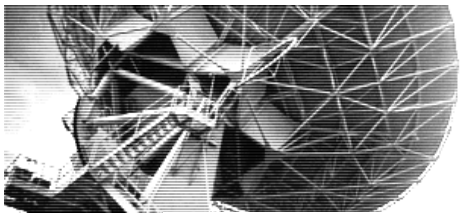

FLETCHER, HEALD & HILDRETH
Communications Law & Regulation

MEMORANDUM TO CLIENTS

News and Analysis of Recent Events in the Field of Communications

Whither TV spectrum? It's . . .

Going Mobile!

FCC to propose "Mobile Future Auction" to induce spectrum re-purposing

By Davina Sashkin
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For several months now the question on many TV broadcasters' minds has been: will they or won't they take away my spectrum and turn it over to smartphones? And while various FCC higher-ups have dropped conflicting hints about what the answer might be, the fact is that no one has expected to know for sure until the release (currently set for March 16) of the FCC's National Broadband Plan (NBP). But late this month Chairman Genachowski tipped the Commission's hand, albeit without adding much practical detail.

The FCC has embraced the notion that TV spectrum is a resource that can and should be re-purposed for mobile broadband use.

The FCC's answer appears to be: TV spectrum is not being used efficiently, and would be better allocated to mobile broadband use, so the FCC plans to devise some mechanism to encourage TV licensees to cough up some or all of their spectrum in return for the prospect of taking home some portion of the proceeds when their spectrum is auctioned off for broadband.

According to the Chairman, the NBP will call for the "freeing up" of 500 MHz of spectrum over the next decade. And one way the FCC hopes to achieve that, at least in part, will involve "establish[ing] market-based mechanisms that enable spectrum intended for the commercial marketplace to flow to the uses the market values most."

Can you spell "a-u-c-t-i-o-n"?

Sure enough, that *fin de siècle* panacea is going to be the go-to device again in the 21st Century. As described by the Chairman, the NBP will propose a "Mobile Future Auction" – unclear whether the "mobile" there modifies "future" or "auction" – which will "permit[ ] existing spectrum licensees, such as television broadcasters in spectrum-starved markets, to voluntarily relinquish spectrum in exchange for a share of auction proceeds".

Precisely how such an auction would work has yet to be disclosed – indeed, it may not even have been determined yet. But it is apparent that the Commission has thoroughly embraced the notion that television spectrum is a resource that can and should be re-purposed for mobile broadband use. While Genachowski's speech shed no light on the anticipated auction mechanism, it did offer something in the nature of a rationale as to why TV spectrum is being singled out.

For openers, there is a "massive amount of unlocked value" in TV spectrum – maybe even $50 billion, according to "one study" – and from this, the Commission has ineluctably concluded that there are "inefficiencies in the current allocation". Who says there's $50B, give or take, in "unlocked value" there? Why, "a broad range of analysts, companies and trade associations participating" in the FCC's nearly infinite range of broadband-related inquiries. Which analysts, companies and associations? Well, the Chairman didn't say. How might the inherent "value"

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February, 2010 **No. 10-02**

Inside this issue . . .

The FCC wants to know everything about everything

"Future Of Media project" To Examine The, um, Future Of Media

By Kevin M. Goldberg
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The FCC has launched an "examination of the future of media and information needs of communities in a digital age". The scope of the inquiry seems to be Everything-Anybody-Could-Possibly-Know-And-Then-Some, although speculation, surmise and other elements arguably falling short of "knowledge" or "fact" will apparently also be welcome. Originally you had until March 8 to get your thoughts together and ship them to the FCC, but that deadline has since been extended to May 7.

The Commission in turn has promised that it will "produce a report". Presumably, that report will be based on comments submitted in response to the FCC's inquiry, but the FCC stops short of any absolute commitment along those lines.

A friend of mine once asked an acquaintance exactly what that person's communications consulting business consisted of. The answer: "I write reports". We have laughed about that ever since because we can't figure out who would pay for such a service.

But it's no laughing matter when the FCC sets out to write, perhaps with unrealistic ambitions, a report about staggeringly broad and unfocused topics. The Commission claims that the report will "provid[e] a clear, precise assessment of the current media landscape" and that its preparers – the largely unidentified "Future of Media project" (FOMp) – will "analyze policy options and, as appropriate, make policy recommendations to the FCC, other government entities, and other parties".

One thing is incredibly clear: the report, and the FOMp as a whole, will necessarily implicate the possibility of government regulation of news and other content. To illustrate, an early contribution to the FOMp conversation – delivered by a post to the FOMp blog (http://reboot.fcc.gov/futureofmedia/blog) on January 25 – expresses concerns about the Supreme Court's decision in the *Citizens United* case. It observes that, while that decision is likely to increase broadcasters' revenues, that may not mean any improvement in broadcast journalism, since the commenter's concept of good journalism may not be "the kind of journalism the market would support". By contrast, another commenter (in a post dated January 27) suggests that "consumers of journalism" should be encouraged to "make appropriate financial contributions" to journalists, journalistic organizations or other producers of "work" which the consumers deem "valuable". (The FOMp blog header, presumably written by someone on the inside of the FOMp, refers to that as "good content".)

And even more recently, Commissioner Copps issued a statement lauding the FOMp, describing its work as an examination of "the present state of journalism and its future". According to Copps, "watchdog journalism" – a term he declines to define – is "dying", and the Commission has a "responsibility" to protect it. Of course, the First Amendment (not to mention Section 326 of the Communications Act) seems to contradict any role for the government in matters relating to the press. And, in a separate statement, Commissioner McDowell delved into history to provide his own contrary view of the state of journalism. But never mind those pesky details – it is readily apparent that the FCC sees a major role for itself in the business of journalism.

At this point, your robot should be dancing around, eyes aglow, arms flailing, screaming "Danger, Will Robinson! Danger!"

The Public Notice contains a list of 42 questions (many in several parts), sprinkled over these seven broad subject headings:

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Focus on FCC Fines

By R.J. Quianzon
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When your audience comes a-calling – The FCC frequently issues fines to stations for public file violations. The violations can be uncovered when a station reports itself to the FCC during renewal time, when an FCC inspector visits the station, or when a member of the public views the public file. This month the FCC fined two stations for public file violations – one to the tune of $1,000, the other to the much heftier tune of $8,000.

A North Carolina college radio station got whacked with an $8,000 fine for failing to make its public file available upon request when a listener arrived at the station and asked to take a look at it. Everyone on a station's staff should be aware that if a member of the public knows enough to look for the public file, he or she likely also knows that FCC rules require a station to make the file "available for public inspection at any time during regular business hours."

Apparently, folks at the college radio station were unaware of this.

According to the FCC's version of events, the public file request at the college station ended with the school's attorney threatening to have the requester arrested if the requester didn't leave the school. Apparently, the requester had arrived at the station and asked a station employee to see the file. The employee told the requester to come back another day. Undeterred, the requester advised the employee that the rule requires the file to be available "any time during regular business hours." The employee then directed the requester to a file drawer and called for back-up, which brought the station's general manager and a school vice president running. They both told the requester that an appointment was needed to review the public file – again, a plain violation of the rules. They then called the school's attorney.

The persistent requester returned the next day and asked again to see the file. Again, the GM told him that he must first schedule a meeting with the school's lawyer. The requester referred to the FCC rule that the file must be available "any time during regular business hours." The GM then directed the requester to the file. The requester then conducted a thorough inventory to see if every document that was required under FCC rules was in the files. Perhaps not surprisingly, some of the required items were missing.

The FCC was not pleased with how the college treated a member of the public trying to access the public, or with the fact that the file was incomplete. The result: an $8,000 fine, based upon both (a) the fact that some items were missing and, perhaps more importantly, (b) the treatment that the requester received.
In contrast to the $8,000 situation, a Virginia FM station had its $9,000 public file fine reduced to $1,000. The station had disclosed to the FCC in its renewal application that it was unable to locate some of its documents that should have been in its public file. According to the licensee, in preparing its 2003 renewal it could not locate issues/programs lists for 1996, 1997 and 1998. From that the Commission had concluded that the station was missing a total of 12 lists (four per year), for which the agency initially proposed to exact the $9,000 fine.

But the licensee then advised the Commission that, according to an inspection conducted by 1 state broadcaster association in 2003, the station's public file was complete. From this the licensee reasonably concluded that the missing lists had been missing, at most, for just a short time. The FCC accepted this, and also noted that the fact that the licensee had voluntarily participated in a mock inspection by its state association reflected a "'good faith' effort to comply with the rules". On the basis of that, and the licensee's previous clean record, and the licensee's statement that it had taken corrective action to prevent future lapses, the Commission reduced the fine to $1,000.

Readers are reminded that public files are meant for the public (and federal inspectors) to review "any time during regular business hours" and that they should contain all of the information required under federal regulations. If you are unsure of what materials should be in the public file, your regulatory attorneys and/or your state broadcaster association should be able to help out. Remember, too, that, at license renewal time all stations must certify that their public information file has been complete during its previous license period. Broadcasters who spend a few minutes every week reviewing their public file for completeness can help to prevent fines, forfeitures and complaints to the FCC.

How to broadcast a telephone conversation – Surprisingly or not, radio personalities whose on-air shtick includes telephone calls to unsuspecting targets tend to attract forfeitures. On the one hand, this is surprising because the rules relative to the broadcast of phone conversations are so stunningly clear and simple. On the other, it may not be all that surprising because, as many personalities have found, such call-outs – despite their plain illegality – can make for very engaging radio that draws listeners.

This month we have two separate cases in which the apparent temptation to entertain at the expense of an unsuspecting member of the public overcame common sense. One station, in New York, was hit with a $16,000

(Continued on page 13)

28 markets get six more months

BAS Relocation Inches Toward The Finish Line

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Broadcasters who use 2 GHz frequencies for auxiliary equipment had warned the FCC about a problem for years. This month, the FCC agreed.

Years ago the FCC announced that broadcasters who used 2 GHz frequencies (1990 - 2110 MHz) for auxiliary operations would have to relocate those operations to other frequencies and use digital emissions. At the time, the Commission imposed a number of relatively short-term timetables that it apparently thought would provide reasonable time to get the massive job done. Many affected parties, including broadcasters, were skeptical.

In a recent order the Commission finally acknowledged that the skeptics had a point. According to the FCC, "the transition has proven to be far more complicated than was first anticipated." Nonetheless, the good news is that the relocation is almost done. Every broadcaster who uses these 2 GHz frequencies – usually for intercity relays, studio-to-transmitter links, or remote links from choppers, vans, trucks or frequent out of studio locations – should already have completed negotiations with Sprint Nextel to move their frequencies.

In the latest FCC order, the government praises Sprint Nextel's efforts to relocate broadcasters. However, the relocation has taken significantly longer that the FCC's original timetable. Twenty-eight markets in the nation still have not completed their transition. Accordingly, the FCC has given those markets another six months to wrap things up. The 28 markets are: Anchorage, Alaska; St. Louis, Missouri; Minot-Bismarck-Dickinson, North Dakota; Missoula, Montana; Columbus and Dayton, Ohio; Buffalo, New York; Lexington, Kentucky; the tri-cities of Tennessee and Virginia; Des Moines-Ames, Sioux City, and Cedar Rapids-Waterloo-Iowa City-Dubuque, Iowa; Honolulu, Hawaii; Butte-Bozeman, Montana; Wausau-Rhinelander, Wisconsin; Davenport, Iowa-Rock island-Moline, Illinois; Spokane and Yakima-Pasco-Richland-Kennewick, Washington; Rochester Minnesota-Mason City, Iowa-Austin Minnesota; Portland, Eugene, Medford-Klamath Falls, and Bend, Oregon; Indianapolis, Fort Wayne, Evansville, and Lafayette, Indiana; and Albuquerque-Santa Fe, New Mexico.

With the exception of the 28 extended markets, all broadcasters who operate auxiliary equipment in the 2 GHz band should already have completed the transition to new equipment and should have been issued new licenses by the FCC. Readers who have not yet received new gear and licenses should contact their FCC regulatory counsel immediately to ensure that their operations can continue after the relocation process.

Meet the new fee, same as the old fee

Annual Webcast Fee Reinstated

By Kevin M. Goldberg
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As expected (and as we predicted in last month's *Memo to Clients*), the Copyright Royalty Board (CRB) has reinstated the $500 per channel annual minimum fee for both commercial and noncommercial webcasters. The great irony, of course, is that it has taken until the final year of the current five-year royalty term to confirm these annual minimum payments.

The official reinstatement of the fee is likely to have no more than a minimal effect on many, if not most, broadcasters. The final rule, published by the Copyright Royalty Board on February 8 (but technically not effective until March 10), applies only to those commercial or noncommercial webcasters who elected to continue webcasting under the terms and conditions of the March, 2007, Copyright Royalty Board decision.

Many broadcasters have signed on to one of the webcasting settlement agreements available to commercial or noncommercial webcasters – and, in so doing, they agreed to the same annual minimum fee of $500 per channel. We expect that those who didn't sign on to one of the settlement agreements probably assumed the $500 per channel annual minimum would be reinstated and went ahead and paid it by January 31 (or at least have already factored it into their webcasting budgets).

If you (a) are webcasting, (b) did ***not*** sign on to one of the settlement agreements, (c) did ***not*** already make a minimum payment to SoundExchange for 2010, and (d) would like more information about how to make that payment, feel free to get in touch with us.

Finally . . .

A Complaint Process Is Born!!

Closed captioning complaint process kicks in

By Harry F. Cole
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The gestation period for the closed captioning complaint process – which thus far has fallen somewhere between the gestation periods of giraffes (420-450 days) and sperm whales (480-590 days) – appears to have entered its final phase.

The Commission first announced its new and (arguably) improved complaint process in early November, 2008. (We reported on it in the November, 2008 *Memo to Clients*). As of December, 2009, that process had still not become effective, even though the Office of Management and Budget had signed off on it in July, 2009. But now we are pleased to report that the FCC has announced that the new closed captioning complaint process became effective as of February 19, 2010 . . . except for Section 79.1(g)(3), which still isn't effective.

Let's put that exception off to the side for the moment and focus on the elements of the process that have (finally) become effective.

As of February 19, any viewer who believes that a video programming distributor (VPD) has failed to comply with captioning requirements may file a complaint – either with the FCC or with the VPD itself. (FYI – VPDs include, for these purposes, over-the-air broadcasters and multichannel video programming distributors, such as cable operators and satellite TV operators.) The complaint must be in writing (fax, e-mail or snail mail), and must be submitted within 60 days of the alleged failure.

When a VPD receives a complaint – whether the complaint is sent (a) directly to the VPD or (b) to the FCC which then forwards it on to the VPD – the VPD has 30 days to respond *in writing* to the complainant. If the complainant isn't satisfied with the response, he/she can then complain further to the Commission.

The newly effective rules also require VPDs to post in various places, within 30 days (*i.e.*, by ***March 22, 2010***), contact information of various sorts. First, VPDs must designate a telephone number, fax number, and e-mail address for purposes of receiving and responding immediately to any closed captioning concerns, such as technical problems which may cause captions to vanish or become garbled. Second, they must also provide contact information for closed captioning complaints of a more general and less immediate nature. That information must include the name of a person with primary responsibility for captioning issues and rule compliance, the person's title or office, telephone number, fax number, mailing address, and e-mail address. All of this information must be posted on the VPD's website (if it has one), included in billing statements for multichannel providers, and included in any local phone directory in which the VPD directly advertises or otherwise places commercial listings.

*The newly effective rules require VPDs to post in various places, by **March 22, 2010,** contact information of various sorts.*

Perhaps more importantly, the VPD is now required to file its contact information with the Commission within 30 days of the rules' effectiveness (again, by ***March 22, 2010***). The Commission has set up a handy webpage which includes a link to a new electronic filing system just for this purpose – which the FCC specifically encourages VPDs to use – although the new rules also permit submissions by e-mail and/or in plain old paper-and-ink.

All contact information must be updated as necessary. (Website contact listings must be updated within ten days; listings on billing inserts must be updated by the billing cycle immediately following the changes; directories must be updated with the next publication.)

What about Section 79.1(g)(3), the sub-subsection that missed the effectiveness boat? That's the provision that would require VPDs who receive a misdirected complaint to forward it along to the proper addressee. For example, the complainant might have written to her cable company – since that's who she normally writes her monthly subscription checks to – not realizing that the party really responsible for the complained-of captioning issue was a program producer or distributor unrelated to the cable company. Under the new rules, the cable company would be obligated to forward the complaint on to the right folks. But as we reported last December, such forwarding would entail the disclosure of certain personal information – and the Communications Act prohibits such disclosure. So the Commission has put a hold on this particular forwarding requirement until it can resolve that pesky problem. No word yet on when that might be.

Extreme Makeover (Not!) – Radio Edition

FCC Adopts 307(b) "Tribal Priority"

Overhaul of basic 307(b) analysis deferred

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As we reported back then, in April, 2009, the Commission issued a sweeping set of proposals designed to re-vamp the AM/FM allotment processes. The overhaul seemed primarily intended to instill order into the chaos that had become (and largely remains) of Section 307(b) analysis. A crucial secondary aim was to stem the seemingly inexorable movement of radio stations out of rural areas and into more densely populated areas. After devoting the first half of its Notice of Proposed Rule Making to those proposals, the Commission used the second half to toss in a laundry list of far less ambitious suggestions.

On February 3, the Commission issued a First Report and Order and Further Notice of Proposed Rule Making in which it grabbed the low-hanging fruit but declined – at least for the time being – to take on the more complex and controversial Section 307(b) issues. The primary beneficiaries of the changes that *were* adopted will be Native American Tribes, for whom the Commission has tried to clear a path toward easier acquisition of radio stations on tribal lands.

The FCC is concerned about the dramatic scarcity of radio stations serving Native American populations on tribal lands.

Changes in Overall Section 307(b) Priorities

There's nothing to say here, because the FCC tabled this item in order to "to analyze comments on the [various 307(b)] proposals in depth, to research certain matters brought up in those comments, and to devote the proper time and analysis to those major reforms without delaying action on a number of less complex but also important matters." (Likely translation: Gosh, this is a complicated and controversial bunch of questions with no easy consensus in sight. Let's get back to this some other time.) No timetable was provided for future action on the tabled questions – but at the current rate of, maybe, one broadcast-related item out of the full Commission every couple of months, the smart money figures that it's going to take a while, if it happens at all.

"Tribal Priority", Other Native American Provisions

Under the longstanding allotment priorities which are ***not*** being changed for now, proposals for new AM or NCE-FM stations – and for the allotment of new commercial FM channels – are assigned "priorities" based on their Section 307(b) attributes. An allotment opportunity that will deliver reception service to otherwise unserved areas/populations is assigned the highest priority (Priority 1). If the proposed allotment would deliver such service to areas/populations which receive only one other radio service, it rates Priority 2. And if it would not serve such unserved/underserved areas/populations, but *would* be the first local transmission service (*i.e.*, the only radio station licensed to that particular community), it is Priority 3. Priorities 2 and 3 are treated as "co-equal". There's also a Priority 4 (for "other public interest factors"), a catch-all category that brings up the rear.

The Commission is concerned about the dramatic scarcity of radio stations serving Native American populations on tribal lands. Accordingly, the FCC has decided to shoe-horn a new priority – the "Tribal Priority" – between Priorities 1 and co-equal Priorities 2 and 3. That means that proposals (*i.e.*, applications for new AM or NCE-FM stations, or new commercial FM channel drop-in proposals) entitled to a Tribal Priority will garner a preference over competing proposals which claim only Priority 2/3 status. That could mean the avoidance of an auction (for AM applicants) or a "comparative points" analysis (on the NCE-FM side). In other words, a Tribal Priority could be a serious benefit.

Not surprisingly, there are a lot of strings attached. The Tribal Priority is available only if:

- the proponent/applicant is a federally recognized Tribe, tribal consortium or an entity at least 51% of which is owned or controlled by a Tribe or Tribes (and there's a further catch to that last option: such entities must be at least 51% owned/controlled by a Tribe or Tribes at least a portion of whose tribal lands lie within the proposed city-grade contour);
- the proposed community of license is on tribal lands;
- at least 50% of the daytime city-grade contour of the proposed facilities would cover tribal lands (although those lands need not all belong to the same Tribe); and

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- the proposal/application would otherwise be entitled to either Priority 1 or 2 (*i.e.*, first or second reception service to more than *de minimis* population) ***or*** slightly modified Priority 3 (*i.e.*, for commercial proposals, first local *tribal-owned* transmission service or, for NCE proposals, first local *NCE tribal-owned* transmission service).

And any applicant/proponent which successfully claims a Tribal Priority has more to think about. There's a minimum four-year holding period (that's four years of actual operation) before an AM or NCE-FM station obtained with a Tribal Priority can be sold (although that doesn't apply if the buyer would itself qualify for the Tribal Priority). (Gradual changes in an NCE licensee's board would be permitted during the four-year period, as long as the 51% tribal ownership/control threshold is always maintained.) Further, for AM, NCE-FM *and* commercial FM stations subject to a Tribal Priority, during the four-year holding period the community of license can't be changed and the station's city-grade coverage cannot be modified to cover less than 50% of tribal lands.

The complex carve-out for a specific racial/ethnic category will likely raise eyebrows among constitutional scholars.

Interestingly, the lingering burdens could also affect *non*-tribal licensees. In the context of commercial FM allotments, the Tribal Priority would come into play at the initial allotment state. Once the channel was allotted, it would be subject to auction, and there would be no guarantee that a tribal applicant would be the highest bidder. In such cases, even a non-tribal licensee would have to provide service primarily to tribal lands for at least four years.

This complex carve-out for a specific racial/ethnic category will likely raise eyebrows among constitutional scholars because it raises obvious "equal protection" questions. Normally, the government's ability to engage in decision-making based on race or ethnicity is narrowly limited, as the Supreme Court made clear in its 1995 decision in *Adarand Construction, Inc. v. Pena*. The FCC recognized the potential *Adarand* problem and tried to head it off with an interesting counter. According to the FCC, the Tribal Priority isn't about racial or ethnic preferences at all. Rather, that Priority is based on the "unique legal status of Indian tribes under Federal law". And sure enough, there is considerable authority supporting the proposition that Tribes are "quasi-sovereign" entities which have historically interacted with the federal government "in a unique fashion".

Anytime you see the word "unique" popping up repeatedly in the space of a couple of paragraphs, you know that the FCC is trying to set up what the *cognoscenti* refer to as an anticipatory "purple cow" defense. That is done by describing the case at hand as so distinctive in so many ways (*i.e.*, it's unique) that it's unlike any other case that has gone before or will come after – and therefore will have no precedential effect. While such efforts can often seem strained and unconvincing, that's not the situation here. There *is* a long (and often not happy) history of interaction between the Feds and the Tribes as sovereign entities. And the FCC's new Tribal Priority is set up as a program in which only the *Tribes* themselves (or "tribal entities") – but *not* mere members of Tribes – will be permitted to take advantage of the Priority. By taking that approach, the Commission may have successfully avoided a constitutional "reverse discrimination" attack on the Priority.

Other Changes

By far the lion's share of the decision is devoted to the Tribal Priority. Beyond that, the newly-adopted changes are more in the nature of housekeeping. For example:

- ✓ When an AM application is awarded on the basis of a 307(b) Priority 1, 2 or 4, the station's facilities *may* be modified, but *only* if the modified facilities don't result in a decrease of more than 20% in the factor(s) (*e.g.*, population served) which resulted in the 307(b) preference.
- ✓ AM applicants will be required to demonstrate, in their initial Form 175s, compliance with four eligibility criteria: (a) daytime community of license coverage; (b) nighttime community of license coverage; (c) daytime protection of existing stations and previously-filed proposals; and (d) nighttime protection of existing stations and previously-filed proposals. In a concession to human fallibility (particularly when that fallibility bumps up against the arcane and labyrinthine complexity of the AM allocation rules), though, the Commission plans to provide a single opportunity to amend to correct failures to satisfy any of those criteria.
- ✓ The Commission has now codified the Bureau's authority to: (a) permit partial settlements and/or amendments to help resolve mutual exclusivities; (b) impose caps on the number of AM applications that may be filed during any particular window; and (c) establish more flexible deadlines for post-auction long-form applications.
- ✓ The auction rules have been revised to confirm the current policy that an applicant's maximum "new entrant bidding credit" is set in stone with the Form 175 showing. The credit may be *reduced* by circumstances that occur after the Form 175 is filed – for example, if the applicant acquires more stations – but the credit may ***not*** be increased beyond what is shown in the Form 175.
- ✓ Also on the topic of "new entrant bidding credits", such credits aren't available to the winning bidder if

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Ask, and it shall be given to you

Major Power Increase For HD Radio

Minor protection for first adjacents

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The Media Bureau has dramatically increased the power level for IBOC digital FM service (the service known in the marketplace as "HD Radio"). In so doing, the Bureau effectively dismissed, or at least minimized, serious interference concerns expressed by non-HD stations (particularly those operating on channels first adjacent to HD stations). While the increased HD power authorizations will still be subject to a complaint process which could theoretically reduce maximum power available in certain situations, that complaint process – at least at first glance – falls short of everything a victim of interference might have hoped for.

The Bureau has decided that "eligible stations" should be permitted to increase their digital power by 6 dB – meaning that their digital power can move – pretty much with no questions asked – from the current maximum ERP of 20 decibels below carrier (-20 dBc) to -14 dBc. Once the new rule becomes "effective", eligible stations will be permitted to go to that -14 dBc limit without any prior approval, as long as they file a notification of the increase through CDBS within 10 days. While the revised power increase rule won't technically be "effective" for some time, the Bureau, apparently eager to make the higher power available without the legalistic nicety of "effectiveness", has announced that it will grant STAs in the meantime. (*See* below for more details on the STA process.) Stations "eligible" for this immediate upgrade are non-"super-powered" stations.

It didn't take long to realize that full replication wasn't happening, especially in "mobile and indoor environments".

Background

HD Radio represents the first – and, so far, the only – technology generally available to bring the radio broadcast industry into the digital world. And unlike digital television, HD Radio promises the Holy Grail-like property of IBOC – "in-band, on-channel" operation that would not require any major upheaval in channel allotments. Where DTV involved massive reassignments of channels (not to mention two-channel operations during the run-up to the final DTV transition), radio licensees can stay on their original channel and simply tack-on digital operation much like a standard subcarrier (SCA) service.

The technology was developed by private parties, who spent years trying to convince the Commission that their IBOC system would work. The FCC agreed in 2002, despite considerable skepticism voiced by folks who did not happen to have any direct pecuniary interest in marketing the HD Radio system. But again, HD Radio was and remains the only game on the table for digital radio broadcasting. So the Commission, recognizing the seemingly inexorable movement of all media away from analog and toward digital, had little choice: if the radio industry was to be goosed toward digital, it made sense to officially bless the only system to walk in the door promising digital service. The fact that that system happened to be IBOC obviously sweetened the pot.

The digital radio specs originally adopted by the FCC were designed by HD Radio's proponents and cheerleaders, who assured the Commission that those specs would be sufficient to deliver a station's digital service to everybody who could receive the station's conventional analog signal. (In industry parlance, digital coverage would "replicate" analog coverage.) The crucial parameter was power: a station's digital ERP was set at one percent of its analog ERP (*i.e.*, 20 decibels below carrier, or -20 dBc).

Oops. It didn't take long to realize that full replication wasn't happening, especially in "mobile and indoor environments" (a universe which, frankly, seems pretty all-inclusive, since it appears to exclude only non-mobile outdoor environments). And thus began the drumbeat for more digital power.

HD Radio cheerleaders pushed for an increase from 1% to 10% of authorized power for all but some Class B FM stations that happened to be "super-powered". That would represent a *ten-fold increase* – by any measure a very substantial boost. FYI: "Super-powered" stations are those with ERP that exceeds the maximum for their class, or with facilities which produce a reference contour greater than the pertinent maximum class contour distance. (*See* Section 73.211 of the rules for more detail.)

While Team HD Radio pushed hard for immediate, or near-immediate, action on their request, others – primarily National Public Radio – urged a more cautious approach. But last November, NPR and the HD Radio proponents reached agreement on increased power levels and the FCC has now largely signed onto the terms of that agreement.

New Power Limits, Complaint Process

As described above, non-super-powered stations will be able to increase their digital power by 6 dB on their own

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with no prior FCC approval (provided that they notify the Commission within 10 days). But there's more.

Eligible stations would be permitted to apply for even greater power increases, up to a total increase of 10 dB over current levels – *i.e.*, to -10 dBc. Because of the Bureau's concern about possible first adjacent interference, the maximum increase beyond the 6 dB automatic increase described above will be based on a "go/no go" analysis designed specifically to protect potentially affected first adjacents. The analysis is based on calculated field strengths; anyone thinking that such calculations fail to account for peculiarities – terrain, environmental or technical –which produce anomalous results is invited to demonstrate those factors in the application.

Super-powered stations of *any* class – *not* just Class B – will be limited to "the currently permitted -20 dBc level or 10 dB below the maximum analog power that would be authorized for the class of the super-powered FM station adjusted for the station's [HAAT], predicted in accordance with Section 73.211 (b)." And unlike their non-super-powered pals, super-powered stations will *not* be permitted to crank up their digital power with no prior FCC say-so. Rather, super-powered stations will have first to file an application, in the form of an informal request, for any increase in digital ERP.

It's pretty clear from the decision that the Bureau really wants to give HD Radio Nation a big leg up.

If you're unsure of whether your station is "super-powered", fear not: the Bureau has posted a jim-dandy gadget on the Audio Division's webpage that determines whether any station is super-powered and, if so, calculates that station's maximum HD power. You can try this tool – dubbed the "FM Super-Powered Maximum Digital ERP Calculator" (presumably, "super-powered" here is *not* intended to modify "calculator", but you never know) – by going to http://www.fcc.gov/mb/audio/digitalFMpower.html and entering the station's call sign and Facility ID Number.

While the Bureau's decision clearly signals its interest in promoting digital radio, the decision nonetheless provides a formal complaint mechanism for first adjacents convinced that they are suffering as a result of a neighboring station's digital power increase. The complaint process is not, however, particularly user-friendly.

If a full power analog station (LPFMs and translators need not apply) believes that it is receiving interference within its protected contour from an HD station operating with digital ERP in excess of -14 dBc, the interferee must first attempt to "work cooperatively" with the interfering station to resolve the issue. That is done by progressively reducing the HD station's digital operating power until a mutually agreeable power is reached. If cooperation is successful, the HD Radio station must simply notify the Commission of its new digital power.

If no amicable resolution is reached, the station receiving interference may file a complaint with the FCC. This is not a streamlined complaint process. Rather, the complaint must be supported by at least six reports of on-going (*not* transitory) interference. Each report must include a map showing the location of the reported interference and a detailed description of the nature and extent of the interference at that location. Interference allegedly occurring *outside* the station's protected analog contour will *not* be considered.

The Bureau is supposed to act on such complaints within 90 days. As a concession to the likelihood that the Bureau may have difficulty meeting that deadline, the new rules provide that an allegedly interfering station must, when the 90-day deadline is reached, reduce digital power to -14 dBc pending Bureau resolution of the complaint. If complaints continue, the Bureau may order further reductions – first to -17 dBc, later to -20 dBc – pending Bureau action on the complaint.

Such a mandatory reduction scheme may seem helpful to the suffering first adjacent complainant, but let's think about that for a minute. The mandatory part kicks in only after: (a) the complainant has learned that its protected contour is getting beat up and has identified the apparent offender; and (b) the complainant has tried, unsuccessfully, to "work cooperatively" with the interfering HD station; and (c) the complainant has compiled the necessary showing (at least six on-going instances, mapped and documented); and (d) the complainant has filed its complaint; and (e) 90 days have then passed. If the complainant turns out to be correct, that means that it will have had to suffer months, possibly even a year or more, of harmful interference before getting any relief.

STAs available NOW!

It's pretty clear from the decision that the Bureau really wants to give HD Radio Nation a big leg up. Further underscoring that is the fact that the Bureau is making the initial 6 dB power increase available to HD Radio licensees even before the new rules have become formally "effective".

The effective date of the rules will occur as of the later of: (a) thirty (30) days after publication of the decision in the Federal Register; or (b) announcement in the Federal Register of OMB approval of the new rules. But that's obviously too long to wait, so the Bureau has invited requests for STAs to increase power (by up to 6 dB). The Bureau has even posted a handy-dandy step-by-step instruction on how to file such a request, detailing precisely what information to include in it. (You can find it at http://www.fcc.gov/mb/audio/digitalSTA.html.)

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- Information Needs of Communities and Citizens
- Business Models and Financial Trends
- Commercial Broadcast TV and Radio, Cable and Satellite
- Noncommercial and Public Media
- Internet and Mobile
- Newspapers and Magazines (though the FCC technically has no jurisdiction to regulate these media)
- Research and Further Questions.

The specific (and we use that adjective very loosely here) questions range from the specialist/wonky (*e.g.*, "Are there changes in tax law, copyright law, non-profit law, noncommercial or commercial broadcasting laws or policies or other policies that should be considered") to the infinitely generalist (*e.g.*, "In general how should FCC policies change to better consider the information needs of communities in the digital era").

The "specific" questions range from the specialist/wonky to the infinitely generalist .

Some questions speak directly to broadcasters, soliciting statistical or anecdotal evidence. F'rinstance, Question 18 (an amalgam of at least five separate sub-questions, by our count):

> For local commercial broadcast television and radio stations, what have been the trends for staffing, the amount of local news and information aired, the audience ratings for such programming and local station profitability? What have been the roles of station debt, advertising revenue declines, government policies, efficiency improvements, and ownership consolidation (including combining the news staffs of commonly owned or operated stations)? What has been the impact of competition for audience from the Internet or other information sources? How are these broadcasters using the Internet, mobile applications, their multicast channels/additional program streams, or other new technologies to provide local news and information? How have these changes affected the availability of educational programming for children?

Remember, you only have until May 7 to pull all of that together.

At least one of the questions may be a trick question. Question 13, for example, asks:

> Many media companies are struggling, but others are reporting healthy profits. What explains the differences in performance? What roles are played by debt levels, consolidation patterns, government policies, geography, diversity of and/or decline in revenue streams, technological innovation, cost reductions, and audience growth?

Excuse us, but if we knew the answer, we (a) probably wouldn't be in the economic mess we're in and (b) probably wouldn't be too keen on sharing our insight for all our competitors to see. But maybe that's just us.

And in case Questions 1-41 (with all of their myriad subparts) may have failed to elicit some, any, important kernel of truth, Question 42 takes care of that: "What questions have we failed to ask that we should?"

In other words, the FOMp wants to gather as much information as possible. So much so that it not only will review the answers it receives to these 42 questions, but also will draw from other proceedings, including a couple which have already been open for a decade or more and have already developed extensive records. Among the on-going proceedings which the FOMp plans to commingle are:

- Public Interest Obligations of TV Broadcast Licensees (kicked off in 1999);
- Empowering Parents and Protecting Children in an Evolving Media Landscape (a relatively recent – 2009 – entry, but extraordinarily broad in scope, as we have previously reported);
- Broadcast Localism (circa 2004);
- Low Power FM (another golden oldie first unleashed in 1999);
- Disclosure Requirements for TV Interest Obligations (from 2000);
- A National Broadband Plan for Our Future (another recent item, but one with a staggeringly expansive reach); and
- Preserving the Open Internet/Broadband Industry Practices (the ubiquitous issue of Net neutrality).

The FOMp has advised that, if you have previously filed relevant comments in one of those already-in-progress proceedings, you should ***not*** refile them in this proceeding. Presumably, FOMp folks will pore over each of the approximately 50 bazillion submissions in those dockets and cull any nuggets which might pertain to the 42 Questions. However, going forward, if you have comments relevant both to the Future of Media inquiry and to any another proceedings, you should by all means file your comments in all proceedings to which they apply.

All this occurs simultaneously – and may yet intertwine – with the work of other agencies which are engaging in similar proceedings (for example, the Federal Trade Commission recently held a two-day workshop entitled "How Will Journalism Survive the Internet Age").

In the spirit of the Reboot.FCC.Gov website we wrote about last month, you'll be able to follow along on a special "Future of Media" page on that site and can continue to add to the discussion as new ideas come to you. The FOMp will

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get "unlocked" (and how did it get "locked" in the first place)? That's another explanation which is left for a later day.

Another reason for grabbing TV spectrum: according to the Chairman, TV "spectrum is not being used efficiently – indeed, much is not being used at all". In support of this claim Genachowski cited some vague and general claims along the lines of "Even in our very largest cities, at most only about 150 megahertz out of 300 megahertz [of TV spectrum] are used."

While a speech is probably not the forum in which to lay all one's cards out on the table, the Chairman might still have offered just a tad more support for the decision to go after TV spectrum. After all, estimates of "unlocked value" are not really something you can take to the bank, particularly if those estimates were propounded by folks who might be in a position to rake in some of that "unlocked value" if things go the right way. And it's difficult to credit claims of efficiency of spectrum use when the TV industry, and the viewing public, are less than nine months into the DTV era. Certainly there may be substantial spectrum potential yet to be tapped, but why must we assume that the best (maybe even the only) way to tap it is through mobile broadband services to be provided by somebody other than broadcasters? (In fact, FHH has a client who has a technology that will allow TV stations to use any digital bits they don't need for television programming to provide broadband – something they can do today under present rules and so can do a lot faster than navigating through the political reallocation and auction thickets.)

The FCC's statutory auction authority doesn't say anything about turning over any proceeds to incumbent licensees.

Perhaps recognizing that his rationale was not all that compelling, Genachowski shifted gears into huckster mode: "the Mobile Future Auction is a win-win proposal: for broadcasters, who win more flexibility to pursue business models to serve their local communities; and for the public, which wins more innovation in mobile broadband services, continued free, over-the-air television, and the benefits of the proceeds of new and substantial auction revenues." Often when you hear the term "win-win", it's a safe bet that somebody's trying to sell you something that you might neither want nor need. In this case, for example, we don't know what "flexibility" broadcasters might gain that they don't have now.

The Chairman did emphasize that the "Mobile Future Auction" is currently envisioned as a voluntary program. Voluntary? Perhaps, but maybe only in the same way that a small businessman "voluntarily" decides to buy insurance from the guy who says "nice little business you got here – it'd be a shame if something happened to it."

In any event, while we may not know all the details, we at least know the direction in which the Commission's heading. Ideally more details will be available on March 16, the day on which the NBP is currently set to be revealed. But even that will mark, at most, the starting point of what is likely to be a difficult struggle.

Interestingly, it's not at all clear what difference (if any) the FCC's views will make. The statute requiring the NBP doesn't say who is in charge of adopting it, or whether it even needs to be adopted by the Commissioners as the formal recommendation of the agency to Congress. The law simply directs the FCC to do its due diligence to come up with a plan, then tell Congress about it. Other than that, the FCC appears to have no independent authority to jumpstart or otherwise implement the NBP; the only entity explicitly granted authority by Congress to adopt regulations related to the broadband initiative is the Assistant Secretary of Commerce in charge of NTIA, ***not*** the FCC. Moreover, the FCC's statutory auction authority doesn't say anything about turning over any proceeds to incumbent licensees or anyone else but the U.S. Treasury.

Given the uncertainty about the follow-through, we are cautiously advising broadcasters to view the NBP as the FCC's recommendation to Congress, and not a final decree. It is also appropriate to bear in mind that the folks in Congress may be reluctant to turn their backs on broadcasters, particularly if broadcasters increase the intensity of use of their spectrum by introducing more multichannel broadcast or non-broadcast services. Notwithstanding social media and Internet advertising campaigns, etc., candidates continue to flock to broadcasters at election time to reach for voters. And broadcasters' ability to deliver voters' eyes and ears may constitute an "unlocked value" of its own.

We will, of course, have to wait and see.

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accept comments through its website. However, it asks that comments of three pages or longer be submitted through the Commission's ECFS system.

Then, somehow – we don't know how and we certainly don't know when – the FOMp plans to wade through the mass of information and come up with a finished product. The FOMp does make one promise: "We will remain mindful of the Hippocratic Oath of physicians, 'First, do no harm.'" In the spirit of the FOMp's apparent concern about the quality of information available to consumers, we suggest that the FOMp might want to check its own sources a bit more carefully: "First, do no harm" does not appear in the Hippocratic Oath of physicians, or any other Hippocratic Oath that we're aware of.

J'accuse!

Anti-Collusion Rules Tightened

By R.J. Quianzon
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Anyone who has participated in an FCC auction is (ideally, at least) familiar with the stringent anti-collusion rules that the Feds impose on participants. Unless there is proper disclosure, auction participants are forbidden from speaking with one another not only about the auction itself, but also about what post-auction matters. The government has issued six-figure fines to bidders who have been found to have violated this rule.

To kick off the new year, the FCC has tinkered with its anti-collusion rule, adding important new details to the "rat-out rule" applicable to recipients of unauthorized contacts. For those not familiar with the auction rules, if you ***receive*** a call, e-mail, message or other communication from another bidder in an auction, you have to notify the authorities of that contact. Even if you are just an unsuspecting bidder, minding your own business and bidding on a permit, once you are contacted by another bidder seeking to discuss auction-related matters, you are required to narc to the authorities about that contact.

The recent clarifications of that obligation are intended to "enhance the usefulness of application information". To that supposed end, the FCC has cut the time within which a bidder must report an unauthorized contact to the government from 30 days to ***a mere five business days***. This leaves very little time for contemplation if/when an auction participant receives a prohibited contact. At a minimum, bidders in that position should immediately contact counsel.

It should also be noted that the obligation to fink on your competitors still extends (as it always has) well beyond the mere bidding activity of the auction itself: the No-Collusion period runs from the deadline for filing the initial short-form applications for the auction all the way until the post-auction down payment deadline.

In addition to the FCC's new, strict timeline for snitching on your competitor, the FCC also has provided new practical details about the required ratting-out process. Up to now, the rules weren't clear about where, or with whom, or precisely how, the reports should be filed. That lack of clarity gave rise to the possibility (if not likelihood) that some reports might be made in a way which could exacerbate the ill-effects of the improper contact. For example, if a report of an improper contact were made, in detail, through the Commission's standard filing public mechanisms, that report could be found by others participating in the subject auction. But that would then give everybody access to the information that wasn't supposed to be communicated to anyone in the first place. In other words, inappropriately-directed reports could have the effect of aggravating the adverse effects of the collusive contacts.

To prevent (or at least discourage) that, the Commission has clarified that reports of collusive contacts must be filed as directed in a public notice or, if there is no notice, with the Chief of the Auctions Division "by the most expeditious means available."

The FCC auction regime has been around for more than 15 years and the government is still revising its policies to ensure the integrity of the process. While the overall auction process is straight-forward and based upon the simple principle of "whoever has the most money wins the auction", there are plenty of rules that can trip up participants. Prior to participating in an auction, an applicant should become very familiar with the rules.

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that bidder (or anyone with an attributable interest in the bidder) has any existing media in the "same area" as the facility up for auction. The Commission has now clarified how that "same area" is to be determined in this context (*e.g.*, for FMs, use the "circular" contour, rather than the "calculated" contour, based on the maximum class facilities at the specified allotment site).

As a follow-up to the creation of the Tribal Priority, the Commission has also proposed (in the "Notice of Proposed Rule Making" portion of its decision) to extend the Tribal Priority to non-landed tribes, and to implement a Tribal Bidding Credit to assist Native Americans in the auction process. Comments and reply comments on those proposals will be due 60 and 90 days after the NPRM is published in the Federal Register.

The new rules fall far short of what might have been expected from this proceeding when it got started back in April. But that's not necessarily all bad. Many observers saw this proceeding as the beginning of the end of the "move-in" process by which radio stations get moved around – "around" here being kind of a euphemism for "into the Big City and away from the Small Town". That obviously hasn't happened . . . yet – but it remains a possibility.

On the other hand, the new rules open potentially significant new opportunities for Native Americans, while also creating a further strategic wrinkle for those involved in allocations proceedings. How and when all of this will start to play out remains in the Bureau's control. Stay tuned.

Size does matter

Anti-Trust Thresholds Decreased

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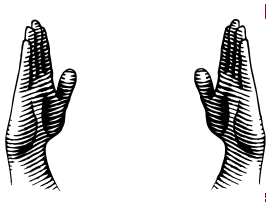

Under federal antitrust law, certain mergers or acquisitions which exceed specified thresholds must first be submitted to the Federal Trade Commission (FTC) and the U.S. Department of Justice for their review before the transaction is consummated. The FTC recently adjusted those thresholds based upon inflation – or lack thereof – and the thresholds have actually decreased.

The process for adjusting these thresholds has been on the books for decades. It uses the infrequently referenced Gross National Product as a factor for calculation. As a result of the current global economic climate and interest rates, the formula this year has resulted in a *reduced* threshold for government scrutiny. Certain transactions which were too small to merit government scrutiny last year now fall squarely within the range of the government's oversight.

As broadcasters and telecommunications operators review their proposed deals, they should bear the new government thresholds in mind. If your deal exceeds the new thresholds, you should plan for the increased government scrutiny and the additional hassle, expense and delay that such a federal inquiry entails.

The newly-adjusted thresholds require pre-transaction notification (and thus greater regulatory scrutiny) if either:

1. The total value of the transaction exceeds $253,700,000.; or

2. The total value of the transaction exceeds $63,400,000 and one party to the deal has total assets of at least $12.7 million (or, if a manufacturer, has $12.7 million in annual net sales) and the other party has net sales or total assets of at least $126.9 million.

In negotiating deals, it is prudent to bear these thresholds in mind. Once they are crossed, additional time and expense to assure compliance with the preliminary review process are virtual certainties

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fine; the other, in South Carolina, got off with a much lighter $4,000 ding.

The FCC rule about the broadcast of phone conversations really is pretty darn clear. Before broadcasting a telephone conversation or recording such a conversation for later broadcast, a licensee must inform any party to the call of its intention to broadcast the conversation. The only exception is where such party is aware, or may be presumed to be aware, that the call is being broadcast or likely will be broadcast.

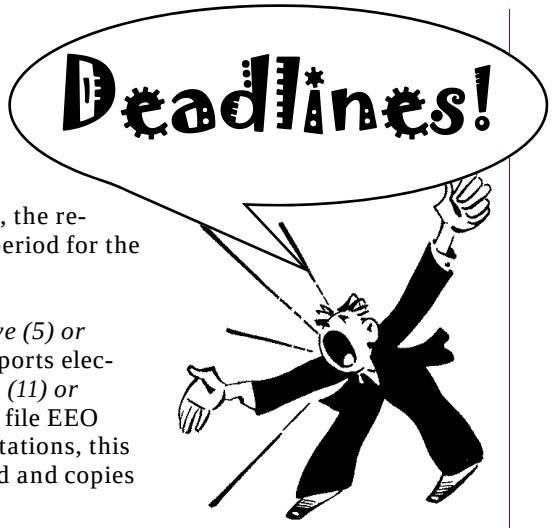
This month's fines involve instances where the call was not cleared before being recorded.

In the New York case, on-air personalities called a woman and, pretending to be representatives of a local hospital, advised her that her husband had been in an accident and had died. As part of its defense, the station told the FCC that the call was a prank arranged by the woman's sister. But the rules do not include any exception based on a claimed "authorization" by a third party. Rather, notwithstanding the sister's involvement in the prank, the station was still required to tell the woman, before they went on air, that the call would be broadcast. The station was hit with a $16,000 fine.

In South Carolina, station representatives phoned a couple of local government officials to discuss recent developments. The calls were made while on the air; they were broadcast in their entirety.

The licensee argued that the on-air folks properly identified themselves as being from the radio station and that the officials could simply have hung up the phone. However, FCC regulations are very clear that broadcasting even the merest "hello" without first having notified the speaker that the call would be broadcast is a violation of federal regulations. The circumstances here were not as ghoulish as those in the New York case – possibly resulting in a significantly lower fine of $4,000. But that's still a high price to pay for a couple of phone calls.

To avoid getting cross-wise with the telephone rule, many stations use a three-step verification process: first, the other party is called and consent is obtained; second, the broadcast or recording is begun and the other party acknowledges that they previously consented to the call; and third, the call is broadcast. While this laborious task may take the fun out of some segments, it provides a record for a station to use if any question arises about the circumstances of the broadcast.



April 1, 2010

EEO Public File Reports - All *radio* and *television* station employment units *with five (5) or more full-time employees* located in **Delaware**, **Indiana**, **Kentucky**, **Pennsylvania**, **Tennessee**, and **Texas** 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 **Texas** 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 **Delaware** or **Pennsylvania** 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.

Noncommercial Radio Ownership Reports - All *noncommercial radio* stations located in **Delaware**, **Indiana**, **Kentucky**, **Pennsylvania**, or **Tennessee** must file a biennial Ownership Report on Form 323-E. All reports must be filed electronically.

Noncommercial Television Ownership Reports - All *noncommercial television* stations located in **Texas** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323-E.

April 12, 2010

Children's Television Programming Reports - Analog and Digital - For all *commercial television* and *Class A television* stations, the first 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. Please note, however, that for television stations, only digital programming will be included, as all analog programming ended last year. Only Class A stations will need to use the analog programming section of the form.

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 *commercial* and *noncommercial 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.

May 7, 2010

Future of Media - Comments are due in the FCC's proceeding examining in very broad terms the future of media in the digital age.

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The bottom line here is that the Commission is clearly committed to the concept of digital radio . . . even though that service has been struggling for years, without much apparent success, to gain any kind of traction in the marketplace, and even though broadcasters themselves have been less than enthusiastic about it (at least judging from the dwindling number of stations seeking to take the HD plunge). Still, the Commission is doing its best to prop HD Radio up. That may be just what the doctor ordered, and it may turn out to be a huge boon to the radio industry generally. But if the digital power increase causes substantial interference to analog stations which still constitute the vast majority of the radio industry, that increase could turn out to be just one more unwanted and unneeded difficulty in an industry which is already dealing with a boatload of other difficulties. Time will tell.

FM ALLOTMENTS ADOPTED – 1/20/10-2/18/10

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
TX	Crowell	82 miles W of Wichita Falls, TX	255C3	08-97	TBA
TX	Knox City	96 miles SW of Wichita Falls, TX	293A	08-97	TBA
TX	Quanah	80 miles NW of Wichita Falls, TX	251C3	08-97	TBA
TX	Rule	113 miles SW of Wichita Falls, TX	288C2	08-97	TBA
KY	Irvington	30 miles SW of Louisville, KY	261A	07-296	TBA
WA	Port Angeles	85 miles NW of Seattle, WA	271A	08-228	TBA

Notice Concerning Listings of FM Allotments

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

FHH - On the Job, On the Go

Howard Weiss co-moderated an FCBA seminar on the second round of applications for broadband stimulus funds in Washington on February 19.

Harry Martin will attend the National Religious Broadcasters convention in Nashville from February 28– March 2, after which he will swing down to Morgantown, WVa, for the West Virginia Broadcasters Association spring meeting on March 6-7.

Frank Jazzo will be attending the NAB's State Leadership Conference in Washingon from March 1-3. He will then toddle on down to the Big Easy where he will be participate on a "Legal and FCC Update" panel at the Joint Convention of the Louisiana Association of Broadcasters and the Mississippi Association of Broadcasters at the Hotel Monteleone in New Orleans on March 24.

On March 16, **Kevin Goldberg** will speak on a panel about "(b)(3)" exemptions to the Freedom of Information Act at the National Freedom of Information Day Conference held at the American University Washington College of Law. And the following week, **Kevin** will be jetting down to sunny Aruba, where (on March 21) he will speak on "Transparency and Open Government" at the Inter-American Press Association Mid-Year Conference.

Matt McCormick will be attending the ABA's Annual Intellectual Property Law Conference in Arlington, VA, from April 7-10.

Paul Feldman will be speaking about Net Neutrality at the NAB Convention in Las Vegas on April 12.

Ink (or maybe it was toner) was spilling all over the place this month with five (count 'em, five) FHHers cited in *Comm Daily* alone. The five? **Paul**, **Kevin**, **Harry Cole**, **Peter Tannenwald** and **Dan Kirkpatrick**. But hold on. Only one of them happened also to be linked in an article in the Illinois Business Law Journal.. (A *business law journal?* Who knew?) And, wait a minute, that was the same guy whose photo (accompanied by a link) graced the weekly newsletter of the Traffic Directors Guild of America — our man **Kevin Goldberg**. Yo, **Kevin**, when you get down to Aruba, make sure the Inter-American Press Association treats you right. After all, you're the *Media Darling of the Month!*