



Broadcast Newsletter

IN THIS ISSUE...

AM REVITALIZATION COMMENTS: URGENT AND RADICAL REFORMS NEEDED.....	1
ANOTHER HUGE EAS TONE MISUSE FINE	1
TV INTERFERENCE/REPACKING WEBINARS PLANNED FOR FEB.....	2
TV CHANNEL-SHARING TEST PLANNED	3
WHEELER REPORTEDLY PUTS HOLD ON TV TRANSACTIONS INVOLVING SSAs.....	3
FEB 3RD LAST DAY FOR OLD FCC HOME PAGE.....	3
AM TOWER FENCING FINE	4
DATES TO REMEMBER.....	5

AM REVITALIZATION COMMENTS: URGENT AND RADICAL REFORMS NEEDED

The more than 150 parties filing comments in the FCC's AM Revitalization rulemaking proceeding have made it abundantly clear that they desire changes to the AM rules, and quickly. While many commenters voiced support for the 6-7 concrete proposals offered by the FCC, including an AM-only FM translator filing window, many more provided specific details and recommendations related to those proposals, and also urged additional, dramatic rule changes.

Those more dramatic suggestions included matters such as (i) the elimination of community of license coverage requirements, (ii) the adoption of *Tell City* waivers to enable longer distance moves of FM translators, (iii) immediate changes to daytime operating hours, (iv) grants of main studio waivers and reduced staffing requirements, (v) allowance of major change modifications when FM translators are forced off the air by full power stations, (vi) expansion of *Mattoon* waivers to remove mutual exclusivity and serial hopper restrictions, and (vii) multiple, radical changes to the AM interference rules. Commenters also stressed the importance of continuing efforts to relax or eliminate AM rules, instead of relying only on this rulemaking and a single AM-only FM translator window for revitalization.

Reply comments are due no later than **February 18, 2014**. Based on the proposals submitted, we'll know soon just how committed the FCC is to revitalizing the AM Band. Telling indicators will be how quickly the FCC acts on the rulemaking, the scope of the changes adopted, and whether the Commission takes any immediate actions to provide relief outside of the rulemaking proceeding.

ANOTHER HUGE EAS TONE MISUSE FINE

Back in November, the FCC issued an enforcement advisory and a few fines for the transmission of commercial or other content that contained an EAS tone or something close to it as attention-getters. One of the victims last time was the Turner Broadcasting System, which earned the privilege of paying \$25,000 for preparing and distributing to over 97 million households a promotion for the Conan show that included sounds similar to an EAS tone.

Well, Turner is back in the FCC's crosshairs; this time, at a price tag of \$200,000 for repeating the error. The FCC received numerous complaints about a commercial for Best Buy on Turner's Adult Swim cable network, which included audio that simulated EAS tones. The commercial apparently aired 14 times over six days, and came after Turner's earlier representation to the FCC that it had changed its internal review practices after the Conan incident.

Now is a good time to review your station's procedures for screening commercial matter to be sure they include a review for offending EAS tones. It might also be a good idea to add a clause in your commercial sale documentation that the advertiser/provider of the material will hold the station harmless for EAS tone simulations that result in a fine.

TV INTERFERENCE/REPACKING WEBINARS PLANNED FOR FEBRUARY

In early January, the FCC promised a workshop/webinar on TV repacking in February to discuss some tweaks to software they hope to use during the repacking phase of the planned incentive auction that will repurpose some TV spectrum for broadband use. In late January, the FCC's Office of Engineering & Technology issued a public notice proposing an alternative broadcast/wireless interference methodology to maximize the amount of auctioned spectrum, and set a February 21st date for a webinar. We now know that these two webinars will both be held on February 21st, with the repacking software webinar scheduled for 10 am to 12 noon, and the interference webinar scheduled for 1-3 pm (all times Eastern).

The FCC's early January public notice provided additional technical details and a description of a "feasibility check" software function that could be used to rapidly determine whether a channel assignment is feasible during the reverse-bidding phase of the auction. The "feasibility check" would only determine "whether a channel assignment is feasible for a set of stations, not that it represents the optimal channel assignment." The software is a shortcut of sorts to avoid time-consuming analysis to determine optimum channel assignments.

Broadcasters, including the NAB, have been critical of the FCC's efforts to enable a speedy auction at the expense of station owners and viewers, painting the "feasibility check" as harming the public interest.

The OET notice, by considering interference methodologies other than distance separation, once again raises the issue of how the FCC should define station coverage areas and just what percentage of viewers can receive interference.

Recent statements from the FCC's new Chairman, Tom Wheeler, suggest that an incentive auction won't be scheduled until mid-2015 at the earliest. While a new DTV Table of Allotments would essentially be adopted "live" during the auction based upon software-driven analyses, the actual repacking process will likely take much longer than the FCC's desired 18-month timeline suggested over a year ago. Hundreds of stations may be required to change channels, and with limited tower crews and antenna manufacturers, plus a still unknown expense reimbursement process, repacking could become nightmarish.

The FCC has repeatedly expressed that it wishes to be transparent about the auction rules so broadcasters will be encouraged to participate. The latest push on that front is the FCC's plan to hold one-on-one sessions with broadcasters about the auction, though initial reports suggest that such discussions would be designed to encourage auction participation, rather than provide assurances to broadcasters who do not wish to participate.

In our view, thus far, the FCC has created more confusion and concern by incrementally releasing information or asking for input, often on matters not favorable to those broadcasters that do not wish to participate in the auction, and always with a "we hope this doesn't scare you" disclaimer that any ultimate policies or rules are subject to Commission approval.

A report and order is expected this spring.

TV CHANNEL-SHARING TEST PLANNED

Two television stations in California, KJLA and KLCS, are planning a test with the assistance of wireless trade associations to see if the FCC's suggested channel-sharing solution to incentivize broadcaster participation in the auction will actually work as advertised.

Though news and blog reports suggest that the stations plan on seeking FCC approval for the test, no details were available on the FCC's online systems. According to its website, KJLA offers 10 different digital programming streams, while KLCS' website reports four programming streams.

According to FCC proposals, stations that channel share will still enjoy all the rights and have all the obligations of a full power television station. The theory is that one of the two stations that channel-share would be able to relinquish its 6 MHz channel, likely in conjunction with an agreement (subject to FCC approval) to share in the auction proceeds from the relinquished channel.

LEGAL CHALLENGE TO VIEWABILITY RULE FAILS

The DC Circuit has denied a legal challenge to the FCC's 2012 action changing how it interpreted a requirement in the Communications Act to ensure that television channels carried by cable operators be "viewable" to subscribers.

Originally adopted in 2007 to ensure that stations converting to digital-only would still be viewable by analog cable providers, the "viewability rule" required cable operators with analog subscribers to down-convert the digital TV channels to analog so those subscribers would not lose the TV channel. That policy was slated to sunset in 2012, and in connection with reviewing the policy, the FCC decided to interpret the "viewability rule" more liberally by concluding that so long as analog subscribers received a notice on their bill that they could continue to receive TV channels by paying for an equipment change, the "viewability" requirement was met. Broadcasters challenged the legality of that new interpretation, but the new rule went into effect anyway. Many stations lost viewers as a

result, even after alerting cable viewers that action was necessary to avoid loss of the signal.

The court upheld the FCC's action, finding that because Congress had not expressly mandated the retention of the prior policy, the FCC's action was not arbitrary or capricious.

WHEELER REPORTEDLY PUTS HOLD ON TV TRANSACTIONS INVOLVING SSAS

According to numerous reports, new FCC Chairman Tom Wheeler has put a hold on processing pending or future applications for television station license assignments if they include shared services agreements with other stations in the same market. The FCC has routinely approved such transactions in the past.

The move comes on the heels of his recent remarks that the FCC should more closely scrutinize transactions that include shared services or joint sales agreements. The issue is also being considered in FCC proceedings determining whether SSAs or joint sales agreements should be attributable under existing ownership regulations.

In response to TV broadcaster claims that Wheeler's move was designed to pressure station owners to participate in the incentive auction, Commissioner Pai expressed concern that the FCC avoid taking actions that could be seen in that light, and instead begin to provide actual cash figures to stations as part of further transparency efforts.

FEBRUARY 3RD LAST DAY FOR OLD FCC HOME PAGE

A few years ago, the FCC made several cosmetic changes to its www.fcc.gov website that structured the delivery of information by topic instead of by Bureau or Division. Despite that change, the "old" home page remained live and a saved link to the old website was still available and updated.

Now, apparently due to a decline in the number of hits to the old home page, the FCC has decided to

eliminate the old home page link. February 3rd will be the last day that it will be active. We will miss it. Old Bureau and Division page links will continue to work, as they remain “live” and are accessible from a bookmark, or once a user clicks through the still mysterious and non-logical home page in order to access them.

AM TOWER FENCING FINE

Some things are hard to hide. During a field agent inspection, one AM station owner tried hard, but ultimately failed, to later explain why half of the fence around one of its three towers was laying on the ground. During the inspection, the agent tried to lift the fencing sections, but it was difficult because the grass had grown through and around the fence. Predictably, the station received a notice of violation of Section 73.49 of the FCC’s rules, which requires AM towers to be enclosed with an effective locked fence or other enclosure.

The station responded, explaining that the fence had only recently collapsed when the station engineer was clearing the site of weeds, and that the fence had been repaired shortly thereafter. The FCC wasn’t buying it, concluding that the fencing “appeared to have been in a state of disrepair for an extended period of time.” The tab for the fencing obligation was \$7,000. But the FCC bumped it up another \$3,000 based on a prior fine for the same violation in 2012. Turns out the station had never actually paid that fine, but the FCC concluded that it could rely upon the prior violation anyway. We doubt that the FCC will see this \$10,000 either.

© 2014 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.

DATES TO REMEMBER

January 31, 2013: minimum fees due to SoundExchange for 2014. Renewal of royalty plan may also be required.

February 1 & 16, 2014: **AM & FM Stations in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, & Vermont:** air your POST-filing announcements.

TV, Class A & LPTV Stations in Colorado, Minnesota, Montana, North Dakota & South Dakota: air your POST-filing announcements.

February 1 & 16, 2014 and March 1 & 16, 2014: **TV, Class A & LPTV Stations in Texas:** air your PRE-filing announcements.

AM & FM Stations in Delaware & Pennsylvania: air your PRE-filing announcements.

February 3, 2014: **TV, Class A & LPTV Stations in Kansas, Nebraska & Oklahoma:** file your renewal application electronically via Form 303-S. Also file EEO Form 396 with, if applicable, two most recent EEO public file reports. Post current EEO public file report to online public file and post copy on station website, if applicable. **NCE Stations Only:** also file biennial ownership report via Form 323-E.

AM & FM Stations in New Jersey & New York: file your renewal application electronically via Form 303-S. Also file EEO Form 396 with, if applicable, two most recent EEO public file reports. Place current EEO public file report in public file and post copy on station website, if applicable. **NCE Stations Only:** also file biennial ownership report via Form 323-E.

AM & FM Stations in Arkansas, Louisiana & Mississippi: if full time employee threshold is met, complete EEO public file report and place same in public file as well as post on website. **NCE STATIONS ONLY:** also file biennial ownership report via Form 323-E.

TV & Class A TV Stations in Arkansas, Louisiana, New York, New Jersey & Mississippi: if full time employee threshold is met, complete EEO public file report and place same in public file as well as post on website.

AM & FM Stations in Kansas, Nebraska, & Oklahoma: if full time employee threshold is met, complete EEO public file report and place same in public file as well as post on website.

February 3, 2014, February 16, 2014, March 1, 2014, March 16, 2014, April 1, 2014 & April 16, 2014:

TV, Class A & LPTV Stations in Kansas, Nebraska & Oklahoma and AM & FM Stations in New Jersey & New York: air your POST-filing announcements.

February 18, 2014: reply comments on AM revitalization NPRM due.

February 23, 2014: **AM & FM Stations in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, & Vermont:** complete and post to your public file documents relating to pre- and post-filing broadcast renewal announcements.

TV & Class A Stations in Colorado, Minnesota, Montana, North Dakota & South Dakota: complete and post to your public file documents relating to pre- and post-filing broadcast renewal announcements.

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

4819-5012-6104, v. 1