give us a call.

FHH - On the Job, On the Go

On October 21-23, **Joe Di Scipio** was the "Communications Law Practitioner-in Residence" at his alma mater, the Syracuse University College of Law, and the Newhouse School of Communications. **Joe** spoke about indecency regulation to the first year law school class.

On October 22-23, **Frank Montero** attended the Hispanic Television Summit in New York. He appeared on a panel on "How to Attract Investment Capital for Ventures in Hispanic Digital Media".

On October 27-28, **Paul Feldman** and **Peter Tannenwald** attended the Community Broadcasters Association DTV National Convention in Las Vegas. (**Peter** was slated to address the FCC's open meeting in Nashville on October 15, but as reported on page 5, the FCC pulled the plug on the meeting.)

On November 13, **Joe Di Scipio** and **Frank Jazzo** will join the FCC's **Roy Stewart** for a "Legal Update on Current Broadcast Issues" at the annual Alaska Broadcasters Association convention in Anchorage.

And how about **Jeff Gee** and **Steve** ("The Contracts Guy") **Lovelady**? *Radio World* ("*the Newspaper for Radio Managers and Engineers*") published *not only* an article by **Steve** *but also* an article about the piece **Jeff** wrote for last month's *Memo to Clients*. Take a bow, gentlemen — you're our *Media Darlings of the Month!!!*

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listings on the one-way stream so that UDCP users would see only programming that they could receive. But taking that approach results in giving the UDCP subscriber the misimpression that he/she has fewer programming choices than the cable system is in fact providing (and for which the subscriber is presumably paying).

Subscribers with UDCPs complained because, when Cox and Time-Warner deployed their SDV platforms, sure enough, those subscribers couldn't receive all the programming they thought they were entitled to. The Enforcement Bureau investigated and sided with the subscribers.

According to the Bureau, the fact that SDV operations prevent UDCP-equipment subscribers from accessing the entirety of the programming options to which their subscription package entitled them constitutes a violation of Section 76.1201. That section broadly prohibits any MVPD from "prevent[ing] the connection or use of navigation devices to or with its system". In the Bureau's view, if any regularly-scheduled programming (referred to as "linear" programming) previously available to the UDCP subscriber is moved to the SDV platform and thus rendered unavailable to Mr. or Ms. UDCP, then a violation has occurred. In response, Time-Warner attempted to argue that the FCC has historically carved out an exception of sorts for some types of two-way service. In Time-Warner's view, SDV is a sort of two-way service, and thus not necessarily subject to those limitations. The Bureau disagreed.

The Bureau also found that the provision of less-than-complete program listings is a violation of Section 76.640(b), which requires the MVPD to provide UDCP-equipped subscribers with complete listings of all program offerings available.

In this case, the Bureau is clearly siding with consumer interests over technical interests.

So the MVPDs here are being penalized for getting a bit too far ahead of the curve, and leaving consumers in the lurch (in the eyes of the FCC, at least). Of course, SDV technology appears to be here to stay. If the majority of the MVPD industry shifts to SDV platforms, something is going to have to be done about insuring consumers some alternative to set-top boxes available, at a cost, only from MVPDs. In that regard, the Bureau's orders sharply note that placement of previously "linear" programming on SDV platforms is "particularly troubling because no bi-directional navigation devices are commercially available at this time." In other words, while SDV might save bandwidth (which is almost always desirable), it also effectively eliminates the utility of non-MVPD-provided navigation devices, which Congress and the Commission long ago concluded was ***not*** acceptable. In this case, at least, the Bureau is clearly siding with consumer interests over technical interests.

Perhaps a sudden influx of non-MVPD-provided bi-directional navigation devices into the marketplace will ease the transition to SDV platforms everywhere. Perhaps Cox and/or Time-Warner will appeal the Bureau's decision – which appears to be unprecedented and, thus, at least possibly open to reinterpretation by the full Commission. Whatever the future may hold, for now we know the Enforcement Bureau's position vis-à-vis SDV and UDCPs. Cable operators considering modifications to their systems should be mindful of that position as they proceed.

And then there were 14

Let the Bidding Begin: LPTV and Translator Channels Set for November Auction

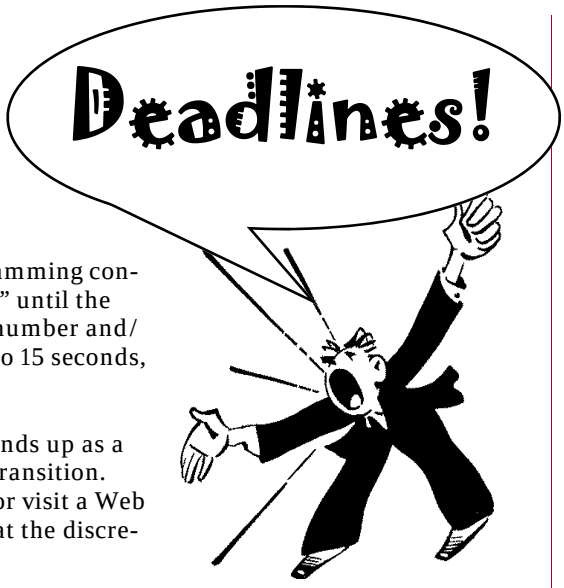
By R.J. Quianzon
quianzon@fhhlaw.com
703-812-0424

In the Spring, 2006, the FCC invited licensees of LPTV and TV Translator stations to apply for digital companion channels for the transition to digital television. Hundreds of applications poured in. The FCC first sorted out those applications which did not cause interference to any others and processed them as singletons. It then sorted the remaining non-singletons into 200 groups of mutually exclusive applications and gave those applicants 60 days to try to resolve their differences amicably. The vast majority of the applicants were able to reach solutions.

A month ago, the FCC identified 43 MX groups which did not reach a settlement. The Commission notified those applicants that their applications would be set for auction. Appropriate filing deadlines were established.

Now the FCC has announced that of the 43 auction-bound MX groups, only 14 will in fact go to auction. That's because, in eight of the 43 cases, nobody at all filed the paperwork to participate in the auction, and in 21 groups only one applicant did so, thus eliminating any need for a real auction in those case. As a result, only 14 markets will actually go to auction. Of those 14 remaining markets, all but one will consist of an auction involving only two applicants. The auction begins on November 5 and, given the dynamics of a two-bidder auction, will likely end very soon thereafter.

November 10, 2008



DTV 100-Day Countdown - Additional consumer education requirements for TV stations which chose Option 2 for their DTV educational efforts begin for the last 100 days of transition. Those stations must begin airing *one* of the following types of additional reminders *each day*:

Graphic display. A graphic super-imposed during programming content that reminds viewers graphically there are "x number of days" until the transition. This will include a visual instruction to call a toll-free number and/or visit a Web site for details. The length of time will vary from 5 to 15 seconds, at the discretion of the station; or

Animated graphic. A moving or animated graphic that ends up as a countdown reminder that there are "x number of days" until the transition. Viewers will be visually instructed to call a toll-free number and/or visit a Web site for details. The length of time will vary from 5 to 15 seconds, at the discretion of the station; or

Graphic and audio display. Option 1 (non-animated graphic display) or Option 2 (anitmated graphic display) – but with an added audio component. The length of time will vary from 5 to 15 seconds, at the discretion of the station.

Longer form reminders. Stations can choose from a variety of longer form options to communicate the countdown message. Examples might include an "Ask the Expert" segment during which viewers are encouraged to call in to a phone bank to ask knowledgeable people questions about the transition. The length of these segments will vary from two minutes to five minutes, at the discretion of the station. (Some stations may also choose to include, during newscasts, DTV "experts" who may be asked questions by the anchor or reporter about the impending February 17, 2009 deadline).

Of course, reliable records of all such on-air educational notices should be maintained, as licensee efforts will have to be reported to the Commission on Form 388 in January (*see below*).

December 1, 2008

DTV Ancillary Services Statements - All DTV licensees ***and*** permittees must file a report on FCC Form 317 stating whether they have offered any ancillary or supplementary services together with its broadcast service during the previous fiscal year. If a station has offered such services, and has charged a fee for them, then it must separately submit a payment equal to five percent of the gross revenues received and an FCC Remittance Advice (Form 159) to the Commission. The report on Form 317 specifically asks for a list of any ancillary services, whether a fee was charged, and the gross amount of revenue derived from those services. This year marks the first time that permittees as well as licensees are required to file the report.

EEO Public File Reports - All *radio* and *television* stations *with five (5) or more full-time employees* located in **Alabama**, **Colorado**, **Connecticut**, **Georgia**, **Maine**, **Massachusetts**, **Rhode Island**, **Minnesota**, **Montana**, **New Hampshire**, **North Dakota**, **South Dakota**, and **Vermont** 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 **Alabama** or **Georgia** 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 **Colorado**, **Minnesota**, **Montana**, **North Dakota**, or **South Dakota** 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 **Alabama**, **Connecticut**, **Georgia**,

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Maine, **Massachusetts**, **New Hampshire**, **Rhode Island**, or **Vermont** 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 **Colorado**, **Minnesota**, **Montana**, **North Dakota**, or **South Dakota** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323 or 323-E.

January 10, 2009

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. The period to be included is October 1 through December 31, 2008. As was true for the last two Form 388 reports, the fourth quarter report will be filed through the Consolidated Data Base System (CDBS), the general electronic filing system for applications and reports.

Children's Television Programming Reports - Analog and Digital - For all *commercial television* and *Class A television* stations, the fourth quarter reports on FCC Form 398 must be filed electronically with the Commission, and a copy must be placed in each station's local public inspection file. 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, or other evidence to substantiate compliance with those limits, 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.

FHH'S COMMLAWBLOG — NEW AND IMPROVED!!!

If you took our advice and and checked out FHH's blog at:

www.CommLawBlog.com

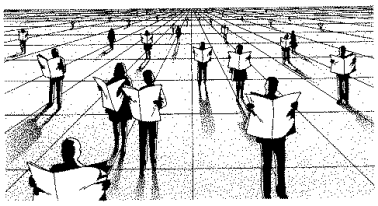
you would have been among the first to learn of the Spanish radio payola probe (reprinted in this issue of the *Memo to Clients* on page 9), or the new DTV search page on CDBS, or the FCC's foray in NASCAR sponsorship. We update the blog as developments arise, so be sure to bookmark it and drop by every day or so, to see what's new. We have included a button that allows you to add the blog to your RSS feeds Or you can subscribe so that you'll be automatically alerted, by email, to new content when it gets added. (*If you were a subscriber to our old blog, please subscribe again — the upgrade didn't carry over our previous subscriber list.*) We have also added links to a wide range of sites that will be of interest and assistance to our readers.

We think you'll find a lot to like at CommLawBlog.com. Stop by, look around, and take the opportunity to add your own comments. We look forward to hearing from you.

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

Updates on the News

It's ALIVE!!! – In the spirit of Halloween, we report on a recent decision in which a seemingly dead FM translator station in Montauk, NY, was brought back to life, even though it had been off the air for more than a year. Faithful readers of the *Memo to Clients* doubtless know that being off-air for more than 12 consecutive months is almost invariably the kiss of death, thanks to Section 312(g) of the Communications Act. In the recent case, the translator had operated briefly, and then signed off in April, 2007. Apparently the station was at that point kicked off its initial transmitter site by the tower owner – right around the time the station was sold to a new entity. The new licensee rolled up its sleeves and jumped right in, trying to get everything set right. A new site was found and a change-of-site application filed with the FCC. Prompt and diligent steps were taken to get local approval – although the local authorities managed to dilly-dally around so that the building permit was not issued until after the 11th hour. With the days ticking quickly down, the licensee got some unexpected bad news: a discrepancy in the tower registration data specified in the permit. Turns out that the registration number in the permit was *not* the tower that they planned to use, but rather a separate tower at the same coordinates. Darn. Plus, the FCC's records for the tower they wanted to use were messed up and inconsistent with the construction permit. Double darn.



The licensee notified the tower owner *and* the FAA *and* the FCC of the problems. It also eschewed the tower owner's offer to go ahead and build the station anyway, even before FAA and FCC approval had been granted. Instead, it plowed ahead down the straight and narrow path, doing things The Right Way, even though that meant keeping the station off the air for more than 12 months. Sure enough, that was the right thing to do. Recognizing that the station's inability to operate had not been the fault of the licensee, and recognizing further that the licensee had been diligent in its efforts to straighten things out, and recognizing still further that the licensee's efforts had "directly promoted the integrity of the ASR system and advanced air safety goals", the Commission breathed the breath of life back into the expired license.

The moral of this story is that the FCC will, on occasion, do the right thing if the licensee does the right thing first.

Arbitron Armageddon – The contretemps over the roll-out of Arbitron's personal people meter ratings system (*see* last month's *Memo to Clients*) ratcheted up a notch or two this month. The State of New York officially tried to get people not to use the PPM, Arbitron sued the State of New York, the State of New York sued Arbitron, the State of New Jersey jumped into the ring to take a swing or two by filing its own lawsuit against Arbitron, and, at the FCC, comments on one side or the other of the tussle rolled in. As of press time there was no white flag in sight on either side of the battlefield.

Can you hear me now? – As we reported last summer, in June a group of broadcasters and equipment manufacturers filed a letter request seeking changes in the technical specs relative to FM digital broadcasting. The Commission has now opened that proposal up for public comment. Comments are due by *November 28, 2008*; replies by *January 4, 2009*. In a tacit admission that the HD Radio ™ digital audio service may not deliver all that everybody hoped for in the way of signal strength, the proponents have asked for an increase in HD power by up to 10 dB . . . *except* (according to the proponents' letter request) that the increase would *not* necessarily apply to some Super B stations (because higher digital power for those stations were found to have potential adverse effects on the analog signal of first adjacent Class Bs). The proposal would, according to its proponents, result in significantly greater HD coverage areas and improved signal penetration into buildings. Of course, the proponents say nothing but nice things about HD service, but one may well wonder why, if HD service is everything it's cracked up to be, a significant power increase might be called for.

Additionally, the fact that even the proponents – who seem to be avid cheerleaders for the HD service – have to carve out some exceptions because of interference concerns does not inspire confidence. While it may be possible that interference would be limited to a particular class of station in particular circumstances, the acknowledgment of any potential interference at least establishes, well, that there is a potential for interference at all. Months ago – long before the FCC's 10/23/08 notice formally opening this up for comment – a number of broadcasters lobbed in fairly strident oppositions. Now that the FCC has affirmatively solicited comments, it will be interesting to see what level of response results.

PAYOLA, MILITARY-STYLE? – Word is out that the Commission has sent out letters of inquiry looking into whether former military officers received some form of consideration for broadcasting favorable views of the Iraq war when they appeared on network news shows as knowledgeable experts. We first reported on these allegations in the June, 2008, *Memo to Clients* after a *New York Times* article led some folks in Congress to dash off a letter to the Chairman raising questions. The FCC's letters are just the first volley in what could prove to be a long engagement.

FM ALLOTMENTS ADOPTED – 8/20/08-10/21/08

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
CA	Tecopa	89 miles SW of Las Vegas, NV	288A	07-226	TBA
NV	Elko	231 miles W of Salt Lake City, UT	274C3	07-281	TBA
NV	Elko	231 miles W of Salt Lake City, UT	284C3	07-281	TBA
OR	Waldport	94 miles NW of Eugene, OR	229C2	07-124	TBA
OR	Butte Falls	187 miles SE of Eugene, OR	290A	07-210	TBA
OR	Netarts	79 miles NW of Salem, OR	232C3	07-210	TBA
TX	Hico	102 miles SW of Dallas, TX	293A	07-182	None
TX	Normangee	110 miles SE of Waco, TX	267A	07-279	TBA

FM ALLOTMENTS PROPOSED – 8/20/08-10/21/08

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (*i.e.*, Drop-in, Section 1.420, Counterproposal)
TX	Crowell	82 miles W of Wichita Falls, TX	255C3	08-97	Cmnt due: 12/1/08 Reply due: 12/16/08	Accommodation Substitution
TX	Knox City	87 miles SW of Wichita Falls, TX	293A	08-97	Cmnt due: 12/1/08 Reply due: 12/16/08	Accommodation Substitution
TX	Quanah	80 miles NW of Wichita Falls, TX	251C3	08-97	Cmnt due: 12/1/08 Reply due: 12/16/08	Accommodation Substitution
TX	Rule	106 miles SW of Wichita Falls, TX	288C2	08-97	Cmnt due: 12/1/08 Reply due: 12/16/08	Accommodation Substitution
WI	Crandon	113 miles NW of Green Bay, WI	276A	08-62	Cmnt due: 12/1/08 Reply due: 12/16/08	Accommodation Substitution
NV	Beatty	111 miles NW of Las Vegas, NV	259A	08-68	Cmnt due: 12/1/08 Reply due: 12/16/08	Drop-in
NV	Goldfield	175 miles NW of Las Vegas, NV	262C1	08-68	Cmnt due: 12/1/08 Reply due: 12/16/08	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

COMING NEXT YEAR: The Memo to Clients Digital Transition

Following the FCC's example in herding the public into a digital universe, we at the *Memo to Clients* are planning to do the same in 2009. In an effort to reduce our carbon footprint and bring the news to our readers as quickly as possible (and in color!), we are going to stop distributing the *Memo* in a paper edition. Instead, we will distribute it electronically. No firm date has been set yet, but we expect we will stop the paper edition sometime in the first quarter, 2009.

We already have an e-mailing list of several hundred subscribers. If you are among them, you need do nothing – your continued receipt of the *Memo* is taken care of.

If, on the other hand, you are one of our 1,400 or so subscribers who receive their monthly *MTC* fix on paper via snail mail , and if you wish to continue to receive the *Memo* (and who wouldn't?), you will need to send us the email address(es) through which we can alert you to each month's edition. Just specify your preferred email address(es) in an email to ***cole@fhhlaw.com***; it *will be helpful if the subject line reads "**MTC email address change**".*

As the FCC did in the DTV Transition, we will provide further warnings as the Big Day approaches – but we encourage you to act sooner rather than later to avoid any possible delivery interruption.