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NEWS AND ANALYSIS OF RECENT DEVELOPMENTS IN COMMUNICATIONS LAW

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Imagining life in a post-repack universe

The Future of LPTV/TV Translator Service Taking Shape?

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Of all television operators, LPTV and TV translator licensees have faced the greatest uncertainties as the anticipated repacking of the TV band has begun to loom. That's because the FCC's repacking plans thus far have disregarded LPTVs and translators. As a result, LPTV/translator licensees don't know whether their stations will continue to exist post-repack: the repacking process will squeeze full-power and Class A stations into considerably less spectrum than they currently occupy, leaving precious little extra space for LPTVs/translators (except possibly in areas populated more by prairie dogs than by people). And anyone holding a construction permit to convert an existing analog LPTV/translator station to digital or to build a whole new station has been left to wonder whether, if they proceed with construction, they will be able to use those re-built facilities after the repack has been completed.

Now, at long last, the FCC has begun to turn its attention to these concerns.

Digital construction deadlines. First, the Commission has suspended indefinitely the previously-announced September 1, 2015 deadline for transitioning all LPTV/translators to digital operation. In a Third Notice of Proposed Rulemaking (*Third NPRM*), the Commission has indicated that that a later deadline will likely be necessary in light of the anticipated impact of the TV repacking process on such stations.

And for the same reason it has similarly suspended the construction deadlines specified in all outstanding construction permits for new digital LPTV/translator stations. As we reported in the September, 2013 *Memo to Clients* (and on CommLawBlog.com), the Commission has up to now refused to extend CP deadlines on a blanket basis, forcing permittees to file repeated applications for extensions. No longer. (Any currently pending applications for extensions of such CP deadlines will likely be dismissed as moot.)

New deadlines for full digital transition and completion of CP construction are on track to be adopted in connection with the disposition of the issues raised in the *Third NPRM*, which looks at a broad range of issues affecting the future of LPTV generally. The FCC's initial thinking is to make the deadline for constructing new stations the same as the deadline for modifying existing analog stations to digital (whether by flash cuts on their existing analog channels or by use of separate companion channels). The Commission is seeking input on what the new deadline should be.

On the one hand, the FCC figures that setting a new fixed deadline now, in advance of the incentive auction, might provide LPTV/translator licensees more "certainty" about the eventual timeframe for completion.

On the other hand, the Commission might want to wait until after the incentive auction. The auction will, after all, largely (though not entirely) determine the repacking plan for full-power and Class A stations, which will in turn determine which LPTV/translators will have to move and what alternative channels might be available.

The timing could work like this. Following the close of the auction the Commission will announce the new channel assignments for full-power and Class A stations. Those stations will then have three months to apply for CPs to relocate to their post-repack channels; but adding to the uncertainty for LPTV/translators, full-power and Class A stations will be permitted to seek alternate channel changes and other facilities modifications. As a result, LPTV/translator licensees and permittees probably won't know what their options are until at least six months or more after the close of the auction.

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Inside this issue . . .

Looking for a place to call home in a re-packed universe

FCC Rethinks Wireless Microphones

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Having inadvertently threatened a key industry with extinction, the FCC is now trying to reactivate it.

We see wireless microphones used on TV stages, live concerts, and in Broadway and Las Vegas shows. TV and film studios use technically similar equipment. So do backstage personnel for intercom and cueing in all of the above productions. Other uses for wireless microphones include public meetings, political events, school and college classrooms, and live music in bars, garage-band garages, and just about everywhere else.

For decades, wireless microphones have operated successfully in locally vacant TV channels. Three recent FCC developments, though, are making those channels scarce. First, the FCC authorized unlicensed TV White Space (TVWS) operation to provide Wi-Fi-type service in many of the same vacant channels. Second, the transition to digital TV eliminated 18 channels from TV use – and also took them away from TVWS and wireless microphones, which greatly increased pressure on the channels that remain. Third, the upcoming "incentive auction" will reallocate still more TV channels to wireless broadband, leaving insufficient spectrum for wireless microphones.

A thick Notice of Proposed Rulemaking takes a long-term view of the problem.

First, it recognizes the importance of wireless microphones in entertainment and in civic and even religious life. Second, it asks for extensive and detailed information on how wireless microphones work and what spectrum they use today. Third, the NPRM goes through a catalog of possible alternative frequencies to the TV bands, asking about the suitability of each for wireless microphones and whether rule changes would help to improve that suitability while still protecting other users. Many of these alternative bands would require the development of technologies not currently used by wireless microphones.

The equipment used for production microphones and performers' ear monitors has particularly demanding requirements: extremely high audio fidelity with very low latency (throughput delay). Because these requirements are incompatible with significant data compression, these particular devices need relatively high radio bandwidth. Many of the alternative bands suggested by the FCC are too narrow for these critical applications, but may be suitable for other production needs.

Another Notice of Proposed Rulemaking, released the same day, proposes shorter-term solutions for *unlicensed* wireless microphones.

By order, back in 2010, the FCC established a temporary waiver that has allowed wireless microphones to operate in the TV bands on an unlicensed basis at 50 milliwatts of power (as compared to the 250 milliwatts permitted to licensed microphones). Unlike licensed operation, which is limited to certain categories of users, unlicensed use is open to anyone. The FCC is now proposing to codify this waiver into the rules, which would give the industry a greater degree of certainty than it has now. The proposal includes a few variations from the waiver: adjustments to the required separation from active TV stations; tighter limits on out-of-band emissions; and a somewhat more restrictive definition of "wireless microphone".

After the incentive auction, there will be 3 MHz guard bands around channel 37 (which is used for radio astronomy and medical telemetry), a guard band of as-yet-unknown size between the surviving TV frequencies and the new wireless broadband allocation, and an 11 MHz "duplex gap" between the downlink and uplink segments of the broadband spectrum. The NPRM proposes to allow unli-

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Should you? CAN you?

On Censoring Political Ads

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There may be just a few days remaining in this election season, but broadcasters should be paying attention – now *and* in future elections – to an important aspect of the political advertising business: the extent to which they may be able to demand changes in, or refuse to air, political ads because of their content. One key protection that covers the broadcast of *some* political spots does not cover *all* such spots, and it definitely does not appear to cover *any non*-broadcast distribution of even the spots that are protected when broadcast.

The Communications Act and the FCC's rules prohibit broadcasters from censoring political candidates' ads in any way if those ads are "uses". In this context, a "use" is an ad, sponsored by a legally qualified candidate or the candidate's campaign committee, that includes a recognizable likeness or image of the candidate. The candidate may be seeking a federal office or a state or local office. The ad buy may be the first one run by a candidate for that particular office, or it may be bought by a candidate taking advantage of the "equal opportunity" requirement created by the fact that the candidate's opponent aired a "use" already.

Broadcasters need to be increasingly on their toes when it comes to taking political ad dollars.

If it's a political "use", broadcasters can't touch the content.

That's so even if the content could, in a non-political context, result in liability for the broadcaster – for example, if the ad contains defamatory statements or obvious untruths, or if it infringes on somebody's intellectual property interests, or if it shows graphic or disturbing images. (The classic case of the latter involves troubling images of aborted fetuses inserted into ads produced by anti-abortion advocates running for office.)

Because Congress prohibits broadcasters from censoring such ads, broadcasters enjoy immunity from liability arising from the content of such ads. So even if a political "use" contains, say, blatantly defamatory statements, the broadcaster cannot be held liable for any harm to the defamed individual. The recourse for a party claiming to be injured by the contents of such a political ad is to sue the candidate who produced the ad.

But there are a couple of very important caveats.

First, the "no censorship" prohibition applies *only* to "uses". That still leaves a wide array of political ads which *can* legally be censored – or even rejected – because of their content. Ads by non-candidate third parties like PACs, labor unions, and other advocacy groups are not "uses", even though they may resemble them in look and content. If a spot is not a "use", a broadcaster who airs it is *not* necessarily immune from liability for any defamation, infringement, etc., occurring in the spot. That means that, before accepting a non-"use" political spot for broadcast, station personnel should take a very careful look at the spot's content and be prepared to insist on changes – or even to reject it – if it gives rise to serious concerns.

Second, what if the station streams candidate ads over the Internet? The "no censorship" prohibition appears in Section 315(a) of the Communications Act, which deals *only* with broadcasting. Since Section 315(a) says nothing about non-broadcast media, it appears that that "no censorship" provision would not apply to ads distributed on the Internet – and if the "no censorship" provision does not apply, then logically such non-broadcast distribution would ***not*** enjoy the immunity otherwise accorded to broadcast of the ads.

This issue has not, to the best of our knowledge, been formally litigated anywhere … yet. But last summer the FCC's political broadcasting expert spoke to the Florida Association of Broadcasters. When asked whether the censorship prohibition of Section 315 of the Communications Act extended to candidate ads streamed on the Internet, he responded that Section 315 applies only to over-the-air broadcasts by radio and television stations and *not* to Internet streams. Thus, as with third-party, non-"use", political ads, stations are not prohibited from censoring the on-line version of any advertisement. In other words, Internet-streamed content that is knowingly and verifiably libelous or defamatory or that infringes on intellectual property rights could be grounds for a lawsuit *against the party doing the streaming*, *i.e.*, the broadcaster, even if that content is identical to the content that enjoys immunity when it is broadcast.

Given the facts that (a) according to Bloomberg, some stations are currently "awash" in SuperPAC cash, and (b) stations are increasingly simulcasting their content over the Internet, broadcasters need to be increasingly on their toes when it comes to taking political ad dollars.

[*Editor's Note: This article has been adapted from an article that originally appeared in Radio Ink, which has kindly consented to its re-use here.*]

The clock is running down …

FCC KO's Sports Blackout Rules

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As pretty much everybody expected, the Commission abolished its blackout rules late last month. That action is now set to take effect on ***November 24, 2014***, according to a notice in the Federal Register.

Despite an aggressive defense mounted by the NAB and various sports leagues (including, most notably, the NFL), the Commission punted on the rules because it believed the rules were no longer necessary to ensure that sporting events remain widely available on television. Instead, the FCC was content to let blackout provisions be thrashed out privately between the leagues and their broadcast, cable, and satellite partners. In other words, sports blackouts may still occur, but *not* as a result of any FCC rule.

In a nutshell, the sports blackout rules prohibited MVPDs from carrying a live sporting event if that event was not available on local over-the-air television in a certain geographic area. The ability to invoke the rule required prior, private blackout-related agreements between leagues or teams and local broadcasters; the rules simply provided a separate mechanism for enforcing those private agreements.

As we noted in the December, 2013 *Memo to Clients* (and on CommLawBlog.com), the FCC's blackout rules were originally adopted because of a fear that sports teams and leagues might not grant any television rights unless they were able to block television viewers from seeing those games in the teams' home markets. The availability of game telecasts would significantly erode attendance at games and thereby undermine gate receipts, or so the theory went.

While that theory may have held some water back when gate receipts were teams' (and leagues') primary source of revenue, times have changed. Now, according to the Commission, the importance of gate receipts is dwarfed by the value of television rights (estimated for just the NFL to be worth around $6 billion – with a B – in 2014). The Commission also noted that the number of blackouts actually occurring as a result of the rules has greatly diminished; as a practical matter, teams generally don't have trouble selling out their stadiums. That being the case, the FCC figures that it's highly unlikely that any games will be kept off the air just because the blackout rules are eliminated.

The NFL and NAB also argued that, without the blackout rules, the NFL would move games to pay television channels instead of over-the-air broadcast stations. This was based on the notion that, but for the blackout rules, the compulsory copyright license available to satellite and cable operators could allow them to import certain distant signals (*e.g.*, those that are considered "significantly viewed") against the wishes of the NFL, the team, and the local station affiliate.

The Commission didn't buy it. The NFL's current broadcast agreements run through 2022, after all, so any migration to cable or satellite is unlikely to occur in the near term. Moreover, the Commission found that, regardless of the compulsory copyright license, the retransmission consent rules (which did not exist when the blackout rules were adopted) and terms of retransmission consent and network affiliation agreements would still combine to prevent most distant signal issues.

> *The FCC figures that it's unlikely that games will be kept off the air if the rule are eliminated.*

Under the retransmission consent rules, a cable or satellite operator wishing to import a distant signal currently would need to obtain the consent of that distant station. But few stations carrying NFL games have granted such consent, probably because such grants are prohibited by many network affiliation agreements. So, again, the Commission wasn't persuaded that the importation of distant signals would likely drive the NFL to move games to pay TV channels. Oh yeah, and let's not forget that games carried on broadcast television stations currently draw far larger audiences than those on pay TV since they are available to all viewers. The FCC assumed, probably not unreasonably, that the NFL wouldn't be eager to take actions likely to remove a very large portion of its audience.

Finally, the Commission concluded that any blackout protections the NFL might still need can be secured through private contractual arrangements between the NFL and its broadcast, cable, and satellite partners.

Bottom line: since the rules are no longer necessary to achieve their original purpose, they have been kicked out of the FCC's rulebook.

So what happens next?

At least for the time being, probably very little. Not only does the NFL have existing agreements with broadcasters that will keep games on broadcast television through 2022, but within days of the Commission

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Image obtained from www.aereo.com

Still alive, still shuffling

Just in Time for Halloween: Zombie Aereo!

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It's still alive!!!

Given up for dead by many, our old pal Aereo has managed to sidestep the Grim Reaper yet again. (Rule No. 2 in Zombieland: Always double tap.) But just barely, and its future prospects are not good.

We've already covered Aereo's arc from Nothing to Big Deal to, well, whatever it is now that Judge Alison Nathan has enjoined it from doing some, but not all, of the things it was originally set up to do. To recap briefly for newcomers, Aereo marketed itself as a way to watch over-the-air television, live or recorded, through Internet-connected devices. It rolled its new service out in New York in 2012 and was immediately sued by broadcasters who insisted that Aereo's system infringed on their copyrights. After losing three rounds in the Second Circuit, the broadcasters finally prevailed in the Supreme Court, which concluded that, to the extent Aereo offered effectively real-time retransmission of over-the-air programming, it was indeed infringing. The Supremes then sent the case back down to the trial court (Judge Nathan presiding) to decide what to do with Aereo.

And now we know.

Given a second bite at the Aereo apple, Judge Nathan has chomped down hard, issuing a nationwide preliminary injunction barring Aereo "from retransmitting programs to its subscribers while the programs are still being broadcast". Not the injunction that broadcasters wanted (or that might have been expected given the Supreme Court's ruling), but still a major disappointment to Aereo.

Nathan's ruling is in line with the Supreme Court opinion, particularly because it demonstrates the same measured caution seen in Justice Breyer's majority opinion. But because of that, it sets us up for further proceedings to explore what Aereo can and cannot still do. And that could eventually lead us back to the Supreme Court to determine Aereo's ultimate existence.

So for now, Aereo is not the fully living, breathing entity it originally set out to be, but it's still not dead. And as it stumbles around zombie-like, it could still constitute a threat to broadcasters' interests.

In her decision, Judge Nathan reviews the three new legal arguments Aereo has developed in the wake of the Supreme Court decision. She does not appear impressed ... favorably, at least.

As we have seen before, Aereo is now claiming that it should be considered a cable system under Section 111 (f)(3) of the Copyright Act (often referred to as the "Cable Compulsory License") and that it should therefore be allowed to continue operating as long as it satisfies all the obligations of a cable system. It made that argument to Judge Nathan. In the alternative, it also argued that, even if it isn't a cable system, it should be protected by Section 512(a) of the Digital Millennium Copyright Act (DMCA) as a "mere conduit" of content. Aereo's final fall-back position: if neither of the first two arguments is a winner, Aereo still shouldn't be enjoined from operation because the broadcasters won't be irreparably harmed.

Given a second bite at the Aereo apple, Judge Nathan has chomped down hard.

As to Aereo's "Look Ma, I'm a cable system!" argument, Judge Nathan saw that as an attempt to "turn lemons into lemonade". (Hey, haven't we heard that analogy before? Oh yeah, right here!) But she quickly squeezed the juice out of that. As she put it, "while all cable systems may perform publicly, not all entities that perform publicly are necessarily cable systems, and nothing in the Supreme Court's opinion indicates otherwise." She also observed that the Second Circuit has already answered the question of whether an Internet service can qualify as a cable system with a flat "NO" in its ivi, Inc. decision. Because the Supreme Court didn't address the *ivi, Inc.* case, that case remains good law and binding precedent. (Note that Judge Nathan's decision on this point is not at all helpful to Aereo's efforts to get the Copyright Office to let treat it as a cable system for compulsory license purposes.)

Nathan took even less time to shoot down Aereo's DMCA argument. But that's because it wasn't really an argument at all. As she noted, "Aereo's opposition brief only declares that it qualifies as a service provider, but does not explain how it satisfied the statutory definition." Aereo did suggest that it might come within the statute because Aereo doesn't itself transmit programming but only acts at the direction of its users, but the Supremes already rejected that notion.

As to Aereo's renewed claim that the broadcasters wouldn't suffer any irreparable harm if Aereo were permitted to continue to operate while the merits trial goes forward, Judge Nathan had a number of things to say. First, she noted that she is currently bound by the findings in her 2012 ruling, where she found that there may well be irreparable harm to the broadcasters. (Aereo

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will soon re-litigate this issue as the court moves to the full trial on the merits, but until then her earlier findings stand.)

Nathan also observed that Aereo hasn't challenged other indicia of irreparable harm, such as loss of subscribers for broadcasters' own services, loss of control over copyrighted content and damage to relationships with content providers, advertisers and licensees. So putting aside the two factual findings that Aereo asked her to relitigate, she concluded that "there is still substantial evidence of irreparable harm to Plaintiffs that Aereo does not challenge."

And perhaps even worse news for Aereo on the irreparable harm/significant hardship front. In her 2012 decision Nathan held that Aereo would itself suffer significant hardship if it were enjoined from operating. But since then, the Supremes have indicated that Aereo's service likely infringes on the broadcasters' copyrights. And because it is "axiomatic that an infringer of copyright cannot complain about the loss of ability to offer its infringing product", Aereo can no longer claim that it would be harmed if enjoined.

Aereo can no long claim that it would be harmed if enjoined.

So Aereo is now subject to an injunction considerably broader than Aereo might have expected. The broadcasters argued that the injunction should prevent it from *any* retransmissions, whether live or on delay. Aereo countered that with the suggestion that any injunction should prevent the retrans of only live programming or programming subject to no more than a 10-minute delay. Judge Nathan came up with her own approach: an injunction limiting Aereo subscribers from accessing a program they've recorded through the system until the over-the-air broadcast of that program has ended.

Interestingly, in considering the geographical scope of the injunction, Nathan noted that "the technological safeguards designed to ensure that subscribers cannot access broadcasts outside of their home DMA are easily overridden." This is important not only in terms of the preliminary injunction motion, but also in the longer term. It's hard to see Judge Nathan – or anyone else – allowing a service to operate in way that results in national accessibility of local broadcast programming.

So what's next?

Either Aereo or the broadcasters could appeal the injunction back to the Second Circuit.

Aereo might want to appeal the full decision or simply the time-delay limitation of the injunction, which goes well beyond the 10-minute delay Aereo had sought.

The broadcasters might want to appeal the fact that the injunction still allows Aereo to provide any service at all. After all, a time-delayed Aereo is still a competitor in many ways. Viewers who don't mind watching on a time delay – quite often the case for anything other than live sports – could still use Aereo as a cord-cutting/time-shifting alternative to cable or an alternative to the broadcasters own on-demand services. It could also compete with services like Hulu (in which broadcast networks have an ownership interest) and Netflix.

Or either side could let this play out through the rest of trial. This obviously suits the broadcasters to some extent, since Aereo may not be as attractive to potential subscribers without the live viewing function. The networks may simply be content to wait and see what happens in the District Court, especially given some of Judge Nathan's comments about Aereo's viability. And, of course, they can continue to pursue the legality of Aereo's time-delayed service then.

Which leaves us with the prospect of still more litigation dragging on, possibly for years to come, possibly even back to the Supreme Court, as the not-quite-dead Aereo struggles to survive some way, somehow, while broadcasters keep trying to administer the final double tap.

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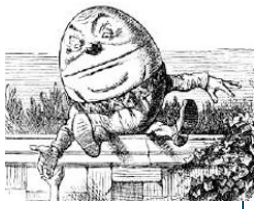
decision, the NFL also announced that it had signed a long-term deal with DirecTV. According to press reports, that deal prevents DirecTV from importing distant signals of games into their local markets.

In the medium-term, we may look for the NFL and its network partners to begin more aggressive pursuit of contractual protection of their blackout rights. In particular, network affiliates may see more pressure from networks not to grant any retransmission rights outside of their DMAs.

More far-reaching impacts could be felt if cable and satellite operators are successful in their ongoing battle to modify how the entire retransmission consent regime works. Among the various proposals for reform of the retrans consent rules have been measures that would prevent local stations from blocking access to NFL games and that could otherwise undermine the value to the NFL of affiliating with broadcast television stations. If those changes come to pass, then the FCC's decision to repeal the sports blackout rules could have a more far-reaching impact.

But those changes, if they occur at all, probably won't happen for some time to come. In the meantime, the FCC is out of the sports blackout business as of November 24.

Audio Division Calls a Spade a Spades



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*"When **I** use a word, … it means just what I choose it to mean – neither more nor less."*

While that quote is, of course, from the noted wordsmith Humpty Dumpty, you'd be forgiven if you guessed that it came from the FCC's Audio Division. The Division based a recent decision on the odd notion that the filing of a single application may constitute a "history of serial modification application**S**". (We have capitalized and boldfaced the "S" in "applications" to highlight the conceptual difficulty of a single application being deemed "serial applications".)

And with that linguistic tour de force, the Division made it considerably more difficult to get a Mattoon Waiver. This is not especially good news for AM licensees.

Readers will recall that, in 2011, the Media Bureau invented the Mattoon Waiver, a policy designed to afford FM translator licensees flexibility in transmitter site moves. Its ultimate goal was to create additional opportunities for AM stations to acquire or utilize FM translators for fill-in purposes.

If the Division wants to change its policy, why not just change the policy?

Because not every translator was located where it might be used by an AM station, lots of translators had to move closer to AM stations. But FCC restrictions on translator site changes often precluded making the necessary relocation in one fell swoop. Creative folks determined that they could achieve through a series of shorter moves, or "hops", that which they couldn't achieve with a single application proposing a much more distant move. The "hopping" approach was not prohibited by the rules – indeed, the Audio Division staff granted a lot of "hop" applications – but that doesn't mean that the staff liked it. In an effort to squelch the "hopping" trend, the staff eventually declared "hopping" to be an abuse of process.

But if AM licensees were to be able to avail themselves of the use of translators, there had to be some way to get the translators moved closer to the AMs.

Enter the Mattoon Waiver. It permits an applicant to propose a single long "hop" that would otherwise be prohibited by the "major change" rule. To be eligible for the waiver of that rule, the applicant must (among other things) have no "history of filing serial modification applications".

When you read that condition, you'd think that it bars only translator licensees who have filed multiple applications, right? So if the totality of your mod application "history" involved no more than one relocation, that shouldn't disqualify you from getting a Mattoon Waiver, right?

Wrong. In its recent decision, the Division announced that it takes only one prior modification application to move you out of the "eligible" category.

The application in question, which was not opposed by anybody, satisfied all the other technical criteria for a Mattoon Waiver. But then the staff noted that the applicant had filed one modification application already. Oops. The staff concluded that the "evident purpose" of the earlier move had been "to manipulate the Commission's modification and waiver policies in an effort to achieve an otherwise prohibited result". The staff faulted the applicant for not providing "any information to the contrary".

Of course, the applicant had only the Division's previous articulation of the waiver policy to work with in preparing the waiver request. And that articulation did not suggest that a single application (as opposed to "serial applications") might be deemed to constitute improper "manipulation". So it's hard to see how the staff could fault the applicant for not initially addressing the notion that a single application it had previously filed might be deemed a disqualifying "manipulation". Agreed, it's not unreasonable for the staff to expect waiver seekers to provide information responsive to previously announced waiver policies. But when the staff moves the goalposts by interpreting policies on the fly in unpredictable ways – for instance, by deeming a single application to be "serial applications" – an applicant's failure to predict the unpredictable really shouldn't be held against it, should it?

And even if the Division had alerted the applicant to the staff's concerns about the earlier application's supposed "evident purpose", in order to respond persuasively the applicant would have had, in effect, to prove a negative. That is, the staff appears to have expected the applicant to be able to demonstrate conclusively that the purpose (evident or otherwise) of the earlier application was not to manipulate the Division's policies. Since the staff appears to have concluded that the mere fact that the first move was in the same direction as the second revealed its "evident purpose", it's hard to imagine how the applicant could have convinced the staff otherwise.

Since the Mattoon Waiver policy was a creation of the Division in the first place, the Division can define its metes and bounds. So the fact that this recent decision seems to cut back seriously on the overall utility of the policy, while disappointing, is probably something the Division can do if it likes (and if it jumps through the right hoops, of course). But if the Division wants to change its policy, why not just change the policy? Why rely on the improbable notion that the plural term "serial applications" should or could have been understood by anybody to mean "one application"? The use of the plural "applications" directly undercuts such a reading, as does the notion of "serial" – when was the last time you saw a series of one thing?

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Just in time for Thanksgiving!

Effective Date of TV JSA Filing Requirement Set

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Readers will recall that, last spring, the Commission decided that certain TV joint sales agreements (JSAs) may create attributable interests for the purposes of determining compliance with the multiple ownership rules. And, thanks to that change, JSAs that do create such interests have to be filed with the Commission. That applies any arrangement – new *and* old – that authorizes one TV station in a market to sell 15% or more of the advertising time of another station in the same market.

But as we reported back then, the requirement to file JSAs didn't kick in when the rest of the revised JSA rules did. That's because the filing provision constitutes an "information collection" that has to be approved by the Office of Management and Budget (thanks to the hilariously-named Paperwork Reduction Act) before that provision can take effect. In May we speculated that it would likely take about four-six months to wrap up that review process.

And sure enough, just like clockwork, OMB gave the FCC the official thumbs up on October 17 – according to a notice in the Federal Register.

With the publication of that notice, the filing requirement has become effective as of ***October 28, 2014***. According to the FCC's Report and Order (*R&O*), that means that copies of all existing TV JSAs that create attributable interests will have to be filed with the FCC within 30 days, *i.e.*, ***by November 28*** (which is technically 31 days, since November 27 is Thanksgiving). The Media Bureau has confirmed this in a separate public notice. Accordingly, if you're a party to a JSA that, under the attribution rules adopted last April, creates an attributable interest, you should be getting a copy of that JSA ready to ship off to the Commission in the next month or so.

Two additional things to think about:

First, the deadline for filing these JSAs with the FCC does ***not*** affect the previously announced June 19, 2016 deadline for unwinding any JSAs that create impermissible ownership combinations. While parties to such agreements will need to file copies with the Commission by the new deadline, the agreements may remain in place until June 19, 2016.

And second, as the Bureau's notice helpfully reminds us, separate and apart from the new filing obligation, copies of *ALL commercial* TV JSAs – regardless of whether they create attributable interests – must be placed in the online public inspection files of both stations involved in the JSA.

Wilkommen, Bienvenue, Welcome!

Laura Stefani Joins FHH

Fletcher, Heald & Hildreth is pleased to announce that Laura Stefani has joined us as Of Counsel. She'll be focusing on emerging technologies, wireless, broadband, and RF equipment issues. Laura is no stranger there: She has more than a decade of experience (most recently with another Washington, D.C. telecom law firm), having represented clients before the FCC, NTIA and other federal agencies with respect to wide range of regulatory matters. Think spectrum allocation and sharing, equipment authorizations, enforcement issues, to name a few.

Laura is a graduate of the George Washington University School of Law. She got her BA in Economics (*magna cum laude*, thank you very much) from Lawrence University (home of the Lawrence Vikings). Her senior thesis focused on public policy agenda setting.

Laura lives in Washington, D.C. with her son and an escape-artist beagle named Polly. When she's not in the office, she generally can be found hiking, biking, running, kayaking, or engaging in any other activity that keeps her outside.

Laura can be reached at stefani@fhhlaw.com or by phone at 703-812-0450.

Everybody say "Yeah"

Live at the Portals! Stevie Wonder

High on the superstar's wish list: Increased video description services.

Yes, you heard it right! Stevie Wonder, the legendary songwriter and recording artist, made the rounds, live and in person, at the FCC recently. He met with the Chairman and the other four Commissioners to advocate for greater availability of audio description services to provide better access for the blind to television programming. Mr. Wonder noted that he can go to his choice of movies in many theaters today and get a headset that delivers video description; but when the same movies are shown on television, the video description is absent. Captioned television for viewers with impaired hearing has made great strides over the years, and it's time for video description to make similar progress.

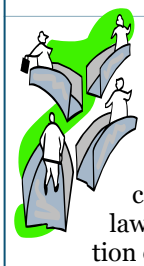
Stevie Wonder and FCC Chairman Tom Wheeler

Mr. Wonder believes that the availability of video description can be increased by taking advantage of screenplay information already created for most staged productions. The process of turning that information into audio description can be automated. Prominent personalities, with Mr. Wonder himself taking the lead, could provide their voices, so that machines could read descriptions of the action on the screen and translate them into the listener's choice of a celebrity voice. Video description might even be downloaded into a smartphone and have the smartphone "listen" to the audio dialog and synchronize the video description to the audio.

If the process can be automated sufficiently, the hope is to drive production costs down to minimal levels; and downloading video description over the Internet would eliminate the need to use data capacity in a TV or cable channel. Mr. Wonder hopes that modern technology can make video description so practical and cost-effective that the video industry will voluntarily embrace it, without regulatory compulsion, in much less time than it has taken for captioning to reach today's widespread distribution.

FHH's Peter Tannenwald escorted Mr. Wonder during his visit to the FCC. It was a memorable day. After the FCC sessions, Mr. Wonder was kind enough to visit our offices, where cameras clicked, and he even serenaded our Firm Administrator. He invited a few of us to join his entourage for a vegan dinner, reported in the *Washington Post*.

Peter has worked with Mr. Wonder for almost 35 years. He prepared the initial petition that led the FCC to adopt captioning rules some 40 years ago, helped establish the National Captioning Institute, has worked on increasing cellphone compatibility with hearing aids, and now looks forward to helping Mr. Wonder realize his dream of making television programming more accessible to the blind.



FHH - On the Job, On the Go

On October 10, **Frank Jazzo** traveled to the University at Albany-SUNY (in Albany, New York, of course) to attend the fall meeting of the Rockefeller College Advisory Board.

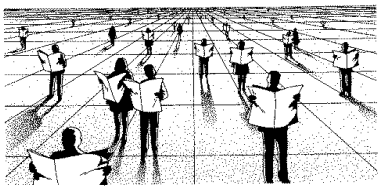
On October 21, **Frank Montero** attended a meeting of the Board of Directors of the New Jersey Broadcasters Association in Atlantic City. He made a presentation on current developments in FCC and copyright law. And on October 30, he attended the Civic Leadership and Executive Leadership Awards at the Organization of American States in Washington. Next month, **Frank** will attend the fall meeting of the U.S. Chamber of Commerce's Telecommunications and E-Commerce Committee, and in December, he'll be attending both the National Hispanic Media Coaltion Imact Awards Reception (at the NAB's Washington headquarters) *and* the FCBA Chairman's Dinner. Party on, Frank!

Kathy Kleiman spoke at the Grace Hopper Celebration of Women in Computing in Phoenix recently. Her audience: young women studying for degrees in computer science and likely headed to jobs in Internet-based industries. And from there it was on to Los Angeles for ICANN 51, where she spoke about efforts to accredit Proxy and Privacy Service Providers.

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

Updates On The News

More time to comment on proposed "TV Broadcaster Relocation Fund Reimbursement Form" — In last month's *Memo to Clients* we reported on the FCC's request for comments about its proposed "TV Broadcaster Relocation Fund Reimbursement Form". That's the form that the Commission plans to use when, after the incentive spectrum auctions, TV licensees put pen to paper and figure out what it's going to cost to move to their repacked facilities. Many (if not most) licensees will then be looking to Uncle Sam to cover those costs – and the Reimbursement Form (and related procedures described in the draft instructions to the form) will provide those licensees the access to the cash. In other words, the reimbursement process is a Big Deal that TV licensees should be focusing on now so as, ideally, to reduce the chances of disappointments down the line.



The Commission originally provided a paltry 30 days in which to review the proposed form and related procedural provisions, cogitate on the various issues they present, and then submit comments thereon. The National Association of Broadcasters figured that that just wasn't enough time to gather all necessary and useful responsive information – for example, from engineers who have first-hand knowledge and experience in modifying TV transmission systems. The NAB asked for an extension and now, *mirabile dictu*, the Commission has agreed.

As a result, the deadline for comments has been extended to ***November 26, 2014***. Happy Thanksgiving!

More time to figure out what to do when the auction arrives — If you picked "mid-2015" in your office pool for the date the FCC's incentive spectrum auction would be held, we've got some bad news for you. While that was probably a pretty good bet up to now (since Commission officials have tenaciously stuck with the "mid-2015" date for some time), it's not looking so good anymore. According to an item recently posted on the FCC's blog, the current target date is "early 2016".

Gary Epstein, Chair of the Commission's Spectrum Auction Task Force, alluding to "undeniable impediments" in the auction's path, has this to say:

> As Chairman Wheeler indicated several weeks ago, the court challenges to the auction rules by some broadcasters have introduced uncertainty. Earlier this week, the court issued a briefing schedule in which the final briefs are not due until late January 2015. Oral arguments will follow at a later date yet to be determined, with a decision not likely until mid-2015. We are confident we will prevail in court, but given the reality of that schedule, the complexity of designing and implementing the auction, and the need for all auction participants to have certainty well in advance of the auction, ***we now anticipate accepting applications for the auction in the fall of 2015 and starting the auction in early 2016***. Despite this brief delay, we remain focused on the path to successfully implementing the incentive auction. [Emphasis added]

With briefing wrapping up very late in January, the "court challenges" mentioned – one from the NAB, the other from Sinclair – probably won't be argued until mid- to late spring, 2015. In our experience, the D.C. Circuit usually takes at least two-three months following oral argument to crank out a decision on relatively easy cases. More complex cases can take significantly longer. (Extreme example: One of our colleagues once had to wait more than three years for a decision following oral argument.)

On a scale of one to ten – where one is a total no-brainer and ten is a case so complicated that it makes your eyes bleed – the spectrum auction appeal will probably be close to 11. So if the Commission is planning on holding off on the auctions until the Court has ruled – an approach implicit in Epstein's statement – the "early 2016" estimate may still be subject to slippage. (Of course, the Commis-

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censed wireless microphones to operate in some of each of these, but at only 20 milliwatts: in 2 MHz of each channel 37 guard band, in all but 1 MHz of the TV/broadband guard band, and in 6 MHz of the duplex gap, shared with TVWS devices. (Another 4 MHz of the duplex gap is set aside for licensed wireless microphones.)

But there is a complication. The Spectrum Act – the statute that authorized the incentive auction – says: "Unlicensed use shall rely on a database or subsequent methodology as determined by the Commission." TVWS devices "rely on a database" without question: each individual device must communicate with a database that identifies safe operating channels at that particular location and time, or must communicate with another device that does. Wireless microphones do not have this capability, and have never needed it; users and their coordinators pick channels manually, according to local conditions, and over the years have caused essentially zero interference to other users.

The FCC recognizes the importance of wireless microphones.

The FCC is particularly concerned about the transition period following the auction, when future guard band frequencies, those that will later be open to wireless microphones, are still functioning as TV channels that wireless microphones must not use. Making matters worse, that transition will proceed unevenly around the country. Frequencies that have completed the shift to guard-band status in some places may still be in use for TV broadcasting in other places, making it more difficult for wireless microphone users to keep track. One option is to require that unlicensed wireless microphones check in with the TVWS database before transmitting at a given location. Providing the capability for automatic checking, however, would add to the products' complexity and cost. The FCC asks whether it would satisfy the statute for the user to manually check a database using a laptop or a smartphone.

Also for the transition period, the FCC has set minimum separation distances between wireless microphones and operating regions of the incoming wireless broadband providers. The same question arises on how wireless microphone users will determine whether operation is allowable at a particular time and place.

Comments are replies for each NPRM will be due 45 and 65 days, respectively, after it appears in the Federal Register. Check back with CommLawBlog.com for updates.

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sion is not necessarily obliged to wait for the Court's decision, but that would impair the crucial "certainty" element.)

In any event, you're now probably safe to lock in that summer rental for June-July, 2015 without having to worry about ditching it for the auction. Check back with CommLawBlog.com for updates.

More opportunity to chip your two cents' worth in — While the NAB and Sinclair press their appeal of the Commission's Incentive Spectrum Auction Report and Order (*R&O*), a number of other folks have expressed their discontent with various aspects of the *R&O* in petitions for reconsideration that the FCC will have to address and resolve. A list of those petitions has been published in the Federal Register. That notice sets the deadlines for oppositions and replies. Oppositions to any or all of these petitions must be filed by ***November 12, 2014***; replies to any oppositions are due by ***November 21***.

More than 30 separate petitions were filed. (You can find a list of the petitioners on CommLawBlog.com.) You can take a look at the various petitions on ECFS – just go to the ECFS Search page and enter "12-268" in the "Proceeding Number" box and, in the "Type of Filing" box in the "Advanced Options" sections, select "Petition for Reconsideration" from the drop-down menu. (Note that the list in the Federal Register does not correspond exactly to the petitions available on ECFS, but it's reasonably close. One apparent omission: When we performed the ECFS search, it turned up a petition filed on behalf of Sprint that isn't listed in the Federal Register notice.)
After the FCC has ruled on these petitions, interested parties will have the opportunity to seek judicial review of the FCC's reconsideration order. If (as may reasonably be expected) this leads to more appeals on the spectrum auction front, there's no telling what impact that might have on the start date of the auctions. (As noted above, the anticipated start has already moved from 2015 to "early 2016" because of (among other things) the already-pending NAB and Sinclair appeals.)

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That being the case, the FCC is considering an LPTV construction deadline 12 months after the close of the auction. Practically speaking, though, that seems a bit optimistic: even after full-power and Class A stations have resolved their channel assignments, the FCC will still have to process all the LPTV channel change applications (including a mandatory 30-day public notice waiting period and international coordination near the borders). Oh yes, LPTV/translator permittees will also have to find manufacturers to produce any replacement equipment that might be needed and tower riggers to change out antennas. (Reality check: 44% of LPTV stations and 20% of TV translators haven't converted to digital yet, so a lot of equipment and installation support will be needed to complete the digital transition.)

While the FCC might not establish a rigid deadline for commencement of digital operation, it does intend to adopt an absolute fixed deadline for terminating analog operation by LPTV and TV translators. But those deadlines are closely related. Once an analog station is forced off the air, a 12-month clock starts to run: if the station doesn't resume operation within 12 months, its license expires automatically. So it's essential that that station get back on the air digitally within that period. In other words, while the FCC may view the analog termination deadline and the commencement of digital operation deadline as separate and distinct, in fact the former may in many instances determine by the latter.

Reality check: 44% of LPTV stations and 20% of TV translators haven't converted to digital yet.

Adding further pressure on non-digital operators, the FCC is proposing to relieve manufacturers of the obligation to include analog tuners in TV sets and DVRs. If that happens, an LPTV or translator that hangs on in analog (and is not on cable) will be shut out of an increasing number of homes as TV sets are replaced over time.

LPTV/Translator channel-sharing following the repack. Looking at how LPTV and TV translator stations might survive after the repack, the FCC offers some ideas, none of them new.

Channel sharing may be permitted, including sharing by more than two stations. A surviving station could share with a station that would not otherwise survive, or two or more stations forced to change channel(s) could file a joint application to share a single new channel. The division of channel capacity would be left to the stations as long as each station had the right to broadcast at least one full-time standard-definition free video channel. Channel sharing is ***not*** the same as brokering a digital stream. In a channel sharing situation, each of the parties sharing a channel has its own FCC license and call sign, each is responsible to the FCC for all its actions, and none is responsible for the actions of the others. In a time brokerage arrangement, one host holds the only FCC license and bears ultimate responsibility for all content on all streams.

The FCC does plan to regulate sharing arrangements to some extent, looking at issues such as equipment maintenance, financial relationships, access to the transmission plant, and what happens if one sharer wants to sell its interest or to withdraw from the sharing arrangement. Withdrawal is a particularly sensitive issue with respect to sharing that the FCC has encouraged for full-power and Class A stations, because the FCC has signaled its disinclination to allow the other sharers to have the legal right to take over the capacity abandoned by a withdrawing party. The prospect that the right to recoup capacity might be restricted has put a chill on the willingness of some licensees to consider sharing. A petition to remove this restriction is pending, and we hear that the FCC realizes that some relief is needed if it wants to encourage sharing.

While it is likely that the FCC will permit sharing where all parties are LPTV stations or TV translators, the situation becomes more complicated if an LPTV or translator wants to share with a Class A station, or an LPTV or Class A station wants to share with a full- power station. Presumably each sharer will retain its existing rights and obligations; but will Class A/LPTV stations sharing with a full-power station be permitted to operate at a full-power station's power level, and will an LPTV station sharing with a Class A or full-power station thereby gain the primary spectrum status enjoyed by its sharing partner? Those areas are where the going gets a little tricky.

Digital Replacement Translators. After the 2009 full-power TV digital transition, the FCC allowed full-power stations to obtain "Digital Replacement Translators" (DRTs) to fill in gaps in their digital service area where they formerly provided analog service. The FCC now proposes to end licensing of new DRTs tied to the digital transition but to open a filing window for new DRTs to fill in gaps in a full-power station's service area that occur after that station has been repacked. Gaps are likely to be significant where a full-power station voluntarily moves from UHF to VHF. The FCC hasn't said anything about whether a full-power station could collect auction money for moving to VHF but then get back into the UHF band by applying for UHF DRTs.

Moreover, the FCC proposes to give these new DRTs priority over: (a) applications by existing LPTV stations (seeking changes in facilities, including displace-

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ment relief to move to a new channel); and (b) applications for new LPTV stations. That priority would apply even if the DRT application were filed later in time. That means that any new deadline for LPTV construction could be undermined not only by requests by full-power and Class A stations to change channels or to modify facilities but also by DRT applications coming out of the woodwork. On top of that, the FCC proposes to specify the normal three-year construction period for DRTs, meaning that full-power stations could tie up channels needed by LPTV stations and TV translators without building their DRTs promptly.

The post-repack application process. When the time comes for LPTVs and TV translators to play spectrum musical chairs after the full-power and Class A repack, the FCC intends to open an initial application window for them. All applications filed during that window would be deemed filed on the same day. After the window, applications would be processed on a first-come, first-served basis. If mutually exclusive applications are filed, a window would be opened for settlement agreements, including withdrawal of applications and proposals for channel-sharing. If no resolution were reached, mutually exclusive applications would presumably go to auction – although, given the very low bids in previous LPTV auctions, the FCC will likely avoid any further LPTV auctions if it is able to do so.

The FCC has proposed to make channel changes easier for LPTV and TV translators than it has been in the past by offering to use its own optimization software to help search for available channels. The initial thought is that the FCC would publish a list of possibly available channels and let LPTV and translator licensees apply for those channels if they want to. There is no telling how the FCC would choose transmitter sites for its list of channels. In that vein, though, the Commission asks whether it should eliminate existing restrictions on LPTV/translator minor change application. (Currently, "minor" changes are limited to site changes of no more than 30 miles; the proposed service area must also overlap the previously authorize service area.) Such relaxation should ease the search for new channels and sharing channels.

Channel 6 "franken-FMs". Finally, the FCC has decided to tangle with the controversial subject of Channel 6 LPTV stations that provide radio station-type services on their aural carrier. Channel 6, of course, sits immediately below the FM radio band and can be picked up by most FM radios. An LPTV station operating digitally would not ordinarily transmit any analog aural signal that FM radios can receive. However techniques have been developed to combine an analog aural carrier with a digital TV signal. The FCC has not permitted them to be used yet, but now it is asking whether it should.

The Commission asks whether it should eliminate existing restrictions on LPTV/translator minor change applications.

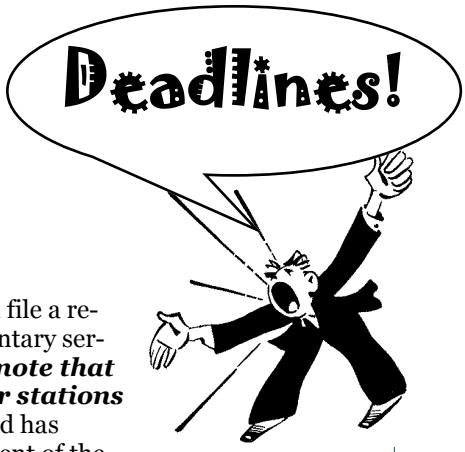
This idea may sound like a bonanza for Channel 6 stations, but the FCC has thrown in a few zingers. First, analog audio may be considered an ancillary service, similar to data streams transmitted by TV stations. The bad news: the government is entitled to 5% of gross revenue from such streams. Second, the Commission may decide to provide formal protection from interference to radio stations at the lower end of the FM radio band. That might shut down some Channel 6-originated LPTV stations. Finally, the FCC asks whether analog Channel 6 audio should be subject to all of the public interest obligations normally associated with radio broadcast stations. That would impose a significant new layer of content regulation that LPTV stations have not previously faced. However, since the 5% ancillary service fee applies only to non-broadcast services, we are not sure how the FCC could both collect the fee and impose new broadcast regulatory obligations.

LPTV stations and TV translators have a lot to think about but not much time to do their thinking. Comments will be due only 30 days after publication of the proposals in the *Federal Register*, with replies due only 15 days later. Check back with CommLawBlog.com for updates.

And you thought you'd have time for your Thanksgiving dinner ...

Holiday Schedule Reminder

Fletcher, Heald & Hildreth, P.L.C.
will be officially closed on
November 27-28 (Thanksgiving weekend),
December 25 and January 1.
We will be open on Tuesday, November 11 (Veterans Day).



November 26, 2014

Incentive Auction – Comments are due in response to the *Public Notice*, released September 25, 2014 seeking comment on the Commission's draft TV Broadcaster Relocation Fund Reimbursement Form.

December 1, 2014

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 their broadcast service during the previous fiscal year. ***Please note that the group required to file includes 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.

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

Television Post-Filing Announcements – *Television* and *Class A television* 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. 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 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 **New Jersey** and **New York** must begin, on December 1,their pre-filing announcements with regard to their applications for renewal of license. These announcements then must be continued on December 16, January 1 and January 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 **Alabama**, **Colorado**, **Connecticut**, **Georgia**, **Maine**, **Massachusetts**, **Minnesota**, **Montana**, **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.

Noncommercial Television Ownership Reports – All *noncommercial television* stations located in **Alabama**, **Connecticut**, **Georgia**, **Maine**, **Massachusetts**, **New Hampshire**, **Rhode Island** and **Vermont** 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 **Colorado**, **Minnesota**, **Montana**, **North Dakota** and **South Dakota** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323-E.

January 10, 2015

Children's Television Programming Reports – For all *commercial television* and *Class A television* stations, the fourth quarter 2014 reports on FCC Form 398 must be filed electronically with the Commission. These reports

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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 continues to require 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 televisio*n 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.

February 1, 2015

Television Post-Filing Announcements – *Television* and *Class A television* 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. 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 **Delaware** and **Pennsylvania** must begin, on February 1, their pre-filing announcements with regard to their applications for renewal of license. 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.

EEO Public File Reports – All *radio* and *television* stations *with five (5) or more full-time employees* located in **Arkansas**, **Kansas**, **Louisiana**, **Mississippi**, **Nebraska**, **New Jersey**, **New York** and **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 television* stations located in **Arkansas**, **Louisiana**, **Mississippi**, **New Jersey** and **New York** 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 **Kansas**, **Nebraska** and **Oklahoma** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323-E.

February 2, 2015

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

And then there were five (or six).

LStelcom Joins the Ranks of Approved Whitespace Database Administrators

It never rains but what it pours. We went nearly 10 months without any new whitespace database administrators being approved, and now we've had the second approval in under a month. The Commission has announced that LStelcom AG has made it over the final hurdle and its system has now been approved for operation.

This brings to six the number of such approvals that have been issued. The others already admitted to the club: Key Bridge Global LLC, Spectrum Bridge, Telcordia Technologies and Google (twice). (Fun factoid: From the fine print of the LStelcom public notice we learn that Telcordia is now referred to as "iconectiv". We have modified our table below accordingly.)

From our handy table, it looks like the next contestant likely to join the ranks of the approved will be Comsearch. Our guess on that score is based on the facts that: (a) Comsearch wrapped up its testing – *i.e.*, the penultimate step in the approval process – back in June; and (b) none of the other four contenders has even started its testing.

So six down (if you count Google twice), five to go. Check back here for further updates.

(Fuzzy on the whole white space database administrator question? Check out this post on CommLawBlog.com for some background.)

Coordinator	Test Started	Test Finished; Comments Sought	Coordinator Approved
Comsearch	Feb. 24, 2014	June 23, 2014	
Frequency Finder Inc.			
Google Inc.	Feb. 27, 2013	May 29, 2013	June 28, 2013
Google Inc. II	June 2, 2014	July 29, 2014	Sept. 10, 2014
LStelcom AG	June 18, 2013	Nov. 14, 2013	**Oct. 1, 2014**
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
iconectiv (f/k/a Telcordia Technologies)	Dec. 2, 2011	Feb. 1, 2012	March 26, 2012
WSdb LLC			

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And why conclude that a single application might, on its own, constitute an abuse of process? That seems an extraordinarily harsh conclusion to draw on the basis of pretty thin evidence.

As alert readers will recognize, this is the Division's second decision in the last month or so cutting back on the Mattoon policy. Coincidence? Of course not. In the long-awaited AM revitalization rulemaking proceeding, the FCC is moving toward complete elimination of the Mattoon policy. In that proceeding the Commission is considering opening an FM translator window for AM stations only. At least in theory, such a window opportunity would obviate the need for Mattoon waivers. So the Mattoon Waiver policy may be a Dead Policy Walking at this point.

Translator applications have been a particular thorn in the staff's side for more than a decade. And the Mattoon Waiver policy has aggravated that by spawning a boatload of mod applications involving waiver requests that have to be carefully analyzed, one at a time, by hand. The Division can be forgiven any antipathy it may bear toward translators generally and toward the Mattoon Waiver policy in particular. Presumably, when the AM revitalization rulemaking wraps up, that'll be the *de jure* end of Mattoon Waivers; in the meantime, it looks like the staff is doing its best to eliminate them *de facto*.

[*Editor's Note: Harry Martin represented the applicant in this case.*]