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MEMORANDUM TO CLIENTS

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FCC Authorizes All-Digital AM Service

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Taking the next step in its ongoing efforts to revitalize the AM broadcast service, the Federal Communications Commission ("FCC" or the "Commission") has authorized AM radio stations to convert to all-digital broadcasting. Making such a switch is expected both to improve the quality of the signal received by listeners and to expand the area in which the audience can receive a listenable signal. Another advantage is that such broadcasts can include metadata, such as song and artist identification, station identification, and the like, plus there is the future possibility of a separate multicast AM channel. The primary downside is that current analog receivers will be unable to pick up the all-digital broadcasts, which means that listeners that currently do not have a digital AM receiver will need to obtain one.

The FCC repeatedly emphasized, however, that any decision to change to all-digital operation is entirely voluntary. The FCC expects that different AM stations will make different decisions, especially at first, based on the availability of digital receivers in a particular market, the make-up of a station's audience, the format, and the investment required. Because the change to all-digital is voluntary, the FCC is not as worried about transition issues or potential loss of service to existing listeners. Likewise, the likely gradual change will make it easier for the FCC to respond to any interference issues that might unexpectedly surface.

The specific standard authorized is the HD Radio in-band, on-channel (IBOC) mode called MA3. The FCC stated that it chose the HD Radio brand now owned by XPeri Corporation because it is the only feasible technology option in the near term, but it did not rule out considering other technologies in the future should they develop.

The FCC initially authorized hybrid operation for AM stations in 2002, using the HD Radio MA1 standard. Such transmissions include both analog and digital signals, with the analog signal in the center of the frequency and the digital signal on sidebands. In the all-digital MA3, there is no modulated analog carrier signal, which means that the power level of the digital broadcasts is increased. Two configurations of the MA3 signal are possible: a 10 kHz primary carrier-only configuration ("core-only mode") or a 20 kHz configuration using digital-only sidebands ("enhanced mode"). Such operations have been tested by the NAB Labs and a small group of AM stations over the past few years.

The results have shown a number of advantages of the all-digital operation. These include a clearer and more robust signal which is better able to overcome noise and interference than even hybrid stations can. Additionally, in what may come as a surprise to those familiar with TV's digital "cliff" effect, weak all-digital AM signals that are at the outer range of coverage can still be received and de-

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coded by digital receivers. Further, the all-digital AM is energy and spectrum efficient, as energy usage is comparable to analog AM stations, but the signal can be received more clearly over a wider area.

The obvious disadvantages that may discourage stations from making an immediate change to all-digital operation are the costs of making the change and the scarcity of digital receivers. Stations must remember to factor into the transition costs possible license fees due to XPeri Corporation. Another possible complication is Emergency Alert System ("EAS") requirements. If an AM station is a primary station monitored by downstream stations, it must make sure that those downstream stations can receive any EAS alerts.

Typical requirements for broadcast stations also will continue to apply. For example, if the all-digital operation should cause interference, the station must take remediation steps. Likewise, compliance with operating power and power spectral density requirements is still required. Further, all-digital stations must broadcast at least one free, over-the-air programming stream with audio quality at least equal to analog broadcasts.

If a station does decide to make the switch, the licensee must file a digital notification on the existing FCC Form 335-AM, and must wait at least 30 days after public notice of such notification to begin the new broadcasts. Additionally, such notifications must be filed if a station increases operating power or changes from core-only to enhanced operating mode. Finally, stations must give reasonable notice to listeners of the plan to go all-digital. The FCC has not imposed the detailed and regimented notice requirements applicable to other transitions but simply expects them to be comparable to other public notices.

After 16 Years, FCC Lifts TV Filing Freeze

The Federal Communications Commission's ("FCC") Media Bureau announced via *Public Notice* the end of a filing freeze on certain full power and Class A TV station modifications that lasted more than 16 years and the leadership of seven FCC chairpersons. The freeze was part of the FCC's effort to keep a stable technical database first during the DTV transition, and then the incentive auction and associated repack; now that the transition is over and the post-incentive auction is complete, the FCC deemed it an appropriate time to end the freeze and allow additional discretionary changes to television facilities.

Modification proposals that can now be filed include:

- Petitions for rulemaking to change channels in the DTV Table of Allotments.
- Petitions for rulemaking to add new DTV allotments.
- Petitions to swap in-core channels.
- Petitions for rulemaking to change communities of license.
- Modification applications that increase a full

power or Class A station's service area beyond an area that is already served.

This lifting of the freeze will be effective 15 days after the publication of the *Public Notice* in the *Federal Register*.

Now in Effect: Broadcast Local Public Notice Rule Changes

The FCC's Local Public Notice Rule Changes have been published in the *Federal Register* and are now in effect. These changes – which we detailed at length in a previous post – eliminate the obligation to publish a public notice of certain broadcast applications in newspapers, requiring instead that applicants publish these notices in the Online Public Inspection File ("OPIF") or application databases. Among other changes, the new rules will also standardize the on-air announcement requirements for broadcast local public notices. If you still have questions in regards to how this will impact your station, please contact Keenan Adamchak at (703) 812-0415 or adamchak@fhhlaw.com.

Inside This Issue

Now in Effect: FCC Repeals Radio Duplication Prohibitions

Back in August, we wrote about the FCC's decision to end the prohibition of commonly owned radio stations in the same service (AM or FM) that have 50% or more overlap of their primary service contours from duplicating more than 25% of their programming. Now that the decision is published in the *Federal Register*, it is effective immediately, and stations may duplicate programming as they see fit.

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FCC Restructures Intelligent Transportation System Rules

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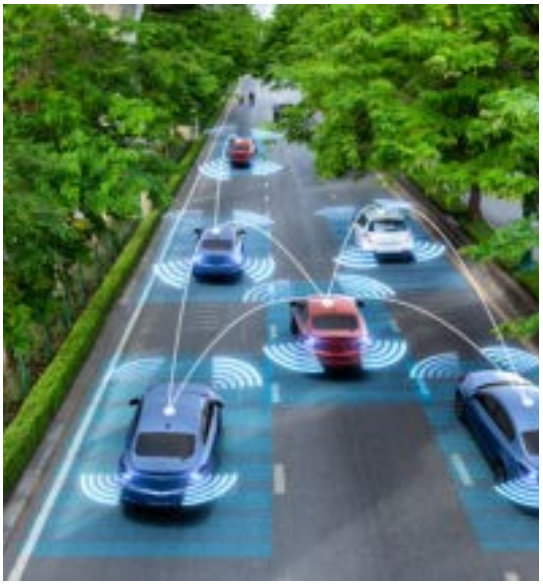
On November 19, the FCC issued a Report and Order for which the Wi-Fi community can be justly grateful at their Thanksgiving celebrations. For some years the FCC has been concerned that the potential for Intelligent Transportation Systems (ITS) in the 5.85 – 5.925 band has never panned out. The automobile manufacturing and public safety communities had touted the ability of this band to provide inter-vehicle and vehicle-infrastructure communications which would significantly improve vehicle safety and traffic management. The band was therefore allocated for use on a licensed basis for DSRC (Dedicated Short Range Communications) about 20 years ago. Despite the continued suggestions by the industry that the wide-spread rollout of in-car devices that could put the technology to use was imminent, the DSRC plane has continually taxied along the runway at low speed but never taken off. With Wi-Fi proponents clamoring, as always, for more and more mid-band spectrum for unlicensed use, the FCC finally decided that a change was needed.



This Order takes the lower 45 MHz of the ITS band and reallocates it to unlicensed indoor use at relatively low power levels (20dBm/MHz). This power level is sufficient to allow our toasters and vacuum cleaners to instantly exchange mission-critical data in real-time but not so powerful as to interfere with Department of Defense radars and incumbent DCRS licensees who will continue to operate in the band, at least temporarily. This reallocation will have the salutary effect of allowing very wide bandwidth applications (40, 80, or even 160 MHz wide) to be deployed in conjunction with the immediately adjacent unlicensed band which the Commission has previously made available. Once this new band (now dubbed U-NII4) is cleared of the existing licensees, power levels will be increased to conform to normal Part 15 rules. In the meantime, users can seek to increase power immediately by requesting waivers or Special Temporary Authorities. Existing non-Federal incumbents have a year to clear the band.

The FCC has not given up on vehicular use of the band altogether, however. Rather, it has recommissioned the remaining 30 MHz of the band (5.895 – 5.925 MHz) for C-V2X (Cellular Vehicle to Everything) technology. This technology is expected to deliver the main features of the old DSRC technology while expanding its potential. C-V2X proponents anticipate that it will serve as the foundation for vehicles to communicate with a wide range of other vehicles and infrastructure around them, providing non-line-of-sight awareness, providing their operators with notice of changing driving conditions with a high level of predictability for enhanced road safety, and engaging in automated driving. To enable this brave new world of highly intelligent vehicles, the Commission is requiring the incumbent DCRS licensees in the lower band to vacate it within one year from the effective date of the Report and Order.

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Once they have relocated to the upper band, they will have a period of time (two years is proposed in a Further Notice of Proposed Rulemaking) to convert to C-V2X operation. There are only a handful of incumbents in the band (116) most of whom are in developmental phases in limited geographic areas, so the small burden on them was deemed a small price to pay for the increased access to Wi-Fi by the general public. The Commission also seeks comment on numerous technical aspects of the C-V2X in the FNPRM. Precise dates for comments will be established when the FNPRM is published in the Federal Register.

New Webinar Available: The New FCC Radio License Filing Window

On October 29, Fletcher Heald attorneys Frank Montero and Keenan Adamchak in cooperation with the National Federation of Community Broadcasters ("NFCB") presented a webinar on the upcoming noncommercial educational ("NCE") FM and lower power FM ("LPFM") filing windows. In this webinar, they explored the NCE and LPFM application forms, processes, and FCC tie-breaking criteria, as well as pointing out some of the mistakes that can occur when applying for a frequency. Being prepared will ensure a smooth process for applicants in the NCE and LPFM filing windows. With guidance from this webinar, you can start mapping out your strategy and planning today.
You can watch the webinar here on YouTube and the NFCB's website.

Upcoming FCC Broadcast and Telecom Deadlines for December – February

Broadcast Deadlines:

December 10, 2020

2021 Annual Regulatory Fees – Comments are due in response to the FCC's Further Notice of Proposed Rulemaking proposing adoption of a schedule of regulatory fees to assess and collect congressionally required regulatory fees for fiscal year (FY) 2021, based on proposals contained in a May 13, 2020 Notice of Proposed Rule Making.

December 28, 2020

2021 Annual Regulatory Fees – Reply Comments are due in response to the FCC's Further Notice of Proposed Rulemaking proposing adoption of a schedule of regulatory fees to assess and collect congressionally required regulatory fees for FY 2021, based on proposals contained in a May 13, 2020 Notice of Proposed Rule Making.

January 30, 2021

Children's Television Programming Reports – Each commercial TV and Class A television station must electronically file its annual Children's Television Programming Report, on FCC Form 2100 Schedule H, to report on programming aired by the station and other efforts in 2020 that were specifically designed to serve the educational and informational needs of children.

Commercial Compliance Certifications – Each commercial TV and Class A television station must post to its Online Public Inspection File ("OPIF") a certification (or certifications) of compliance during 2020 with the statutory limits on commercial time during children's programming. The certification(s) should cover both the primary programming stream and all subchannels aired by the station.

February 1, 2021

Radio License Renewal Applications Due – Applications for renewal of license for radio stations located in Kansas, Nebraska, and Oklahoma must be filed in the Licensing and Management System ("LMS"). These applications must be accompanied by Schedule 396, the Broadcast EEO Program Report, also filed in LMS, regardless of the number of full-time employees. Under the new public notice rules, radio stations filing renewal applications must begin broadcasts of their post-filing announcements concerning their license renewal applications between the date the application is accepted for filing and five business days thereafter and must continue for a period of four weeks. Once complete, a certification of broadcast, with a copy of the announcement's text, must be posted to the OPIF, within seven days.

Television License Renewal Applications Due – Applications for renewal of license for television stations located in Arkansas, Louisiana, and Mississippi must be filed in LMS. These applications must be accompanied by Schedule 396, the Broadcast Equal Employment Opportunity ("EEO") Program

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Report, also filed in LMS, regardless of the number of full-time employees. Under the new public notice rules, radio stations filing renewal applications must begin broadcasts of their post-filing announcements concerning their license renewal applications between the date the application is accepted for filing and five business days thereafter and must continue for a period of four weeks. Once complete, a certification of broadcast, with a copy of the announcement's text, must be posted to the OPIF within seven days.

EEO Public File Reports – All radio and television station employment units with five or more full-time employees and located in Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York, and Oklahoma must place EEO Public File Reports in their OPIFs. 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.

Telecom Deadlines:

January 15, 2021

Hearing Aid Compatibility Certification (FCC Form 855) – Digital mobile service providers (primarily cell phone providers, including MVNOs and resellers, and certain mobile interconnected and non-interconnected Voice over Internet Protocol (VoIP) services) must certify annually whether they comply with the Commission's wireless hearing aid compatibility requirements. The FCC streamlined the filing requirement for digital mobile service providers in 2019. However, digital mobile service providers still use the same electronic filing portal that device manufacturers use to file their annual Form 655 relating to hearing aid compatibility. Device manufacturers are still required to file Form 655.

January 31, 2021 (Due February 1, 2021 because January 31 falls on a Sunday)
Lifeline Recertification (FCC Form 555) – All eligible telecommunications carriers must re-certify all subscribers every 12 months, except for subscribers in states where the National Verifier, state Lifeline administrator, or other state agency is responsible for annual re-certification of subscribers' Lifeline eligibility. In 2018, the FCC changed Form 555 to make the filing due for all carriers on January 31 each year, rather than on a rolling 12-month basis for each carrier. Carriers should file the form using the Universal Service Administration Company's (USAC) E-file system.

February 1, 2021

Numbering Resource Utilization Forecast (NRUF) (FCC Form 502) – Twice a year, service providers with numbers from the North American Numbering Plan Administrator (NANPA), a Pooling Administrator, or another telecommunications carrier must file a numbering resource utilization forecast. Subscriber toll-free numbers are not included in the report. Interconnected VoIP providers are subject to the reporting requirement along with other service providers who receive NANPA numbers, such as wireless carriers, paging companies, incumbent local exchange carriers (ILECs), and competitive local exchange carriers (CLECs). The next biennial reporting deadline is February 1, 2021.

Quarterly Telecommunications Reporting Worksheet (FCC Form 499-Q) – FCC rules require telecommunications carriers and interconnected VoIP providers to file quarterly revenue statements re-

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porting historical revenue for the prior quarter and projecting revenue for the next quarter. The projected revenue is used to calculate contributions to the Universal Service Fund (USF) for high cost, rural, insular and tribal areas as well as to support telecommunications services for schools, libraries, and rural health care providers. USF assessments are billed monthly.