Fletcher, Heald & Hildreth®

Memorandum to Clients

December 2017

No. 17-12

FCC Approves Voluntary ATSC 3.0 Next Gen TV Implementation

New Opportunities for Next Gen Broadcasters and Simulcast "Host" Stations, but Controversies Remain.

Paul J. Feldman
feldman@fhhlaw.com
703-812-0403

At the FCC's November Open Meeting, the Commission adopted a Report and Order authorizing television broadcasters to use the "Next Generation" broadcast television (Next Gen TV) transmission standard (also called "ATSC 3.0") on a voluntary, market-driven basis. This Order may herald a revolutionary change in TV broadcasting, opening new business models for Next Gen broadcasters as well as for other stations that act as "hosts."

However, the Order requires full power TV stations voluntarily transmitting in ATSC 3.0 to still be required to continue transmitting current-generation digital television (DTV) service using the ATSC 1.0 transmission standard to their viewers. This requirement to simulcast ATSC 1.0 with ATSC 3.0 is to be accomplished by stations partnering with other stations acting as "hosts" to transmit the "guest" station's 1.0 or 3.0 format signal. Class A and low power TV ("LPTV") stations will be allowed to "flash cut" directly to transmission in ATSC 3.0. In connection with the release of the Order, the Commission also issued a Further Notice of Proposed Rulemaking seeking comments on issues related to exceptions and waivers of the simulcast requirement, and on whether to let broadcasters use vacant TV channels to encourage use of Next Gen TV. These changes will also likely impact MVPDs and even wireless carriers. However, the Order has generated significant controversies that may not go away quickly. But let's take a few steps back before we address all that.

First off, what is Next Gen TV? Glad you asked.

Inside this issue . . .

ATSC 3.0 is the new TV transmission standard developed by the Advanced Television Systems Committee as "the world's first Internet Protocol (IP)-based broadcast transmission platform." It is designed to merge the capabilities of over-the-air (OTA) broadcasting with the broadband viewing and information delivery methods of the Internet, while using the same 6 MHz channels presently allocated for DTV service. The promise of this new TV transmission standard is the potential to enable broadcasters to provide consumers with a "more immersive and enjoyable television viewing experience" both at home and on mobile screens.

Live TV transmission to mobile phones would open a potentially huge new market for TV broadcasters. Ad-

(Continued on page 2)

ATSC 3.0 ***Next Gen TV*** — *(Continued from page 1)*

ditionally, ATSC 3.0 is designed to enable delivery of "Ultra High Definition" television, with greater spatial resolution, higher dynamic range and frame rate, along with enhanced audio.

Lastly, ATSC 3.0 is also designed to allow broadcasters to geographically localize, as well as personalize, the delivery of TV programming. Geographic localization can be used to provide targeted public safety messages. But most importantly for the broadcast industry, it can provide targeted advertising, *a la* the Internet. Put this all together, and implementation of this next standard may not only be more revolutionary than the implementation of DTV, but it holds the promise of providing broadcasters significant new bases for revenue streams. That's big. Notably, by requiring the simulcasting of ATSC 3.0 and 1.0 for full power stations, the Order establishes an important role for LPTV, Class A, and independent full power stations as "host" stations. This may be a temporary but multi-year economic lifeline for such stations.

A number of regulatory issues are triggered with the authorizing TV stations to commence broadcasting on the ATSC 3.0 standard.

Based on the Order, here are some of the most important elements :

1. **Voluntary Use**. The Order authorizes the *voluntary* use of the ATSC 3.0 transmission standard. Broadcasters will be permitted, but not required, to transmit ATSC 3.0 signals, as long as they comply with the requirements of the Order and related rules. Alternatively, broadcasters may choose to continue transmitting their signals solely in the currently authorized ATSC 1.0 transmission standard. This may make sense for many stations, at least until new consumer equipment capable of receiving and displaying ATSC 3.0 signals penetrates a significant percentage of the market.

2. **Local Simulcasting**. The Order requires Next Gen TV broadcasters to simulcast the primary video programming stream of their ATSC 3.0 channels in an ATSC 1.0 format. This is so that viewers will continue to receive ATSC 1.0 service. Broadcasters must meet this requirement by partnering with a temporary "host" station in their local market to either: 1) air an ATSC 3.0 channel at the host's facility, while using their original facility to continue to provide an ATSC 1.0 simulcast channel, or 2) air an ATSC 1.0 simulcast channel at the temporary host's facility, while converting their original facility to provide an ATSC 3.0 channel. For five years, the programming aired on the ATSC 1.0 simulcast channel must be "substantially similar" to the programming aired on the 3.0 channel, and Next Gen TV broadcaster's 1.0 simulcast channel must continue to cover its entire community of license. Stations that partner to facilitate simulcasting will be required to enter into written simulcasting agreements similar to the agreements currently required between stations engaged in channel sharing.

3. **Licensing.** The Order states that 1.0 and 3.0 channels aired on a partner host station be licensed as temporary second channels of the originating broadcaster. That is, the ATSC 1.0 and ATSC 3.0 signals of a Next Gen TV broadcaster will be two separately authorized companion channels under the broadcaster's single, unified license. Broadcasters will be required to file an application to obtain Commission approval before a 1.0 simulcast channel or a 3.0 channel aired on a partner host station can go on the air, and before an existing 1.0 station can convert to 3.0 operation. However, such applications will generally be treated as minor modifications, and the Order adopted a streamlined "one-step" expedited processing approach with a target of granting applications 15 business days after publication of Public Notice of the application.

(Continued on page 3)

ATSC 3.0 *Next Gen TV — (Continued from page 2)*

4. **MVPD Carriage.** A station's ATSC 1.0 signal with mandatory carriage rights will retain those rights, but a station's 3.0 signal will not have mandatory carriage rights during the time while the Commission requires local simulcasting. The Commission did not adopt new rules to govern carriage of 3.0 signals pursuant to retransmission consent. Rather, voluntary carriage of 3.0 signals is left to marketplace negotiations between broadcasters and MVPDs. Stations relocating their 1.0 simulcast channel to a host facility will be required to provide notice to MVPDs currently carrying the station: 1) at least 120 days in advance of relocating their 1.0 simulcast channel to a temporary host facility if the location occurs during the post-incentive auction transition period; and 2) at least 90 days in advance of relocating their 1.0 simulcast channel to a temporary host facility if the relocation occurs after the post-incentive auction transition period.

Attached to the Order is a Further Notice of Proposed Rulemaking, seeking comments on a few related issues. Specifically, the Commission seeks comments on the criteria to be used to evaluate exceptions and waivers of the requirement that Next Gen TV broadcasters partner with a local station to simulcast DTV signals. The Commission also seeks comment on the extent to which it should let full power broadcasters use vacant TV channels to encourage use of Next Gen TV, and how it should define a channel as "vacant."

Of course, it would be difficult for an Order that so extensively impacts the future of TV broadcasting to avoid controversy, and there is plenty of controversy in this case. Both Commissioner Clyburn and Commissioner Rosenworcel dissented from the Order. Commissioner Clyburn's dissent primarily raised the concern that ATSC 3.0 transmissions are not "backward compatible" with the current DTV standard, and as a result, consumers will have to purchase equipment to access free over the air TV once the simulcasting period concludes. She also wondered whether ATSC 1.0 simulcasts will be made available in HD format. Broadly, she is worried that this Order will create a new kind of "digital divide." Lastly, she raised a concern about the uncertain impact of ATSC 3.0 operations on consumer privacy, in light of significant amount of data that Next Gen broadcasters would be collecting, on their TV audience's viewing habits, apparently without their consent, in connection with providing targeted advertising. Commissioner Rosenworcel shared those concerns and argued that the Commission should take an approach similar to the analog-DTV transition, by seeking Congressional input, providing for interim testing, and making funds available for consumers to purchase ATSC 3.0 compatible equipment. She also noted that in light of the ATSC 3.0 patents owned by Sinclair Broadcasting, there is a real risk that Sinclair will use those patents improperly to extort excessive licensing fees from MVPDs and others, with the costs passed on to consumers. This only enhances concerns by many parties regarding Sinclair's dominant position if its pending proposed purchase of Tribune Media is approved.

In any case, this Order may have a revolutionary impact on the TV broadcast industry. Comments are due on the Further Notice 60 days after publication in the *Federal Register,* which has not yet occurred. Please contact us if you would like more details on the Order and Further Notice.

Deregulation Picks Up Steam: New Media Ownership Rules Foreshadow a New Terrain for Broadcasters

Daniel A. Kirkpatrick
kirkpatrick@fhhlaw.com
703-812-0432

When Ajit Pai took over as Chairman of the FCC, it was widely expected that he would take steps to relax existing restrictions on media ownership. The last month, in particular, has seen a flurry of activity on that front. As we reported, the Chairman released at the end of October the proposed text of an Order on Reconsideration relaxing or eliminating a number of broadcast ownership rules. That Order on Reconsideration was, as expected, adopted at the FCC's November meeting in essentially the same form as it was proposed. The Chairman days later also released a draft Notice of Proposed Rulemaking opening a separate proceeding to conduct beginning a "comprehensive review" of the national television ownership cap. That NPRM is due for a vote at the Commission's Dec. 14 Open Meeting.

The Chairman clearly is interested in making significant changes to the media ownership landscape. What do those changes mean and what can we expect going forward? Read on to find out.

Order on Reconsideration – 2010/2014 Quadrennial Ownership Review

At its Nov. 16 meeting, the Commission, on a three-two party-line vote, adopted an Order on Reconsideration that significantly relaxed a number of media ownership rules. This Order brought an end (at least for now) to the Commission's 2010 and 2014 quadrennial reviews of its media ownership rules.

Last September, the Commission, under former Chairman Tom Wheeler, had attempted to conclude those reviews with its own Second Report and Order. That decision, at least for the most part, left the media ownership rules unchanged. A number of parties, however, asked the Commission to reconsider that decision and, with the change in administration following last November's elections, has now reconsidered and reversed most of the decisions made in the 2016 Order. As noted above, this Reconsideration Order was essentially the same as the version proposed by the Chairman in October, so we will just briefly address the major changes it makes to the media ownership rules when it becomes effective (more on that later).

- **Elimination of the newspaper/broadcast cross-ownership rule.** Based in large part on its findings regarding the changes in the overall media landscape since this rule was adopted in 1975, the Commission found that prohibiting common ownership of newspapers and broadcast stations is no longer necessary to protect viewpoint diversity or competition — and could, in fact, harm localism. As a result, the Commission eliminated any prohibition on newspaper ownership by broadcast station owners.

- **Elimination of the radio/television cross-ownership rule.** The elimination of this rule was based primarily on two related conclusions. First, the Commission found that the record showed that broadcast radio stations, which produce diminishing amounts of local news, no longer contributed to viewpoint diversity enough to justify the rule. This is particu-

(Continued on page 5)

New Media Ownership Rules *— (Continued from page 4)*

larly in light of the increasing contributions to viewpoint diversity from cable, the internet, and other "non-traditional" voices. Second, in light of the fact that the rule already allows significant cross-ownership, and there continue to exist separate television and radio local ownership caps, the Commission found that eliminating the rule would not have a significant effect on common ownership.

- **Elimination of the "eight voices" test for local television ownership.** In the Reconsideration Order, the Commission determines that the eight-voices test for local ownership cannot be supported by any evidence in the record. This test prohibited common ownership of two television stations unless at least eight independent television station owners remained in the market. Indeed, the Reconsideration Order questions whether there has ever been sufficient evidence to support drawing a line at eight voices remaining in a market, or at any other specific number. Finding that the rule may in fact prevent combinations that would enhance localism, particularly in small and mid-sized markets,the Commission eliminated the eight-voices test. With elimination of this portion of the rule, duopolies will now be allowed in all markets both stations are not among the top-four rated stations.

- **Relaxation of the top-four restriction on television duopolies.** The Reconsideration Order retains, at least formally, the existing prohibition on common ownership of two of the four most highly-rated stations in a market (generally the ABC, CBS, Fox, and NBC affiliates). The Commission, however, also adopts a policy that will allow, on a case-by-case basis, waivers of the top four prohibition. The Reconsideration Order does not adopt a rigid set of criteria for such waivers, but does identify some of the factors it will consider in granting waivers. These factors include, among others: the stations' ratings and revenue share (from both advertising and retransmission consent fees) in the market; other market characteristics, such as the existence of strong competitors outside the top-four; and likely effects on programming serving local needs and interests. Waiver requests should be based on data covering a "substantial period," which the Commission suggests could be around three years, to minimize the impact of short-term changes.

- **Elimination of attribution of joint sales agreements (JSAs)**. The Commission finds that there was not sufficient evidence in 2014 to support making JSAs attributable to the overall ownership calculations, nor is there such evidence now. Concluding that the record does not show that JSAs allow one station to exert undue influence over the operation of a second station, they will no longer be treated as attributable.

- **Minimal relaxation of the local radio ownership rule regarding embedded markets**. The Reconsideration Order largely leaves the local radio ownership rule untouched with one small exception. Currently, a number of radio markets (which are defined in most cases by Nielsen ratings information) include embedded

(Continued on page 6)

New Media Ownership Rules *— (Continued from page 5)*

submarkets. Any combination in such markets must show compliance with the rule in the larger market and in each embedded market. Recognizing that this may produce unintended consequences, at least in the Washington D.C. and New York markets, each of which contains multiple, non-contiguous embedded markets, the Reconsideration Order adopts a presumption in favor of certain waivers in those markets.

- **Establishment of a diversity/incubator program.** The Reconsideration Order also includes a section that serves as a Notice of Proposed Rulemaking regarding the establishment of some type of incubator program to encourage greater diversity in media ownership. Such a program, as envisioned by the NPRM, would work by granting waivers of the ownership rules to applicants who establish programs to enhance broadcast ownership by new and diverse entrants. Finding that such a program may be desirable in the abstract, the Commission requests comment on how any such program should be structured and implemented to serve its goals effective and comply with legal requirements.

Interested parties are now waiting for the Reconsideration Order to be published in the Federal Register. When that happens, a shot clock will begin for the filing of court appeals. It seems almost certain that such appeals will be filed by the public interest groups that have long opposed media ownership deregulation. Portions of the Reconsideration Order may also be appealed by other parties. This could include, for example, the waiver policy for top-four combinations in television which has been criticized by the cable industry.

When any such appeals are filed, it is likely that they will include a request to stay the effectiveness of the rules. As in the case of the reinstatement of the UHF discount earlier this year, courts are generally reluctant to grant stays, although the potential impact of these rules, and the difficulty in unwinding combinations in the event they are ultimately overturned, may change a court's calculus somewhat. If the rules are stayed, it may be an extremely long time before they go into effect.

Whenever the rules do go into effect, it will also take some time for the Commission to flesh out the parameters of its top-four waiver policy. As with any such case-by-case policy, the exact nature of policy will depend on the filing, and resolution, of specific requests for waiver. Given that it would include combinations of top-four rated stations in a number of markets, it is easy to imagine that the pending Sinclair-Tribune merger will be the first "test-case" of the new policy. If so, the resolution of any such waiver requests is itself certain to be controversial and could, potentially, lead to further appeals to the courts. In any event, this relaxation may not trigger an immediate flood of waiver requests, as some potential applicants may decide to wait for additional clarity as to how those requests will be evaluated.

(Continued on page 7)

New Media Ownership Rules *— (Continued from page 6)*

If you're left feeling unsatisfied by this wave of deregulation (as many radio licensees may be), it is worth remembering that the next quadrennial review begins in 2018. As a result, all of the Commission's media ownership rules (except, as explained later, the national television ownership cap) will once again be subject to further review.

Notice of Proposed Rulemaking – National Ownership Cap

Just days after the Commission adopted the Reconsideration Order, Chairman Pai released the proposed text of a Notice of Proposed Rulemaking to amend the Commission's national television ownership cap. If adopted, this would continue the Chairman's push to deregulate television ownership. The national ownership cap currently prevents any entity from owning or controlling television stations that reach more than 39 percent of the television households in the country. (Although, with the reinstatement of the UHF discount, the actual percent of households reached may be substantially higher.)

As the Chairman promised to do in reinstating the UHF discount back in April, the NPRM begins a "broad review" of the national ownership cap. The NPRM requests comment on whether the Commission has the legal authority to modify or eliminate the 39 percent cap at all. This may prove perhaps the most interesting question in this proceeding.

Unlike many of the specific limits set forth in the Commission's rules, the 39 percent cap was explicitly established by Congress in 2004 and was removed from review in the quadrennial ownership reviews. The NPRM seeks comment on whether the Commission cannot review it at is prohibited from reviewing it at all, or just cannot do so in the context of the quadrennial reviews.

While the NPRM certainly suggests that the Commission has at least tentatively concluded that it has the authority to review the national ownership cap, Commissioner O'Reilly (one of the two other Republican votes Chairman Pai will almost certainly need to adopt any change) has clearly indicated in the past that he disagrees. In his dissent to the Wheeler Commission's 2016 decision to eliminate the UHF discount, he "reject[ed] the assertion that the Commission has authority to modify the National Television Ownership Rule in any way." Nevertheless, Commissioner O'Reilly has indicated that he supports asking the question again now in the NPRM. It will be interesting to see how this plays out over the coming months.

Assuming the Commission has the authority to modify the national ownership cap, the NPRM seeks comment on whether the rule should be modified or eliminated in light of the changes in the media landscape since 2004. This includes the proliferation of non-broadcast programming, changes in the network-affiliate relationship, and consolidation among MVPDs, among other things. The NPRM also seeks comment on how compliance

(Continued on page 9)

One Small Step for Cell Sites: FCC Finds that Replacing Utility Poles is Unlikely to Affect Historical Properties

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

The Federal Communications Commission has taken a very tiny step toward eliminating unnecessary obstacles to the installation of communications facilities on existing structures without triggering historic review obligations. For the last year, the FCC has been reviewing the various regulatory obstacles that are hindering, delaying, and making more expensive the process of establishing new cell sites. The need for reform in this area is widely acknowledged to be increasingly urgent since 5G technology will require the installation of thousands, or even hundreds of thousands, of small cell locations in the next five years. Both large and small cells are currently covered by onerous environmental and historical review. These obligations require archeological excavations, extensive (and expensive) consultation with Indian tribes, and other machinations to ensure that no historical or tribal artifacts will be affected by the installation of a new communications facility on an existing telephone pole, a building, a treehouse, or other structure.

The FCC has somewhat dubiously declared that installation of communications facilities in, or on any new or existing structure (with a few exceptions), constitutes a "federal undertaking" that triggers review obligations under historic preservation laws. It is now, to its credit, taking steps to ameliorate the significant adverse effects of subjecting virtually all communications installations to these procedures.

The FCC in a 2014 Order eliminated, or severely circumscribed, the circumstances where historic review is required for small, unobtrusive installations in or on existing structures. It then opened a wider inquiry into the entire gamut of municipal, tribal and historical obstacles to prompt cell site construction. The comment cycle in that Docket has been closed since the summer, so a decision on those matters may be out as early as the first quarter of next year. In the meantime, on Nov. 15, the Commission adopted a brief Order dealing with the low-hanging fruit of that policy review.

The current rules provide that replacement of an existing utility pole that has not gone through the historic review process triggers a full historic/tribal/environmental review if the new structure is going to hold a small wireless transmitter. Since these would normally be economical and natural places to install small 5G facilities, the need for a burdensome review posed a needless obstacle to using such replacement poles. The FCC made the realistic determination that simply replacing an existing pole with no new disturbance of the ground was unlikely to create any new threat to protected sites. The FCC did grudgingly allow the replacement poles to be up to 10 percent taller than the original pole, but no new ground can be disturbed (a difficult proposition for the poor soul who must install a new pole in the ground without enlarging — even by a scintilla — the hole in which the pole is fixed). One

(Continued on page 9)

New Media Ownership Rules *— (Continued from page 7)*

with any modified cap (or the existing 39 percent cap, if it is retained) should be calculated, including whether the UHF discount should be modified or eliminated. Finally, the NPRM asks how any existing ownership combinations should be grandfathered if any changes to the rules make them non-compliant.

Assuming it is adopted at the Commission's December meeting, comments would be due 30 days after Federal Register publication, and reply comments 30 days after that. Absent any extension of those deadlines, the comment cycle could reasonably be expected to close by late in the first quarter of 2018, meaning a potential decision could come during the second quarter of the year. Any such decision, assuming the Chairman is able to garner three votes, will almost certainly be appealed. This is particularly likely here in light of the rather thorny legal questions surrounding the Commission's authority in this area.

Taken as a whole, it seems clear that Chairman Pai is moving with significant speed to adopt a deregulatory agenda. Of course, this should not really come as a great surprise, since he has long been an outspoken advocate of deregulation.

The ultimate outcome of these efforts remains uncertain, and will almost certainly be decided in the courts. Stay tuned to Commlawblog for updates.

Small Step for Cell Sites *— (Continued from page 8)*

thinks uncomfortably of Portia reminding Shylock, in Shakespeare's *The Merchant of Venice,* that while he may freely remove his pound of flesh from Antonio, he may not take even one molecule more than that or face imprisonment.

The new pole also must be similar in "quality and appearance" to the old pole. Presumably, lots of weathered campaign posters, lost pet notices, and garage sale signs will have to be affixed to the new pole to recreate the historical ambiance of the old one.

So while the new rule does grant some relief in a subset of sites where 5G facilities could ideally be situated, the highly circumscribed limits of the relief show just how difficult it is to escape the pervasive reach of the historic preservation laws once something is deemed a "federal undertaking." Hopefully, for the wireless and tower industry, broader relief is on the way.

Christmas Has Come Early: Media Bureau Waives Ancillary/Supplementary Services Report Filing Requirement

FHH Law
703-812-0400

Acting with commendable promptness, the Media Bureau has relieved virtually all television stations from the requirement to file ancillary/supplementary service reports, at least for this year and likely for future years as well. These reports are traditionally due on Dec. 1 of every year.

As we reported back in October, the reports are the ones that require that all stations broadcasting in DTV (digital television) to state whether they have offered any ancillary/supplementary services detail any revenue earned from those services. In light of the fact that the reports over past years have shown that virtually no stations offer any such services, the Commission has proposed that only stations that do provide ancillary or supplementary services, but do not include broadcasts of subchannels, be required to file any reports.

Since the Commission has already tentatively concluded that the costs imposed for all DTV stations outweigh any conceivable public interest benefits, the Media Bureau applied the same reasoning and decided that there is "good cause to waive" the deadline for the report this year. The waiver will remain in effect so long as the proceeding which has proposed to eliminate the reports for most stations is still pending.

Keep in mind, though, that if your station is among the handful of digital broadcasters that does offer feeable ancillary or supplementary services, you will still need to submit the ancillary/supplementary services report by Dec. 1 to provide information about those services and the revenue received during the past fiscal year.

I Know You Called: FCC Approves New Rules Permitting Disclosure of Blocked Caller IDs For Threatening Calls

Sekoia D. Rogers
rogers@fhhlaw.com
703-812-0424

If you're a traditional landline user who grew up prank calling friends, you're probably familiar with the dialing code *67, which blocked the outgoing Caller ID information from being transmitted to the call recipient. But you probably didn't know that, under one of the FCC's privacy rules, your decision to block your Caller ID transmission also meant that the telephone companies were prohibited from disclosing that Caller ID information to just about anyone, including law enforcement.

Overtime, a rule that was put in place to protect legitimate privacy interests (for example, callers who sought to remain anonymous when seeking help with domestic abuse) has apparently been subject to increasing misuse. Threatening calls made with blocked Caller ID information that have targeted schools, religious organizations, and other entities has complicated law enforcement personnel efforts to access identifying information for the purposes of tracing and investigating those calls in a timely manner. Newly adopted FCC rules should fix that problem.

Last month, the FCC unanimously approved an Order that modifies its rules in a way that should help security and law enforcement personnel obtain quick access to blocked Caller ID information relating to threatening calls. The FCC has described the modifications in the Order as an exemption to the Caller ID privacy rules designed to promote public safety. This is also a shift from the FCC's previous rule that generally prohibited telephone companies from revealing blocked Caller ID information.

So, what does this exemption entail? Telecommunications carriers will be required to disclose blocked Caller ID information only when law enforcement personnel request it while investigating a "threatening call." Specifically, a "threatening call" is defined as "any call that conveys an emergency involving danger of death or serious physical injury to any person requiring disclosure without delay of information relating to the emergency." This definition aligns with the standard set in the Electronic Communications Privacy Act (ECPA).

The new rules limit the sharing of blocked Caller ID information to law enforcement personnel and, as directed by law enforcement, others who are responsible for the safety and security of the threatened party. The FCC explained that, "we limited the disclosure of the blocked caller ID information to prevent abuse, and to protect the privacy

(Continued on page 12)

FLETCHER, HEALD & HILDRETH, PLC

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

Editor
Helena Okolicsanyi

Assistant Editor
Sandi Kempton

Contributing Writers
Anne Goodwin Crump,
Donald J. Evans,
Paul J. Feldman,
Daniel A. Kirkpatrick,
Sekoia D. Rogers

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

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

Disclosure of Blocked Caller IDs *— (Continued from page 11)*

interests of parties who may block their Caller ID for valid privacy interest, such as domestic violence victims."

Prior to adopting the new rules, the FCC had granted limited, case-by-case waivers of the Caller ID privacy restrictions in extenuating circumstances where the requesting parties demonstrated that a waiver would serve the public interest.

While this Order and the new rules eliminate the need for such waivers, the FCC will continue to apply the same conditions that were attached to the waivers, as follows:

1) the calling party number (CPN) on incoming restricted calls may not be passed on to the line called;

2) any system used to record CPN must be operated in a secure way, limiting access to designated telecommunications and security personnel, as directed by law enforcement;

3) telecommunications and security personnel, as directed by law enforcement, may access restricted CPN data only when investigating calls involving danger of death or serious physical injury to any person requiring disclosure — without delay of information relating to the emergency — , and shall document that access as part of the investigative report;

4) carriers transmitting restricted CPN information must take reasonable measures to ensure the security of such communications;

5) CPN information must be destroyed in a secure manner after a reasonable retention period; and

6) any violation of these conditions must be reported promptly to the Commission.

Finally, the Order also adopted rule changes providing an exemption to "non-public" emergency services allowing those services to obtain blocked Caller ID information of persons calling for assistance.

As the FCC explained, an emergency caller to either a public (e.g., poison control) or non-public emergency assistance service (e.g., a private ambulance service) may not always remember or know how to disable Caller ID blocking (if it was previously enabled), and these callers would presumably want to be contacted or located using their phone number in order to receive further assistance. Consistent with past FCC waivers, entities providing non-public emergency services must still be licensed by a state or municipality to provide such services in order to qualify for the new exemption.

Deadlines!

Upcoming FCC Broadcast Filing Deadlines

Do you know what FCC filing deadlines are coming up in November and the coming months? We do. Note our list is not comprehensive, and other proceedings may apply to you.

December 1, 2017 –

DTV Ancillary Services Statements – DTV licensees and permittees that have offered any ancillary or supplementary services for a fee during the prior year must file a report in the LMS filing system identifying those services and the fees collected. Please note that the group required to file includes only Class A TV, LPTV, and TV translator stations that have offered feeable ancillary or supplemental services. If a station has offered such services it must also 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 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.

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. Radio stations in the top 50 markets and in an employment unit with five or more employees will have to place these reports in the new online public inspection file; all other radio stations may continue to place hard copies in the paper public file for the time being. For all stations with websites, the report must be posted there as well. Per announced FCC policy, the reporting period may end ten days before the report is due, and the reporting period for the next year will begin on the following day.

EEO Mid-Term Reports – All radio stations with eleven or more full-time employees in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, or Vermont, and all television stations with five or more full-time employees in Colorado, Minnesota, Montana, North Dakota, or South Dakota must electronically file a mid-term EEO report on FCC Form 397, with the last two EEO public file reports attached.

January 10, 2018 –

Children's Television Programming Reports – For all commercial television and Class A television stations, the fourth quarter 2017 children's television programming re-

(Continued on page 14)

Deadlines!

(Continued from page 13)

ports 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 as has been the case for some time now, the required use of the Licensing and Management System for the children's reports means that the licensee FRN and password are necessary to log in; 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 online 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 commercial and noncommercial 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 in the top 50 markets and in an employment unit with five or more employees will have to place these reports in the new online public inspection file, while all other radio stations may continue to place hard copies in the paper file for the time being. Television and Class A television stations will continue 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.

Class A Television Continuing Eligibility Documentation – The Commission requires that all Class A Television maintain in their online public inspection files documentation sufficient to demonstrate that the station is continuing to meet the eligibility requirements of broadcasting at least 18 hours per day and broadcasting an average of at least three hours per week of locally produced programming. While the Commission has given no guidance as to what this documentation must include or when it must be added to the public file, we believe that a quarterly certification which states that the station continues to broadcast at least 18 hours per day, that it broadcasts on average at least three hours per week of locally produced programming, and lists the titles of such locally produced programs should be sufficient.

(Continued on page 15)

Deadlines!

(Continued from page 14)

March 1, 2018 –

Radio Station Online Public Files – All radio stations in all markets must have uploaded their entire public inspection files, with the exception of the political file, to the location provided for such public files on the FCC's website. The records which must be uploaded by March 1, 2018, include, but are not limited to, any and all issues/programs lists and EEO public file reports for the current license term (since the last license renewal grant), as well as either a current list of or copies of organizational documents and contracts required to be filed with the Commission.

March 2, 2018 –

Biennial Ownership Reports – All licensees and entities holding an attributable interest in a licensee of one or more AM, FM, TV, Class A television, and/or LPTV stations must file a biennial ownership report reflecting information as of October 1, 2017. Please recall that not only corporations and limited liability companies, but also sole proprietorships and partnerships composed entirely of natural persons (as opposed to a legal person, such as a corporation) are included in the licensees that must file reports. For the first time, noncommercial and commercial entities are required to file by the same date. Additionally, all persons holding an attributable interest in a commercial licensee must have acquired either an FCC Registration Number (FRN) or Restricted Use FRN.

FHH - On the Job, On the Go

On Nov. 2-4, **Dan Kirkpatrick** and **Karyn Ablin** attended and presented at **College Broadcasters Inc.'s 2017 National Student Electronic Media Convention** in San Antonio, TX. Dan presented sessions on "*FCC Regulation of Indecency, Obscenity and Profanity: From Pacifica to Colbert*" and "*What's Happening in Washington? A Regulatory and Legislative Outlook*," and participated in an "*Ask the FCC Lawyers*" panel.

On Nov. 15, Frank Montero attended the **Radio Ink Forecast Conference** at the Harvard Club in New York City. He also attended the **National Hispanic Media Coalition's 8th Annual Washington, D.C. Impact Awards Reception** at NAB Headquarters in Washington D.C. on Nov. 29.

On Nov. 18, **Kathy Kleiman** presented a program at **TedXBeaconStreet** in Boston, MA. She spoke about the pioneering work and roles of the six women ENIAC programmers of the world's first modern computer.

On Nov. 29, **Peter Tannenwald, Sekoia Rogers,** and **Mark DeSantis** attended the **Visual Radio Symposium** in Washington, D.C.

On Nov. 30, **Frank Jazzo** attended the **AFCCE FCC Reception**.

On Dec. 6, **Frank Montero** will be giving a lecture on FCC broadcast regulations to students from Colorado State University and, on Dec. 19, he will attend **New Jersey Broadcasters Board Meeting** and holiday party in Point Pleasant, NJ.

On Dec. 7, **Frank Jazzo, Laura Stefani, Frank Montero, Scott Johnson, Davina Sashkin, Paul Feldman, Matt McCormick,** and **Don Evans** will all be attending the **FCBA Annual Chairman's Dinner**.

On Jan. 22-24, **Bob Winteringham** will be attending the **National Educational Telecommunications Association's Annual Conference** in Washington, D.C.