Fletcher, Heald & Hildreth®

Memorandum to Clients

May 2014 | News and Analysis of Recent Developments in Communications Law | No. 14-05

As expected, unfortunately

Here Come The Political File Complaints!

By Howard Weiss
weiss@fhhlaw.com
703-812-0471

Two years ago, when TV stations were first required to post their local public inspection files online, a number of observers anticipated that the ubiquitous availability of the now-misnamed "local" files would lead to an influx of complaints from non-local parties enjoying easy Internet access to once distant files.

The complaints have started.

In one of the first – if not *the* first – instance, two Washington, D.C.-based public interest firms have filed complaints against a total of 11 TV stations. The complainants – the Sunlight Foundation and the Campaign Legal Center – base their charges entirely on political advertising materials obtained from the stations' online public files. The essential claim running through all the complaints is that the target stations failed to include various bits and pieces of legally-required information. Following up on the complaints, the Commission has sent letters of inquiry (with Chairman Wheeler's blessing) to the targeted stations.

First, let's focus on the disclosure information that the complainants allege to be missing. Section 315(e)(1) of the Communications Act requires broadcasters to maintain (and make available for public inspection) certain information with respect to any request to purchase airtime when the request is either (a) made on behalf of a legally-qualified candidate for public office ***or*** (b) "communicates a message relating to any political matter of national importance". That latter provision includes messages concerning a legally qualified candidate, any election to federal office, or a "national legislative issue of public importance".

With respect to each such request for time, the broadcaster is required to record:

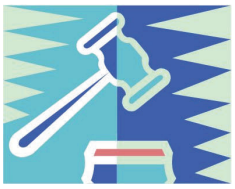
- whether the request is accepted or rejected by the licensee;
- the rate charged;
- the date and time the spot(s) are aired;
- the class of time purchased;
- the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);
- for ads placed by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and
- for any other request, the name of the entity purchasing the time, the name, address, and phone number of a contact person for the purchaser, and a list of the chief executive officers or members of the executive committee or of the board of directors of the purchasing entity.

And all that information is then supposed to be placed in the station's public file and, thus, made generally available for inspection.

According to the complaints, the targeted stations didn't include all the required information. In particular, the documents obtained from the various stations' files allegedly failed to identify: the name of the candidate referred to in the ad; and/or the issue of national importance to which the ad referred; and/or the chief executive officer or board

(Continued on page 10)

Inside this issue . . .



AM Auction 84 update

What If They Held a Spectrum Auction and Nobody Came?

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

Through the history of spectrum auctions, the FCC has seemed motivated by a Field of Dreams-like belief: "If you hold the auctions, they will come." And sure enough, for the most part the bidders have indeed shown up. So it's got to be a disappointment, if not a surprise, that Auction 84, the most recent auction of AM construction permits, has ended with only five of the available 22 permits drawing any active bidding beyond the opening minimum, and more than half not attracting any bids at all.

The full details of Auction 84, which was first announced last November and concluded on May 13, 2014, may be found at the FCC's website. As noted, a total of 22 AM CP's were up for grabs, of which five went for the minimum bid (or, in one case, just a tad over that minimum) and five sold after active bidding – leaving 12 unsold on the auction block. The ten that got sold gave the U.S. Treasury a total take of only $891,500, the bulk of which was attributable to two CP's, one each in the New York and Los Angeles markets. The final bid for the Los Angeles-area permit (that would be in Culver City) was $409,000; which is precisely the same as what the New York City-area permit (Stony Point Town) fetched.

While the lack of interest may be attributable in some measure to the much-reported disadvantages – technical and otherwise – to which the AM industry is subject, other factors certainly came into play. This was a "closed" auction, after all, and the only eligible bidders were folks who had filed applications for the permits back in 2004. After ten years of waiting (with a near-Depression-level economic crisis dominating much of the intervening time), it's understandable that applicants may have lost their lust for an AM in, say, Kuna, Idaho (motto: "Gateway city to the birds of prey") or Windsor, Virginia (2000 U.S. Census population of 916 - although we hear that that has since more than tripled thanks to the annexation of some nearby county land).

Suffice to say, the peculiar (if not unique) circumstances of this auction are not likely to be duplicated in future auctions for spectrum in other services.

In any event, the five markets for which there was any bidding contest at all, and the successful bids, were:

Culver City, California	$ 409,000
Stony Point Town, New York	$ 409,000
Chugiak, Alaska	$ 34,000
Montoursville, Pennsylvania	$ 9,400
Eaton, Colorado	$ 4,700

Five other markets attracted only the minimum opening bid (or very close to that minimum) set by the Commission:

Spring Valley, Nevada	$ 10,000
Enola, Pennsylvania	$ 5,000
Micanopy, Florida	$ 5,000
Bozeman, Montana	$ 2,500
Coalinga, California	$ 2,900

In the "Loss" column, the following 12 permits got no takers at all:

Lovelock, Nevada
Deschutes River Woods, Oregon
Huntsville, Alabama
Alturas, California
Colorado Springs, Colorado

(Continued on page 9)

FLETCHER, HEALD & HILDRETH P.L.C.

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

Co-Editors
Howard M. Weiss
Harry F. Cole

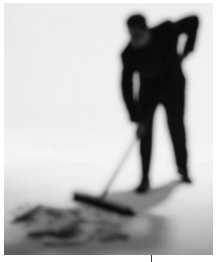
Assitant Editor
Steve Lovelady

Contributing Writers
Anne Goodwin Crump,
Kevin M. Goldberg,
Donald J. Evans, Frank Montero
and R. J. Quianzon

Memorandum to Clients is published on a regular basis by Fletcher, Heald & Hildreth, P.L.C. This publication contains general legal information which is not intended to be deemed legal advice or solicitation of clients. Readers should not act upon information presented herein without professional legal counseling addressing the facts and circumstances specific to them.

Distribution of this publication does not create or extend an attorney-client relationship.

Noted with approval . . . and appreciation



FCC Clearing the Decks of Long-Pending Applications for Review

By Donald J. Evans
evans@fhhlaw.com
703-812-0430

Along with spring daffodils, there has been a refreshing burst of FCC activity in the last few weeks on applications for review relating to decisions (mainly FM matters) from the FCC's Audio Division. An "application for review," in FCC parlance, is the pleading by which one asks the full Commission to review an adverse decision by one of the Commission's delegated authorities, such as the Wireless Bureau or Media Bureau. This allows the five Commissioners to review a decision by their subordinates and either approve it or correct any errors that might have been made. The presidentially-appointed Commission is, after all, the body charged with fulfilling the regulatory functions under the Communications Act, so it naturally has the last word when it comes to agency actions. In fact, an FCC action is technically not "final" (and, therefore, ripe for judicial review) until the full Commission has passed upon the matter one way or another.

Unfortunately, in recent years – in fact, as long as we can remember – the five Commissioners have seemed to regard applications for review much as Superman regards Kryptonite. The matters at issue tend to be of local interest and small importance to most: should this site change be approved, should this waiver be granted, did this application have a defect? These issues, though often vitally important to the parties out in the hinterlands, must seem of small consequence compared to the Great Issues of Our Day that typically fill the Commissioners' *ex parte* meeting schedules. Net neutrality, spectrum access, auction policy – these are the grave and weighty issues that our philosopher-Commissioners prefer to debate and ponder in their offices up in the clouds of the Eighth Floor.

This is certainly understandable, but we cannot forget that a huge part of the Commission's job is to review and grant license applications. Part of that process requires the resolution – at the staff level – of disputes involving a tiny fraction of the thousands of applications routinely filed, and then full Commission review of the staff's resolutions in the even tinier fraction of cases in which applications for review are filed. But for some reason – perhaps because the original action by the delegated authority is effective upon its issuance – the Commission has historically appeared to feel that there is no need to dispose of such appeals promptly. It has therefore not been unheard of for applications for review to languish at the Commission level for three, four, five years, sometimes even longer. They are just not on anybody's priority list except for the hapless parties who cannot close the books on the matter until the full Commission acts.

Chairman Wheeler has taken a welcome step in the direction of reform by appointing Diane Cornell as a special assistant to identify and redress problems with FCC procedures, including this one. Suggestions have included treating applications for review as automatically disposed of if the full Commission does not take affirmative action within a specified timeframe. (Whether the automatic disposition should be a grant or a denial of the application for review is still a matter of debate.) Commissioner Pai in particular has been a public advocate for this approach. We out in the hinterlands are looking forward to adoption of some of the reform measures proposed in the Cornell Report which was presented a couple of months ago, but we are not holding our breath.

The wheels of justice may grind slowly, but they need to at least keep grinding or cases never come to a conclusion.

In the meantime, at least one Division at the FCC appears to have taken the bull by the horns. In the last month or two, at least five decisions disposing of long-pending applications for review concerning FM radio cases have been issued by the Commission. Most of the cases were able to be disposed of quickly in whole or in part because the issue involved had become moot or there was some technical defect in the pleading. But in a few, the Commission reviewed the record, found that the Division's original decision was solid, and affirmed. These actions both ensure that the original decision has been looked at by a fresh set of eyes and, importantly, permits an aggrieved applicant to seek independent review at the Court of Appeals. The wheels of justice may grind slowly, but they need to at least keep grinding or cases never come to a conclusion.

From what we can determine, the notable increase in the resolution of Audio Division-related applications for review is the result of (a) an effort by the Division to identify and "package" cases appropriate for relatively streamlined treatment, and (b) an affirmative response to that effort from the Eighth Floor. The latter factor is particularly noteworthy because, under the recent Martin and Genachowski chairmanships, the Eighth Floor reportedly showed zero interest in dealing with pretty much any routine Media Bureau applications for re-

(Continued on page 5)

They're heeere!

New gTLDs Are Now Available for Registration

We have previously alerted our readers to the impending arrival of new generic Top Level Domains (gTLDs) on the Internet and the opportunities that their arrival will be opening up. And now the time has come – or, at least, it has come for some new domains, with others to be rolling out periodically for the foreseeable future.

Folks contemplating expansion of their Internet presence into any of the new gTLDs should already be regularly reviewing the website of the Internet Corporation for Assigned Names and Numbers (ICANN). That's where ICANN lists the opening and closing dates for the various filing periods (*e.g.*, Sunrise, Landrush, etc.) for each new gTLD as it becomes available.

We'll be keeping an eye on the ICANN list as well, looking for new gTLDs that, in our purely subjective view, might have some particular interest for our readers. When those pop onto our radar screen, we'll post about them on CommLawBlog.com. This will be an ongoing process. There are still more than 1,500 gTLD applications working their way through the ICANN system, so attention must be paid to periodic developments for months, if not years, to come.

*Our hope is to get **you** to bring **your** imaginations to bear on how **you** might be able take advantage of any of the new gTLDs.*

This article – and the posts on our blog that will follow – aren't intended to substitute for readers doing their own research. Far from it. Rather, it's one way for us to continue to poke, prod, cajole, wheedle, nudge and otherwise encourage folks to devote a bit of their own time and attention to the new gTLD universe and the potential it holds for them. *Important disclaimer*: We will ***not*** be reporting on each and every new gTLD that comes down the pike; rather, just the ones that catch our eye for one reason or another. So any reader looking for the perfect gTLD(s) should ***not*** be relying on us here to post all available gTLDs. (And we should probably also remind everybody to take a look at the Disclaimer that applies to all posts that we put up on CommLawBlog.com.)

The problem for us here in the *Memo to Clients* bunker is that we don't know all (or, in some cases, even any) of the promotional terms you use for your operations – and whether or not you've formally registered any of them as federal trademarks. We also don't know what different directions you might want to go in, Internet-wise. So in identifying even our abbreviated list, we're using our imaginations to come up with the types of domain names our readers might want to use. Our hope is to get ***you*** to bring ***your*** imaginations to bear on how ***you*** might be able take advantage of any of the new gTLDs as they become available. (Note that we may also be able to provide individualized monitoring services for clients in some circumstances; give us a shout if you're interested in exploring options along those lines.)

So please take a look at our preliminary, abbreviated list here (which reflects new gTLDs posted by ICANN through May 9), and also the complete ICANN list here, and put your thinking caps on. To get you started, here are a few thoughts we had.

"**.rocks**", "**.country**", "**.farm**" – These are total chip shots. Any rock radio station should see the potential of having "[YOUR CALL SIGN].rocks" as a domain name. Ditto for country stations and "[YOUR CALL SIGN].country". "**.farm**" could easily be used for a station with agriculture-focused programming. You could also use promotional identifiers (*e.g.*, "DC101") instead of your call sign there, too.

[***Timing considerations***:If the term you'd like to use is a registered trademark, bear in mind that the "Sunrise" period – during which registered trademark holders who have placed their marks in ICANN's Trademark Clearinghouse get a head start on the Great Unwashed – is set to close in June for ".rocks" and ".country". The Sunrise period for ".farm" has already closed, but look for it to be generally available shortly.]

"**.camera**", "**.photos**", "**.pics**" – Many businesses, including broadcast stations, encourage the submission of photos to their websites to help in creating a bond between the businesses and their customers or audience. They might be interested in "**.camera**", "**.photos**" or "**.pics**" for an easily identifiable domain name to which pictures can be sent and on which they can be easily accessed. (Think "[YOUR CALL SIGN].pics", for instance.)

[***Timing considerations***: The Sunrise period for all three of these has passed, so they are open and available right now!]

Geographic domains – Do you have a station in New York City? Think about "**.nyc**". It's now in Sunrise and available to trademark owners who have registered their marks with the ICANN Trademark Clearinghouse. "**.LONDON**" (also currently in Sunrise), "**.BERLIN**", "**.tokyo**" and "**.MOSCOW**" are all coming online, too.

"**.buzz**", "**.webcam**" – If you're a broadcast station and you want to establish (or reinforce) the fact that you're

(Continued on page 5)

(Continued from page 4)

on top of what's happening, how about "**.buzz**" – as in "TheCommLawBlog.buzz"? Do you try to attract eyeballs with (or to) your own webcam? You might think about "**.webcam**".

[***Timing considerations***: ".buzz" is open for general registration through some (but not necessarily all) registrars; the ".webcam" Sunrise period is set to close May 30.]

"**.media**", "**.report**", "**.review**", "**.technology**", "**.today**", "**.community**" – Any of these could provide useful domain names to associate with specific types or programming already on the air. Looking for something more whimsical with image-building potential? How about "**.ninja**" or "**.guru**" or (probably for the edgier among you) "**.wtf**" or "**.sexy**"?

[***Timing considerations***: ".media", ".report", ".community" and ".wtf" are all currently in their respective Sunrise periods. ".guru", ".sexy", ".technology" and ".today" are all available, well, today.]

It's a tremendous opportunity to look ahead and think creatively – both inside and outside the box.

You get the idea.

And these are just the obvious ones that even a lawyer/blogger could identify without breaking a sweat. There are a couple hundred more domains already available to work with, and nearly 2,000 more on the way. It's a tremendous opportunity to look ahead, think creatively – both inside and outside the box – and start planning the ways you will interact with Internet users (*i.e.*, just about everybody) in the coming years.

So take some time to go through both our subjectively abridged list or the complete ICANN list of new gTLDs that have already made it through the application process, or the unabridged master ICANN list which includes nearly 2,000 proposed domains still under consideration. Highlight the domains that might work for you and make note of their respective roll-out dates. (Helpful tip: By clicking on any of the domain names on the ICANN site, you can get a drop-down menu of any relevant documents – such as detailed start-up policies – laying out terms and conditions applicable to that particular domain.)

Once you've assembled a list, sit down with the other Big Thinkers in your company (that could include management, promotions folks, creative staff, whoever might be able to contribute usefully to a vision of your future operations), put your thinking caps on and get going. You might also want to call on our gTLD Team (identified below) for suggestions and guidance. Team members have been hip-deep in the gTLD application process and they have already pored over the full list of new gTLDs that have been applied for. Not only can our gTLD Team help in identifying new gTLDs useful for your purposes, but they can also help navigate the registration process. For anyone looking to act quickly, that may be crucial: not all new gTLDs are available through all registrars.

You should also bear in mind that there's a defensive component here as well. Even if you yourself might not want a particular domain name based on, say, a promotional phrase you use heavily, consider whether you would be happy if your competitor down the street – or anybody else, for that matter – were to register a domain name based on that phrase.

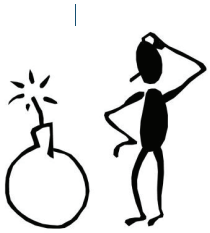
It's especially important to focus sooner rather than later if you've got a registered trademark that you'd like to use in a domain name. As we have previously advised, there are a number of ways by which registered trademark holders can get a leg up in the domain name registration process, so if you've paid attention to our previous suggestions and you've registered one or more marks, now's the time to take advantage of them.

And if you've got any questions about the new domain name process and how it all works, don't hesitate to contact us. Again, if you need help picking, and/or registering domain names in, any of the new gTLDs, let us know (we're monitoring registrations). Our gTLD Team includes Kathy Kleiman (who participated in the drafting of numerous new gTLD rules), Bob Butler, Kevin Goldberg, Davina Sashkin, and Jon Markman.

(Continued from page 3)

view. Rather than spend time on matters that seemed unlikely to make it past the Eighth Floor, the Bureau staff chose to occupy themselves more productively on other things, which resulted in a backlog of pending applications of review. The Wheeler Commission, by contrast, has encouraged disposition of those long-pending items. And beyond mere encouragement, staff members on the Eighth Floor and in the General Counsel's office have devoted considerable time and attention on this front, working with Bureau staff to produce a series of brief, backlog-reducing orders – generally not more than three or four pages each – designed to address only the issues necessary for resolution. We note that most of these short orders concern matters already addressed at some length in the Bureau's initial disposition of the case.

Kudos to Peter Doyle and the other folks at the Audio Division who have seen a problem and taken action to right it. And kudos to the full Commission for acting promptly on the matters presented rather than simply shoving them to the back of their desks behind lead screens. Now if only the other Bureaus and Divisions would follow a similar course, those mountains of years-old applications for review could be reduced to molehills.



Could this lawyered loophole backfire on the industry?

Geofencing, Webcasting and Performance Rights Royalties: How Far Does the Exemption Go?

By Kevin M. Goldberg
goldberg@fhhlaw.com
703-812-0462

For two years, TV broadcasters have railed against Aereo's innovative interpretation of the Copyright Act based on what Aereo claims to be technological developments. According to Aereo, its interpretation would relieve Aereo of copyright obligations. Now, in an ironic turn of events, a radio broadcaster is asserting its own innovative interpretation of a separate provision of the Copyright Act, an interpretation that (a) is based on technological developments and (b) would relieve the interpretation's proponent of copyright obligations.

If this new argument is ultimately endorsed by the courts, it could lead to major changes in webcasting copyright law – including some changes not likely to be welcomed by broadcasters. Those changes could include, at least theoretically, creation of the Performance Right that the broadcast industry has fought for years.

VerStandig's claims have a certain facial appeal, but their ultimate effect could be unpleasant for broadcasters.

The broadcaster in question is VerStandig Broadcasting (VerStandig), licensee of some FM stations in Virginia. The technological development VerStandig is relying on: geofencing, which permits a webcaster to limit accessibility to its programming based on the physical location of the computers receiving the webcast. Geofencing works by checking the "receiving computer's IP address, WiFi and GSM access point, GPS coordinates, or some combination against a real world map of those virtual addresses".

The provision of the Copyright Act in question is Section 114, which provides a limited exemption from the requirement that a webcaster pay royalties for the performance of copyrighted sound recordings. While broadcasters are exempt from such performance royalties for their *broadcast* programming, they're still on the hook for those royalties for recorded performances that they retransmit on the Internet. But thanks to Section 114(d)(1)(B)(i), even those retransmissions are exempt if they don't go "more than a radius of 150 miles from the site of the radio broadcast transmitter".

VerStandig's claim: as long as it uses geofencing to make its streamed signal inaccessible to computers more than 150 miles from its station's transmitter, it owes no performance royalty.

Much like Aereo's claims (which involve an entirely different area of the Copyright Act), VerStandig's have a certain facial appeal. But their ultimate validity requires deeper analysis, and their ultimate effect could be unpleasant for broadcasters.

On February 28, 2014, VerStandig notified SoundExchange, which administers the statutory license applicable to webcasting, of VerStandig's intent to begin webcasting its Station WTGD via a simulcast of the station's over-the-air signal. VerStandig further asserted that by using geofencing, it would fall within the 150-mile exemption found in Section 114. VerStandig asked SoundExchange to confirm that VerStandig's approach would not be subject to a legal challenge.

SoundExchange responded two weeks later in a letter stating – not surprisingly – that "SoundExchange does not share your view". According to SoundExchange, the Section 114 exemption applies only to "retransmissions of broadcasts by cable systems to their subscribers or retransmissions by broadcasters over the air. It does not apply when broadcasters simulcast their own programming over the internet." The letter strongly urged VerStandig to obtain licenses for the simulcast transmissions.

In response, VerStandig took the fight to federal court. It asked the U.S. District Court in Harrisonburg, Virginia to issue a Declaratory Judgment providing (among other things) that: a live stream of its FM broadcasts over the Internet to listeners physically located within 150 miles of the FM station's transmitter is an exempt transmission under Section 114(d)(1)(B)(i) of the Copyright Act; such a stream is therefore not an infringement of any rights protected by the Copyright Act; no statutory license is required; and SoundExchange has no right to collect royalties for streaming to listeners located within 150 miles of the particular station's transmitter.

The whole thing raises a number of questions touching on several subjects from the applicability of spe-

(Continued on page 7)

(Continued from page 6)

cific statutory provisions in this case to its potential effect on an entire industry.

Why haven't we heard much about this exemption before? Because it never mattered. First and foremost, most people probably thought the 150-mile exemption applied only to what we usually think of in terms of "retransmission": retransmission of broadcast signals by a cable system or an over-the-air translator or booster. And even if anybody did think that the exemption might apply to webcasting, it was pretty much a moot point because there was no way to tell when an Internet listener was within 150 miles of the transmitter, let alone ensure that only people within that geographic area received the stream.

But geofencing changed all that. As the VerStandig complaint notes: "[n]ow, because of geofencing, data made available over the Internet can be restricted to recipients based upon their physical locations". And suddenly, the 150-mile exemption looms large.

Now, in light of geofencing, the 150-mile exemption looms large.

Is the claim valid? Hard to say – it's never been litigated. But that's because the only time it came up on the past, it was quickly dismissed because it was at that time technologically impossible to limit the range of listenership.

What's the short-term effect if VerStandig is right? Even though geofencing isn't cheap, it's cheap enough that most webcasters would likely try to employ it.

Note one uncertain aspect of the Section 114 exemption: it's not clear whether that exemption applies to *any listener* within 150 miles of the station transmitter or whether it applies only if the station ensures that *no listeners* can attach the stream outside of 150 miles.

If a court says, yes, there is an exemption for retransmissions within 150 miles of the station transmitter and it's applied on a per listener basis (*i.e.*, the station doesn't have to pay for any performances to listeners within that radius), royalties paid by broadcasters engaged in Internet simulcasting would go way down (and the number of stations engaged in simulcasting would probably go way up as the cost of performance royalties would be eliminated).

If a court says, yes, there is an exemption for retransmissions within 150 miles of the station transmitter and it's applied on an all or nothing basis (*i.e.*, the station gets the exemption only if not one single listener outside the geofence attaches to the stream), we'll see a less "world-wide" Internet, at least as far as webcasting is involved. Sure, stations love to reach community expats who have gone off to college or beyond or others interested in their local communities from afar, but they love saving money even more. I think many, possibly most, webcasting stations would prefer to reach more local listeners via multiple devices than more listeners in multiple far-flung locations.

The bigger question: What's the long-term effect if VerStandig is right? It's a variation on what we see as the eventual outcome of the Aereo litigation. Faced with an interpretation that, arguably, runs counter to Congress's initial intent, Congress could be prompted to take steps to clarify that initial intent. But unlike in the Aereo case, such clarification would likely be a lot easier to accomplish. Rather than addressing the Performance Right in a forward-looking way that deals with new technologies – a potentially herculean task – Congress has a couple of "quick fixes" at its disposal. Most obviously, Congress could simply clarify that any court ruling for VerStandig got it wrong and that the 150-mile exemption in Section 114(d)(1)(B)(i) applies only to cable and over-the-air retransmissions and ***not*** to webcasting (as SoundExchange claims).

Or maybe this is the final straw in the long-running battle over a long-proposed Performance Right that could result in additional royalty obligations for over-the-air broadcasters. That has been held at bay for a long time but it's never been a slam dunk. But if VerStandig wins, the recording industry would have the added argument that it stands to lose a big chunk of revenues because radio broadcasters wouldn't be paying any royalties for performance of sound recordings, over-the-air or online (as long as the 150-mile limit is maintained). That claim of increased harm might be enough to convince enough legislators to switch their view and enact a Performance Right that eliminates the exemption from such royalties that broadcasters have long enjoyed.

So again we have a novel interpretation of a provision of the Copyright Act, based on claims of technical innovations and intended to exempt a substantial class of transmissions – or retransmissions – from copyright obligations. During oral argument in the Aereo case, Supreme Court Chief Justice John Roberts observed:

> I'm just saying your technological model is based

(Continued on page 8)

Hats off to Nancy Naeve!

An Anchor's Reminder About the Importance of Broadcast Emergency Alerts

By Harry F. Cole
cole@fhhlaw.com
703-812-0483

When it comes to emergency alerts about, *e.g.*, dangerous, fast-approaching, weather conditions, a broadcaster's lot is not enviable. It is often difficult simply to marshal, in very short order, the important details and reduce them to reliable words and images that can be grasped quickly and accurately by the audience. There are regulatory concerns: even the best-intentioned broadcaster doing his or her utmost to get the word out to the public can be unpleasantly whacked after the fact by the FCC for an inadvertent failure to comply 100.000% with certain regulatory requirements. (You can find examples here, here, here, here or here.) And let's not forget members of the audience, occasionally ungracious and unappreciative, who call to complain when emergency reports interrupt their favorite program.

Broadcasters provide entertainment, but they also provide public service.

In other words, broadcasters might have considerable reason not to jump at the opportunity to break into their programming with bad news about bad weather.

Still, emergency alerts save lives and property. It is difficult to conceive of a public service of greater importance. And despite the difficulties and risks to their own operations, broadcasters have historically stepped up to the plate over and over again to serve their audiences in this valuable way.

We say all this because a video clip caught our attention one morning this past month.

It appears that a tornado blew through Sioux County, Iowa, the night before. Nearby KSFY-TV, in Sioux Falls, South Dakota, had dutifully broken into its regular programming to get the word out. At least one woman later confirmed on camera that, thanks to the station's alerts, she had reached out to family members who were apparently able to get to shelter in time. And yet, other audience members had complained, heatedly and repeatedly, about the fact that the alerts interrupted their favorite shows. The next day an anchor during the early morning news reacted with an eloquent extemporaneous defense of the station, which you can view on YouTube (or CommLawBlog.com). While it's difficult to summarize effectively, suffice it to say that the anchor reminds viewers, in no uncertain terms, that the broadcast of emergency information is a matter of crucial – and, in this case, life-saving – importance, and any concerns that the audience might have about missing some portion of their preferred entertainment programming are pretty darned inconsequential in comparison.

Is it good business to criticize the station's audience? Of course not – that's like biting the hand that feeds you. So big Memo to Clients props to KSFY anchor Nancy Naeve, for speaking the hard truth to shortsighted viewers. Broadcasters provide entertainment, but they also provide public service, and the latter is often (as it was for KSFY) of considerably greater value to the public. For telling like it is, Ms. Naeve – thanks.

(Continued from page 7)

solely on circumventing legal prohibitions that you don't want to comply with, which is fine. I mean that's you know, lawyers do that.

But in Aereo's case it was a non-broadcaster seeking to be relieved of copyright payments to broadcasters. In the VerStandig case, a broadcaster is taking essentially the same approach to avoid copyright liability to recording artists, albeit with respect to a completely separate and distinct provision of the Copyright Act. Despite the differences between the two cases, the irony is inescapable.

There are a lot of hurdles to jump and questions to answer before this case reaches its final conclusion. But it's not entirely out of the realm of possibility. Plainly, this case – like Aereo, albeit in a different context – has the ability to upend the broadcast industry. And, like Aereo, it's all because someone lawyered a loophole.

Broadcasters would be well-advised to keep an eye on the progress of the VerStandig litigation as it wends its way through the courts.

"Competitors are expected to compete"

FTC to Trade Associations: No Antitrust Slack for Associations

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

If you're a trade association and you've recently had that creepy feeling that someone's watching you, you're probably right. That would be the Federal Trade Commission (FTC), one of whose missions is to preserve competition in the marketplace. Since trade associations are cooperative entities composed of members who normally compete against one another, the potential for anticompetitive conduct is evident.

And in case anybody had forgotten about that, the FTC has in a recent blog post on its website reminded trade associations that they are subject to the same antitrust rules as other businesses. In particular, the FTC cautioned that it remains vigilant about trade association activity that restrains competition among its members without a legitimate business justification.

The FTC's focus: Rules and bylaws constraining give-and-take among competing association members in the marketplace.

While acknowledging the great benefit that a trade association can provide to its industry, the FTC noted that some association practices have been condemned by the courts for antitrust violations. The FTC was focused particularly on association rules and bylaws that constrain the normal give-and-take among competing association members in the marketplace.

The FTC's message in a nutshell: "Competitors are expected to compete" and "there are no special antitrust rules for trade associations."

The announcement was apparently prompted by recent FTC enforcement actions involving a couple of associations which had imposed on their members anticompetitive restrictions lacking a legitimate business rationale. Historically, collusion among members to raise prices has long been one of the more obvious types of anticompetitive behavior. The misconduct flagged in the two recent actions was arguably less obvious. In one case, an association not only barred its members from taking out comparative ads but it also prevented members from offering discounted rates to another member's clients or recruiting another member's employees without giving prior notice. In the other case, the association prevented members from soliciting clients from a rival.

The FTC put the kibosh on all these provisions. In the view of the FTC, the prohibited activities – *i.e.*, competing for customers, cutting prices, and recruiting employees – all limited the ability of members to compete against one another. The FTC concluded that, absent some "procompetitive justification", such limitations were unreasonable restraints on trade that violate the Sherman Antitrust Act.

The FTC's blog announcement is a clear warning to trade associations: their conduct (including organizational rules, bylaws, etc.) will be scrutinized to insure that they do not restrict competition in a way that harms consumers. And when an association's conduct is determined to effect such restrictions, that conduct will be viewed by antitrust enforcers – and, presumably, the courts – as impermissible joint decision-making by otherwise independent competitors.

While the particular antitrust misbehavior described in FTC's blog post may not look like the types of activities in which broadcast-related associations (including, *e.g.*, state broadcaster associations) routinely engage, bear in mind that the FTC's post is not all-inclusive. The FTC plans further reminders regarding other types of association activities likely to attract the attention of antitrust enforcement efforts – think group boycotts, advertising restrictions, information exchanges, exclusive membership benefits, etc. We'll keep an eye out, so stay tuned.

Of course, any trade associations uncertain about their own organizational rules or activities should consult counsel.

(Continued from page 2)

Kachina Village, Arizona
Waynesboro, Georgia
Lebanon, Tennessee
Canyon, Texas
Windsor, Virginia
Henderson, Nevada and
Kuna, Idaho

All bidders and interested parties are reminded that the FCC anti-collusion policies remain in effect until the FCC's down payment deadline. Accordingly, auction participants should avoid discussing the auction with one another for several more weeks.

(Continued from page 1)
of directors of the sponsor. And sure enough, some of those tidbits of information do appear to have been omitted from the documentation attached to the complaints. (The complainants have provided a webpage with links to all 11 of the complaints, each of which conveniently includes the underlying station documents as attachments, in case you'd like to take a look.)

In some instances the complaints allege that the station's paperwork failed to identify the "issue of national importance" even though the paperwork did identify the candidate for whom the spot ran. But it's not at all clear from the language of Section 315(e)(1) that, when a candidate's ad includes reference to a national issue and the candidate is him/herself properly identified, the national issue referred to must be separately identified in the public file materials. And even where the candidates were also not identified, the complainants don't appear to have had much trouble figuring out from the available documentation just what candidates (and what issues) were featured in any particular spot.

Compliance is often hard to achieve even by the best-intentioned stations.

In any event, review of the stations' documents suggests that any omissions occurred more as a matter of oversight or inadvertence than devious calculation. The forms on which the required information should have been communicated to the stations appear in some, if not all, instances to have originated from the advertisers, not the stations. Sure, station personnel could presumably have noted the omissions and tried to track down the information before letting the spots run. But that's easier said than done.

In the thick of a political campaign season, with ad buys rolling in hot and heavy from a wide range of candidates and organizations, such follow-up is difficult. And that's true even if the sponsor is cooperative, which apparently often isn't the case on the political front. Non-candidate political advertisers may prefer anonymity, notwithstanding what the law may require – so, for example, getting a complete list of officers or directors can be a non-starter. What's worse, we understand from a number of knowledgeable sources that, when contacted by stations trying to track down the required information, some political advertisers are declining to cooperate – and even threatening to pull the order and place it on one or more competing stations (who, so the threat goes, would be happy to air non-compliant spots).

In other words, compliance is often hard to achieve even by the best-intentioned stations.

But while it may be easy to understand the practical realities that presumably led to the alleged omissions, the fact is that the Communications Act says what it says, as do the FCC's rules. Compliance with those requirements is the order of the day. The complaints clearly illustrate that, thanks mainly to the online public file system, individuals and groups who may have no connection to a particular station or a particular area (including that area's particular political contests) can nevertheless fly-speck a station's public file from the distant comfort of their computers. And, as the complainants have done here, such individuals and groups can urge the FCC to impose forfeitures and possibly other penalties on stations whose public files are found lacking in some way or other.

That being the case, station personnel – and especially sales personnel – should be reminded of the law's requirements. Stations might consider, where possible, developing internal systems to minimize omissions of required data from political advertising documentation. Absolutely perfect compliance, while theoretically desirable, is practically unlikely – but if such systems are in place, a licensee may be in a better position to argue that it has taken adequate steps to comply with the law, even if those steps in some instances prove not quite up to the job.

As annoying as the complaints may be, they do provide a reminder that is particularly timely – timely because, as we have reported, it looks like the requirement to place political advertising materials in the online public file system is likely to be extended on July 1 to ALL full-power and Class A TV stations regardless of market or network affiliation status. (Up to now, only affiliates of the Top Four commercial networks in the Top 50 DMAs have been required to upload their political files to the online system.) That doesn't change the underlying requirements relative to what information those files are expected to contain, but it does change the ease with which those files may be reviewed by anybody anywhere.

The complaints are thus a shot across the bow, a demonstration that there are organizations out there who are ready, willing and able to access whatever information is available in online public files and notify the FCC if they find that the information falls short in some way. The possibility of such complaints should provide a strong incentive for all TV stations to take steps to tighten up that end of their operation to the extent possible. Again, a station's ability to comply will often depend on the willingness of the advertiser to provide the necessary information, and advertisers may not always be as cooperative as a station might like. But that merely underscores the wisdom of knowing the requirements and trying in good faith to comply with them. Remember that the FCC's rules apply to TV licensees, not to their advertisers.

Drone even go there II

While FAA Continues to Swat at Drones, an Appeal of its Policy Takes Off

By Harry F. Cole
cole@fhhlaw.com
703-812-0483

Last month we reported on the FAA's efforts to discourage the use of drones a/k/a "Unmanned Aircraft Systems" (UAS) a/k/a model aircraft. We have a couple of updates on that front.

First, in the aftermath of the recent spate of tornadoes that ripped through the South, it's been reported that the FAA is investigating a "storm chaser and videographer" who used a drone to document the effects of a tornado in Arkansas. The captured images were apparently used by a Little Rock TV station in its coverage of the storm damage. According to a report in the Arkansas Democrat-Gazette, the FAA "is looking into" the station's use of the drone-acquired footage. (The report also indicates that other Arkansas stations are using drones, although whether the FAA is "looking into" *their* drone use is not clear.) Since post-storm damage assessment is a use for which drones are especially well-suited – a use which reduces the need for exposing additional personnel to potentially dangerous circumstances – the FAA's vaguely menacing consideration of that use seems a bit churlish.

But if you really want churlish, check out our second update.

Inviting the D.C. Circuit to the party may be a good thing.

For several years, the Texas EquuSearch Mounted Search and Recovery Team (EquuSearch) has coordinated volunteer searchers in search-and-rescue missions on behalf of the families of missing persons. According to EquuSearch, it is a 501(c)(3) non-profit organization that relies on volunteers and does not charge families for the searches it performs. For nearly a decade EquuSearch has used camera-equipped model aircraft in its efforts with, apparently, considerable effectiveness.

Last February, an EquuSearch volunteer informally inquired of an FAA official whether the agency's policies on the use of drones for search-and-rescue missions had changed. In an email, the FAA rep responded that unauthorized drone operations "violate part 91 (and some others) and hence are illegal". Noting that the volunteer held a certificate of authorization (COA) from the FAA to operate only in a particular, prescribed area, the FAA cautioned that

> if you are operating outside of the COA provisions, stop immediately. That is an illegal operation regardless if it is below 400ft AGL, [operating within visual line of sight] or doing volunteer [search and rescue].

Apparently no good deed goes unpunished (or at least unthreatened).

Understandably concerned, EquuSearch called that email to the attention of the FAA's Chief Counsel in Washington and asked that the directive to "stop immediately" be rescinded within 30 days. Not surprisingly, the FAA didn't bother to respond within that 30-day period, so EquuSearch has filed a Petition for Review with the U.S. Court of Appeals for the D.C. Circuit.

On the one hand, inviting the D.C. Circuit to the party may be a good thing: the FAA seems dead-set on attempting to enforce non-existent rules, so alerting the courts to this sooner rather than later may be helpful.

On the other hand, the facts underlying the EquuSearch case may not focus all the pertinent issues. Even if the Court opts to consider EquuSearch's petition on the merits, it may not have to reach the legality of the "commercial/noncommercial" component of the FAA's policy because, presumably, any supposed ban on commercial drones could not be validly applied to a noncommercial use such as EquuSearch's.

There's also the problem of the nature of the "order" that EquuSearch is trying to get reviewed. While the FAA rep's email is clearly emphatic ("stop immediately"), it doesn't look much like an official agency action. (F'rinstance, the email in question is signed off with "Best wishes". When was the last time you saw an official order signed off like that?) Under the given circumstances, EquuSearch might have been better off asking the Court for an extraordinary writ (*e.g.*, mandamus or prohibition) to put a stop to the FAA's apparently extra-legal activities. While such a request could have relied on the FAA email (and other available materials reflecting the FAA's recent anti-drone efforts), it would have been directed not just against the one email, but more broadly against the FAA's overall approach.

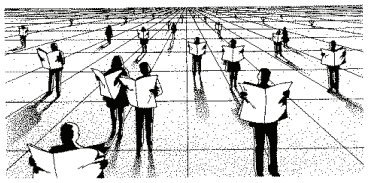
Of course, if the Court does delve into this matter as a result of the EquuSearch petition, the end result may be the same. We shall see. Check back on CommLawBlog.com for updates.

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

Updates On The News

Last month we reported on the Commission's decisions to (a) prohibit joint retransmission consent negotiations between two non-commonly owned "Top Four" stations in the same market and (b) impose new limits on TV joint sales agreements (JSAs). Anyone subject to either or both of these developments – and particularly anyone contemplating seeking FCC reconsideration or judicial review of either or both – should pay attention to the fact that both of those decisions have now appeared in the Federal Register.

The decision concerning joint negotiation of retransmission deals was published in the Register on May 19. That establishes the effective date for the prohibition: ***June 18, 2014***. Any TV licensees pursuing some kind of joint retrans negotiations should thus be sure to wrap them up before then – but it's probably best not to get your hopes up on that score, since the folks on the other side of the table will also be aware of the approaching effective date and may therefore not be especially motivated to close a deal before then.



Federal Register publication also starts the countdown for (1) petitions for reconsideration asking the Commission to re-think things and (2) petitions for review asking a Federal appeals court to reverse the Commission. Recon petitions concerning the retransmission consent negotiation limits are due at the Commission no later than ***June 18, 2014***. Petitions for review are due by ***July 18.***

The JSA item – which took the form of the Report and Order component of the FCC's 2014 Quadrennial Regulatory Review decision – showed up in the Federal Register a day later (*i.e.*, May 20). As a result, the new JSA rules will technically become ***effective on June 19***, although affected licensees will get some extra time on the reporting side. That's because, while the new JSA rules require that TV JSAs old and new be submitted to the Commission (and placed in stations' online public inspection files), those reporting requirements will ***not*** kick in on June 19. Those reporting requirements constitute "information collections", so they must first be run past the Office of Management and Budget pursuant to the hilariously-named Paperwork Reduction Act. As a result, we don't expect the file-with-the-FCC/place-in-the-public-file component to take effect for another four-six months or so. Check back with CommLawBlog.com for updates.

But even if the reporting requirements won't be taking effect on ***June 19***, the underlying substantive obligations of the new JSA rules will. That means that any new TV joint sales arrangements will have to comply with the new rules. And for licensees with existing JSAs that, thanks to the new rules, result in violations of the applicable ownership limits, the two-year clock for restructuring or otherwise eliminating the overage will start on ***June 19*** – so let's all get out our calendars and mark June 19, 2016 as the target date (actually, since June 19, 2016 will be a Sunday, the correct date to mark will probably be June 20, 2016).

Anyone thinking about filing for reconsideration of JSA requirements should be prepared to have their petitions on file by ***June 19, 2014***. If you're inclined instead to take the new rules straight to court, you'll have until ***July 21***.

Note that both the retrans negotiation item and the JSA item belong to a category of agency decision that may be appealed to most any Circuit – that means, in turn, that it's at least possible that we may all be taking another trip or two to the Judicial Panel on Multidistrict Litigation (JPML). The Commission ended up there back in 2011, when multiple appellants took the FCC's first net neutrality decision to court. It's not clear whether anyone contemplating an appeal of either of the two latest TV items believes that one circuit is preferable to any other, so we won't know for some time whether there's going to be a judicial lottery to pick a circuit this time around. If you're contemplating an appeal and you do happen to have a preferred circuit, you may want to brush up on what you'll have to do to insure that your circuit of choice makes it into the drum from which the lucky circuit will be drawn (assuming, of course, that multiple petitions are filed with different circuits). The FCC has issued a handy notice on the steps to take.

Bear in mind, too, that the terms of the Media Bureau's Public Notice, issued a month or so in advance of the Commission's adoption of the 2014 Quad Reg Review, are already in effect. That notice laid out "guidance" on how the Bureau would analyze pending and future applications proposing sharing arrangements involving, in particular, JSAs. The NAB has sought review of the Bureau's notice by the U.S. Court of Appeals for the D.C. Circuit (Case No. 14-1072, for those of you with PACER access). The NAB is geared up to argue, among other things, that the Bureau's notice is in some ways inconsistent with the Commission's Quad Reg Review decision. How the NAB's ap-

(Continued on page 13)

White space database update

Google v.2 Now in Beta

There's been some movement on the white space database administrator front – but it's hard to call it progress. Readers will recall that Google got its database system approved nearly a year ago. But now comes word from the Office of Engineering and Technology that Google has come up with a "new registration system" which is a "major modification" to the Google system previously approved. That means that the new version will have to be run through the same hoops as the original. Accordingly, for a 45-day test period beginning on ***June 2, 2014***, Google's new system will be available for public trials. Interested folks can give it the once-over, kick the tires, take it for a spin and see if it does what it's supposed to.

When the test wraps up – on July 17, or maybe later if the FCC decides more testing is called for – we'll see the usual drill: Google will have to file a report on the test, public comment on the report will be invited and, if everything works out Google's way, the FCC will eventually re-approve it as a coordinator. If and when that happens, Google's new system will rejoin the others already approved.

OET's public notice indicates that Google is currently relying on Spectrum Bridge (another already-approved coordinator) to manage registration of protected entities on Google's behalf. Google's new system is intended to "replace [Google's] use of the Spectrum Bridge procedures". What precisely has become of Google's originally approved system is not clear.

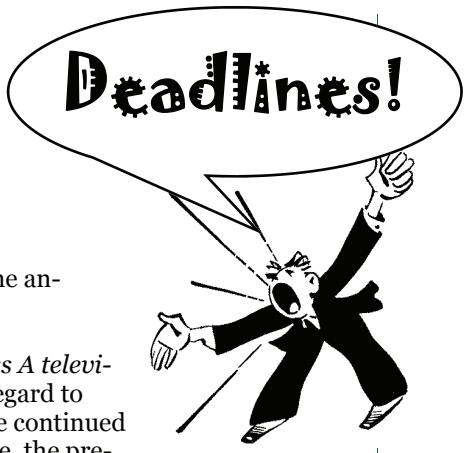
In keeping with our white space database SOP, we have updated our handy-dandy table charting the progress of each of the would-be administrators by inserting a new row (for "Google Inc. II") to track the progress of the latest test process:

Coordinator	Test Started	Test Finished; Comments Sought	Coordinator Approved
Comsearch	Feb. 24, 2014		
Frequency Finder Inc.			
Google Inc.	Feb. 27, 2013	May 29, 2013	June 28, 2013
Google Inc. II	June 2, 2014		
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			

(Continued from page 12)

peal will play out – and whether the Bureau will revise its public notice in light of the Quad Reg Review – obviously remains to be seen. Again, check back with CommLawBlog.com for updates.

One last related deadline tidbit: the Quad Reg Review order included a separate notice of proposed rulemaking section. That, too, has made it into the Federal Register, so if you were planning on filing comments, you now know your deadlines: comments on the various proposals are due by ***July 7, 2014*** and reply comments by ***August 4***.



June 1, 2014

Television Post-Filing Announcements – *Television* and *Class A televisio*n stations located in **Arizona**, **Idaho**, **Nevada**, **New Mexico**, **Utah** and **Wyoming** must begin their post-filing announcements with regard to their license renewal applications on June 1. These announcements then must continue on June 16, July 1, July 16, August 1 and August 16. Please note that with the advent of the online public file, the prescribed text of the announcement has changed slightly from that used in prior renewal cycles. 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.

Television License Renewal Pre-filing Announcements – *Television* and *Class A television* stations located in **California** must begin their pre-filing announcements with regard to their applications for renewal of license on June 1. These announcements then must be continued on June 16, July 1 and July 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.

June 2, 2014

Television License Renewal Applications – *Television* stations located in **Arizona**, **Idaho**, **Nevada**, **New Mexico**, **Utah** and **Wyoming** 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 **Arizona**, the **District of Columbia**, **Idaho**, **Maryland**, **Michigan**, **Nevada**, **New Mexico**, **Ohio**, **Utah**, **Virginia**, **West Virginia** and **Wyoming** 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 television* stations located in **Arizona**, the **District of Columbia**, **Idaho**, **Maryland**, **Nevada**, **New Mexico**, **Utah**, **Virginia**, **West Virginia** and **Wyoming** must file a biennial Ownership Report (FCC Form 323-E). All reports must be filed electronically.

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

July 10, 2014

Children's Television Programming Reports – For all *commercial television* and *Class A television* stations, the second quarter 2014 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, as the FCC bases its initial judgments of filing compliance on the contents and dates shown in the online public file. Please note that the FCC's filing system now requires the use of FRN's prior to preparation of the reports; therefore, you should have that information at hand 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.

(Continued on page 15)

(Continued from page 14)

August 1, 2014

Television License Renewal Applications – *Television* and *Class A television* stations located in **California** 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. LPTV and TV translator stations also must file license renewal applications.

Television Post-Filing Announcements – *Television* and *Class A television* stations located in **California** must begin their post-filing announcements with regard to their license renewal applications on August 1. These announcements then must continue on August 16, September 1, September 16, October 1 and October 16. Please note that with the advent of the online public file, the prescribed text of the announcement has changed slightly from that used in prior renewal cycles. 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.

Television License Renewal Pre-filing Announcements – *Television* and *Class A television* stations located in **Alaska**, **American Samoa**, **Guam**, **Hawaii**, **Mariana Islands**, **Oregon** and **Washington** must begin their pre-filing announcements with regard to their applications for renewal of license on August 1. These announcements then must be continued on August 16, September 1 and September 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.

EEO Public File Reports – All *radio* and *television* stations *with five (5) or more full-time employees* located in **California**, **Illinois**, **North Carolina**, **South Carolina** and **Wisconsin** 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 television* stations located in **California**, **North Carolina** and **South Carolina** 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 **Illinois** and **Wisconsin** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323-E.

FHH - On the Job, On the Go

On June 6, **Frank Jazzo** (along with the NAB's **Chris Ornelas**) will provide an "FCC and Industry Update" at the Annual Convention of the New Mexico Broadcasters Association in Albuquerque.

And if you're heading to Virginia Beach, be on the lookout for **Howard Weiss**, who is scheduled to attend the Virginia Association of Broadcasters Convention there on June 19-21.

That font of communications content and commentary, **Frank Montero**, was published in *Radio Ink* (on Adam Carolla's legal battle against a patent troll) and in Bloomberg BNA Telecommunications Law Update (on the blurring of previously clear lines between various communications and regulatory concepts). He also continues to wax eloquent regularly for RBR/TVBR. And in his spare tiem, **Frank** will be attending the New Jersey Broadcasters Convention and Board Meeting in Atlantic City on June 17-18.

Meanwhile, coming down the red carpet on May 24 was none other than **Kathy Kleiman**. The scene was the Seattle International Film Festival, where her 20-minute documentary, *The Computers*, got its world premiere in front of a sell-out audience who, by all accounts, ate it up. *The Computers* tells the story of the ENIAC Programmers, the six women who programmed the first all-electronic programmable computer as part of a secret WWII project. **Kathy** co-wrote and co-produced.