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Memorandum to Clients

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Looking to treat some obvious symptoms

FCC Responds to AM Code Blue

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Amplitude Modulation radio (AM to its friends) is old and by all accounts pretty sick . . . so the FCC's wheeling in the crash cart, gelling up the defibrillator paddles and hoping to shock the patient back to vitality. Will it be enough? Will it be in time?

Clear!

Back in September, then-Acting FCC Chairwoman Mignon Clyburn announced that the Commission was considering a package of reforms to bolster the survival prospects of AM stations. And not quite two months later, the Notice of Proposed Rule Making in the new "Revitalization of the AM Radio Service" docket (we'll call it the *Revitalization NPRM*) was released.

The FCC's goal is to help AM licensees remain economically viable. Besides soliciting comments on these specific proposals, the FCC invites any other ideas for improving the quality of AM service.

Anyone paying the slightest attention to the radio industry already knows that AM has faced 30 or more years of struggle to hang on to a meaningful market share. Those of us who are a little long in the tooth (one metric: we were around when the Beatles' White Album first came out . . . on something called "vinyl") recall when FM was the poor stepsister of radio broadcasting. AM dominated the dial.

But by the 1970s the erosion had begun. Listeners were looking for better sound. FM had it. AM, not so much. By the mid-1980s, AM radio represented 30 percent of the nation's radio listening hours. By 2010, it was down to 17 percent. Among younger demographics, the percentages were in the single digits.

Physics, construction techniques and electronic gadgetry have all added to AM's woes.

Thanks to the laws of physics, AM signals bounce off the ionosphere at night. (The ionosphere conveniently thins out during the day thanks to the sun's radiation, allowing AM signals to streak out into space and not bother anybody down here on earth; but when the sun goes down, the signals bounce back down.) The bounce, or "skip", sends the reflected signal far afield of the transmitter, so that a bounced AM signal can (a) be heard by distant listeners and (b) interfere with signals where the bounced signal ends up. For that reason, only a limited number of AM stations can operate with any appreciable power at night. Most AMs are left with little or no nighttime power and are unable to cover their market areas at night or, in many cases, during critical pre-dawn morning hours.

Meanwhile, the use of steel frame reinforcement and/or aluminum siding is ubiquitous in modern construction. Those types of materials somewhat impede AM signals.

Possibly most importantly, AM signals are particularly susceptible to interference from electronic devices – so the proliferation of computers, television sets, power lines, fluorescent lights and other RF generators that have been a boon in many ways are nothing but a bane to AM radio.

Against this background come the FCC's proposals intended to give AM stations a fighting chance of survival.

AM-Only FM Translator Filing Window. This is the proposal that has drawn the most huzzahs because it may present a realistic opportunity for cash-strapped AM operators to get FM translators. Ironically, it's not so much an "AM Revitalization" plan as an "Escape to FM" alternative.

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Inside this issue . . .

José Luis Uncensored? Apparently not anymore.

Indecency with a Spanish Accent?

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Something – it's hard to say exactly what – recently occurred on the indecency front. I learned about it first at the Impact Awards ceremony presented by the National Hispanic Media Coalition (NHMC). NHMC President/CEO Alex Nogales announced excitedly that Commissioner Jessica Rosenworcel (who was being honored that night) had brought "good news" about a matter in which NHMC was involved. The news: the FCC had entered into a consent decree with Liberman Broadcasting to resolve a complaint, filed by NHMC (along with the Gay & Lesbian Alliance Against Defamation (GLAAD)), targeting the Spanish-language TV talk show "José Luis Sin Censura" (translation: "José Luis Uncensored"). Liberman's Los Angeles-area TV station had broadcast the Luis show, complete with images and language that NHMC and GLAAD thought were indecent. (It stopping airing the show in 2012.)

I wrote on CommLawBlog about the complaint when it was filed back in 2011. NHMC and GLAAD alleged the repeated use of sexually-oriented terms such as "pinche" and "culero", along with anti-gay epithets ("maricón", "joto", "puñal") and anti-Latino slurs (*e.g.*, "mojado"). They also suggested that the FCC might be applying different indecency standards – or at least different enforcement policies – against Spanish-language programming as opposed to the English-language equivalent. (That last point is one that I had been asked to address by *Billboard* in a 2006 article – demonstrating that the NHMC/GLAAD concerns were neither new nor unique to them.)

So what did the FCC do to Liberman?

It let Liberman cop a plea and avoid being found guilty of any violations, ***BUT*** it also exacted from Liberman a $110,000 "voluntary contribution" and imposed on Liberman a three-year "comprehensive compliance plan". You can decide for yourself whether or not Liberman got off easy.

Consent decrees are unusual creatures. They are basically plea bargains in which the licensee admits certain violations and agrees to make a "voluntary contribution" to the United States Treasury. Calling Liberman's agreement to pay $110,000 "voluntary" is kind of like calling a plea bargain for five years in prison a "voluntary contribution of your leisure time". But that's how consent decrees work.

The benefit of such a deal for Liberman is that the consent decree brings the whole matter to an end and removes the cloud from Liberman's FCC licenses. With the ongoing uncertainty over the state of the FCC indecency rules, such a cloud can linger a very long time, leaving license renewals and assignment applications in limbo and thus indirectly complicating other business activities (such as re-financings). There is clearly a considerable practical benefit to be gained from concluding an indecency investigation.

And there were benefits to the Commission as well. The Liberman settlement is noteworthy particularly because it comes at a time when the FCC's indecency rules and policies are in a state of flux – thanks to court decisions which have questioned or rejected the rules and policies the Commission has historically applied. The consent decree seems to reflect uncertainty on that front: Liberman admits only that it "inadvertently violated the Commission's interpretation of its indecency regulations and requirements in force at the time of such actions", an obviously qualified admission of guilt. The fact

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And then there were five

Meet the New Boss(es) . . .

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OK, readers, how about a big "welcome aboard" to the two newest arrivals on the Eighth Floor?

On October 29, the Senate confirmed Tom Wheeler and Michael O'Rielly as Chairman and Commissioner, respectively, of the Federal Communications Commission. They were sworn in a couple of days later, returning the FCC to a full complement of five commissioners.

For those keeping score, Wheeler will be the third Democrat commissioner (joining Commissioners Mignon Clyburn – previously the Acting Chairwoman – and Jessica Rosenworcel) while O'Rielly will be the second Republican (along with Commissioner Ajit Pai).

The confirmations were delayed briefly when Senator Ted Cruz placed a procedural hold on them because of concerns about possible changes in FCC policy to expand mandatory disclosures relative to television political advertisements. Wheeler and Cruz had a sit-down chat about the matter, during which Wheeler advised Cruz that imposing such disclosure requirements was "not a priority". Cruz was apparently satisfied, and he lifted his hold.

With that, the normally creaky Congressional wheels suddenly began to spin with impressive ease. During the last two minutes of the Senate session immediately following Cruz's announcement, Senate Majority Leader Harry Reid asked for unanimous consent that the nominees be confirmed. No objection was voiced, and that was that.

Cruz lifted his hold, and the Congressional wheels suddenly began to spin with impressive ease.

The record will reflect that, also in those last two minutes, the Senate unanimously approved the designation of November 2, 2013, as National Bison Day. And, just in time (since the month was already pretty much gone), it approved the annual designation of October as National Work and Family Month.

Wheeler's five-year term will end on June 30, 2018. He is, of course, a long-time Washington telecommunications lobbyist very familiar with the workings of the FCC. In his testimony during the Senate's confirmation hearing last June, Wheeler described himself as an "unabashed supporter of competition".

O'Rielly is a Washington veteran whose interaction with the FCC has been from the legislative side. He spent 20 years as a Congressional staff member (on both the House and Senate sides), where he developed an expertise in communications policy. During his Senate testimony he professed to favor "a smaller governmental role", although he hedged his position some by emphasizing that that was "not an absolute". Because O'Rielly will be filling out the remainder of former Commissioner McDowell's term, he will be on board (at least initially) only until June 30, 2014.

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that the FCC accepted this may signal an acknowledgement by the agency that its requirements were indeed ambiguous, or worse.

Unfortunately for the rest of us, the consent decree sheds no light on the broader question of how the FCC interprets and enforces its indecency policies with respect to Spanish-language programming. While the NHMC/GLAAD complaint provided extensive documentation of the content of José Luis Sin Censura, the consent decree does not describe the specific content that triggered the complaint. (If you're curious, you can view a copy of the 173-page complaint here. Be careful – there are some pixilated-but-still-probably-NSFW screen shots adorning the first few pages.)

More importantly, the decree does not itemize the portions of that programming that the Enforcement Bureau felt to be contrary to the Commission's indecency policies. As a result, we still don't know precisely what Spanish terms may be "indecent" in the FCC's view, and we don't know how the FCC might have made that determination here or how it will make it in the future.

We do know two things, though. First, the consent decree makes clear that the FCC ***will*** enforce its indecency policies against Spanish-language broadcasts (even if we don't know ***how*** it will do so). And second, Liberman was willing to pay $110,000 – and commit itself to a reasonably burdensome "compliance plan" – to achieve a result that, among other things, relieved the Commission of the immediate need to answer that latter question.

Now in effect: tougher TCPA requirements

FCC to Telemarketers: Get It In Writing!

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If you're a for-profit company that engages in or relies on telemarketing, BEWARE! Rule revisions adopted by the FCC nearly two years ago have recently taken effect. Those revisions, adopted pursuant to the Telephone Consumer Protection Act (TCPA) impose significantly tighter restrictions on certain telemarketing activities. Since the number of potentially expensive TCPA-based law suits targeting telemarketers continues to grow, everyone involved in such activities should pay close attention to the revised requirements.

The TCPA, enacted more than two decades ago, is Congress's effort to protect consumers from unsolicited telephone and fax advertising. The particular TCPA-based rules at issue here involve: (1) autodialed or pre-recorded telemarketing calls to cell phones; and (2) telemarketing calls, to any residential line, using an artificial or prerecorded voice. Historically, both types of call have been permitted under certain limited circumstances. The new rules tighten up those limited circumstances considerably.

First things first. What is "telemarketing?", you ask. The FCC defines it (in Section 64.1200(f) of the rules) as

> the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

Some telemarketing calls, often referred to as "robocalls", are made using automatic dialing equipment (autodialers); some may include prerecorded or artificial voices. With few exceptions, all telemarketing calls require some form of consent on the part of the party being called.

Telemarketing to cell phones and prior express* WRITTEN *consent*.** Prior to October 16, 2013, if you wanted to deliver a telemarketing call or text to a cell phone using an autodialer or prerecorded/artificial voices, the FCC's rules required you only to have "prior express consent" from the party called. (That's the same level of consent required for *non*-telemarketing calls.) As of October 16, though, "prior express ***written consent" is now required for any such telemarketing calls to cell phones.

The FCC's insistence on ***written*** consent is a major change. Just what is "prior express written consent"? It's a written (naturally) agreement that:

- ✓ contains the signature of the person to be called;
- ✓ includes the specific phone number to which the person authorizes calls; and
- ✓ explicitly authorizes the use of an autodialer and/or artificial/pre-recorded voice to deliver telemarketing calls or text messages to the consumer.

In addition, the written agreement must contain a "clear and conspicuous disclosure" informing the person signing that he or she is not required either to sign the agreement (directly or indirectly), or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

While a handwritten signature can fulfill the requirements of the new rule, any electronic or digital form of signature recognized under state or federal law will also do the trick – so signatures may be obtained via email, website form, text message, telephone keypress, or voice recording.

It is important that written agreements be properly drafted to protect those who engage in or utilize telemarketing. In any litigation alleging a violation of the TCPA, the telemarketer bears the burden of proving that a clear and conspicuous disclosure was provided and that unambiguous consent was obtained. Once a written document reflecting such disclosure and consent is in hand, telemarketers should be sure to retain copies in order to demonstrate consent should the need arise.

Calls to residential numbers and the loss of the established business relationship exemption to the consent requirement. Since 1992 the FCC has permitted prerecorded telemarketing calls to residential lines without the need for additional consent ***provided that*** the caller had an established business relationship (EBR) with the consumer. However, in 2008, the Federal Trade Commission – which shares jurisdiction over such things with the FCC – eliminated its own EBR safe harbor. Now, to conform its approach to the FTC's Telemarketing Sales Rule, the FCC has amended its corresponding rule to require ***prior express written consent*** for prerecorded telemarketing calls to residential lines ***even where*** the telemarketer and called party have an EBR. The term "prior express written consent" here requires the same components described in the preceding section.

What about previously obtained consent? Because the new FCC rules impose new requirements on these types of telemarketing calls, any consent previously given by a consumer may have to be revised to meet the new standards if the telemarketer wishes to continue making such calls to that consumer. Ironically, telemarketers will have

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And then there were four

Developments on the "White Space" Coordinator Front

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Our handy-dandy table for tracking the progress of would-be white space database administrators got a real work-out this past month. In the space of a week it got updated twice: first to note the completion of LS telcom's testing, and then to reflect the fact that Key Bridge Global LLC had made it to the finish line. Key Bridge has been approved to provide service to certified unlicensed devices operating in the TV white spaces. Those two developments are reflecting in the red entries in the table below.

Four down, six to go as far as coordinator approvals go. But don't expect the remaining wannabes to wrap things up real soon: five of them haven't even begun public testing of their systems. Check back with CommLawBlog.com for further updates.

(Fuzzy on the whole white space database administrator question? Take a look at this post on CommLawBlog.com for some background.)

Coordinator	Test Started	Test Finished; Comments Sought	Coordinator Approved
Comsearch			
Frequency Finder Inc.			
Google Inc.	Feb. 27, 2013	May 29, 2013	June 28, 2013
LS telecom AG	June 18, 2013	**Nov. 14, 2013**	
Key Bridge Global LLC	March 4, 2013	May 29, 2013	**Nov. 19, 2013**
Microsoft Corp.			
Neustar Inc.			
Spectrum Bridge Inc.	Sept. 14, 2011	Nov. 10, 2011	Dec. 22, 2011
Telcordia Technologies	Dec. 2, 2011	Feb. 1, 2012	March 26, 2012
WSdb LLC			

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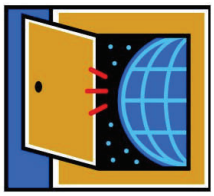
to be careful not to violate the new rules in the process of contacting consumers to obtain new consents.

The penalties for noncompliance. The FCC can impose monetary forfeitures of up to $16,000 for each violation of its TCPA rules (with a statutory maximum of $122,500 for any single continuing violation). Perhaps more ominously, the TCPA also provides a private right of action for consumers to sue in state or federal courts. In other words, each and every person on the receiving end of a telemarketing call for which the telemarketer cannot demonstrate "prior express written consent" can sue for actual monetary damages or statutory damages of $500 per call (and up to $1,500 per call for "willful" violations). And don't think that such suits are unlikely: class action suits alleging hundreds or thousands of violations (with aggregate claims easily in the six or seven figures) are something of a "growth industry" among some enterprising plaintiff's attorneys.

Anyone engaging in or utilizing telemarketing practices should review their procedures and documentation to confirm that they are in full compliance with all governmental rules. Failure to do so could be bad news in the event of FCC enforcement action and civil litigation. Review of those procedures and documentation with coun-



Concentrate and ask again . . . and again . . . and again

Foreign Control of Broadcast Licensees: The Regulatory Door Is Gradually Opening

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Indirect alien control of U.S. broadcast stations, long thought a taboo, may be on the way to acceptance at the FCC. In a Declaratory Ruling, the Commission has announced that it will consider easing up on such indirect foreign ownership of U.S. stations. But exactly when any easing up will occur, and how much alien control the FCC will eventually permit, remains to be seen.

Section 310(b)(3) of the Communications Act requires that entities holding certain FCC-issued licenses (for broadcast and common carrier services and radios serving aircraft while en route) must be organized under U.S. law AND may have no more than 20% foreign ownership. By contrast, Section 310(b)(4) of the Act permits such licensees to be ***in***directly controlled by separate entities up to 25% of which is owned by alien interests. In other words, while the license holder itself cannot be more than 20% foreign-owned, up to 25% of its parent company may be owned by foreign individuals or companies (even if the parent, which must be a domestic U.S. entity, is a 100% owner of the licensee).

A body of law will develop to guide parties seeking similar relief.

The convoluted structure of Section 310(b)(4) suggests that the Commission might be able to allow entities with more than 25% alien ownership to control such FCC licensees – as long as an appropriate public interest determination is made. Historically, though, the Commission has strictly adhered to the 25% benchmark: it has never made such a public interest determination and, consequently, it has effectively established 25% as a hard and fast maximum not to be exceeded.

But now the Commission says that, going forward, it will be more open-minded to – and is, indeed, effectively inviting proposals for – greater indirect foreign ownership and control of broadcast licensees.

In doing so, however, the Commission stops short of announcing any policies or guidelines that might apply to such proposals. Instead, unsure of what kinds of proposals may be brought to it, the FCC wants to take a look at specific proposals before it adopts any universal policies. Accordingly, it will proceed on a case-by-case basis. As decisions are reached in individual cases, a body of law will develop that will guide parties seeking similar relief in the future. Over time, the case-by-case approach may permit the adoption of streamlined procedures for foreign ownership requests.

How will the case-by-case process work? Before foreign ownership of the parent of a broadcast licensee may exceed 25%, the parties to the transaction must request a declaratory ruling from the Commission. That request must set forth all the facts and circumstances which, in the requesters' view, establish that the proposed transaction would be in the public interest. Note that, when the transaction involves an assignment of license or transfer of control, the parties must also file the necessary application (*e.g.*, Form 314 or 315) along with the declaratory ruling request. But the Commission cautions that some transactions that do not rise to the level of an assignment or transfer – and thus do not require such an application – may still require submission of a declaration ruling request.

The Declaratory Order makes clear that, as it does in the telephone area, the FCC will consult with and "afford appropriate deference to" various other government agencies when it considers such requests. The agencies the FCC has in mind include those with expertise on issues related to national security, law enforcement, foreign policy, and trade policy – presumably the Department of Homeland Security, the State Department, the Department of Justice and the FBI, and possibly others. In the telephone context such agencies have required foreign telephone investors to agree to conditions that enable the U.S. to exercise its national security functions. It is at least possible, if not likely, that similar conditions may be imposed in the broadcast context.

As the FCC sees it, relaxing foreign ownership restrictions may open up new sources of capital for applicants (including minority individuals, local residents and others) seeking to acquire broadcast licenses that they might not otherwise be able to afford. The Commission is also hoping that such relaxation could encourage other countries to relax restrictions against investment by U.S. citizens. Proposals which advance those objectives will have the best chance of obtaining approval.

It is, however, apparent from the separate statements of the Chairman and Commissioners that they have diverse perspectives on the benefits that may be realized from increased alien investment in broadcast licensees. The Chairman, for example, emphasizes advancement of spectrum efficiency, which suggests that he is looking for foreign capital to facilitate TV channel sharing and relocation of TV stations from the UHF band to the VHF band. Other Commissioners, by contrast, seem more interested in providing capital to widen ownership diversity in the face of significant recent industry consolidation.

In the eyes of many this relaxation is overdue. The FCC has in recent years allowed majority foreign control of telephone companies which are subject to the same Section 310 (b) limits as broadcast licensees. While the Commission

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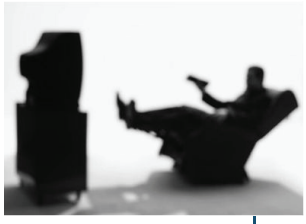
Less than a year after initial CALM Act took effect

New CALM Act Standard Proposed



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If you're a TV licensee or MVPD provider and you thought that you had a firm handle on your CALM Act obligations, think again. The CALM Act standards are in the process of evolving, and you (along with the Commission) will be having to play catch-up ball. The most recent demonstration of this? An Order and Further Notice of Proposed Rulemaking (O/FNPRM) announcing a new "successor" "Recommended Practice" featuring an "improved loudness measurement algorithm" that must be incorporated into the gear necessary to assure CALM Act compliance.

If you're a bit hazy on the CALM Act, check some of our posts on CommLawBlog.com for a refresher course (here and here would be good places to start). It's the law intended to exorcise the Demon of Loud Commercials from the TV-watching experience. Congress enacted it in 2010, the FCC adopted rules for its implementation in 2011, and those rules kicked in in 2012.

*The new Successor RP standard **will** be adopted without question.*

An unusual aspect of the CALM Act is that it requires the Commission to incorporate into its rules standards adopted by the Advanced Television Systems Committee (ATSC) relative to loudness measurement. The statute leaves the FCC no discretion at all: it specifies with precision the particular ATSC standard to be used, and it requires the FCC to incorporate that standard not only as it existed in 2010 (when the Act was passed), but also as it might be revised by ATSC from time to time going forward.

And sure enough, in March, 2013 – a bare three months after the CALM Act rules first took effect – ATSC published a revised version of the standard.

What we're talking about is known to the cognoscenti as the "ATSC A/85" Recommended Practice (RP). The latest and greatest version – dubbed ATSC A/85:2013, or the "Successor RP" – updates the loudness measurement algorithm in order to conform with the correspondingly updated version of the International Telecommunication Union's BS.1770 measurement algorithm, "BS.1770-3".

Since Congress ordered the FCC to follow ATSC's lead, the FCC has to do so. So while the O/FNPRM does not itself automatically adopt the new standard, the new Successor RP standard ***will*** be adopted without question.

What the FCC is particularly interested in now, though, is ***when*** to require compliance with the new standard.

For those who have already sought to comply with the original ATSC A/85 RP, the Successor RP may necessitate some software or device upgrades. The Commission is inclined to give everybody a year (starting from the release of an order incorporating the Successor RP into the rules) to comply with the Successor RP. But since it's not at all clear at this point exactly how much time, effort and expense may be involved in such upgrades, the FCC wants to hear from any and all affected licensees/MVPD systems. In particular, it is interested in situations where already-purchased equipment is ***not*** easily upgradable or implementation of the Successor RP would be "significantly burdensome" for some reason. The FCC also wants to know whether small TV stations and MVPD might need additional time to implement the Successor RP.

Meanwhile, since adoption of the Successor RP is a foregone conclusion, the Commission makes clear that anyone wishing to implement that new standard now may do so, even though the rules (at least for the time being) will continue to specify the original 2011 version of ATSC A/85. All others will still be required to comply with that original version until the new standard is formally incorporated into the rules and takes effect. Bottom line: TV licensees and MVPD operators have to comply with "either the BS.1770-1 measurement method in the Current RP or the BS.1770-3 updated measurement method in the Successor RP".

Anyone who might want to comment on the O/FNPRM has until December 27, 2013; reply comments can be filed until January 13, 2014.

In connection with the O/FNPRM, Commissioner Rosenworcel issued a separate supporting statement in which she mentioned that, since December, 2012, the Commission has received "nearly 20,000" CALM Act-related complaints. According to Rosenworcel, "[b]y any measure, that is a lot", and she suggests that the Commission should start issuing quarterly reports to "identify patterns of CALM Act noncompliance".

Hold on a minute.

First, since there are more than 110,000,000 TV households in the U.S. (according to Nielsen), 20,000 repre-

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After the close of the application window

Low Numbers for Low Power

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2,799 is the magic number. That's the number of applications for new LFPM construction permits filed during the extended (thanks to the FCC's October shutdown)-but-just-closed window period. So if you had 2,799 in your office pool, you should be a happy camper. But hold on. There were also 19 applications for major changes to outstanding LPFM licenses and two applications for major changes to outstanding LPFM CPs filed. So, depending on exactly how your office pool was set up, the correct number might be 2,820.

In any event, the LPFM applications are now available in CDBS, so our friend Dave Doherty (of Skywaves Consulting) has worked his spreadsheet magic again (like he did earlier this year, on the FM translator front). If you would like to see Dave's list of 2,799 sorted by state, city and frequency, click here; if you'd like to see the list sorted by frequency, state and city, click here. His lists are unofficial, of course, but they should provide anyone who's interested a reasonably complete look at the lay of the LPFM land post-window. At a minimum, they should help interested folks get at least a sense of who filed, where, and for what channels.

The FCC's staff is already hard at work examining the LoPo applications that were filed.

And for those of you who might prefer a more visual means of determining where those applications happen to be geographically, our friends at Cavell Mertz have advised us of a nifty feature that they provide – free of charge, thank you very much – through their website at FCCInfo.com. They have layered the LPFM application data onto Google Earth. So if you've got Google Earth already loaded on your computer, just click here to access the feature.

(If you don't have Google Earth loaded yet, you might want to get on that – but be sure to allow several days which you'll probably diddle away using the program to find images of your house, or your school, or all the major league baseball parks you've ever been to, or that place you went fishing a couple of years ago, or . . . you get the idea.)

Once you click on the link above, you will likely get a message asking what program you want to use to get things started. Pick "Google Earth".

You will then be presented with a Google Earth image of the lower 48 states in the main pane. You should see a vertical sidebar along the left side of screen. (If you don't, click on "View" in the top menu bar and then click on "Sidebar".) In the sidebar you should see a line entry reading "2013 LPFM Applications". Click on the triangular icon at the far left of that entry and a subfolder named "LPFM Applications by Channel" will appear. Click on the triangular icon at the far left of that entry and a listing of all FM channels will appear.

Now you're set to explore what channels are being proposed for LPFM use where and by whom. Click on any one of the channel listings in the sidebar, then zoom in on any area on the U.S. image in the main pane. (You can zoom by doubleclicking on a particular area.) Bingo, if there are any LPFM applications on the selected channel in the zoomed-in area, you will see small green indicators, each next to the legend "NEW (FL) – APP". Those are LPFM applications. Click on an indicator and up will pop a note providing the proposed specs (power, HAAT), Facility ID number associated with the application, and the applicant's name. You'll also get a couple of links that take you to additional information about the application.

(And talk about precision! The power and antenna height are calculated out to six (count 'em, six!) decimal places. Those calculations are from the FCC, based on the technical information in the application.)

If you have filed an LPFM application and want to get an idea of whether you have company, this is a handy tool. It should also help full-service licensees concerned about possible nearby LPFM encroachment on their channels. Thanks to Mike Rhodes at Cavell Mertz for passing the word along about this.

The total number of LPFM applications filed appears to be vastly below the worst-case scenarios that a number of observers had feared. Why was the final number so small compared with the pre-window speculation? It's impossible to say right now, and we may never know for sure. But the fewer LPFM applications that got filed in this go-round, theoretically the more opportunities for FM translators still exist – and that could bode well for AM folks, should the AM revitalization proceeding lead to an AM-only window for new FM translators.

We understand that the Commission's staff is already hard at work examining the LoPo applications that were filed, whatever the precise number. While some winnowing is almost certain to occur as defective applications – and you've got to expect that there are at least some in that category – get weeded out, Jim Bradshaw, Deputy Chief, Engineering of the FCC's Audio Division, has advised us that the staff had, as of November 22, already accepted more than 100 singleton LPFM applications. (Acceptance starts the 30-day petition to deny period.) Check back with CommLawBlog.com for updates on that front.

This should get your attention

Fake EAS Attention Signals Fetch Fines

By R. J. Quianzon
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The lesson of the day: it is illegal to broadcast EAS attention signal tones, or simulations of EAS tones, except in connection with a genuine alert or an authorized test of the EAS system. Write that down, share it with others, commit it to memory. If you want to see it in black and white, check out Section 11.45 of the Commission's rules.

Many – probably the vast majority of – broadcasters learned this rule a long time ago and have had no problem complying with it. Indeed, just last June the FCC was confronted by broadcasters skittish about getting crosswise with that very rule. (In response the Commission went out of its way to assure the broadcasters that it really is OK to broadcast one particular FEMA-produced PSA that contains an alert tone that sounds like the EAS signal.)

But according to the Enforcement Bureau, recently it's been receiving "numerous consumer complaints" about the use of EAS-like tones in ads and promotions. And sure enough, the Bureau has now brought the hammer down on two culprits who used simulations of EAS tones to promote, in one case, an upcoming program and, in the other, one of its advertisers (that would be the Fan Wear and More Store). The former got spanked to the tune of $25,000 in a notice of apparent liability (NAL); the latter copped a plea and entered into a Consent Decree that will cost it a "voluntary contribution" of $39,000.

The impulse to use EAS tones for, say, advertising purposes must be resisted.

The rationale for the rule is obvious.

Broadcasters who air fake EAS attention signals are, in effect, "crying wolf" and thereby undermining the integrity and effectiveness of the EAS system. If the public can't be sure whether a particular announcement is real or fake, the public may not recognize truly dangerous situations until it's too late.

Additionally, as our friends at the Society of Broadcast Engineers warned us all several years ago, the use of EAS header tones can cause EAS gear to lock-up at stations downstream in the EAS system. This can occur even when the tones are used merely as sound effect in a commercial spot. The result could place the public in unnecessary danger.

To pound the point home, the Enforcement Bureau has released not only the NAL and Consent Decree, but a companion public notice ***and*** a separate "Enforcement Advisory".

The bottom line: Don't broadcast EAS attention signal tones, or anything that might be confused with such tones, except in connection with an actual emergency or an authorized EAS test. As irresistible as the impulse to use EAS tones might on occasion be – since those tones are designed to get the audience's attention, an effect that advertisers, in particular, crave – it must be resisted.

While the rule is simple and, from our perspective, completely justified, the recent flurry of activity gives rise to a couple of questions.

First, how similar does a tone have to be to constitute a "simulation" worthy of enforcement action? Section 11.31 of the rules says the EAS "Attention Signal" must be "made up of the fundamental frequencies of 853 and 960 Hz. The two tones must be transmitted simultaneously." But it's presumably still possible, and maybe even easy, to generate tones that ***sound*** like the real deal without meeting those particular standards. Here it's probably best to use a conservative rule of thumb: if a reasonably nervous and inattentive listener might conclude that a particular tone is an EAS tone, then that tone should not be broadcast.

Second, take a look at the NAL and the Consent Decree.

The NAL was issued to Turner Broadcasting for a promo inserted into the *Conan* show. According to the NAL, the promo was transmitted on both feeds (East Coast and West Coast) and reached a potential audience of nearly 100 million viewers. Turner is part of Time Warner, which last year reported revenues in excess of $14 billion. In response to the FCC's inquiry, Turner apparently quibbled that one element of the tone that was transmitted was really more akin to the sound associated with color bar test patterns. (The Bureau did not agree.)

The Consent Decree, on the other hand, involved a single TV station in Bowling Green, Kentucky. The

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Since roughly 2009, AM stations have been allowed to rebroadcast their programming on FM translators whose 60 dBu contours are within the smaller of the AM station's daytime 2.0 mV/m contour or a 25-miles radius from the AM station's transmitter site. At first the FCC allowed only then-existing translators to be used for AM rebroadcasting. That left AM licensees to scrounge around for translators that were both for sale and located (or could be moved to) near enough to the AM station to be rebroadcast. In 2012, the FCC relaxed the rule a little, allowing AM stations also to use the new translators coming on line with the grant of a flock of long-pending Auction 83 applications.

But two basic problems emerged: (a) often translators were available only from third parties at premium prices; and (b) translators tended not to be located where the AM stations could use them, thus requiring relocation. The process of moving a translator to a useable location typically is complex, time-consuming and expensive.

The solution? An FM translator window for AM stations only. In the *Revitalization NPRM* the Commission is proposing a one-time-only filing window during which *only AM broadcasters* would be allowed to apply for *one and only one* FM translator per AM station. The translator would have to operate in the non-reserved band and be located in compliance with existing requirements (*i.e.*, the translator's 60 dBu contour would have to fit within the smaller of the AM's 2.0 mV/m contour or a 25-mile radius of the AM site). It would be used solely to rebroadcast the AM station designated by the AM-licensee applicant. To ensure that that last limitation would be honored, the translator would be "permanently linked to the AM primary station acquiring it".

An AM-only translator window could mean the elimination of "Mattoon waivers".

These obviously stringent limitations are designed to avoid the "land rush" crush of zillions of translator applications that occurred with the last translator window for all comers in 2003. The Commission has tentatively concluded that the imposition of such eligibility criteria will pass muster under the longstanding *Ashbacker* test.

And those limitations could get more stringent. The *Revitalization NPRM* asks whether applicant eligibility should be restricted to allow only Class C and Class D AM stations or "stand alone" AM stations to file. No mention is made whether an AM licensee that already has one or more FM translators would be allowed to file for an additional translator.

If an AM-only window were to be opened, the Commission would consider eliminating the availability of "Mattoon waivers". Those waivers, which technically remain available (at least for the time being), permit the avoidance of certain procedural rules in the processing of applications to relocate translators so they can be used to rebroadcast AM stations. Mattoon waivers can speed up such relocations considerably.

The FCC also is soliciting comments on whether an AM-only FM translator window will affect – for good or ill – full-power FM stations, small businesses, businesses owned by minority groups and women, other FM translator licensees and LPFM broadcasters.

Daytime Community Coverage. The FCC's rules require an AM station to put a 5.0 mV/m contour over its entire community of license during daytime hours. That tends to limit, severely, the ability of AM stations to relocate and improve their facilities, since AM stations – especially ones with multi-tower directional antenna systems – require a lot of land for their transmission systems. For years the FCC has let AM stations slide by if they put a 5.0 mV/m daytime contour over at least 80% of the area or population of their communities of license, a relaxation which has helped some.

Since 2009, the Minority Media Telecommunications Council (MMTC) has been pushing for even further relaxation. MMTC argues that, even under the relaxed city-coverage standard, AM stations often still can't change sites or make improvements. That inability forces AM licensees to undertake "protracted waiver proceedings" which can strain the resources of both the applicant *and* the FCC. MMTC proposes that, like NCE stations, each AM station should be required only to put a city grade signal (5.0 mV/m in the case of AMs) over 50% of its community of license.

In the *Revitalization NPRM*, the FCC acknowledges that finding sites suitable for AM antennas is increasingly difficult and expensive. And the FCC is willing to consider some relaxation of the coverage requirement – but not to the full extent of MMTC's proposal.

The *Revitalization NPRM* proposes to allow a *licensed* AM station seeking to modify its facilities *without changing its community of license* to cover only 50% of either the area or population of its community of license. That should open up additional potentially useable sites that aren't available given the current regulatory constraints.

However, because of the importance of community coverage, an applicant for a new AM station or for a change in community of license would still be expected to specify a site that complies with the current daytime community coverage requirement (*i.e.*, 100% coverage of the community with a 5.0 mV/m contour).

The *Revitalization NPRM* solicits input on the likely effect of the proposed change, and also whether the relaxation should be extended to include new or change-of-community applications. The Commission is particularly interested in hearing from broadcasters about the anticipated costs and benefits of the proposed change: would the change materially help licensees (and if so, which ones), or would it lead to delivery of "sub-standard signal quality" to significant portions of communities of license?

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Nighttime Community Coverage. As we previously mentioned, because of the transmission characteristics of AM signals, AM stations more often than not must operate with reduced power at night. But AM stations are still subject to nighttime community coverage requirements similar to the daytime coverage standards described above. (The precise limits are complicated; suffice it to say, as the *Revitalization NPRM* cogently summarizes, AM stations must "serve the bulk of their community of license at night".)

Because of the reduced nighttime power limits, the nighttime community coverage requirement makes the quest for suitable sites for nighttime transmission systems even harder than is the case with daytime coverage requirements. Acknowledging this, the Commission is now contemplating the complete abandonment of nighttime coverage limits for *licensed* stations. If that proposal were to be adopted, such stations would not be required to cover *any* portion of their community of license at night.

Applicants for new stations or changes of community would still have to demonstrate some community coverage – either 50% of the population or 50% of the area of the proposed community of license during nighttime hours with a 5.0 mV/m contour or a nighttime interference-free contour, whichever value is higher. But that would still be a significant relaxation of existing limits.

The FCC has tentatively agreed that the Ratchet Rule should go.

This aspect of the *Revitalization NPRM* – particularly the notion of totally tossing the nighttime coverage requirement – is radical, as the Commission seems to recognize. It asks a range of questions about what effects – good or bad – such changes would have on the AM industry and on the listening public. The FCC is also looking for any alternative suggestions anybody might have. (Along these lines, the Commission itself suggests that it might be a good idea to impose at least some minimum nighttime coverage standards on stations are the only radio service licensed, or which provide the only nighttime service, to the community.)

Death to the "Ratchet Rule". The "Ratchet Rule" is a truly arcane requirement imposed on Class A or Class B AM stations seeking to modify their facilities. The Ratchet Rule for Dummies: Such stations must demonstrate that the net results of the proposed modifications will be a reduction in the amount of skywave interference caused to certain other AM stations. (For a more detailed, but probably less comprehensible, discussion of the nitty-gritty of the Ratchet Rule, check out our post on the subject on CommLawBlog.com.)

Back in 2009, the revered engineering firms of duTreil, Lundin & Rackley (DLR) and Hatfield & Dawson (H&D) asked the FCC to ditch the rule because it discouraged or impeded stations trying to alleviate nighttime coverage difficulties due to noise and man-made interference. Eight parties filed comments in support of their petition; nobody opposed it.

The FCC now tentatively has agreed that the Ratchet Rule should go and seeks comments on whether that's really a good idea.

Implementation of MDCL Without Prior Approval. Modulation Dependant Carrier Level (MDCL for short) control technologies or algorithms have been developed to allow AM stations to reduce power consumption while maintaining audio quality and station coverage. (Feel free to refer back to our earlier post on the topic on CommLawBlog.com for a quick refresher course on MDCL.)

Since September, 2011, the Media Bureau has been granting permanent waiver requests (30 in all so far) and experimental authorizations (16 to date) permitting use of MDCL techniques. Word back from these MDCL pioneers is all good: significant power cost savings and little or no perceptible effects on signal coverage or quality.

Accordingly, the FCC now is proposing to let AM licensees use MDCL technology without prior FCC authority, provided they notify the Commission within 10 days that MDCL control technology is being employed. There are a couple of minor catches: first, MDCL controlled stations would have to be able to reach full licensed power at some audio input level or when the MDCL control technology is disabled; second, they would have to disable the MDCL system when field strength measurements are taken.

Currently, domestic AM transmitter manufacturers (Harris and Nautel) offer MDCL control technologies. Additional MDCL options – transmitters and external adapters – are apparently in development by others. The Commission asks how it should deal with the anticipated expansion of available hardware in terms both of how the technology may permissibly be deployed and what information MDCL-equipped stations should report to the FCC.

In 2011, the jury was still out as to whether simultaneous use of both MDCL and a hybrid HD system would cause increased out-of-band emissions and/or suffer reduced signal quality of its HD stream. But the Commission hasn't received any complaints about stations operating that way, so it tentatively plans to permit all AM stations – even those with hybrid digital facilities – to implement MDCL control technologies without prior authority.

AM Antenna Efficiency Standards. The FCC's "minimum efficiency" standards require each applicant for new or modified AM facilities either (a) to meet minimum height requirements which vary by frequency (the lower the frequency, the taller the tower) or (b) to meet specified field strength requirements.

Arguing that the minimum efficiency standards make it tough to find suitable AM transmitter sites – particularly for lower frequency stations that need taller antennas – MMTC proposed that the FCC adopt a "minimum radiation" stan-

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dard instead. According to MMTC, that change would allow stations to use very short antennas and "enjoy more flexibility in site selection, including rooftop installations".

The FCC expresses some bewilderment about this component of MMTC's proposal, which the FCC says is "unclear as to both the exact problems that MMTC perceives with our current regulations, the specifics of the rule or rules it proposes to eliminate or replace, and why that solution is preferable". Nevertheless, in the revitalization spirit, the Commission will consider reducing the minimum effective field strength values. That would offer AM broadcasters some relief by enabling them to propose shorter antennas.

Specifically, the FCC seeks comment on whether it should reduce minimum field strength values by roughly 25%. The welcome mat is also out for comments on pretty much any technical and/or policy considerations relating to minimum antenna efficiency. For instance, would lower efficiency transmission systems face potential interference or stability problems? Are the FCC's existing methods sufficient to assess the performance of very short antennas? Would such antennas produce excess heat that would harm the transmission system? Would the RF radiation rules need to be revised to cover very short antennas? And if you can think of any other antenna efficiency-related questions, feel free to answer those as well.

The *Revitalization NPRM* proposes a lot of remedies to better the condition of the AM radio patient. But it does not solicit comment on some of the more radical ideas MMTC and others have floated – the heart transplant options, if you will – such as giving each AM station a digital channel in the band presently assigned to TV Channels 5 and 6, or switching the AM band to digital-only operation. Instead, the extensive changes proposed in the *Revitalization NPRM* are all aimed at helping the financial viability of the AM service rather than altering the technical quality of the signal it can deliver to the listening public. Indeed, a number of the Commission's questions reflect concern that some of the proposals could lead to less or worse service.

But the AM service is somewhat like a geriatric patient, subject to a variety of infirmities that simply may not be remediable, certainly not in the short term. In such cases the care-giver should do whatever it can and hope for the best. Here, the FCC is clearly looking to stabilize AM radio's financial heartbeat as an essential first step to preserving the patient.

If you want to file comments in response to the *Revitalization NPRM*, you've got until ***January 21, 2014***. Reply comments can be filed by ***February 18, 2014***. Additionally, if for some bizarre reason you might instead feel motivated to comment strictly on whether the "information collection" aspects of the *NPRM* comport with the Paperwork Reduction Act, you can file those comments separately by ***January 21, 2014***.

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has attributed its hard-line adherence to the 25% level on the broadcast side to concern about national security, the same concern applies to telephone service: in times of emergency, U.S. citizens should have immediate and ultimate control over critical communications facilities, both broadcast and telephone. The Commission finally appears to be recognizing that there is little if any reason to distinguish between the two services.

With no explicit guidelines on the table, and possible divergence of goals among the Commissioners, many questions remain unanswered, among them: How easy it will be to obtain approval of foreign investment in broadcasting? Will majority foreign control be permitted? Will TV be treated differently from radio? Nevertheless, we anticipate that foreign investors will be attracted to U.S. investment opportunities. As that happens, we expect to see more and more requests for declaratory rulings seeking approval of a range of financial deals. Through the gradual development of policies and practices in this case-by-case manner, we can expect a new – and ideally more relaxed – approach to foreign ownership in the broadcast industry to emerge.

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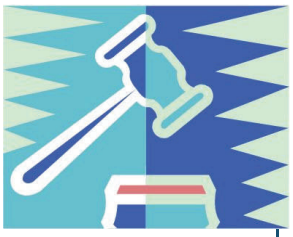
sents less than two-hundredths of one percent of those households. While 20,000 may be a large number in some contexts, here it does not seem to reflect a particularly significant portion of the population. (And we're assuming that each of the 20,000 complaints came from a different household; it's at least possible that some particularly sensitive viewers may be responsible for more than one complaint each.) We don't mean to discount the perceptions of the complainants; rather, we just want to put the number of complaints into some useful perspective.

And second, the mere fact that a complaint has been filed does ***not*** mean that any "noncompliance" has occurred. As we have observed previously, "loudness" is often a subjective factor determined by the ear of the beholder, irrespective of whether the video provider has complied with applicable FCC rules. Whether or not "noncompliance" is involved will require investigation by the Commission. If, after such investigation, some "patterns" of noncompliance emerge, the Commission may want to issue reports describing those patterns. But the Commission should be clear that absent investigation, complaints reflect only complaints, not noncompliance.

22 permits up for grabs

Auction Action, AM Style



By R. J. Quianzon
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Do ***you*** remember what you were doing in January, 2004? That's not quite ten years ago. George W. Bush was still in his first term in office. The Janet Jackson Super Bowl flap still hadn't happened. "Friends" and "Frasier" were still on the air; "House" and "Desperate Housewives" hadn't even debuted. Facebook was still just a glimmer in Mark Zuckerberg's eye.

And some of you were apparently filing applications for AM radio construction permits.

We know that because 53 AM applicants, vintage January, 2004 (and four more from 2007), have just been identified as possible participants in a "closed" auction announced by the FCC. The auction, featuring 22 AM construction permits, is set to begin on ***May 6, 2014***.

The permits are for service areas from Oregon down to Florida. Opening bids range from as little as $1,000 (for, *e.g.*, beautiful Lovelock, Nevada) up to $25,000 (for Culver City, California). You can see a list of the lucky few eligible to bid, the markets they'll be able to bid on, and the minimum opening bids here.

Since the applications were first submitted, a lot has happened

The auction – Auction No. 84, for those of you keeping track – is the culmination of a decade's worth of work by the FCC and broadcasters. The applications were among those filed in 2004 in response to a five-day window (first announced in November, 2003) for proposals for new AM stations or major modifications to existing stations.

About 800 applications were submitted. The FCC then spent a year and a half reviewing them all, identifying mutual exclusivities and sorting them into various categories for processing. Singletons (*i.e.*, applications not MX with anybody else) could be, and were, granted. Some groups of MX applications were permitted to resolve their differences through settlement. In MX groups involving applications proposing different communities of license, applicants were required to submit Section 307(b) showings. (Such showings consist of elaborate piles of data designed to prove that the applicant's proposal would result in the most "equitable distribution" of radio service. Derived from Section 307(b) of the Communications Act, a preference awarded on the basis of such a showing can trump other factors and even result in a grant without the need for an auction.) Others were required just to sit tight and wait for the auction.

The vast majority of MX groups were able to work out non-auction solutions. But, as it turned out, 22 of those groups (comprising 57 applicants in all) could not. And those 57 – assuming that they're still around and still interested – will now get to duke it out in an auction to determine the winners.

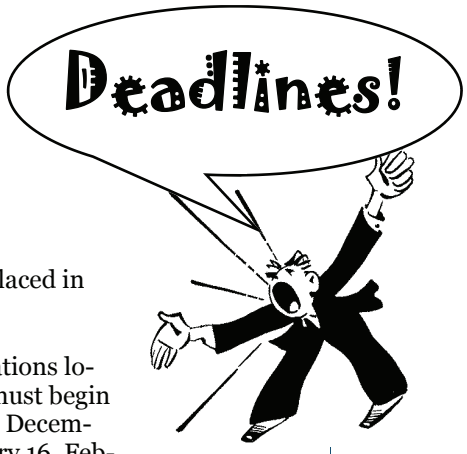
Whether there is still interest by the parties to participate in the auction is another matter. Since the applications were first submitted, a lot has happened (including Olympics in Athens, Beijing and London and, let's think . . . oh yeah, a major economic crisis sending the U.S. into a years-long recession). So much has changed in the industry and elsewhere that applicants may not want to pursue their applications. Nonetheless, the FCC will require any bidder, even if he or she is the only one to show up, to pay the minimum bid for a permit.

As is customary, the FCC has proposed numerous rules which will govern how the auction is conducted. The rules are nearly identical to auction rules from the past. Parties who wish to comment on the proposed rules have until ***December 6, 2013*** to submit comments. Reply comments are due on ***December 20***.

Potential bidders who have submitted applications for this auction are reminded that the FCC rules prohibit colluding with other bidders. In other words, any chance of any amicable resolution has now gone by the boards, and auction participants can***NOT*** communicate with their opponents any more.

We wish you the happiest of holidays and peace in the new year.

Fletcher, Heald & Hildreth®



December 1, 2013

Radio Post-Filing Announcements – *Radio* stations located in **Connecticut**, **Maine**, **Massachusetts**, **New Hampshire**, **Rhode Island** and **Vermont** must begin their post-filing announcements with regard to their license renewal applications on December 1. These announcements then must continue on December 16, January 1, January 16, February 1 and February 16. Once complete, a certification of broadcast, with a copy of the announcement's text, must be placed in the public file within seven days.

Television Post-Filing Announcements – *Television* and *Class A television* stations located in **Colorado**, **Minnesota**, **Montana**, **North Dakota** and **South Dakota** must begin their post-filing announcements with regard to their license renewal applications on December 1. These announcements then must continue on December 16, January 1, January 16, February 1 and February 16. Please note that with the advent of the online public file, the prescribed text of the announcement has changed slightly. Also, once complete, a certification of broadcast, with a copy of the announcement's text, must be uploaded to the online public file within seven days.

Radio License Renewal Pre-Filing Announcements – *Radio* stations located in **New Jersey** and **New York** must begin their pre-filing announcements with regard to their applications for renewal of licenses on December 1. These announcements then must be continued on December 16, January 1 and January 16.

Television License Renewal Pre-filing Announcements – *Television* and *Class A television* stations located in **Kansas**, **Nebraska** and **Oklahoma** must begin their pre-filing announcements with regard to their applications for renewal of license on December 1. These announcements then must be continued on December 16, January 1 and January16. Please note that, with the advent of the online public file, the prescribed text of the announcement has been changed slightly from that of previous renewal cycles.

December 2, 2013

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. *Please note that, in addition to full-power TV stations, this requirement applies to Class A TV, LPTV, and TV translator stations that are offering digital broadcasts*. 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. Ancillary services do not include broadcasts on multicast channels of free, over-the-air programming for reception by the public.

Radio License Renewal Applications – *Radio* stations located in **Connecticut**, **Maine**, **Massachusetts**, **New Hampshire**, **Rhode Island** and **Vermont** must file their license renewal applications. These applications must be accompanied by FCC Form 396, the Broadcast EEO Program Report, regardless of the number of full-time employees.

Television License Renewal Applications – *Television* stations located in **Colorado**, **Minnesota**, **Montana**, **North Dakota** and **South Dakota** must file their license renewal applications. These applications must be accompanied by FCC Form 396, the Broadcast EEO Program Report, regardless of the number of full-time employees.

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**, **Minnesota**, **New Hampshire**, **North Dakota**, **Rhode Island**, **South Dakota** and **Vermont** must place EEO Public File Reports in their public inspection files. TV stations must upload the reports to the online public file. 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.

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Noncommercial Television Ownership Reports – All *noncommercial television* stations located in **Colorado**, **Minnesota**, **Montana**, **North Dakota** and **South Dakota** must file a biennial Ownership Report (FCC Form 323-E). All reports must be filed electronically.

Noncommercial Radio Ownership Reports – All *noncommercial radio* stations located in **Connecticut**, **Maine**, **Massachusetts**, **New Hampshire**, **Rhode Island** and **Vermont** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323-E.

December 20, 2013

Biennial Ownership Reports – All *licensees* and *entities holding an attributable interest in a licensee* of one or more *AM*, *FM*, *TV*, *Class A television*, and *LPTV stations* must file a biennial ownership report on the FCC Form 323 by the extended deadline of December 20. Please recall that sole proprietorships and partnerships composed entirely of natural persons (as opposed to a legal person, such as a corporation) must file reports, as well as other licensee entities. All reports must be filed electronically. The Ownership Report still must reflect information as of October 1, 2013.

January 10, 2014

Children's Television Programming Reports – For all *commercial television* and *Class A television* stations, the third quarter reports on FCC Form 398 must be filed electronically with the Commission. These reports then should be automatically included in the online public inspection file, but we would recommend checking. Please note that the FCC requires the use of FRN's and passwords in order to file the reports. We suggest that you have that information handy before you start the process.

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 uploaded to the public inspection file.

Website Compliance Information – *Television* and *Class A television* station licensees must upload and retain in their online 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 during the past quarter must be placed in the station's public inspection file. Radio stations will continue to place hard copies in the file, while television and Class A television stations must upload them to the online 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.

January 21, 2014

AM Revitalization – Comments are due in response to the Commission's broad Notice of Proposed Rule Making aimed at revitalizing the AM radio service.

February 1, 2014

Radio Post-Filing Announcements – *Radio* stations located in **New Jersey** and **New York** must begin their post-filing announcements with regard to their license renewal applications on February 1. These announcements then must continue on February 16, March 1, March 16, April 1 and April 16. Once complete, a certification of broadcast, with a copy of the announcement's text, must be placed in the public file within seven days.

Television Post-Filing Announcements – *Television* and *Class A television* stations located in **Kansas**, **Nebraska** and **Oklahoma** must begin their post-filing announcements with regard to their license renewal applications on February 1. These announcements then must continue on February 16, March 1, March 16, April 1 and April 16. Please note that with the advent of the online public file, the prescribed text of the announcement has

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licensee acknowledged that it had broadcast a simulated EAS tone.

But when the dust settled, the resistant and well-heeled Turner was issued a $25K fine for a violation that could have had nationwide repercussions, while the other guy – who readily admitted the violation and sought to co-operate with the Bureau – is being forced to pay more than 50% more ($39K) for an incident that affected only greater Bowling Green. Doesn't this send the wrong message on a number of levels?

[Final note: The items described above relate only to the transmission of EAS alert tones (or simulations thereof); they do ***not*** involve general alarms or other loud noises, including "bells, claxons, and police, fire or civil defense sirens" that don't resemble EAS tones. But the transmission of such sounds could separately violate Section 325 of the Communications Act, which prohibits the transmission of "any false or fraudulent signal of distress, or communication relating thereto." The goal, again, is to prevent the transmission of sounds that could cause disruption and peril.]

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changed slightly. Also, once complete, a certification of broadcast, with a copy of the announcement's text, must be uploaded to the online public file within seven days.

Radio License Renewal Pre-Filing Announcements – *Radio* stations located in **Delaware** and **Pennsylvania** must begin their pre-filing announcements with regard to their applications for renewal of licenses on February 1. These announcements then must be continued on February 16, March 1 and March 16.

Television License Renewal Pre-filing Announcements – *Television* and *Class A television* stations located in **Texas** must begin their pre-filing announcements with regard to their applications for renewal of license on February 1. These announcements then must be continued on February 16, March 1 and March 16. Please note that, with the advent of the online public file, the prescribed text of the announcement has been changed slightly from that of previous renewal cycles.

February 3, 2014

Radio License Renewal Applications – *Radio* stations located in **New Jersey** and **New York** must file their license renewal applications. These applications must be accompanied by FCC Form 396, the Broadcast EEO Program Report, regardless of the number of full-time employees.

Television License Renewal Applications – *Television* stations located in **Kansas**, **Nebraska** or **Oklahoma** must file their license renewal applications. These applications must be accompanied by FCC Form 396, the Broadcast EEO Program Report, regardless of the number of full-time employees.

EEO Public File Reports – All *radio* and *television* stations *with five (5) or more full-time employees* located in **Arkansas**, **Louisiana**, **Kansas**, **Mississippi**, **Nebraska**, **New Jersey**, **New York** or **Oklahoma** must place EEO Public File Reports in their public inspection files. TV stations must upload the reports to the online public file. 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.

Noncommercial Television Ownership Reports – All *noncommercial televisio*n stations located in **Kansas**, **Nebraska** or **Oklahoma** must file a biennial Ownership Report (FCC Form 323-E). All reports must be filed electronically.

Noncommercial Radio Ownership Reports – All *noncommercial radio* stations located in **Arkansas**, **Louisiana**, **Mississippi**, **New Jersey** or **New York** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323-E.

February 18, 2014

AM Revitalization – Reply Comments are due with regard to the Commission's Notice of Proposed Rule Making aimed at revitalizing the AM radio service.

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

Updates On The News

Form 323 deadline extended – It's official! The deadline for filing biennial Ownership Reports for commercial broadcast stations has been extended 18 days, to ***December 20, 2013***. The Media Bureau took this action in response to a number of requests which observed that the usual 60-day period for preparing and filing such reports – which would ordinarily have run from October 1– December 2 – was interrupted by the 16-day shutdown of the federal government in October. Since preparation of the reports requires access to CDBS, which was off-line during the shutdown, would-be filers were deprived of that access.

Discount daze – Back in September we reported on a Commission proposal to abandon the UHF discount aspect of the limitation on nationwide broadcast TV multiple ownership. (The Commission also suggested that it might be interested in establishing a VHF discount.) The Notice of Proposed Rulemaking has now made it into the Federal Register, which means that comments deadlines have now been established. If you have anything to say to the FCC about the proposal, you've got until ***December 16, 2013*** to file comments and until ***January 13, 2014*** to file reply comments.

Bad news for the mad men? – LEGISLATIVE ALERT!!! Last month we reported on indications that, according to AdWeek, some in Congress are thinking about revising the tax code to eliminate, or at least seriously reduce, the deductibility of advertising expenses. AdWeek has since reported that the Chairman of the House Ways and Means Committee (that would be Rep. David Camp (R-Mich)) is indeed pushing a tax reform proposal that targets, among other things, ad expense deductibility. It's hard to say at this point how serious the threat is, but we suspect it ranks right up there. NASBA seems to agree: it sent off a sternly worded letter to Congress warning that the measure could adversely affect broadcasters' ability to provide local programming.

Movin' on up to the East Side (reprise) – In June, 2009, we reported on an ambitious – some thought harebrained (or worse) – effort by PMCM TV, LLC to relocate two television stations from Ely, Nevada and Jackson, Wyoming to Middletown Township, New Jersey and Wilmington, Delaware, respectively.

We are pleased to announce that Phase One of that project has been completed: Station KJWP, Channel 2, Wilmington, Delaware, has now signed on the air. (You can see a video of the low-key sign-on here.)

Delaware now has its first operational commercial VHF TV station since the 1950s. In fact, the last time Delawarians saw a commercial VHF station licensed to their state, some of the programs now showing on MeTV were first run features. (The station is an affiliate of the popular Me-TV network – "Me-TV" stands for Memorable Television – featuring classic shows from the '50s through the '80s.) PMCM is in the process of developing locally-produced nonentertainment programming to provide Wilmington and the rest of the station's service area with the benefits of a local station.

Consistent with the unusual nature of this project from the get-go, KJWP has retained its distinctive "K"-prefix call sign even though it's now east of the Mississippi.

Construction of KJWP was completed in just five months: the construction permit authorizing the long-distance move was granted on June 19, 2013, and the switch turning on program test operation in Wilmington was thrown on November 18. Credit for that impressive accomplishment goes to PMCM principal Robert McAllan (seen in the video, appropriately enough, flipping the switch), who was in charge of all phases of the move. While some additional work still needs to be completed here and there, Bob, a long-time broadcaster, has managed to pull off a near-miracle. (His work isn't over, though – next stop, Middletown Township!)

Fletcher Heald is proud to have played a role in PMCM's effort from Day One. Past performance is, of course, not a guarantee of future results – particularly here, where the unique circumstances of PMCM's feat are not likely to occur again. But we like to think that we are entitled to some props on the lawyering side for helping PMCM recognize and take advantage of an extraordinary opportunity.

FHH - On the Job, On the Go

On December 3, **Frank Montero** will attend the Joint Fall Meeting of the Telecommunications & E-Commerce Committee of the United States Chamber of Commerce.

And this past month, **Frank M** hasn't been a wallflower by any means. He attended: the 2013 Public Radio Super-Regional Meeting; a reception at the new headquarters of National Public Radio (honoring visiting public radio stations and NPR affiliates); and the National Hispanic Media Coalition's Impact Awards. Meanwhile, he was also interviewed by a Univision affiliate in San Juan (about FCC pressure on wireless carriers to unlock cell phones) and he was quoted in the *Bloomberg Daily Report to Executives* in a tribute to outgoing Acting FCC Chairwoman Clyburn.