Fletcher, Heald & Hildreth®

Memorandum to Clients

March 2019 No. 19-02

Now In Effect: FCC Eliminates Requirement to Post Licenses

As we reported back in December, the FCC issued a Report and Order that would eliminate the need to post and maintain broadcast licenses at a physical location. The Commission's stated goal is to modernize US "media rules and remove unnecessary regulatory burdens that impede competition and innovation in the media marketplace." That Report and Order was published in the Federal Register, and went into effect on Friday, February 8, giving broadcasters one less responsibility to worry about.

FCC Eliminates EEO Mid-Term Report for Broadcasters

by Keenan Adamchak
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On February 14, 2019, the FCC released a Report and Order in which it eliminated the requirement that certain broadcast television and radio stations file a Broadcast Mid-Term Equal Employment Opportunity (EEO) Report (Form 397). As we reported back in January, the FCC found that Form 397 reporting obligation became unnecessarily redundant following the completion of the transition of all broadcasters to the Online Public Inspection File (OPIF) – which makes most of the information in Form 397 (*i.e.*, the station's annual EEO public file reports) available to the public online.

The FCC previously used Form 397 to identify whether a broadcaster's station employment unit had enough full-time employees to trigger a mid-term EEO review. In its place, the Commission will now require ***radio stations*** to report their staffing size when they upload an EEO public file report to a station's OPIF. This question will not be effective until after it receives Office of Management and Budget (OMB) approval. In contrast, such a question is unnecessary for ***television stations*** because the act of uploading an EEO public file report to a station's OPIF demonstrates that a station is subject to a mid-term EEO review. While all television station employment units filing EEO public file reports are subject to mid-term review, some radio station employment units (those with 5-10 full-time employees) must file annual public file reports but are not subject to a mid-term review.

The Commission also used the Report and Order as an opportunity to announce that it will be issuing a Further Notice of Proposed Rulemaking within the next 3 months seeking comments on the FCC's EEO enforcement track record, and proposals on ways the agency could improve its EEO enforcement efforts.

The elimination of Form 397 will be effective as of May 1, 2019 – thereby allowing time for the completion of the current mid-term renewal cycle as television stations in Delaware and Pennsylvania must still file their Forms 397 by April 1, 2019. The new EEO-related changes to the OPIF, however, are not effective as of May 1, 2019. Instead, they will become effective sometime after OMB approval of those changes.

Inside this issue...

A Word of Caution to Broadcasters Pertaining to E-Cigarette and Vaping Advertisements

by Frank Montero
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Last month I participated in a webinar with my colleague Dan Kirkpatrick where we addressed the issue of advertising controversial products. While the topic of marijuana advertising (which we discussed in our webinar) gets much attention these days – especially with the recent decision by CBS to turn down a cannabis ad for the Super Bowl – we also examined the advertising of e-cigarettes and nicotine vaping products.

Federal law does not currently prohibit advertisements for e-cigarettes or vaping products (as it does for tobacco cigarettes), although many broadcasters have been cautiously expecting the other shoe to drop. For now, the US Food & Drug Administration (FDA) only requires general disclosures that "e-cigarettes contain nicotine and that nicotine is an addictive chemical" and prohibits e-cigarette and vaping ads from making claims that they are healthier than cigarettes or that they help users quit cigarette smoking. (As a reminder, both the FDA and the Federal Trade Commission regulate any false or unsupported medical claims in advertising). The FDA has been extremely aggressive in cracking down on e-cigarette and vaping ads that are perceived as targeting children and has issued this warning: unless advertisers can prove that they are not targeting minors, they may be forced off the market. This was seen in the FDA's crackdown against the manufacturer Juul last year and the announced ban on flavored e-cigarettes. Juul's marketing campaigns used young models and appeared to target teens, which the FDA claimed led to a rise of teen "juuling." Some states have taken action as well, with the drafting of legislation that would ban or limit online sales of vaping products in their states.

Broadcasters should be very careful when considering whether to accept e-cigarette or vaping ads, especially on stations having a high percentage of minors or teens in their audience. The FDA has threatened to review the promotional activities of the e-cigarette and vaping industries to evaluate compliance with the law. And just last month, FDA Commissioner Gottlieb threatened e-cigarette companies, saying they face an "existential threat" if they don't stop marketing to youth. Despite this, the American Lung Association recently gave the FDA an "F" grade for failing to take sufficient action to protect children from e-cigarettes. Whether this leads to further action by the FDA is uncertain, but it should at least continue to turn public opinion against e-cigarette advertising. If FCC Commissioner Rosenworcel's op-ed is any indication, the FCC may take action in the future.

In any event, broadcasters should proceed cautiously and are urged to view the voluntary alcohol industry guidelines as a guidepost. Also, watch state and federal activity and consult with your FCC counsel and state broadcast association.

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Broadcasters Seek New Business Opportunities Amid Legalization of Industrial Hemp Products (Including CBD Oil)

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There's a green wave coming in the form of expanding marijuana legalization across the US, and many of the people trying to take advantage of this green wave are also trying to turn it into another kind of green: money. Broadcasters are also looking to take advantage of these new revenue opportunities, but because marijuana remains illegal at the federal level, Fletcher Heald has continued to advise its clients not to advertise marijuana or marijuana-derived products. Federal law also prohibits using a radio or TV station to commit or facilitate a felony. With the sale of marijuana remaining a felony under federal law (even if enforcement is deprioritized) broadcasters could be charged with a felony for using their station to facilitate – through advertising – the sale of marijuana. If convicted, a broadcaster would have to disclose the conviction to the FCC and would likely lose the ability to hold an FCC license (in addition to being convicted of a felony).

However, broadcasters now have a silver lining in the rush to take advantage of new "marijuana adjacent" industries, particularly cannabidiol ("CBD") oil. CBD oil can be derived from marijuana, but it can also be made using hemp. Hemp is a variety of cannabis with significantly less tetrahydrocannabinol ("THC"), a psychoactive ingredient, than marijuana. In the US, hemp is defined as containing a THC concentration of no more than .3 percent on a dry weight basis.

Historically, hemp has been tightly regulated along with marijuana. The U.S. effectively made industrial hemp illegal with the Marihuana Tax Act of 1937, and hemp was later added to the schedule of controlled substances when the Controlled Substances Act went into effect in 1971. However, the federal government legalized the industrial production of hemp last year. Among other things, the Agriculture Improvement Act of 2018 (the "2018 Farm Bill") allows hemp production pursuant to yet-to-be-created state regulatory plans approved by the Department of Agriculture. If a state does not submit a hemp regulatory plan, producers in that state will be able to rely on a default set of regulations to be created by the Department of Agriculture.

Now, before you go out and start soliciting CBD oil advertisements (or start your new CBD oil business), there are some important caveats broadcasters need to keep in mind, and some questions that still need to be answered. We would recommend holding off temporarily on advertising CBD oil until the appropriate regulatory frameworks are in place. That said, we do anticipate that broadcasters could start advertising CBD oil in the relatively near future.

The 2018 Farm Bill essentially legalized industrial hemp, but the law required the establishment of a regulatory framework that is not yet in place. Under the new law, states and the federal government will share regulatory responsibility. The Department of Agriculture will create regulation for industrial hemp production that can serve as a default in states that don't adopt their own hemp regulations. For states that choose to regulate industrial hemp production on their own, they must first submit a regulatory plan to the Department of Agriculture, which must accept or reject the plan within 60 days.

We would recommend holding off temporarily on advertising CBD oil until the appropriate regulatory frameworks are in place.

So far, the Department of Agriculture's regulations are not in place; only Pennsylvania and Kentucky have filed plans of their own. Hemp remains illegal in a number of states, as one Colorado company found out when it shipped a truckload of hemp from Oregon through Idaho (where a species of cannabis remains illegal). Therefore, broadcasters will also need to be cognizant of state laws related to CBD oil advertisements. That said, it looks like several other states are preparing to file regulatory plans that will allow broadcasters to air CBD oil advertisements soon.

In addition to regulatory issues, there are several other issues broadcasters should keep in mind. First, because marijuana remains illegal federally, broadcasters will need to take precautions not to run advertising for CBD oil derived from marijuana, as opposed to hemp. It remains to be seen what safeguards broadcasters will need to put in place to guard against this risk, but at the very least, broadcasters must avoid advertising marijuana-based products, as opposed to hemp-based products. Second, CBD oil proponents often advocate the health benefits of their product,

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but health claims in advertising are closely scrutinized by the Federal Trade Commission and, to some extent, the Food and Drug Administration. If broadcasters run CBD oil advertising that makes health or medical claims, they should make sure there is evidence to support those claims.

For now, broadcasters may want to continue to take a cautious approach to CBD oil advertising, but the day is fast approaching where broadcasters will likely be able to take advantage of this new advertising opportunity.

FCC Ponders Revising Several NCE and LPFM Procedures

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Anyone who has filed an application for a new noncommercial educational ("NCE") station or a new Low Power FM (LPFM) station knows that many traps beset the unwary throughout the process. If you fall into one of those traps, your chance of success can be severely injured. On Valentine's Day, the FCC adopted a 50-page Notice of Proposed Rulemaking (NPRM), in which the Commission contemplated removal of some of those traps and simplifying some of the NCE and LPFM new station application procedures.
Here are the highlights:

NCE Applicant Proposals

1. *Eliminate the Need for NCE Applications to Revise and Submit Governing Documents*. Currently, if a new NCE station application is mutually exclusive ("MX") with another application, the FCC chooses the winner through a points process too detailed and arcane to explain here (the NPRM, however, features a reasonably concise explanation for those interested in the nitty gritty). Suffice to say here, it is beneficial if an NCE station applicant can obtain "localism" points by being both "established" and "local" for at least 2 years immediately before filing its application. It is also beneficial if the applicant can obtain media "diversity" points. To do so, neither the applicant nor any "parties" to the application (*e.g.*, the applicant's officers and directors) can hold an interest in another station whose principal community contour overlaps that of the proposed new station.

In the past, to obtain localism and/or diversity points, the applicant needed to support its claims with governing documents demonstrating the requisite localism and diversity attributes – which in almost all cases compelled the applicant to amend its existing governing documents. Many a hard-fought and expensive NCE MX case turned on whether an applicant's amended governing documents sufficiently supported the award of localism and diversity points.
In the NPRM, the FCC proposed to drop the localism requirement from an applicant's governing documents. Instead, the applicant would certify that it will maintain its local status until its new station had been on the air for 4 years. Similarly, both the prevailing applicant awarded diversity points and the parties to that application would be barred from acquiring another station whose principal community contour would overlap that of the new station. The ban would remain in place until the new station had been on the air for 4 years.

2. *Establish Uniform Divestiture Pledge Policies*. Under the current rules, if a new NCE station applicant wants media diversity points, but either it or a party to its application has interests in a station whose principal community contour overlaps that of the proposed new station, those other interests have to be divested before the filing window closed unless that other station was a fill-in translator, a Class D FM station, or an LPFM station. For those 3 station types, the applicant did not have to shed itself of those other interests until the new station went on the air.

In the NPRM, the FCC proposes to honor divestiture pledges for all types of stations. The pledge would need to be made in the application before the filing deadline, and the winning applicant would need to complete its pledged divestiture

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before the new station went on the air.

3. *Revise Tie-Breaking and Time-Sharing Procedures*. Currently, if NCE applicants are tied for the highest points in an MX group, they move on to a tie-breaking round: the applicant with the fewest other stations wins. Then, the applicant with the fewest pending applications wins if 2 or more applicants in the MX group remain tied. However, if a tie still remains and the applicants are unable to work out a settlement, the FCC resorts to mandatory time-sharing in which the remaining applicants split use of the frequency – a thoroughly unsatisfactory result for all involved. If the parties cannot agree on how to split use of the frequency within 90 days, the Commission may resolve the issue through a hearing – which the FCC has never actually done. Instead, these types of MX groups remain in pending status for years until the applicants finally break down and cut a deal.

If the parties cannot agree on how to split use of the frequency within 90 days, the Commission may resolve the issue through a hearing – which the FCC has never actually done.

In the NPRM, the FCC requests proposals to improve the tie-breaking process and the procedures for mandatory time-sharing if applicants remain tied. Additionally, the Commission asks if the existing LPFM mandatory time-sharing procedures should apply to NCE cases.

4. *Clarify and Modify the "Holding Period" Rule*. In the NPRM, the FCC asks if it should tweak its Holding Period Rule. The rule is intended to ensure that a winning NCE comparative case applicant maintains its technical and non-technical characteristics for at least 4 years after the station goes on the air.

As to non-technical characteristics, the current rule imposes a 4-year prohibition on a winning applicant from divesting its station to an entity that would garner fewer comparative points than the winning applicant. However, the rule does not bar the winning applicant from altering the characteristics it relied upon to obtain the station. For instance, an NCE applicant that won based on media diversity points could subsequently acquire another same-service station in the same area. Thus, the FCC asks whether it should revise the rule to prohibit such changes, and if so, how long the prohibition should be in place.

As to technical characteristics, winning NCE stations are currently subject to a 4-year prohibition on downgrading service to the area on which a winning preference was based. The FCC now asks whether it should allow such stations to drop some first and/or second NCE FM service originally proposed if that loss is offset by first, and separately, combined first and second NCE FM service population gains.

LPFM Applicant Proposals

1. *Permit Time-Sharing Agreements Prior to Tentative Selectees Being Designated*. When LPFM applicants are tied for the highest number of points in an MX group, they are permitted to enter into voluntary time-sharing agreements and aggregate their points. For example, if 3 applicants with 3 points each entered into a time-sharing deal, together they could claim 9 points. Still, some confusion exists as to when LPFM applicants can aggregate their points.

In the NPRM, the FCC tentatively proposes to allow point aggregation discussions and agreements at any time before the Media Bureau implements involuntary time-share procedures. Afterward, the Commission asks if its proposal goes too far and would lead to gamesmanship. Also, it asks: should the number of applicants entering into a particular time-share deal be limited so they cannot "stack the deck"? And what should the FCC do if a time-share participant bags out of putting its station on the air after the share-time construction permits have been granted? Should the Commission open a "mini" application window for the time slot surrendered?

Finally, the FCC asks what procedures should be followed if a time-sharing agreement is dismissed for any reason. Should the tentative selectees get a second chance to put together a voluntary point-aggregating time-share deal or a universal settlement?

NCE and LPFM Applicant Proposals

1. *Reclassify Gradual Board Changes as Minor*. The FCC's NCE and LPFM construction permit awards can take a long time to occur. Changes in the governing boards of NCE and LPFM applicants are bound to happen while construction permit applications are

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pending. Thus, an application may be dismissed because a "major" change in the applicant has occurred while the application was pending (*e.g.*, when a majority of the board members has changed since the application was filed). Luckily, the FCC routinely grants waivers in such situations. In the NPRM, the FCC proposes to fix the problem by classifying as "minor" all changes in NCE and LPFM governing boards gradually occurring over time with little or no effect on the organization's mission.
To avoid gamesmanship, the Commission proposes to continue treating the change in the majority of an NCE or LPFM applicant's board as a "major" – and thus a fatal – change. It asks for comments on the appropriate definitions of "gradual" and "sudden" in this context.

2. *Clarify Reasonable Site Assurance Requirements*. By filing its initial application, an NCE or LPFM new station applicant makes an implied representation that it has reasonable assurance of its proposed transmitter site's availability. In the past, it was apparent that some applicants did not understand they were making such a representation or simply ignored the "reasonable assurance" requirement – resulting in extensive pleading battles and the occasional dismissal of erring applicants. To address the matter, the FCC proposes a modification of the NCE and LPFM application forms to require each applicant to certify it has reasonable assurance of its proposed transmitter site's availability. The Commission also proposes that the applicant retain documentation supporting its certification.

Other Proposals

1. *Streamline Construction Permit Tolling Procedures*. A new station or modified facilities permittee can pause or "toll" the time given to build the proposed facilities. Tolling is granted for a very limited number of reasons (*e.g.*, a pending post-grant challenge). However, the burden is on the permittee to file the tolling request even if a valid reason to stop the clock is already a matter of record before the Commission. If no tolling request is filed, the time for construction continues to run. In the NPRM, the FCC proposes to identify any NCE or LPFM construction permits that should be tolled because the permit is subject to: (a) administrative or judicial review; or (b) a condition on the commencement of operation that the FCC "has a direct licensing role" in satisfying.

2. *Lengthen LPFM Construction Period*. LPFM construction permits specify an 18-month construction period. But the FCC routinely gives LPFM permittees an additional 18 months to complete construction upon request. The Commission now proposes to simply extend the initial construction period for LPFM facilities to 3 years.

3. *Modify LPFM Transfer and Assignment Restrictions*. Presently, the FCC's rules prohibit the assignment or transfer of an LPFM construction permit altogether. Even a constructed LPFM station can be sold only after it has been licensed and on the air for 3 years, and then the price cannot exceed the depreciated fair market value of the physical equipment and facilities.

Those who have been long awaiting a chance to file for a new NCE or LPFM station can take comfort from the fact the FCC is tweaking the NCE and LPFM permittee selection mechanics.

In the NPRM, the FCC tentatively concluded that those prohibitions are too restrictive. Thus, the FCC proposes eliminating both the LPFM construction permit divestitures prohibition and the 3-year holding period for LPFM licenses. The Commission proposes instead to allow LPFM divestitures if: (a) the LPFM construction permit was granted at least 18 months before; (b) the price does not exceed the seller's reasonable and prudent expenses; (c) the buyer satisfies all LPFM eligibility criteria; and (d) the station has been on the air for less than 4 years. Additionally, the buyer must be eligible for at least the same number of comparative points awarded to the initial permittee. Finally, if the LPFM station being sold is part of an involuntary time-share group, the buyer must be "locally established" for at least as long as the most recently established local applicant in the tied MX group.

Comments on all of these proposals will be due 60 days after the NPRM or a summary is published in the Federal Register. Reply comments are due 30 days after the comment period ends. We will post an item in CommLawBlog when the Federal Register publication occurs.

Those who have been long awaiting a chance to file for a new NCE or LPFM station can take comfort from the fact the FCC is tweaking the NCE and LPFM permittee selection mechanics. It wouldn't be going through the exercise if it did not plan – at long last – to open filing windows. The last filing window for new LPFM stations closed in 2013, and in 2010 for new NCE stations.

RMLC-GMR Continue to Fight (but Also Agree To Extend Interim License for Another Six Months)

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One of the most famous movie franchises ever is the "Rocky" series. From its origin as an underdog story where an unknown fighter named Rocky Balboa shocks the world by taking heavyweight champion Apollo Creed the distance (spoiler alert: only to lose the fight but get the girl) through sequels II (Rocky Wins!), III (Mr. T shines as Clubber Lang), IV (Draaaaaaggggooooooooo!!!!!!), V (featuring real-life fighter Tommy Morrison), and, finally, Rocky Balboa (why not just Rocky VI?), millions of dollars and movie history were made over the span of thirty years (and that doesn't include the two "Creed" spinoffs which take us into the present day and may or may not count as "Rocky" movies).

The legal fight between the Radio Music License Committee (RMLC) and Global Music Rights (GMR) is quickly becoming the "Rocky" franchise of musical work licensing. GMR is, of course, the upstart shooting for the big time and finding themselves in the fight of its life after not reaching an agreement with the RMLC regarding the public performance of musical works from the GMR catalog by the majority of commercial radio stations around the country. As readers of our prior posts know, the RMLC sued GMR in the United States District Court for the Eastern District of Pennsylvania, alleging anti-competitive behavior by GMR. GMR punched back by filing its own lawsuit in the United States District Court for the Central District of California, alleging anti-competitive behavior by the RMLC. A fight over where to hold the fight is ongoing.

Much like the Rocky movies, this litigation is big, both in the short and long term. Just as those movies made millions of dollars, there are millions of dollars at stake in the form of copyright royalties to be paid to songwriters and publishing companies. And, just like those movies changed movie history in many ways (by creating a particular genre of movie, showing us that a first time screenwriter could win an Academy Award, and making Sylvester Stallone a star, without which we might not have the Rambo series (installment V coming later this year), The Expendables series (installment IV in the works) or, Victory (sometimes referred to as "Escape to Victory")), this litigation could change the face of music licensing. At a minimum, the mere existence of GMR has already done that by forcing broadcasters and others to consider 4, not 3, performing rights organizations when licensing their services.

(Plus, there's the obvious musical connection, with the songs "Gonna Fly Now", "Eye of the Tiger" and even "Hearts on Fire" inextricably linked to Rocky movies).

Also much like the Rocky movies, the initial fight ended with each side claiming victory to some degree after reaching an interim license agreement in December 2016 that would allow radio stations to publicly perform works from the GMR catalog for a nine-month period beginning on January 1, 2017, and ending on September 30, 2017. And, finally, much like the Rocky movies, we've seen a number of sequels in the form of extensions of that interim license agreement for additional six-month periods:

- October 1, 2017-March 31, 2018 (RMLC-GMR II)
- April 1, 2018-September 30, 2018 (RMLC-GMR III)
- October 1-March 31, 2019 (RMLC-GMR IV)

With that most recent license extension set to expire in just over a month, the RMLC has released a coming attraction in the form of a press release for RMLC-GMR V – another license extension covering the period from April 1-September 30.

These continuing sequels are particularly Rocky-esque in that each new installment in the franchise is met with less interest. To be clear: we are not downplaying the issue or importance at all; this is actually a jab at how many extra rounds the dueling cases have fought, with no end in sight, which gave rise to the seemingly ad infinitum extensions in the first place. That's why we worked so hard to hype this up with the whole Rocky theme because, in fact, nothing has really changed since our last reporting on the issue except that stations that have been licensed with GMR have the opportunity to remain licensed for another six months while the boxing match continues. Some highlights:

- This latest six-month extension is being offered on the same rates and terms as each of the past interim licenses.
- Stations currently performing musical works from the GMR catalog under an interim license should expect to be contacted by GMR by mid-March regarding an extension.
- Stations that have not been contacted by GMR by March 15, 2019, should proactively contact GMR – not the RMLC. The RMLC email to broadcasters lists a

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contact number for GMR: 844-827-5467.

- Stations who do not have an interim license with GMR should contact an attorney to discuss this further.
- You should check this space regularly for any developments on the RMLC-GMR licensing and litigation fronts.

(And feel free to send us ideas for themes to a possible RMLC-GMR VI blog post; unlike the movie studios, we're happy to take unsolicited story ideas).

Jeffrey Mitchell Joins Fletcher, Heald & Hildreth, P.L.C.

Washington-area based telecommunications, media, and technology law firm Fletcher, Heald & Hildreth, P.L.C. is pleased to announce that Jeffrey A. Mitchell has joined the firm as Of Counsel. Jeffrey brings with him more than two decades of telecommunications experience both in private practice and in multiple roles for the Universal Service Administrative Company ("USAC").

The constant for these endeavors is his abiding interest in rural broadband and universal service. With USAC, he directed a $100 million compliance audit program of participants in the Universal Service Fund under close oversight from the FCC's Inspector General. After leaving USAC, Jeff helped persuade the FCC to enlarge and modernize the Rural Health Care Federal Universal Service program — thus ensuring that health care providers would have the broadband capabilities to properly treat their patients.

Jeff received his law degree from the Georgetown University Law Center. While there, he was a member of the Georgetown Journal of Law and Policy in International Business. He also earned an undergraduate degree from the University of Washington, majoring in English. A well-rounded student, he worked in a pathology laboratory as an undergraduate, once attending an autopsy for a class project. In the spirit of *noblesse oblige*, Jeff shares his insights as a frequent panelist on the importance of broadband policy to healthcare – most recently at the Center for Telehealth and e-Health Law's Executive Telehealth Summit in 2018.

"I know our clients will immediately benefit from Jeff's wealth of knowledge," said co-managing member Dan Kirkpatrick. "With his exceptional legal skills and great experience, we are thrilled to add him to our growing practice." Fletcher, Heald & Hildreth attorneys pride themselves in their ability to get in-the-weeds on broadcast policy. Jeff will fit right in with his firsthand broadcast experience as a disc jockey at WCBN-FM, 88.3, Ann Arbor.

"I am delighted to join the distinguished team at FHH working on a wide array of cutting edge legal and policy issues in telecommunications and media. I anticipate continuing the exciting work of working with great clients and committed policymakers to ensure all Americans have affordable access to high-speed broadband."

Upcoming FCC Broadcast Deadlines for March-May

March 11, 2019:

Additional Steps to Revitalize the AM Radio Service - Reply comments are due in response to the FCC's Second Further Notice of Proposed Rulemaking with regard to revised alternative proposals regarding interference protection to Class A AM radio stations.

April 1, 2019:

Equal Employment Opportunity Public File Reports – All radio and television station employment units with five (5) or more full-time employees located in Delaware, Indiana, Kentucky, Pennsylvania, Tennessee, and Texas must place EEO Public File Reports in their public inspection files. All stations must also 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.

EEO Mid-Term Reports – All television stations with five or more full-time employees and located in Delaware or Pennsylvania must electronically file a mid-term EEO report on FCC Form 397, with the last two EEO public file reports attached.

April 10, 2019:

Repack Transition Progress Report – All full-power and Class A television stations repacked as a result of the incentive auction, other than those in Phase 1 or Phase 2 that have completed the repacking process, including filing reports of completion, must file a report in the Licensing and Management System (LMS) to detail their progress toward completion of the transition.

Children's Television Programming Reports – For all commercial television and Class A television stations, the first quarter 2019 children's television programming reports 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 required use of the LMS for the children's reports means that you should have the licensee FCC registration number and password 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 record sufficient to substantiate at license renewal time 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 last quarter must be placed in the station's online public inspection 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 maintains 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.

April 29, 2019:

2018 Quadrennial Review of Media Ownership Rules – comments are due in response to the FCC's NPRM.

May 29, 2019:

2018 Quadrennial Review of Media Ownership Rules – replies are due in response to the FCC's NPRM.

FHH-On the Job, On the Go

On March 2, **Peter Tannenwald** will attend a meeting of the Board of Directors of Brown Broadcasting Service, Inc., operator of WBRU.COM at Brown University in Providence, RI. Peter is an *Emeritus* Board Member and FCC legal counsel. Last year, he was inducted last year into the WBRU Hall of Fame.

From March 5 – 8, **Jeff Mitchell** will attend the Internet2 conference in Washington, DC.

From March 5 – 6, **Matt McCormick** and **Frank Montero** will attend the Michigan Association of Broadcasters Great Lakes Media Show in Lansing, MI.

On March 7, **Mark Lipp** will be a panelist for the FCC's Symposium on Media Diversity in Washington, DC.

On March 8, **Kevin M. Goldberg** will speak at the National Freedom of Information Day Conference at the Newseum in Washington, DC.

On March 12, **Kevin M. Goldberg** will speak at the DC Open Government Summit in Washington, DC.

From March 12 – 13, **Frank Montero** will attend the Hispanic Radio Conference in Miami, FL. Frank will moderate a panel on FCC, programming, and music licensing issues.

On March 14, **Frank Montero** and **Dan Kirkpatrick** will give a webinar to the Colorado Broadcasters Association on Maintaining a Broadcast Station's Online Public Inspection File.

On March 15, **Frank Montero** and **Dan Kirkpatrick** will teach a class at the NAB's Broadcast Leadership Training program on "Closing a Broadcast Acquisition Transaction" in Arlington, VA.

On March 20, **Mitchell Lazarus** will host a CLE titled "The Exception that Became the Rule: Radio Operation without a License" in Arlington, VA.

From March 22 – 24, **Peter Tannenwald** will attend the 15th Annual Symposium of students and alumni, as well as a Board of Directors' meeting of WVBR-FM at Cornell University in Ithaca, NY. Peter has served as legal counsel to WVBR -FM for more than the four decades.

From March 26 – 29, **Karyn Ablin** will attend the NRB convention in Anaheim, CA. Karyn will speak at the convention as well.

On April 3, **Frank Montero** will attend the Federal Comminutions Bar Association's Congressional Reception in Washington DC.

From April 6 – 11, **Karyn Ablin**, **Davina Sashkin**, **Mark Lipp**, **Dan Kirkpatrick**, **Kathleen Victory**, **Scott Johnson**, **Kevin M. Goldberg**, and **Michelle McClure** will attend the NAB Show in Las Vegas, NV.

On April 7, **Davina Sashkin** and **Frank Montero** will attend the ABA's Forum on Representing your Local Broadcaster in Las Vegas, NV. Davina is on the planning committee for the event.

From April 5 – 6, **Frank Montero** will attend the George Washington University Law Alumni Board of Directors and Business Law Advisory Board Meeting in Washington, DC.

On April 7, **Karyn Ablin, Kevin M. Goldberg,** and **Frank Montero** will attend the Radio and Internet News (RAIN) reception in Las Vegas, NV.

On April 18, **Mitchell Lazarus** will speak at the TCB Council in Baltimore, MD.