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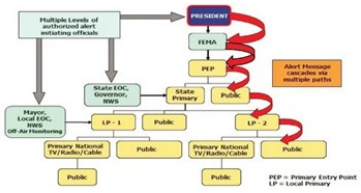
# Memorandum to Clients

June 2015

NEWS AND ANALYSIS OF RECENT DEVELOPMENTS IN COMMUNICATIONS LAW

No. 15-06




*Lessons learned from 2011 nationwide test*

## EAS Rules Revised

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Nearly four years ago the FCC (along with FEMA) conducted the first ever nationwide test of the Emergency Alert System (EAS). Now, after analyzing the performance of the EAS during that test, and after twice soliciting input from interested parties, the Commission has decided to tweak the system. This will be of interest to all EAS participants, since within the next year or so their equipment will have to accommodate the tweaks.

***Header Code Tweaks.*** The first two changes the FCC has adopted involve EAS "header codes". As we all know, the EAS system is a "daisy-chain" arrangement by which alerts percolate down through EAS participants and out to the public. An EAS alert – real or test – is triggered when a message is sent by an authorized person or office. The message contains a "header" consisting of certain coded components that permit EAS equipment down the daisy-chain to identify the originator of the message, the type of event in question, the geographic area affected by the alert and other useful information. It is obviously important that this coded information – particularly the "location" and "event" codes – be interpreted correctly by EAS gear downstream so that the message will be accurately transmitted to the proper audience.

## Inside this issue . . .



The first problem that surfaced during the 2011 nationwide test was the location code, or, rather, the lack of one. Location codes allow EAS gear to determine which alerts pertain to which particular geographic area(s). There is, after all, no reason that an EAS participant in, say, Alaska should issue an alert concerning some emergency local to, say, Florida.

While the EAS designers had provided location codes for each state, they hadn't provided any for a nationwide alert, so there was no way to indicate that the nationwide test was intended to trigger EAS receivers throughout the system. Oops. The 2011 test was sent using the location code for Washington, D.C., but that didn't do the trick because some equipment rejected the alert as being "out of area".

The solution: designation of six zeroes (as in "000000") as a national location code for any future nationwide tests (or, God forbid, actual nationwide emergencies). That happens to be the national code already used in the Common Alerting Protocol (CAP), so its adoption for EAS purposes will insure consistency between EAS and CAP, which is what you'd want in the event of a real national emergency. (For more on CAP, check out our post from a couple of years ago.)

The good news: According to the Commission, the six zeroes code can be accommodated by most equipment already in use, either as is or with a mere software update. The bad news: Adoption of the six zeroes code will still likely cost some affected EAS participants more than $2 million in the aggregate, split roughly evenly between cable operators and broadcasters. Readers will be comforted to know that the FCC views that figure as "negligible" and has decided that, in any event, the benefits justify the cost. So six zeroes is the new nationwide location code.

The second header problem involved the event code to be used in a nationwide test. The event code tells EAS equipment what type of emergency is involved. There are several dozen possible event codes – you can find them in Section 11.31(e) of the rules – ranging from "Avalanche Watch" through "Volcano Warning" and on to "Winter Storm Watch". While the list includes a "National Periodic Test Code" (NPT), in the 2011 test the Commission instead used the EAN – "Emergency Action Notification" – code.

EAN is the code used when there is a for real national emer-

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*A wag of the finger, a lift of the eyebrow*


# A Regulatory Message To Tower Owners: Follow the Rules

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If you own a tower subject to the FCC's Antenna Structure Registration (ASR) requirements, the Wireless Telecommunications Bureau's got something to say to you: Shape up and pay attention to the rules ... or else. In a terse public notice, the Bureau advises that, in the course of reviewing ASR applications, it has "discovered several types of defects". All the observed defects "may be considered violations of FCC rules and are potentially subject to enforcement proceedings". Get the message?

What "defects" is the Bureau talking about here? Here's the list with respect to existing towers:

- Failure to obtain a No Hazard Determination from the FAA prior to construction;
- Failure to register the structure prior to construction;
- Failure to notify the FCC within five days of completion of either construction or dismantlement;
- Failure to light and paint the tower in conformity with the lighting/painting specifications set out for the tower in the ASR system and/or in the FAA No Hazard Determination; and
- Having the height and/or location of the tower differ materially from the height/location specified in the ASR system (see below for more on what a "material" difference is).

And if you're merely an applicant looking for initial authority to construct or modify a tower, here's some more miscues that can get you in trouble:

- Using ASR certification (1) before an environmental review has in fact been completed. (With ASR certification (1), the applicant is called upon to certify that "the construction is exempt from environmental notification (other than due to another agency's review) and it does not fall within one of the categories in Section 1.1307(a) or (b) of the FCC's rules");
- Using ASR certification (3) before the Bureau has notified the applicant that an Environmental Assessment is not required. (ASR certification (3): "The environmental notification has been completed, and the FCC has notified the applicant that an Environmental Assessment is not required under Section 1.1307(c) or (d) of the FCC's rules, and the Construction does not fall within one of the categories in Section 1.1307(a) or (b) of the FCC's rules"); and
- Using ASR certification (4) – "The FCC has issued a Finding of No Significant Impact" – before the FCC has in fact issued such a finding.

All of these problems can generally be found by the Bureau in the "back end" of the ASR system. One other problem not so easily discernible involves reporting of changes in a tower's ownership. Since the Bureau doesn't necessarily know when a tower has changed hands, it can't be sure whether the ownership information on file is correct. But when discrepancies do come to light, the Commission hasn't hesitated to lower the boom there as well.

A note about "material" discrepancies in height or location. The FCC's current rules specify that alteration of a registered antenna structure requires a new registration prior to the alteration ... BUT the rules don't define what constitutes an "alteration". As we reported last August, the Commission has adopted new standards for that purpose: any height change of one foot or more, and any change in latitude or longitude of one second or more. However, those changes have not yet

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*Back down to bid-ness*

# Auction 98 – The Applications Are In

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Auction 98, featuring 131 FM construction permits, is on track. The FCC has issued a notice announcing that 112 potential bidders submitted applications to participate in the upcoming auction. The auction is still scheduled to begin on ***July 23, 2015***. If you aren't on the list of 112 bidders, the auction train has already left the station, but you can watch auction developments on the FCC's auction website or by following us at CommLawBlog.com.

A total of 112 prospective bidders tossed in applications. Of those, 87 made the cut on their first try: the Commission has concluded that their applications were complete and acceptable, so they are assured of a bidding paddle and a seat in the bidders' section (assuming, of course, that they get the necessary upfront payment filed in time).

*The anti-collusion rules are very strict and the FCC enforces them rigorously.*

The other 25 applicants? As for 24 of them, the FCC sent letters asking for a bit more information about their applications. They had until ***June 29, 2015*** to dot their "i"s, cross their "t"s and provide the FCC with whatever paperwork has asked for. As for the 25th applicant, there's bad news. It was totally rejected and won't be permitted to participate. How come? The applicant revealed that if it won, it was going to use the station for noncommercial educational purposes. While that's a laudable goal, it was also the kiss of death; the FCC kicks out NCE applicants that are in an auction with commercial bidders.

***Any*** bidder – whether one of the 87 already-in-the-door or one of the 24 "incompletes" (but ***not*** the lone rejected applicant) – who wants to participate in the bidding was required to wire the upfront payment to the FCC by ***6:00 p.m. Eastern time on Monday, June 29, 2015***. The FCC is not sympathetic to bidders who wait until the last day and then run into unexpected problems; historically, the FCC has disqualified some late-paying bidders who claimed that their lateness was the fault of their banks.

As is commonplace with auction notices, the FCC dedicates nearly three pages of its ten-page release to warnings about the anti-collusion rules. Cautionary anti-collusion note: Even if they opt not to participate further from this point on in the auction process, ***all 112 prospective bidders are prohibited from discussing the auction, the markets, the bids or the bidding strategies with other bidders in the same market until several weeks after the auction closes.*** The anti-collusion rules are very strict and the FCC enforces them rigorously. Cautionary example: Several years ago the FCC and the U.S. Department of Justice dragged a bidder through federal court in order to enforce penalties related to anti-collusion violations.

More than half of the 87 "complete" applicants are claiming new entrant bidding credits that would allow them to pay less than their bid amounts should they win. A new entrant with no interest in any other mass communication outlet is entitled to a 35% credit, which means they would pay only 65% of their winning bid. Bidders who own three or fewer mass communication interests are entitled to a 25% discount as long as there is no overlap between (a) any of their current interests and (b) a market on which they are bidding. As is typical in these types of auctions, more than two dozen bidders advised the FCC that they wanted to bid on all 131 markets. Selecting all markets does not necessarily indicate that the bidder will be active everywhere; rather, it may just reflect a preference to keep the maximum number of options open … or it may indicate that the bidder simply pressed the "Select All" button by mistake when filling out the form.

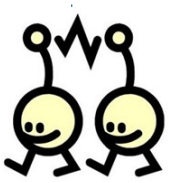
After the FCC receives funds from potential bidders, it will release another list of those bidders who are going forward in the auction. The next list is expected in mid-July. Check back with CommLawBlog.com for updates.

*(Continued from page 2)*

gone into effect, since they have not yet been approved by the Office of Management and Budget.

In any event, in light of the Bureau's reminder, this would be a good time to review your tower registrations for accuracy and compliance. Of course, not all towers have to be registered in the ASR system, so there's at least a possibility that your tower isn't subject to these requirements and you're off the hook. But until you (along with, maybe, your consulting engineer) have reviewed all the relevant rules – ***and*** your tower specs ***and*** any information already in ASR – you won't know for sure. Fines for failure to comply with the ASR rules can routinely run from $3,000 (for failure to timely file ownership change applications) to $10,000-25,000 for painting, lighting and notification violations. And in 2013, a notice of apparent liability and forfeiture in the amount of $234,000 was issued for failure to comply with ASR requirements.

In other words, there are a lot of good reasons to take the Bureau's reminder to heart.



*Tuning up the rules for the post-repack universe*

# A Pair Can Channel Share, but Better Still Beware

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As the incentive auction approaches – now supposedly less than a year away – the FCC continues to fine-tune various components of the sprawling auction/repack process. Most recently the Commission has turned its attention to channel sharing.

Channel sharing, of course, is one way in which the Commission hopes to encourage TV licensees to give up their current channels for sale in the auction. The idea is that any licensee willing to give up its channel but unwilling to leave the business entirely would simply share a channel with another station, thus freeing up its original channel for re-purposing. It's as if your neighbor down the street agreed to vacate her one-acre lot with a two-story house and move into the second story of *your* two-story house on *your* one-acre lot, making the neighbor's original property available for that nice mobile broadband family to move into. Under the Commission's sharing approach, each sharer gets its own license and is independently responsible to the FCC for its actions, but all share a common transmitter and antenna.

*To take advantage of the channel-sharing option, a station will have to specify in its pre-auction application that it intends to channel-share.*

The rules as initially adopted were somewhat restrictive in a number of important respects. But now, in response to petitions for reconsideration, the FCC has relaxed some of its earlier restrictions. Additionally, it has requested comments on a number of proposals for further relief.

***Post-auction Sharing Agreements Permitted, With a Catch or Two***. Originally, only channel-sharing agreements (CSAs) entered into prior to the incentive auction – and submitted to the Commission with the stations' pre-auction application – would be recognized. That has changed. The Commission will now permit stations to make their deals any time up to the deadline by which pre-auction CSAs must be implemented, *i.e.*, three months after the auction. In other words, you can enter the auction declaring your intent to share without knowing who your sharing partner will be. And if the FCC eventually adopts further proposals currently on the table, new sharing deals may be allowed any time in the future.

Sounds good? Beware of the fine print.

First, in order to take advantage of this option, a station will have to specify in its pre-auction application that it intends to channel-share. This won't mean that station will eventually *have* to enter into a CSA, although if it doesn't find a partner after the auction, it won't be able to keep its old license and will end up with no license (because its old channel will have been disposed of in the auction). But if the pre-auction application does not include an expression of intent, the station will not be able to avail itself of a "first generation" post-auction CSA. ("First generation" CSAs are those in place at the completion of the auction process. "Second generation" CSAs are those which may be entered into later down the line, outside of the incentive auction context. See below for more discussion of those.)

Second, would-be sharers without a pre-auction CSA in place will be subject to the auction rules forbidding any communication or collaboration about a licensee's auction strategy prior to and during the auction. Yes, such communication/collaboration will be permitted between or among sharing stations that have identified themselves (and submitted their CSAs) in their pre-auction applications. But that exception won't apply to stations that enter the auction with no CSA in place. That means that parties entering the auction with the intent to share but without a pre-auction deal signed, sealed and delivered to the FCC won't even be able to discuss possible deals, much less negotiate them, during the auction.

On top of that, would-be sharers without a pre-auction CSA in place will in any event have to sign and implement their post-auction CSAs by the time that they are required to relinquish their channel, which will be only three months after the auction. One petitioner had argued that stations turning in their licenses should have 12 months in which to find an alternate channel to share, since the Communications Act ordinarily permits stations to remain off-the-air for up to 12 months. Nope, said the FCC, the 12-month provision applies only to stations with licenses. When an auction participant turns in its license, by definition it ceases to have a license and the 12-month option is no longer available. Plus, limiting the post-auction CSA options reduces interruption of service to the public and should "smooth the MVPD's post-auction transition process". And heads up: the FCC will ***not*** find and assign a sharing partner and will not guarantee that any station rolling the dice in this way will be able to find a willing sharer by the tight deadline.

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***CSA Limitations on Assignment of Shared Spectrum.*** Another aspect of the initial rules that distressed potential sharers was the FCC's view that because each sharer's license will be completely independent, that license could be sold at will (subject to the usual FCC approval, of course). That meant that one sharing licensee could opt to sell its piece of a channel to a third-party who might be a total stranger to the other sharing licensee. The idea of having to share with a stranger was distasteful to a lot of licensees, who argued that CSAs should be allowed to provide that non-withdrawing sharers have the right to acquire a withdrawing sharer's interest. Initially the FCC nixed this approach, saying that such a provision would constitute an unlawful right of reversion in favor of the survivor. But the FCC has changed its mind. OK, the FCC now says, we'll let you off the hook: Sharing parties may agree on any provisions they like for disposition of the rights of a withdrawing party, including allowing the remaining party to resume use of the entire channel.

*Sharing parties may agree on any provisions they like for disposition of the rights of a withdrawing party.*

This alternative does pose its own complications, though. If a channel-sharing agreement breaks up and the full channel goes back to one of the parties, that will reduce the number of stations in the market by one, which could in turn affect the relevant multiple ownership limitations of that market. While existing ownership combinations will be grandfathered, creation of any new duopoly might be prohibited. Yes, the FCC says, that's the way it is: multiple and cross-ownership rules still apply, and if loss of a sharer blocks a planned transaction, so be it.

On a related note, the Commission has also decided to let channel sharers agree among themselves what will happen in the event that one of the sharers loses its license by, *e.g.*, by revocation or even voluntary cancellation. Initially the FCC had taken the position that, if one sharer's license was revoked or otherwise terminated, that license – *i.e.*, the right to share the use of the particular channel – would automatically go back to the FCC, which could then grant the right to some new applicant. But some commenters objected to the notion that the Commission might become a matchmaker forcing unfamiliar sharers into a shotgun marriage of sorts. On further reflection, the Commission has agreed, and will allow sharers to address this potential circumstance in their CSAs.

***Flexibility of CSA Terms***. The FCC has decided the channel sharing deals will not have to match the term of a CSA to the expiration date of the underlying FCC licenses (although the FCC has invited comment on whether CSAs should be subject to a minimum length of term).

***No FCC Review of CSAs until AFTER the Auction*** – As noted above, CSAs are supposed to be entered into and submitted to the FCC *prior to* the auction. But the FCC now says that it won't get around to reviewing the substantive content of any CSAs until *after* the auction – which gives rise to the possibility that deals may have to be re-worked post-auction if the Commission finds terms in them that raise regulatory problems. (It will review CSAs before the auction only to "to confirm that the parties qualify for the anti-collusion rule exception".)

No problem, according to the FCC. It assures us all that it has no interest in substituting its judgment for the judgment of CSA participants "with respect to the terms of the agreement". Any post-auction CSA review will be limited to "confirming that the CSA contains the required provisions and that any terms beyond those related to sharing of bitstream and related technical facilities comport with our general rules and policies regarding licensee agreements". Still, sharers would be well-advised to insure that their CSAs provide for what happens if the FCC doesn't like a term that the parties consider to be critical.

***No Change of Class If Sharing Terminates***. The FCC observes that commercial and noncommercial stations may share a channel, and Class A and full power stations may also share. But sharing won't change their regulatory status apart from the fact that a Class A station sharing on a full power channel will enjoy the benefit of extra power. If a sharing deal breaks up, the noncommercial station will remain subject to noncommercial rules, even if it was sharing a channel not reserved for noncommercial use; and a Class A station will have to revert to Class A power limits even if it was sharing a full-power channel.

***Further Items Out for Comment***.

As noted above, the FCC has also posed a number of questions about further issues that will need to be addressed with respect to CSAs entered into outside the context of the spectrum auction. Generally, the Commission contemplates applying the same overall matrix of operational and licensing rules to such post-auction arrangements as will be applied to pre-auction CSAs. Those include the provisions relating to sharing arrangements between full-power and Class A stations and between commercial and noncommercial licensees. The Commission invites comments on that approach, as well as other questions, including:

*Second Generation Sharers' Construction Periods*. "First Generation" CSAs – *i.e.*, agreements entered into by auction participants – will have to be implemented within three months after the auction. But what about Second Generation CSAs involving a sharer that opted not to participate in the auction? In order to move onto somebody else's channel pursuant to a CSA, such a sec-

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*Court OKs FCC's revised take on OET-69*

# TVStudy Passes the D.C. Circuit Test

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A seemingly small but crucial element of the FCC's incentive auction preparations has survived a broadside attack in the U.S. Court of Appeals for the D.C. Circuit. As a result, *TVStudy* lives on and the auction's approach continues unimpeded.

At issue was the fact the FCC decided, in connection with the auction, to tweak the way it calculates TV station coverage areas and interference. Of course, what looks like a useful tweak to a regulator may look like a major – and harmful – overhaul to a regulatee. Luckily for the Commission, the court saw tweak rather than overhaul.

The story starts, as all incentive auction stories do, with the Middle Class Tax Relief and Job Creation Act of 2012, a/k/a the Spectrum Act. That's where Congress officially set the wheels in motion for the upcoming auction. In Section 1452(b)(2), Congress told the FCC to make all reasonable efforts to preserve, as of February 22, 2012, the coverage area and population served of each broadcast television licensee, as determined using the methodology described in OET Bulletin 69 of the Office of Engineering and Technology of the Commission.

*As the FCC saw it, the Spectrum Act did not bar the use of revised OET-69 input software.*

That may look pretty specific. In the eyes of some – most notably the NAB and Sinclair – it wasn't.

The first sign of trouble was the Commission's announcement, in early 2013, that it was planning to use new computer software, dubbed *TVStudy*, in running OET-69 calculations. (For those of you just joining us, OET-69 – real name: "OET Bulletin No. 69 Longley-Rice Methodology for Evaluating TV Coverage and Interference" – is the how-to guide developed by OET over the years for predicting, through use of the Longley-Rice propagation model, local television coverage areas and population served, as well as the likelihood of interference. OET-69 is more precise in predicting the effect of terrain obstacles on signal propagation than older methods.)

According to the Commission, *TVStudy* "runs much faster, provides greater accuracy in modeling and analysis, and is easier to use and more versatile". Plus, it's based on more current population data and more precise terrain data than were previously used. While all that sounds swell, lurking in the notion of "greater accuracy in modeling and analysis" was an ominous thought: a change in accuracy and analysis could result in reductions in the areas and populations to be calculated – and in fact it does for some stations. Think of *TVStudy* as the digital equivalent of sharpening your pencil before you draw contours in order to make them as compact as possible. (You can read more about TVStudy in our previous posts.)

The NAB and Sinclair Broadcast Group, concerned about potential loss of coverage areas and audience thanks to the greater accuracy of *TVStudy*, objected. They argued both to the Commission and the court that when Congress ordered the FCC to use "the methodology described in OET Bulletin 69", Congress meant the methodology in place on February 22, 2012, the day the Spectrum Act became law. Notwithstanding its supposed upsides, *TVStudy* was not part of that methodology and therefore could not be used consistently with the mandate of the Spectrum Act.

Hold on there, countered the Commission, we're not changing the methodology; rather, we're using new software to *implement* the existing OET-69 methodology using some new data sources (such as updated 2010 Census figures and antenna beam tilt data). As the Commission saw it, the Spectrum Act did not bar the use of such software. In effect, the FCC said that the auction statute does not require protecting station coverage as it would have been *calculated* in 2012. It requires using only the basic OET-69 framework from 2012, with no restriction on changing input data or the software that implements the framework, even if the outcome reduces protection for individual stations.

When parties are arguing about whether an agency has strayed from the direction Congress has given it, the court's first stop is what is known as a "*Chevron* analysis". The first question: Did Congress speak directly "to the precise question at issue" – that is, in this case, did Congress unambiguously foreclose the Commission's use of *TVStudy* along with updated data inputs when applying OET-69? Reviewing the statutory language, the court concluded that there was no such unambiguous direction there. To the contrary, the Spectrum Act directs the FCC to get the auction done successfully, and reliance on outdated data could threaten the auction's ultimate success. (The court seems to have been put off by the appellant's argument that Congress must have wanted the FCC to rely on old data and slower software. In the court's view, that notion was "counterintuitive".)

In this kind of appellate litigation, once the court is satisfied that it's not looking at a *Chevron Step 1* case – that is, that Congress has not spoken directly to the particular issue being raised – it's usually easy sledding for the agen-

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*Box Elder, SD – safe at last*

## Update: Pandora Cleared to be Broadcast Licensee

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The good folks of Box Elder, South Dakota can breathe a little easier now. Soon they should be able to listen to their local radio station and not have to worry about insidious alien influences. (If they get their tunes through the Internet, however, they're on their own.)

As we reported last month, Pandora, in an effort to reduce its copyright royalty costs, has been trying for a couple of years to purchase the only radio station in Box Elder. But that got Pandora mired in FCC red tape, as the Commission tried to determine whether Pandora complied with foreign ownership restrictions. The way was finally cleared in May, when the FCC agreed to consider Pandora's application subject to a number of conditions. (Check out our previous post for details.) At that time, the Commission held off on actually granting Pandora's application until at least some of those conditions were satisfied.

That has now happened: the Media Bureau has finally approved the assignment application, clearing the way for Pandora to become a radio station licensee.

To garner the Bureau's approval, Pandora submitted a "compliance plan" detailing steps it would take to periodically measure its foreign ownership and ensure that it did not exceed the levels approved in the Commission's May decision. "Detailing" might overstate things a bit, since the compliance plan (available here) came in at barely a page and a half. But it was apparently enough to satisfy the Bureau, despite the continued objections of ASCAP.

In the plan, Pandora outlines some of the steps it will take to monitor its foreign ownership, and commits to certifying compliance with the terms of the Commission's May Declaratory Ruling beginning with its 2017 biennial ownership reports. (Pandora argued, successfully, that it would not be able to compile the necessary information in time for the filing of its 2015 ownership reports.)

Among the monitoring steps it will take, Pandora has pledged to try revise its organizational documents to allow it to require shareholders to divulge their citizenship. Those revisions will require shareholder approval, and Pandora's 2015 shareholders meeting was already scheduled for June 4. Because of that, the Bureau agreed that Pandora can deal with this provision at its 2016 shareholders meeting. If Pandora's shareholders reject the changes in 2016, the company will have another chance at getting them approved in 2017. If they are rejected again, the Media Bureau intends to require Pandora to divest the station.

Wasting no time at all, within a week of the Bureau's grant Pandora had closed the deal. As a result, Pandora has now actually, finally, after almost two years of waiting, become the proud owner of a terrestrial broadcast radio station. We hope it turns out to have been worth the effort.

*(Continued from page 6)*

cy from there on out. If Congress hasn't addressed the specific issue, then the reviewing court will accord the agency a boatload of deference. Pretty much as long as what the agency has done is not totally crazy, the court will affirm it. In this case, the FCC was able to convince the court that *TVStudy* made all the sense in the world: it's faster and more accurate than the former software and, therefore, likely to lead to a successful auction, which is something Congress definitely wants. The court agreed.

Over and above their attack on *TVStudy*, the appellants raised a procedural challenge and a couple of other substantive points, to no avail. The procedural point – that the planned use of *TVStudy* was announced by OET, not the full Commission – didn't stop the court, which was satisfied that OET's announcement constituted substantial compliance with the relevant rules (it was published in the Federal Register, after all, so everybody had an opportunity to comment on it). Similarly, the court had no problem with the FCC's decisions (a) not to protect digital replacement translators – they operate on different channels from their primary station and protecting them might jeopardize the auction's success and (b) to require completion of the repacking process within 39 months because, again, a longer time could depress values and thereby threaten the auction.

The result here probably shouldn't surprise us. After all, the subject matter – the operation of OET-69, a process which even savvy communications lawyers may not be familiar with – is highly technical. Often, judges seem uncomfortable wading into deep technical weeds, especially when, under *Chevron*, the agency is supposed to be accorded *mucho* deference. Whether *TVStudy* was indeed the innocent and inspired innovation that the FCC claimed or a bit of high tech high jinks, as some feared, it makes little difference now. The court has blessed *TVStudy*, and we will have to look forward to its implementation as the auction plays out.

*The squeeze is on*

# FCC Proposes to Reserve UHF Channel Space for White Space Devices and Wireless Mics

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With the impending repack of the TV band, already scarce spectrum will be getting scarcer. In an effort to preserve UHF spectrum for unlicensed devices and wireless microphones, the FCC has issued a Notice of Proposed Rulemaking (*NPRM*) proposing the reservation of one vacant UHF TV channel in every geographic area of the country for use by unlicensed TV white space devices (WSD) and wireless microphones.

Under the proposal, once the incentive auction is completed, TV applicants – a universe that includes applicants for full-power, Class A, LPTV, TV translator and Broadcast Auxiliary Service (BAS) authorizations – would have to demonstrate that their proposed facilities would still leave one UHF channel available for unlicensed devices and wireless mics. LPTV's, translators and BAS applicants would be subject to that requirement immediately following the incentive auction. Full power and Class A applicants would get a grace period of 39 months (corresponding to the time allowed for stations that were not bought in the auction to move to their post-auction channels) during which they would be exempt from the requirement. As the Commission currently figures it, though, after that 39-month period Class A applicants would have to make the showing. Whether or not full power stations would be similarly burdened after the exemption period is a question about which the FCC expressly seeks comment.

*Some new prioritizing may be necessary.*

Other questions posed by the *NPRM*: Should Digital Replacement Translators (DRTs) forced to change channel post-auction be accorded some kind of priority over LPTV and translator applicants and if so, how? How about out-of-core LPTV stations eligible for Class A status which hadn't obtained that status by February 22, 2012: such stations won't be protected in the incentive auction – but should they be subjected to the vacant channel demonstration requirement?

The *NPRM* also recognizes that some new prioritizing may be necessary.

For example, in order to satisfy the vacant channel condition, should LPTV and/or translator displacement applicants be allowed to ignore applications for new or modified LPTV/translator facilities? Should Class A station applications (for the first time) be permitted to displace already authorized (or proposed) LPTV or translator stations? And what will happen to those stations – mostly LPTV — that use vacant TV channels for studio-transmitter links?

The Commission does not envision that a single uniform UHF channel would remain available nationwide or even throughout a particular DMA. Rather, the required showing would involve a demonstration that white space devices and wireless microphones operating within the same area as the proposed broadcast or BAS station will have access to at least one channel.

The remaining available TV channel need not be uniform throughout a market. The FCC suggests that broadcast applicants make a showing based on 2 km cells in a grid. As long as one vacant channel remains available in each grid, using existing Part 15-broadcast interference standards, it won't matter to what extent the channel may be different in every grid. The assumed power level for personal portable devices would be 40 mW, although the FCC asks whether it needs to accommodate 100 mW. Devices registered in the WSD database, including wireless mics, need not be considered by broadcast applicants, because presumably they are equipped to move about the spectrum as the database changes from time to time. Vacant channel availability at a given location would be determined using existing criteria governing where wireless WSD and microphones can operate.

The prospect of making full power stations subsidiary in any sense to unlicensed devices provoked dissents from Commissioners Pai and O'Rielly, with Commissioner Pai also criticizing the proposal to make LPTV stations defer to unlicensed uses. The majority put its mark down, stating that the Communications Act "endow[s] the Commission with expansive powers", including "broad authority to manage spectrum…in the public interest". The majority also cited a subsection of Section 6403 of the Spectrum Act which provides that nothing in that section "shall be construed to…expand or contract the authority of the Commission, except as otherwise expressly provided". In so doing, the majority opted not to cite another subsection of the same section which provides that nothing in that subsection should be read to alter the spectrum usage rights of low-power television stations.

It is unlikely that any industry affected by these proposals will be happy with them. LPTV stations are already discontent with the prospect of being squeezed out of business (as Pai suggests is almost certain to happen); they are likely to object. Users of wireless mi-

*(Continued on page 9)*

*Lining up at the Spectrum Auction starting gate*

# Attention TV Licensees: The FCC Has Released the Eligibility Public Notice

*By Harry F. Cole*
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The incentive spectrum auction process has gotten a lot more real. The FCC's Eligibility Public Notice has been released and the count-down toward the required certification of facilities has begun. To date, for many of us the spectrum auction has tended to be more imagined than concrete. Sure, we've read a lot about it and we know it'll almost certainly have a major impact on all of us. But we haven't yet been required to ***do*** anything (other than, maybe, prepare some rulemaking comments or attend an FCC webinar or meeting).

But that has now changed, dramatically, with the release of the Eligibility Public Notice and the accompanying list of TV stations eligible for (a) protection in the post-auction repack and (b) relinquishment in the auction.

First things first. If you're a full-power or Class A TV station, you should take a careful look at the eligibility list to see if you're on it. If you are, get out your calendar and put a big red circle on ***July 9, 2015***. That's the deadline by which you must complete and file your Pre-Auction Technical Certification Form (a/k/a FCC Form 2100, Schedule 381).

Next, get yourself a copy of FCC Form 2100, Schedule 381 and fill it out, a separate form for each station. We have previously given our readers a recap of the form, so if you have any questions about it, you may want to look here to refresh your recollection. You will need to access the FCC's various databases – CDBS, Licensing Management System, Antenna Registration System, and any other information on file with the FCC relative to your station – to make sure that the representations you make in the form are accurate. But the form asks for information that you can't get from the FCC's database, so you will need to work with (a) an engineer who knows your on-site equipment in detail and (b) your tower owner who knows when the last structural study was done and what it involved. Once you've completed the form(s), you get them filed through the FCC's Licensing Management System – ***NOT*** the old CDBS application filing system. (See the related article on Page 10.)

*The form asks for some information that you can't get from the FCC's databases.*

If, in preparing the form, you find that there is a discrepancy between your station's facilities and the corresponding information in your authorization and/or the related FCC databases, you should include with your form an exhibit providing the correct information.

If, on the other hand, you have to certify that you've been operating with facilities at variance from your authorization (and the FCC database info), you'll have either to (a) get your facilities back into conformity with your authorization or (b) file for modification of your facilities *and* seek an STA to allow you to continue to operate with parameters at variance. But don't count on getting those modified facilities protected in the repack: in order to get such protection, you had to have a license application to cover such modifications on file by May 29.

And if, on the other other hand, you find that your station is ***not*** on the list but you think it ***should*** be, all is not lost. You have until ***July 9*** to file a "Petition for Eligible Entity Status" explaining why you think you're eligible. The Bureau promises to hustle up a decision on such petitions and will alert each petitioner of the disposition of its petition "well in advance of the reverse auction". Practice tip: If you do file such a petition, be sure to include in the caption (*i.e.*, at the top of the first page) the name of the licensee, and the station's call sign, community of license (city and state), facility identification number and channel number, along with the file number of the authorization you believe should be eligible.

To paraphrase Churchill, this may not be the beginning of the end, but it sure feels like the end of something. From here on in, we'll all be sailing in largely uncharted waters. It's time to keep calm and carry on.

*(Continued from page 8)*

crophones have underscored to the FCC at length that a single 6 MHz channel is not sufficient to meet the needs of entertainment, conference, and sports venues – as well as news gathering situations – and, moreover, that they need clean spectrum and cannot share with other unlicensed devices that operate at unpredictable locations. Likewise WSD proponents have stressed that they need more than 6 MHz of spectrum.

In other words, get ready for yet another incentive auction/repack-spawned struggle.

The deadline for comments has not yet been set, but will be 30 days from the publication of the *NPRM* in the Federal Register, with reply comments due 30 days after that. Check with CommLawBlog.com for updates.

*A Memo to Clients guide for DIYers*

# Form 2100, Schedule 381: Getting There is Half the Fun!

*By Harry F. Cole*
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*cole@fhhlaw.com*

We have previously reported that TV stations included on the FCC's Eligibility List have got to file Form 2100, Schedule 381 (official name: "Pre-Auction Technical Certification Form") by ***July 9***, which is right around the corner. Over on the CommLawBlog quadrant of our bunker we have received a query from a reader, who asks how to go about submitting the form – as our reader notes, "[t]he instructions don't say how or where to file".

No problem. Just follow us....

Schedule 381 must be filed electronically through the FCC's relatively new Licensing and Management System (LMS). You can get to LMS at this link. It should look like Figure 1, above.

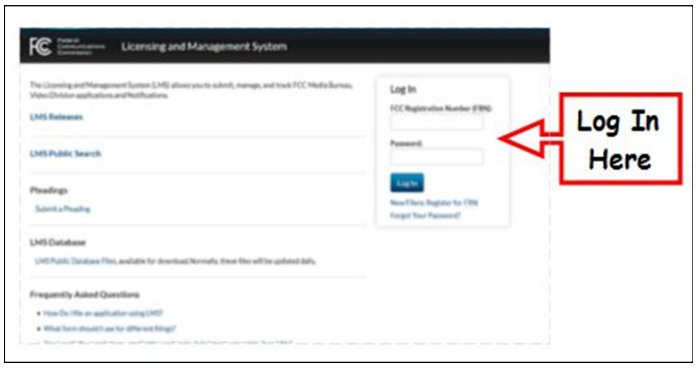



*Figure 1*

To get in the door, fill in the FCC Registration Number (FRN) and related password in the blanks in the upper right corner of the screen and click on the "Log In" button.

If your FRN happens to be associated with one or more stations that have multiple FRNs, the system will show you the "Select FRN of Record" screen (see Figure 2) and ask you to pick one FRN to use for each station currently associated with more than one FRN. (Hopefully obvious and unnecessary observation: we have blurred out the station-specific information in all these images.)


*Figure 2*

(If the station for which you're filing the Schedule 381 isn't listed on this intro screen, that means that that station is already associated exclusively with the FRN you used to get into LMS in the first place. In that case, you can scoot past this screen by simply clicking on the "Save and Continue" button.)

Once you've got that little detail worked out, the next screen you see should look like Figure 3 (next page).

If you have more than one station associated with this particular FRN, you should use the drop-down menu to pick the Facility ID Number of the station you're filing for. (If only one station is associated with that FRN, you shouldn't have to worry about this screen.)

After you choose the Facility ID Number you're working with, click on the "Authorizations" button in the upper left-hand corner. That should get you to the "Active Authorizations" screen that looks like Figure 4.

In the File Numbers column, find the file number that corresponds to the "license file number" for the station listed in Appendix A to the FCC's June 9 Eligibility Public Notice. Clicking on that file number should take you to a "DTV License" screen that looks like Figure 5.

Now click on the blue "File an Application" button, which will drop down a menu that includes an option for "Schedule 381 Certification". Click on that and voilà – the starting screen for Form 2100, Schedule 381 (see Figure 6.)

Unlike the path to get to the form, completing the form is relatively straightforward. Folks familiar with CDBS will note that LMS offers no "validation" or "test file" options. Essentially, the system tells you if you have omitted any necessary responses and won't let you file until the application is complete.

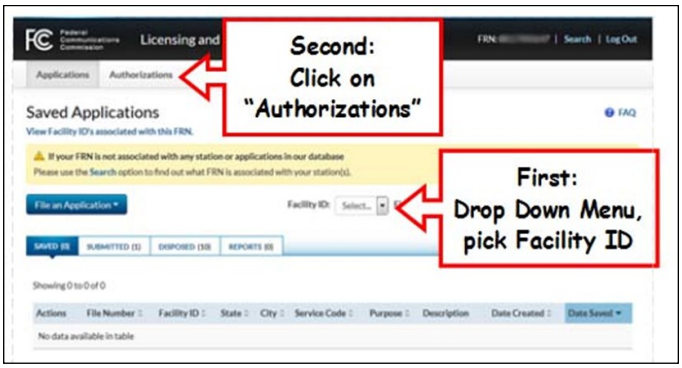



*Figure 3*

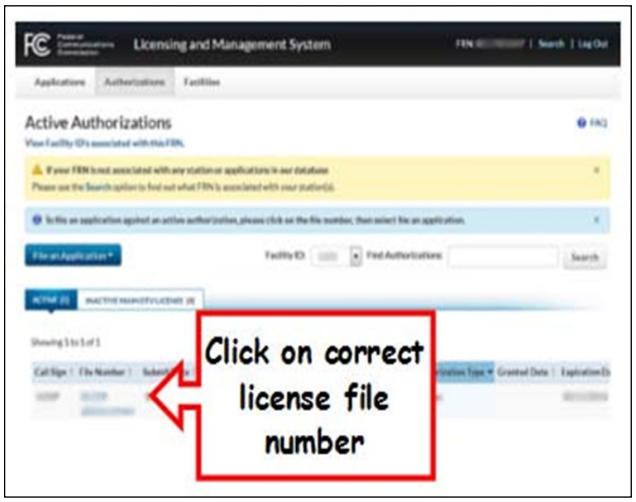



*Figure 4*

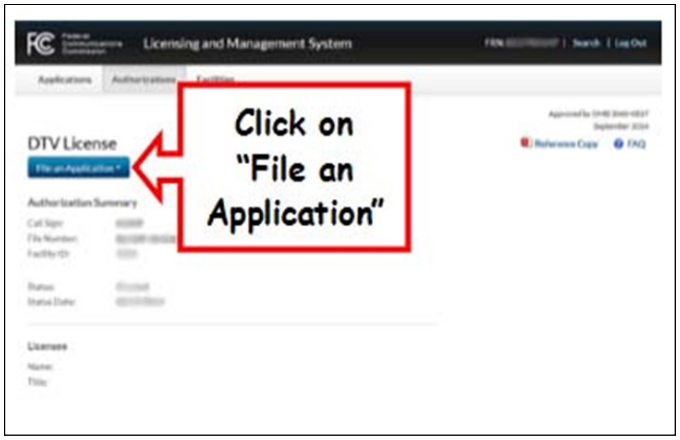



*Figure 5*

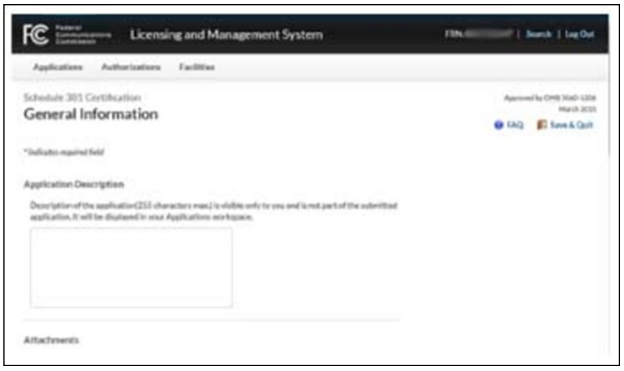



*Figure 6*

*(Continued from page 5)*

ond generation sharer would have to file for a construction permit to do so – but should that permit, when issued, be subject to a three-year construction term (*i.e.*, the standard shelf-life of a CP), or a three-month term?

*Carriage Rights for Channel Sharers.* The Spectrum Act provides that stations choosing to share a channel won't lose any of their MVPD (cable and satellite) carriage rights. The idea is that the total number of stations with such rights won't change, and it doesn't matter how many or how few TV channels those stations occupy. But Second Generation CSAs give rise to the possibility that sharers might include entities that never owned a station before (and thus never had any carriage rights to begin with). Will such entities be entitled to carriage?

The FCC has tentatively concluded that a sharer will have carriage rights only if it possessed such rights through an auction-related channel sharing agreement or because it was operating on its own non-shared channel and had carriage rights immediately prior to entering into a channel sharing agreement. However, the Commission expressly invites alternate suggestions.

So the FCC has opened some new opportunities for channel sharing, though perhaps not as much as some parties would like. Sharing remains a useful idea that may be financially advantageous and otherwise attractive to some stations, but sharing is still a bit of a minefield whose topography is still shifting. Anyone contemplating some type of sharing arrangement should be careful to get maximally familiar with all the relevant rules as soon as possible.

*(Continued from page 1)*

gency. Because such notices, if necessary, will clearly be of the highest priority, EAS equipment is programmed to move EAN messages to the head of the line, bumping any other EAS message that may otherwise be in the way. (NPT messages don't get that priority.) And unlike NPT and other event codes – which are limited to two minutes (to permit EAS units to reset after two minutes in the absence of an "end of message" (EOM) code) – EAN messages can be any length. The 2011 test was originally scheduled to run three minutes (that was later ratcheted down). Because the organizers wanted the test to be as realistic as possible, they used EAN rather than NPT in 2011.

That resulted in problems. The EAN header, as expected, generated a visual message saying there was a national emergency, but the audio said that it was only a test. Anticipating that, the Commission and FEMA had engaged in extensive outreach prior to the test to alert the public that a test would be conducted. They had also produced an "Only a Test" slide for use televisions stations and video service providers to use. Nevertheless, confusion still occurred, particularly among members of the public with disabilities. (As it turned out, some cable providers couldn't display the "Only a Test" slide.)

*ETRS will look a lot like the 2011 electronic filing platform, but with more bells and whistles.*

To deal with this event code problem in future tests, the FCC had three options. It could continue to use EAN – not a desirable alternative, given the problems encountered when it did just that in 2011. Or it could re-work the NPT code to act like the EAN code, with its prioritization and extra length. Or it could simply elect to use NPT in its existing form and forgo precise verisimilitude. The Commission has chosen that last option.

As it turns out, re-jiggering NPT to emulate EAN would be time-consuming and expensive – more than $3 million, according to FCC estimates. By contrast, since NPT is already included in the list of codes, all (or at least the vast majority of) EAS equipment currently in operation is set up to process NPT messages. While some EAS participants may have to reconfigure their gear so that it automatically responds to the NPT code, that apparently is a minor chore easily accomplished. In the Commission's view, a nationwide test using NPT should adequately test the overall EAS operation.

***Electronic Test Reporting***. After the 2011 nationwide test, EAS Participants were required to submit test results data, either on paper or through a temporary electronic filing system. Most took the electronic option, which not surprisingly provided data much more promptly than did the paper route. Happy with those results, the Commission has opted to implement a permanent, and mandatory, Electronic Test Reporting System (or ETRS).

ETRS will involve three separate forms. The first will simply identify the EAS participant. The second will be a "day of test" form to confirm receipt of the nationwide test alert (and, where applicable, propagation of the alert downstream). And the third, to be filed within 45 days of the nationwide test, will require participants to report detailed information about their receipt and propagation of the alert, including discussion of any complications encountered along the way.

ETRS will look a lot like the 2011 electronic filing platform, but it will have more bells and whistles. Data drawn from the Commission's databases (*e.g.*, ULS) regarding EAS Participants will pre-populate fields on the form. EAS Participants will be able to retrieve previous filings for 30 days to correct errors, get receipts verif--ying submission of completed reports, and file their reports in batches. Heads up on two points, though. First, as with just about every FCC form, filers will be required to attest to the truthfulness of their filings. And second, while the form will permit filers to enter their latitude and longitude in separate fields, it will require use of NAD83 figures, *not* NAD27.

The FCC's Public Safety & Homeland Security Bureau (or just the Bureau for our purpose) will release a public notice providing more details as we get closer to the ETRS launch date. Once the form is officially available, EAS Participants will be required to review and update the pre-populated fields and make any necessary corrections.

***Visual Crawl and Audio Accessibility***. EAS alerts are supposed to be both aural and visual, with the latter generally displayed either as a page of fixed text or a video crawl at the top of the screen. The 2011 nationwide test turned up some problems on this front, particularly with respect to disabled viewers. Video crawls scrolled across some screens too quickly, and the font in some visual messages was difficult to read.

Some commenters suggested that more time should be provided to allow stakeholders to resolve the accessibility issues, but the Commission was not in a waiting mood. While the FCC urged continued collaboration in the private sector, it concluded that at least *some* basic rules are needed *now*. Accordingly, the EAS rules have been amended to require that visual EAS messages be displayed in a size, color, contrast, location and speed that is readily readable and understandable. The rules don't specify a particular font size or crawl speed, but they do require that the entire visual message be displayed at least once during any EAS alert.

The Commission also reiterated the existing requirement that visual messages be displayed at the top of the screen or where they won't interfere with other video messages.

*(Continued on page 13)*

*(Continued from page 12)*

To the requirement it added language mandating that the visual message not contain overlapping lines of EAS text or extend beyond the viewable display (except for crawls, which of course are intended to scroll on and off the screen).

As for EAS alert audio, the Commission will now require that the message be played in full at least once during any EAS alert. The Commission also said it expects audio messages to be delivered "in a manner and cadence that is sufficient for the consumer who does not have a hearing loss to readily comprehend it".

***Next Steps***. Recognizing that EAS is a work in progress, the Commission has directed the Bureau to continue collaboration with FEMA and other stakeholders. That collaboration will include a workshop, hosted in conjunction with FEMA, focusing on (a) increasing the flexibility of the EAS to expand its use by emergency managers at the state and local levels, and (b) the improvement of alert accessibility. Look for the workshop to happen before mid-September.

Meanwhile, when will EAS participants be expected to comply with the new rules?

Participants will have 12 months from the effective date of the new rules to get their equipment set up both to use the six zeroes code and to respond automatically to an NPT alert. They will have six months from the effective date to insure that they comply with the visual display legibility, completeness and placement standards.

Meanwhile, the required review and update of pre-populated fields in the ETRS will have to be completed within six months of the later of (a) the effective date of the ETRS rules or (b) the official launch of ETRS. We're betting that the latter of those two potential deadlines will be the one to worry about. That's because the ETRS will be an "information collection", which means that the FCC will have to get approval from the Office of Management and Budget before ETRS can be rolled out.

What is the effective date of all these new rules, you ask? That would be ***July 30, 2015*** for all the rules *except* Sections 11.21(a), and §11.61(a)(3)(iv), which involve information collections that will need a thumbs-up from OMB before they can kick in.

## FHH - On the Job, On the Go

On June 23-24, **Harry Cole** and **Cheng Liu** attended the American Conference Institute's FCC Boot Camp in San Francisco. **Harry** was presenting on the evolution of the FCC's must carry policies.

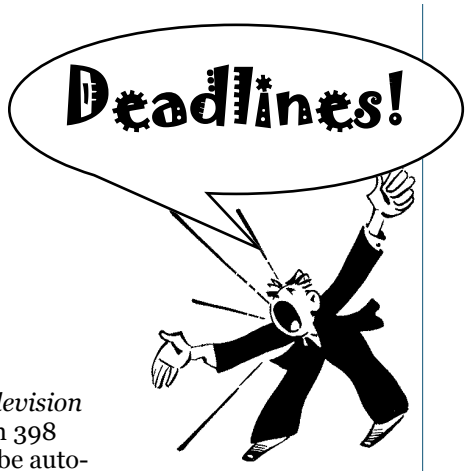
**Frank Montero** will be attending the Public Media Development & Marketing Conference in Washington, D.C. on July 8-9. And the following week (July 15-16, to be exact), he'll be attending *and* presenting at the MMTC Access to Capital Conference in Washington. Look for the panel titled "*Money and Technomics: Financing the Capital Pipeline from Angels to IPOs*". And the *following* week he'll be attending the LISTA (that's the Latinos in Information Sciences and Technology Association) Conference in NYC – Frank's on the LISTA Board of Directors. And if, despite all those appearances, you still happen to be jonesin' for some **Frank M**, check out the upcoming issue of Radio Ink's annual *40 Most Powerful People in Radio* – he's got an article there recapping the most important legal/regulatory issues in radio.

**Frank Jazzo** will be conducting "The FCC/Legal Game Show" session along with the NAB's **Scott Goodwin** at the annual convention of the Arkansas Broadcasters Association in Little Rock on July 24.

And on the same day **Matt McCormick** will be attending the meeting of the Board of Directors of the Oregon Association of Broadcasters in Beaverton.

Come August, **Scott Johnson** will be south-bound. On August 8, look for him at the South Carolina Broadcasters Association's Annual Star Awards dinner and ceremony in Columbia. He'll be speaking there. And the following week Scott'll be in Birmingham for the Alabama Broadcasters Convention August 14-15. He'll be presenting a program on FCC legal issues and goings-on in Congress.

And from our If It's Tuesday, This Must Be Belgium file, **Kathy Kleiman** is making the rounds on the other side of the pond. First stop: InspireFest in Dublin, a festival of leaders (mainly women) in STEM from across the EU and the US. It was sponsored by Silicon Republic, the high tech publication. Next stops: Paris and Stockholm, to discuss the history of women in computing and the advantages of diversity in computing. You can safely assume that along the way she'll also be screening The Computers, her documentary about the women who programmed ENIAC.




**July 9, 2015**

***Form 2100, Schedule 381*** – All *television stations* and *Class A television* stations must electronically file Form 2100, Schedule 381 to provide information concerning their technical facilities. This form must be filed using the Commission's Licensing and Management System (LMS) and is being sought in connection with the spectrum incentive auction. The information provided will assist the Commission in the repacking process and determining reimbursement amounts/needs for repacked licensees.

**July 10, 2015**

***Children's Television Programming Reports*** – For all *commercial television* and *Class A television* stations, the second quarter 2015 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 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 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.

**August 3, 2015**

***EEO Mid-Term Reports*** – All *radio* station employment units *with eleven (11) or more full-time employees* and located in the **North Carolina** and **South Carolina** must file EEO Mid-Term Reports electronically on FCC Form 397.

***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 **Illinois** and **Wisconsin** must file a biennial Ownership Report (FCC Form 323-E). All reports must be filed electronically.

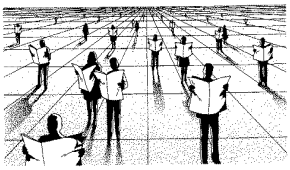
***Noncommercial Radio Ownership Reports*** – All *noncommercial radio* stations located in the **California**, **North Carolina** and **South Carolina** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323-E.

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

# Updates On The News

***Meet the new CommLawBlog, NOT the same as the old CommLawBlog*** — As longtime readers of our blog, CommLawBlog, have doubtless noticed already, the blog looks different. That's because, with the help of our friends at LexBlog, as of June 25 we upgraded ourselves in a number of respects, some obvious, some not so. The content, of course, hasn't changed. It's all there, going back to our earliest posts from 2007. So don't worry on that front.

But you will notice, most obviously, our new sans serif typeface. The experts assure us this is friendlier to readers. We'll take their word for it – they're the experts. So kiss good-bye to outgoing typeface Georgia and say hello to Proxima Nova. There are other, less obvious but ideally useful changes – including quicker access (in the top bar for desktop users and through the menu button for mobile users) to our links to FCC resources and various search options.



Readers who subscribe to our email notification system will also notice that, rather than receiving a new email every time we post new content, they'll receive a once-a-day email listing all new posts since the previous email. Our RSS feed will supposedly be updated every 30 minutes, so email subscribers may want to sign up for the RSS feed to be sure that they're getting the latest news.

If you prefer to read the blog on your mobile device, there's more good news: we're now using a "responsive design" that adjusts what you're seeing on the screen to the particular screen you happen to be seeing it on. This is intended to improve the mobile reader's experience. We're all for that. Grab your device and check out for yourself how the new design is working (but not while you're driving, please).

The move to "responsive design" is not entirely altruistic on our part. The folks at Google have tweaked their search engine algorithm to favor sites that are mobile-friendly. In other words, thanks to our new design and Google's tweaking, we should show up higher in search results and, as a result, get more hits (or, in LexBlog's more genteel terminology, "visits").

Which brings us to our latest CommLawBlog contest!

In the greater scheme of things, the number of hits (um, we mean "visits") we get here in the *Memo to Clients* bunker (we share the space with CommLawBlog) really doesn't make much difference to our readers. But the hit totals do reflect whether the blog is being read (and, we assume, appreciated), so we keep an eye on them, mainly to make ourselves feel good. And what do you know – between 2008 (when we signed on with LexBlog and they started keeping track of that kind of thing) and the end of this past May, we'd had more than 960,000 total "visits"; we're over 970,000 right now.

If you think like us (not something you may be comfortable admitting), you'll know where this is heading.

We're fewer than 30,000 hits shy of the 1,000,000 hit mark.

Now, 1,000,000 hits is small potatoes to lots of Big Boy websites, who probably get that many on a slow Tuesday afternoon. But 1,000,000 is a big round number to us, and we're happy to view it as an excuse for celebration. It also gives us an opportunity to express our sincere appreciation to our readers, who are really the raison d'être for our efforts here. Thanks to all of you.

So the question for you is: When are we going to get to Hit Number 1,000,000? We're asking you to take a guess as to when that 1,000,000th visit will show up on our stats page. You can submit your entry via email (address it to CommLawBlog@fhhlaw.com) or through our twitter account (using the hashtag #Commlawblog1million). Just tell us the date and time (hour and minute). In the event that two or more identical entries are submitted, the first one we receive will be the winner (but we'll try to find something nice for the runner(s)-up). If nobody gets it exactly right, we may go all "Price Is Right" and give it to the nearest guess that doesn't go over the correct answer. Or not. We'll see.

Why would you bother to venture a guess? How about a pair of CommLawBlog sunglasses! A special CommLawBlog corkscrew – just like the one we use here in the *Memo to Clients* bunker! A CommLawBlog lanyard! An invite to any celebratory party we may end up throwing! And if we have some t-shirts printed up, you'll get one of those, too. Plus, we'll put up a post announcing your winner-ship! And if all of that doesn't get your attention, how about this: if the winner sends us a photo of him/herself wearing our shades, we'll figure out a way to work that image into a graphic that we'll use – tastefully, of course – to illustrate an upcoming post on CommLawBlog.

A couple of hints. For some time we've been getting about 12,000-15,000 visits a month, but that was before our "responsive design" upgrade. The smart money around here figures that the Big Day will be sometime in August. FWIW; the Swami's got dibs on August 26, 2015 at 1:22 a.m. Good luck.

[*Fine print disclaimer (you had to see this coming): Our contest is intended to be an amusing diversion, not a source of angst. We here in the Memo to Clients bunker will determine who wins and who loses, and our decision will be final.*]