



Broadcast Newsletter

IN THIS ISSUE...

FCC INCREASES FM DIGITAL AUDIO BROADCASTING POWER LEVELS; EST INTERFERENCE RESOLUTION PROCEDURES	1
SUPREME COURT RULING CHANGES POLITICAL ADVERTISING LANDSCAPE	2
NONCOMMERCIAL STATION OWNERSHIP REPORT PROCEEDING	2
COMMERCIAL STATION OWNERSHIP REPORT UPDATE	2
FCC SNOW DAYS.....	2
FCC TWEAKS POLICY FOR LPFM STATIONS IN NCE PROCEEDINGS .	3
CONTRIBUTIONS TO FCC'S COFFERS	3
NATIONAL EAS TEST BEING CONSIDERED	3
OPERATIONS ON 700 MHZ BAND MUST CEASE BY 6/12/2010	4
CABLEVISION HEADS TO SUPREME COURT ON MUST CARRY CONSTITUTIONALITY	4
PENALTY BOX	4
DATES TO REMEMBER.....	5

SAINTS WIN SUPER BOWL XLIV

For everyone who called or emailed to congratulate us on the New Orleans Saints' first ever Super Bowl win, thank you! We've learned that many of you have become Saints fans from afar, and we welcome you as official members of the "Who Dat" Nation. The post-game celebration continued all the way through the Mardi Gras season, which was renamed "Lombardi Gras". For us long-suffering Saints fans, the victory is still hard to believe. Go Saints!

FCC INCREASES FM DIGITAL AUDIO BROADCASTING POWER LEVELS; ESTABLISHES INTERFERENCE RESOLUTION PROCEDURES

The FCC has issued an order allowing FM radio stations to increase digital power levels up to a maximum of 10% of analog power levels. Currently some 1500 stations nationwide are operating in digital hybrid mode, and the order permitting an increase in power is expected to increase that number.

As of the effective date of the order, and earlier if special temporary authority is obtained, all FM stations may commence operating with a 6dB increase in digital power by filing a notice with the FCC. Many stations make a higher increase, but such increases must follow specific engineering guidelines. We are available to assist you in determining your permitted power increase and making the required notification. We can also assist with filing an STA to increase power immediately.

In the same order, the FCC also adopted very specific procedures for investigating and resolving interference caused to existing analog radio stations by those stations that increase digital power. Each analog station's potential to receive interference from digital radio operations will vary based on a number of factors. However, under the resolution procedures adopted, the burden of proof will be on the analog station receiving such interference. We are available to answer your questions about the interference resolution procedures, or to assist you should your station receive interference from an FM digital signal.

SUPREME COURT RULING CHANGES POLITICAL ADVERTISING LANDSCAPE

In January, the US Supreme Court struck down a provision of the 2002 Bipartisan Congressional Reform Act (BCRA) that prohibited political issue advertisements paid for directly by corporations or unions within 30 days of a primary or 60 days of a general election. In addition, the Court also struck down a ban on corporations using funds from their own accounts to pay directly for campaign ads. However, the Court left in place the BCRA's disclosure requirements that require identification of the ad sponsor. The Court's ruling is expected to increase political ad spending by corporations.

Unlike political candidate advertisements, issue ads do not qualify for lowest unit rates. Normal rates may be charged for such ads. In addition, broadcasters airing issue ads do not receive the same legal immunity protections that apply to political candidate advertisements. Caution should therefore be taken when reviewing the content of such ads. We are available to clarify any issues related to the Court's ruling and attendant compliance changes for broadcast stations.

On the heels of the Court's decision, Democratic members of Congress have introduced legislation proposing new restrictions to counter the Court's decision. The proposed legislation would prohibit political ad spending by foreign corporations, and by government contractors or corporations that received TARP funds. In addition, the proposal adds new disclosure requirements. Under those requirements, corporate CEOs would have to appear in the ads, and the names of the top five contributors to a political organization that purchases ads would have to appear in the ad. Finally, the proposal includes a requirement that if a corporation's ad supports or opposes a candidate, then that candidate and his/her political party would be allowed to receive the lowest unit rate for the entire media market, and broadcasters would have to provide reasonable access (i.e., to give them an opportunity to respond to the corporate ad).

NONCOMMERCIAL STATION OWNERSHIP REPORT PROCEEDING

Last fall, when the FCC adopted changes to its ownership reporting rules for commercial stations, it also sought comment on making similar changes to the ownership reporting obligations of noncommercial broadcast stations, including potential changes to the ownership reporting form current used for NCE stations.

Since seeking and receiving those comments, the FCC has not taken any further action in this proceeding. In the meantime, NCE stations must continue filing biennial ownership reports on their normal schedule – every two years no later than the anniversary date of the station's license renewal application filing deadline. If you are not sure of your filing deadline, we are available to assist you.

COMMERCIAL STATION OWNERSHIP REPORT UPDATE

Since suspending the newly adopted commercial station ownership report in late December, 2009, the FCC has announced new revisions to the reporting form or a new deadline for commercial stations to file their 2009 biennial ownership reports. Commercial stations that did not file the new form prior to its suspension should continue to maintain records of their ownership information as of November 1, 2009, since that is the information that the FCC will require reporting for when the revised form becomes available. The suspended commercial station ownership reporting form must still be used for non-biennial ownership reports, and is available in the FCC's online filing system for that purpose.

FCC SNOW DAYS

The FCC was officially closed during the February snowstorms, and has announced that all paper and electronic filings that were due between February 5-12 became due on February 16, 2010.

FCC TWEAKS POLICY FOR LPFM STATIONS IN NCE PROCEEDINGS

In a recent order deciding several remaining mutually exclusive groups from a 2007 Filing Window for new noncommercial stations, the FCC has modified a policy related to applicants for new full power NCE stations that already hold Low Power FM licenses. In connection with such applications, the FCC permits such applicants to seek a waiver allowing the applicant to disregard its existing LPFM license for purposes of points eligibility. That waiver can give applicants that already own LPFM stations a points advantage in winning a permit for a full power NCE station. However, to qualify for the waiver, the applicant must agree to surrender its LPFM license prior to the grant of its full power NCE construction permit application.

Recognizing that the surrender timelines would result in a loss of existing radio service for up to three years under the existing policy, the FCC has clarified that LPFM divestitures can occur prior to commencement of program tests under the newly issued permit, rather than as a condition to issuance of the permit itself. This will enable such applicants to continue with LPFM operations while they construct the new full power NCE facilities. In addition, the FCC will also permit such applicants to fulfill a divestiture pledge by assigning the LPFM license to a third party, provided that the assignment is rule-compliant and is not mutually exclusive with the new NCE permit.

CONTRIBUTIONS TO THE FCC'S COFFERS

As this newsletter has chronicled, the FCC has issued a record number of forfeiture orders related to the last broadcast station license renewal cycle, and has collected millions of dollars in forfeiture payments from broadcasters for rule violations. Will your station be contributing to the FCC's coffers as part of the next license renewal cycle? The answer depends on how conscientious your station has been in following and staying current with the FCC's rules.

It may be hard to fathom, but license renewal time isn't that far away for some stations. The first

license renewal applications for the next cycle will be due June 1, 2011 by radio stations located in Maryland, the District of Columbia, Virginia and West Virginia. Pre-filing announcements related to those filings will begin in April, 2011. Staggered deadlines for license renewal will then continue through 2015.

All broadcasters would be well advised to spend an hour sometime soon reviewing FCC Form 303-S, the form that must be used by each broadcaster seeking renewal. If you'd like a copy of the current license renewal form with instructions, send us an email request at admin@hardycarey.com. The various certifications of rule compliance to be made on the form should not surprise or confuse you. If you are uncertain of current requirements or rules, we are available to assist you in clarifying or confirming your obligations.

NATIONAL EAS TEST BEING CONSIDERED

In its ongoing review of and changes to the Emergency Alert System, the FCC has recently led to planning with FEMA, the National Weather Service and the Executive Office of the President for a national test of the EAS system. Although the current EAS rules contain a provision for national testing of certain components of the system, the rules only contemplates that participation will be "as appropriate", but there is nothing in the rule setting who conducts the tests or how and when they are to be conducted. Since its inception, no national EAS test has been conducted.

The Commission has not announced when the first national EAS test is scheduled, but under a new proposed rule, notice would be provided to EAS participants at least two months prior to any nationwide test. In the month the national test occurs, it would replace the required monthly test. The FCC wants to implement the national test on an annual basis. After the test, the FCC is proposing that EAS participants report certain data to the Commission within thirty days, including when they received emergency alert notice and the make/model number of EAS equipment being used. The information will be used to diagnose problems with the test.

Broadcaster comments are invited on these proposals.

EAS testing and documentation failures are among the top reasons stations are fined by the FCC. Stations should always ensure that required tests are being properly conducted and logged, and immediately correct any anomalies. Should you have questions about your EAS responsibilities, the attorneys at Hardy, Carey, Chautin & Balkin are available to assist you.

FCC: OPERATIONS ON 700 MHz BAND MUST CEASE BY 6/12/2010

The FCC has issued an Order establishing June 12, 2010 as the deadline by which all low power auxiliary stations, including wireless microphones, must cease operating in the 700 MHz band, which used to house analog television channels above channel 51. Low power auxiliary stations are used to transmit signals over distances of approximately 100 meters through devices such as wireless microphones, cue and control communications and synchronization of TV camera signals.

The band is being cleared to allow for use by commercial and public safety groups. Some commercial and public safety licensees may send out notices before June 12, 2010 requiring that users vacate their spectrum within 60 days of the notice. Moreover, in the near future, however, sale of low power auxiliary stations such as wireless microphones, that operate in the 700 MHz band will be prohibited.

CABLEVISION HEADS TO SUPREME COURT ON MUST CARRY CONSTITUTIONALITY

On January 27, 2010, Cablevision filed an appeal with the U.S. Supreme Court of a Second Circuit decision that upheld the FCC's must carry mandate for an upstate New York television station to be carried on Cablevision's system. Cablevision has obtained a stay of the Second Circuit's decision mandating carriage while it challenges the continued constitutionality of the must-carry rules at the Supreme Court.

The Supreme Court must first agree to consider the case, and that decision is not likely to be made until later this year. If the Supreme Court agrees to hear the case, it would probably not be scheduled until the spring of 2011. The last constitutional challenge to the must-carry rules was made in a 1994 case, where they were upheld in a 5-4 vote.

The facts surrounding carriage of the station in this case involved a dispute over modification of the station's market to add additional communities. Cablevision is arguing to the Supreme Court that the must-carry rules should not require carriage in areas where a station does not have an over-the-air audience. In addition, however, Cablevision challenges the constitutionality of the entire must-carry regime given that cable operators face new competition that did not exist in the 1990s.

PENALTY BOX

FINES FOR FAILURE TO PUBLICIZE CHILDREN'S TV PROGRAMMING REPORTS

In early February, the FCC issued fines of \$8,000 and \$10,000 each to two television stations that failed to publicize the existence and location of station children's television programming reports (Form 398). Both fines arose from admissions made in the station license renewal applications filed in 2004 and 2005.

Section 73.3526(e)(11)(iii) of the FCC's rules – in addition to requiring commercial stations to place the completed Form 398 in the station public file each quarter – also includes a requirement that commercial licensees “publicize in an appropriate manner the existence and location of these reports.” The FCC has previously suggested that stations may comply with this requirement by announcing the existence and location of the reports periodically over the air. In each of the cases at issue, the station failed to publicize the existence and location of the Form 398 Reports for the entire license term.

This “publicize” requirement described above is different from the requirement that stations provide information to publishers of program guides about

children's programming. In the license renewal application, a separate certification of compliance must be made for each requirement.

DATES TO REMEMBER

August 25, 2009 through July 26, 2010

FCC will begin accepting first-come, first-served applications for rural area only new digital-only LPTV and TV translator stations, major changes to existing analog and digital LPTV and TV translators, and for digital companion channels for incumbent analog stations.

February 1, 2010

NCE ONLY AM & FM Stations in Arkansas, Louisiana and Mississippi: complete your biennial ownership report on Form 323-E and place copy in public file. Also complete EEO public file report and place same in public file as well as post on website.

Commercial AM, FM, TV & Class A Stations in Arkansas, Louisiana and Mississippi: complete EEO public file report, place copy in public file and post copy on website.

NCE Class A & TV Stations in Arkansas, Louisiana and Mississippi: complete EEO public file report, place copy in public file and post copy on website.

Commercial and NCE AM & FM Stations in Kansas, Nebraska, and Oklahoma: complete EEO public file report, place copy in public file and post copy on website.

Commercial TV & Class A Stations in Kansas, Nebraska and Oklahoma: complete and electronically file EEO Mid-Term Form 397; and, complete EEO public file report, place copy in public file, attach copy to Form 397 and post copy on website.

NCE TV and Class A Stations in Kansas, Nebraska and Oklahoma: complete and electronically file biennial ownership report on Form 323-E; complete and electronically file EEO Mid-Term Form 397; and, complete EEO public file report, place copy in public file, attach copy to Form 397 and post copy on website.

Commercial AM & FM Stations in New Jersey and New York: complete and electronically file EEO Mid-Term Form 397; and, complete EEO public file report, place copy in public file, attach copy to Form 397 and post copy on website.

NCE AM & FM Stations in New Jersey and New York: complete and electronically file biennial ownership report on Form 323-E; complete and electronically file EEO Mid-Term Form 397; and, complete EEO public file report, place copy in public file, attach copy to Form 397 and post copy on website.

All TV & Class A stations in New York and New Jersey: complete EEO public file report, place copy in public file and post copy on website.

February 5-26, 2010: minor mod freeze in place on FM commercial and non-commercial minor change applications, commencing at 11:59pm EST on February 5, 2010 through close of the window on February 26, 2010.

February 19-26, 2010: filing window for 67 vacant commercial FM allotments reserved for non-commercial use

February 24, 2010: Children's Electronic Media Comments due

March 8, 2010: Future of Media Public Notice Comments due

© 2009 Hardy, Carey, Chautin & Balkin, LLP

For more info, contact Joe Chautin, Mark Balkin, or Elise Stubbe.

Phone 985.629.0777

Fax 985.629.0778

www.hardycarey.com

Actual resolution of legal issues depends upon many factors, including variations of facts and applicable Federal laws. This publication is not intended to provide legal advice on specific subjects, rather, it seeks to provide insight into legal developments and issues that we feel could be useful to our clients and friends.

 Hardy, Carey, Chautin & Balkin, LLP
ATTORNEYS AT LAW
1080 West Causeway Approach
Mandeville, Louisiana 70471-3036