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MEMORANDUM TO CLIENTS

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The Supreme Court Overturns Third Circuit on Media Ownership Rules

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On Thursday, April 1, 2021 the Supreme Court unanimously voted to overturn the United States Court of Appeals for the Third Circuit in Philadelphia ("Third Circuit") in the case of *Federal Communications Commission* ("FCC") *v. Prometheus Radio Project, No. 19-1231.* The possibility of this result was something we had considered in a previous post, which includes background on media ownership rules. By overturning the Third Circuit, the changes the FCC adopted in 2017 will likely go into effect soon. Those changes included eliminating the newspaper-broadcast and the radio-TV cross-ownership rules and allowing dual TV station ownership in markets with fewer than eight independent voices, creating an opportunity for ownership of two of the top four TV stations in a market on a case-by-case basis (the FCC did not call it a waiver), eliminating attribution of joint sales agreements for multiple ownership purposes, and creating an incubator program.

The FCC still has to deal with its pending Quadrennial Review of the ownership rules, which started in 2019. That proceeding largely looks at the radio rules, but also includes a review of the dual network rule (whether common ownership of 2 of the Top 4 TV networks should be permitted), the Top 4 rule for TV ownership (trying to decide if there are more definitive criteria that can be established as to when two of the Top 4 TV stations in a market can be commonly owned), and whether there should be any rules limiting shared services agreements between non-commonly owned stations. The FCC may ask for further comments on the issues raised in the Quadrennial Review. In comments filed in the 2019 Quadrennial Review, the National Association of Broadcasters ("NAB") proposed that there be no limits on AM station ownership at all, nor any limits on ownership of radio stations in markets below the Top 75 rated markets. In the Top 75 markets, the NAB proposes that one owner be allowed to own up to 8 FM stations, and up to 2 more if it successfully incubates a new broadcast owner.

The new Democratic-controlled FCC under Acting Chair Jessica Rosenworcel could make other re-regulatory changes to the ownership rules. (As a reminder, the Quadrennial Review proceedings are also separate from any review of the FCC's national television ownership cap and related UHF discount, both of which could be revisited in the new Democratic Congress or FCC). Of course, any re-regulatory changes raise the question of whether the Quadrennial Reviews are intended to only be deregulatory in nature. Even if the 2017 rules are allowed to continue unchanged under a Democratic FCC, applicants could likely expect a tighter review of waivers of the Top 4 prohibition on television duopolies.

As to timing of any action on the radio rules under consideration in the current Quadrennial Review, if the FCC takes new comments, it may be year's end or Q1 2022 when a decision is released. But if the FCC doesn't reopen the radio proceeding, then there is a chance of a decision by summer of Q3 2021. However, there will likely be no movement on this until President Biden appoints a permanent FCC Chair and fills the vacant Democratic seat on the FCC.

Now Available:
Writing Contracts for a Post-Covid World Webinar

On March 23, Fletcher Heald attorney Thomas Urban presented a webinar on how the COVID-19 pandemic has affected contract litigation and how companies should be prepared for future public health emergencies. During the presentation, Tom broke down the differences in contract doctrines and provided viewers with specific case law that could be applicable in potential lawsuits. The webinar ended with an in-depth look at where contract law could be moving post-COVID as well as many other challenges businesses could face. If you have not updated your contracts or are just interested in learning more about the law, this is an exceptional educational opportunity.

If you would like a copy of the PowerPoint, please reach out to potischman@fhhlaw.com. Otherwise, you can watch the webinar on our YouTube channel. Be sure to subscribe to receive all the latest legal webinar content and feel free to ask us any questions you may have.

Dates Announced for Non-Commercial Educational Station Filing Window

On April 21, the FCC announced that the next Full Power Non-Commercial Educational Station ("NCE") Filing Window would take place from November 2, 2021 to November 9, 2021. Those that wish to apply must file a Form 2100, Schedule 340 electronically through the FCC's Licensing & Management System ("LMS"). The FCC is limiting each applicant to no more than 10 applications.

Keep an eye on CommLawBlog as we will be providing a more substantive update on the new NCE filing window soon.

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Upcoming FCC Broadcast and Telecom Deadlines for May – July

Broadcast Deadlines:

June 1, 2021

Radio License Renewal Applications Due – Applications for renewal of license for radio stations located in Arizona, Idaho, Nevada, New Mexico, Utah, and Wyoming must be filed electronically in the FCC LMS. These applications must be accompanied by Schedule 396, the Broadcast Equal Employment Opportunity Program Report (EEO), also filed in LMS, regardless of the station's 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 station's Online Public Inspection File (OPIF).

Television License Renewal Applications Due – Applications for renewal of license for television stations located in Michigan and Ohio must be filed electronically in LMS. These applications must be accompanied by Schedule 396, the Broadcast EEO Program Report, also filed in LMS, regardless of the station's 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 station's OPIF within seven days.

EEO Public File Reports – All radio and television station employment units with five or more full-time employees that are located in Arizona, Idaho, Michigan, Nevada, New Mexico, Ohio, Utah, and Wyoming 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.

July 10, 2021

Issues/Programs Lists – For all commercial and noncommercial radio, television, and Class A Television stations, listings of each station's most significant treatment of community issues during the second quarter of 2021 must be placed in the station's OPIF. The lists should include brief narratives describing the issues covered and the programs which provided the coverage, with information concerning the time, date, duration, and title of each program with a brief description of the program.

Class A Television Stations Continuing Eligibility Documentation – The FCC requires that all Class A Television Stations maintain in their OPIF 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 FCC has given no guidance as to what this documentation must include or when it must be added to

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the station's OPIF, 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.

<u>Telecom Deadlines:</u>

May 15, 2021 (May 17, 2021 because May 15 falls on a Saturday)

Quarterly Percentage of Internet Usage (PIU) Certification – USF prepaid calling card providers must file a certification stating that it is making the required USF contributions. The certification must be signed by an officer of the company under penalty of perjury and can be filed electronically using the FCC's Electronic Comment Filing System (ECFS). The Quarterly PIU Certification due May 15, 2020 will cover the First Quarter of 2020 (January 1, 2020 through March 31, 2020).

May 31, 2021

Annual Employment Report and Discrimination Complaint Requirement (FCC Form 395) – FCC licensees or permittees of common carrier stations **with 16 or more full-time employees** must complete FCC Form 395 and file it with the FCC by May 31 annually. The report should be filed in Docket No. 16-233 of the FCC's ECFS filing systems. However, filers should not submit any confidential information using ECFS. If a filer seeks confidential treatment of any information in its Form 395 filing, the filer should submit a redacted version of the report using ECFS and send a request for confidential treatment along with its non-redacted Form 395 filing to the FCC at:
Office of the Secretary
Federal Communications Commission
Attn: Industry Analysis Division, Office of Economics Analytics
45 L Street, N.E.
Washington, DC 20554

In addition to the Form 395 filing, all licensees or permittees of common carrier stations, **regardless of the number of employees**, must submit discrimination reports to the Commission. Filers that submit Form 395 can satisfy this requirement by completing Section V of Form 395 and need not submit a separate report.

July 1, 2021

Eligible Telecommunications Carrier Data Collection (FCC Form 481) – Eligible Telecommunications Carriers (ETCs) that receive funds from the High Cost Program and/or Lifeline support program must complete Form 481. Mobility Fund recipients are not required to submit the form. Form 481 collects financial and operations information regarding ETCs and fulfills the annual certification requirement in Section 54.313 of the FCC's rules. ETCs required to submit Form 481 must file the form electronically using their online USAC portal.