



Provided by:
 M. Scott Johnson, Esquire
 Fletcher, Heald & Hildreth, P.L.C.
 1300 N. 17th Street – 11th Floor
 Arlington, Virginia 22209
 703-812-0474
 sjohnson@fhhlaw.com

Memorandum to Members

Corporations, unions now free to buy their own political spots



Ban On “Electioneering Communications” Tossed By Supreme Court

By Jeffrey Gee
 gee@fhhlaw.com
 703-812-0511

The U.S. Supreme Court has struck down a long-standing ban on corporate spending on political advertising, as well as a related portion of the McCain-Feingold campaign finance reform act that prohibited “electioneering communications” by corporations and unions in the days leading up to an election. This is welcome news to broadcasters and others in the media business as the decision is widely predicted to introduce a new pool of buyers of political advertising time.

The case arose, oddly enough, from a documentary movie about Hillary Clinton. The film, released in the thick of Ms. Clinton’s 2008 run for the presidential nomination, was – how can we say this delicately? – brutally critical of Ms. Clinton. Its producers wanted to broadcast ads for the film, but were concerned such ads might be deemed “electioneering communications” and, therefore, might violate the law. Accordingly,

they took the matter to court, and the rest is now history.


The Supreme Court’s decision, which affirms the First Amendment rights of corporations and unions, involves (among other political advertising laws) the McCain-Feingold Act, more properly referred to as the Bipartisan Campaign Reform Act of 2002 or “BCRA”. In relevant part, BCRA prohibited “electioneering communications” by corporations and labor unions. Specifically, BCRA barred such entities from directly spending money on broadcast, cable or satellite communications that (a) referred to clearly identified candidates within 60 days of a general election or 30 days of primary election and (b) reached 50,000 or more persons. The Court found that that restriction (and earlier cases upholding bans on corporate political speech) amounted to unconstitutional censorship based solely on the identity of the speaker.

For broadcasters facing a down advertising market, the positive effect of the Court’s decision may be considerable.

Although the Court’s decision greatly expands the free speech rights of corporations, it does *not* lift all restrictions on political advertising. Corporations are still prohibited from making contributions directly to the campaigns of political candidates (although Political Action Committees, or “PACs”, may still do so). Moreover, the Court specifically upheld BCRA’s disclaimer and disclosure requirements (the spoken and textual announcements of who is responsible for an ad and whether it was authorized by any candidate). Also untouched by the decision are BCRA’s “stand by your ad” announcement and certification requirements that federal candidates must meet to qualify for lowest unit rates.

Nevertheless, for broadcasters facing a down advertising market, the positive effect of the Court’s decision may be considerable. Corporations and labor unions are now permitted to spend money directly from their treasuries on ads that support or oppose political candidates and ballot issues. This greatly expands the market for the upcoming

(Continued on page 11)



January, 2010 **No. 10-01**

Inside this issue . . .

- FCC Attaches Strings To Wireless Mics 2**
- Focus on FCC Fines 3**
- Copyright Royalty Board Tries, Tries Again 4**
- RMLC and ASCAP/BMI Agree To Continue to Disagree 4**
- “Fleeting Expletives”: Second Circuit, Second Time Around 5**
- Annual National EAS Test Proposed 6**
- FCC Tells Sky-High And Down-To-Earth 7/10/13 GH Users How To Co-exist 7**
- FCC Seeks To Build A Better Website 8**
- FCC Expedites Waivers To Permit NCE Fund-raising For Haiti Relief Efforts 11**
- Deadlines 12**
- FM Allotments 13**
- Updates On The News 14**



FCC Attaches Strings To Wireless Mics

By Peter Tannenwald
tannenwald@fhhlaw.com
703-812-0404

The FCC has bitten the bullet and taken steps to clear the 700 MHz band of wireless microphones in order to make room for new uses. At the same time, it has legalized these devices in the hands of formerly unlawful users.

Wireless microphones are ubiquitous. We see them on live and televised music shows and in TV news reporting. They are just as important, although less visible, when hidden under clothing in movies and TV drama and in live theater; they are equally indispensable to sports arenas, houses of worship, community centers, universities – anywhere that one person speaks to many. Even the FCC's own meeting room has a few.

Most professional wireless microphones use unoccupied channels in the TV bands. These do not cause interference to TV reception because the large users, and the companies that sell to small users, are careful about avoiding TV channels in use. Even the organizations devoted to protecting broadcast spectrum have accepted wireless microphones.

Until now, the use of wireless microphones required an FCC license. Eligibility was strictly limited to broadcasters and radio, TV, cable, and movie production, and a few other groups. All other users – music venues, Broadway shows, churches, garage bands – have been operating illegally. These folks are supposed to use non-TV frequencies, but the TV-band microphones work better, and so are by far the most popular. Even so, the unlicensed use of wireless microphones caused no trouble, so the FCC left things alone.

Then came the digital TV transition, in the course of which the FCC repacked the channels to free up the 700 MHz band (the channels formerly known as TV Channels 52-69) for other uses. But some wireless microphones left over from before the transition still operate in that part of the band. These may cause problems for the new users of 700 MHz, primarily public safety and commercial applications.

The FCC has now issued a 101-page Report and Order and Further Notice of Proposed Rulemaking that attempts both to clear the 700 MHz band and to legitimize the non-licensed users.

The bottom line: starting when the new rules are published in the Federal Register (likely within the next few weeks), wireless microphones and other low power auxiliary devices on Channels 52-69 may no longer be imported, manufactured, sold, or leased in the United States. Use of any such devices now in operation must cease by **June 12, 2010, with no exceptions.** They must clear out earlier on 60-days notice from a 700 MHz operator who plans to start operations, and immediately if they cause actual interference at any time.

None of this is a surprise. The FCC has been saying for over a decade that Channels 52-69 must be vacated. But it has waited unto now, six months after the DTV transition, to take definitive action.

The widespread use of non-licensed microphones puts the FCC in a bit of a predicament. The Commission would take far too much heat if it started confiscating unauthorized devices and shutting down Broadway and Sunday Mass, to say nothing of your kid's school play. Rather than investigate and prosecute ineligible users, the FCC decided instead to find a way for everyone to get most of what they want.

For now, both old and new users who are currently ineligible for licenses may nonetheless operate legally on an unlicensed basis, at up to 50 milliwatts power, until the FCC decides on permanent rules. In the "Notice of Proposed Rulemaking" portion

(Continued on page 10)

FLETCHER, HEALD & HILDRETH P.L.C.

1300 N. 17th Street - 11th Floor
Arlington, Virginia 22209

Tel: (703) 812-0400

Fax: (703) 812-0486

E-Mail: Office@fhhlaw.com

Web Site: fhhlaw.com

Blog site: www.commlawblog.com

Co-Editors

Howard M. Weiss

Harry F. Cole

Contributing Writers

Anne Goodwin Crump,

Kevin M. Goldberg, Dan Kirkpatrick,

R.J. Quianzon and Peter Tannenwald

Editor Emeritus

Vincent J. Curtis, Jr.

Memorandum to Clients is published on a regular basis by Fletcher, Heald & Hildreth, P.L.C. This publication contains general legal information which is not intended to be deemed legal advice or solicitation of clients. Readers should not act upon information presented herein without professional legal counseling addressing the facts and circumstances specific to them.

Distribution of this publication does not create or extend an attorney-client relationship.

Copyright © 2010 Fletcher, Heald & Hildreth, P.L.C.

All rights reserved

Copying is permitted for internal distribution.

That's right, you're STILL not from Texas – Last August FCC agents paid a visit to a couple's home in Austin, Texas, to investigate if an illegal broadcast on 90.1 MHz was coming from the house. The couple readily admitted that they were operating the station but then attempted to turn the tables on the FCC. The couple claimed that the FCC did not have jurisdiction in Texas and further questioned the authority of the FCC agent who pursued them. In the end, the couple was hit with a \$10,000 fine.

The FCC had received complaints about unauthorized broadcasts in Austin and dispatched agents to investigate. The agents tracked the signals to a residence and sent a letter to the couple living there warning them that if they continued to broadcast they could face a fine. The couple refused to shut off their transmitter despite the warning from the FCC.

Instead of heeding the government's warning, the couple fired back a response. It seems that the couple was convinced that because their radio signal did not leave the boundaries of the state of Texas, the federal government had no business regulating their signals. As we observed in the November, 2009, Memo to Clients (which reported on a similar claim made by another Texas pirate), the FCC has little tolerance for this particular argument. The FCC referred the couple to the federal law that empowers the FCC to regulate both interstate and intrastate radio signals.

Undeterred, the couple then set its sights on the guy who signed the FCC's warning letter. They claimed that the FCC agent was powerless and had no authority to do his job. Again, the FCC was not sympathetic and gave the couple a reference to its regulations which delegated authority to FCC employees.

The FCC showed up at the house a few more times and found the couple still broadcasting. In response to the continued broadcasts – even after the warning letter – the FCC has ordered the couple to pay a \$10,000 fine for its pirate broadcasts. What remains undecided is whether the couple recognizes the U.S. Dollar as currency or whether they will issue their own scrip instead.

FCC already had the paperwork, cancels station's fine – More than three years ago, the FCC proposed fining an Iowa FM station for continuing to broadcast after the station had failed to file its renewal application. The FCC was quick to scold the station for its oversight and took aim at the station with a \$7000 fine.

"Not so fast", replied the station. It provided the FCC a reference number to a renewal application that had indeed been entered into the FCC's computer system in a timely matter. However, it seems that the station at-

tempted the filing without assistance of counsel and encountered difficulty navigating the FCC's system. As a result, although the station filled out parts of its application, it missed a few steps and overlooked the most important task of paying the government its fee. Nonetheless, enough of the paperwork had been submitted that the FCC considered the application filed.

The FCC admitted that although the station had done an incomplete job, it had indeed filed the renewal paperwork. As a result, the \$7,000 fine was cancelled. Not missing an opportunity to generate revenue, the FCC did assess a different penalty. The station was penalized for making a late filing in light of the incomplete data entry job.

Focus on FCC Fines

By R.J. Quianzon
quianzon@fhhlaw.com
703-812-0424



This latest decision by the FCC should encourage all stations to hire professionals or to take particular care when submitting government applications or pursuing filings with the FCC.

Wyoming AM/FM hit with \$17,500 fine for obvious oversights – When the FCC conducts a station inspection, there are certain things that even the swiftest General Manager cannot talk his or her way out of. One of those items is the location of the station. The FCC encountered such an instance in a 2008 inspection of a Rawlins, Wyoming AM/FM combo.

Denver agents swept into Rawlins and conducted a two day inspection of the two stations. One standard procedure for FCC agents is to review a station's Emergency Alert System logs and equipment. When the FCC checked into the stations EAS gear, they discovered that the station was not monitoring any EAS assignments and had not been conducting regular testing.

The agents didn't stop with the EAS equipment. They sat down and reviewed the station's public file. A few items were missing from the public file and the FCC fined the station for the missing documents, too.

In addition, the agents spotted some microwave equipment at the studio and ran it through the FCC license database. Although the station did have an FCC license for the microwave hop, it was for a different location. Upon further discussion with station personnel, the FCC agents discovered that the equipment was moved about a mile down the road, but nobody at the station had apparently bothered to complete the FCC paperwork to let the government know. Although the station's staff may have thought that the move was insignificant because it created no interference, FCC rules require current and accurate technical data at all times. Relocating gear down the road requires a notification to the FCC.

(Continued on page 13)

\$500 minimum payment still up in the air



Copyright Royalty Board Tries, Tries Again

By Kevin Goldberg
goldberg@fhhlaw.com
703-812-0462

Today we're playing "Copyright Jeopardy!". The category is "Annual Minimum Payments", and the answer is: \$500.

Contestant No. 1: "What is the amount required to be paid by non-interactive webcasters at the beginning of each year for the right to perform sound recordings over the Internet?"

Host: "No, I'm sorry. That *would* have been the right answer, except the United States Court of Appeals declared that required payment to be arbitrary and capricious earlier this year."

Contestant No. 2: "What is the amount that will probably soon be required to be paid by non-interactive webcasters at the beginning of each year for the right to perform sound recordings over the Internet?"

Host: "Correct!"

A subtle but important distinction: the \$500 fee is *not* now in effect, but the Copyright Royalty Board (CRB) is working to change that.

We've written plenty – in previous *Memos to Clients* and also on our blog (www.CommLawBlog.com) about the challenge to the March 2, 2007 decision of the Copyright Royalty Board which instituted rates and terms to be paid to owners of sound recordings for the years 2006-2010, including the appeal of that decision by several sectors of the webcasting community to the U.S. Court of Appeals for the D.C. Circuit.

Last July the U.S. Court of Appeals for the D.C. Circuit upheld most aspects of the CRB decision. The only issue that the Court tossed back to the CRB: the annual minimum fee to be paid by both commercial and non-commercial webcasters. The Court of Appeals concluded that the CRB had provided absolutely no justification supporting this amount. Why \$500? Why not \$100? Why not \$250? The CRB's inability to justify the \$500 requirement violated the Administrative Procedure Act's requirement that, at a minimum, a new rule have some factual or legal underpinning – *i.e.*, it was not reached in an arbitrary or capricious manner.

So the Court sent the CRB back to the drawing board. And in late December, 2009, the CRB began sketching, issuing a Notice of Proposed Rulemaking in
(Continued on page 11)

RMLC and ASCAP/BMI Agree To Continue To Disagree

By Kevin Goldberg
goldberg@fhhlaw.com
703-812-0462



In our November, 2009, *Memo to Clients*, we suggested that broadcasters who had not already signed up with the Radio Music License Committee (RMLC) might look into doing so pronto. The RMLC, you will recall, represents broadcasters in negotiating with ASCAP and BMI relative to copyright royalty rates. You can be part of the RMLC team, but you have to expressly sign up with them.

There's even more reason to check into doing so now that we have turned the corner into the New Year.

In the waning days of 2009, the RMLC agreed to terms with both ASCAP and BMI covering the "bridge" period between expiration of the last agreement (which technically went away on December 31) and the approval of new terms by the U.S. District Court which oversees the RMLC/ASCAP/BMI ménage à trois. The interim deal may have some appeal.

According to *Radio Ink*, royalties due to ASCAP and BMI from radio stations will be discounted seven percent per month starting on January 1, 2010. The discount (which should be reflected in the latest round of bills being sent out by ASCAP and BMI) will be in effect until RMLC and ASCAP and/or BMI come to terms for the period beginning 2010 – or until the supervising Court steps in because the parties can't manage to reach an agreement. (Call us crazy, but we suspect that the latter is the more likely scenario, what with the RMLC Chair being quoted in the trades as saying that "the gap in [the parties'] respective positions was so vast that it made it virtually impossible to reach a voluntary agreement." That could just be a negotiating ploy, though.)

Once the rate for the next term is set, it will be retroactively applied to January 1, 2010, so depending on how things shake out, stations could end up having to pay back all of the cash saved through the interim seven percent discount. But that might not happen for a year or more – meaning that the cash will stay in the stations' pockets, rather than the ASCAP/BMI coffers, at least for the time being.

Again, stations which have already authorized RMLC to negotiate on their behalf – and thus agreed to be bound by any eventual deal that gets approved (along
(Continued on page 11)

Kevin's
Copyright
Corner



Fox v. FCC, Round 3

“Fleeting Expletives”: Second Circuit, Second Time Around

By Dan Kirkpatrick
kirkpatrick@fhhlaw.com
703-812-0432



If at first you don't succeed, try, try again. And so it was that the FCC trudged back into the U.S. Court of Appeals for the Second Circuit on January 13 to defend the “fleeting expletives” portion of its indecency regime one more time. When last the Commission fought this particular fight in this particular arena, things didn't go so well for the agency. From what we saw, the Commission is not likely to fare any better this time around.

Back in 2006, in the wake of Janet Jackson's Super Bowl flash, the Commission determined that fleeting uses of “fuck” and “shit” in two live awards shows aired by Fox in 2002 and 2003 violated the prohibition on indecent broadcasts. Fox appealed the decision to the Second Circuit, which overturned the FCC on non-constitutional grounds. According to the court, the FCC failed to explain why it had chosen to abandon a longstanding policy of *not* penalizing the occasional “fleeting” use of expletives. As we reported in the May, 2009, *Memo to Clients*, the Supreme Court, having agreed to hear the FCC's appeal of the Second Circuit ruling, reversed the Second Circuit and shipped the case back down for further consideration.

While the FCC may have been pleased to have won a temporary reprieve from the Supremes, any Commission elation must have been tempered by the grim reality that it was about to jump out of the frying pan and into the fire.

When the Second Circuit gave the FCC the big thumbs down in 2007, its opinion was not limited to the relatively narrow non-constitutional law question on which the case was ultimately decided. (We reported on that decision in the June, 2007, *Memo to Clients*.) Rather, the court took the somewhat unorthodox step of offering a detailed analysis of the constitutionality of the FCC's indecency policy, an analysis which brutally ripped that policy apart. The constitutional analysis was what lawyers refer to as “dicta” – meaning that it technically wasn't an essential aspect of the court's holding, and so had no precedential impact. Still, that analysis clearly telegraphed what the Second Circuit thought of the FCC's policy, constitutionally speaking.

So when the Supremes sent the case back to the Second Circuit (the logical expectation being that the parties would re-address the constitutional issue), the likely outcome of that second visit to the Second Circuit was anticipated to be a foregone conclusion.

And after the January 13 oral argument, it's looking like that foregone conclusion is a pretty good bet: many observers expect that the Second Circuit will hold the

“fleeting expletives” to be unconstitutional. (You don't have to trust us on this one – the oral argument is available on-line for your viewing enjoyment. We've posted a link to it at www.CommLawBlog.com.)

The issue most troubling to the Second Circuit this time around appeared to be the FCC's failure to provide a coherent and specific standard as to when something was indecent. One judge characterized the Commission's indecency decisions since the Supreme Court's 1978 *Pacifica* decision as a matter of “bewildering vagueness”. The Second Circuit panel peppered FCC counsel with hypothetical programs they worried might be found indecent under the current regime. For instance, Judge Leval (the source of the “bewildering vagueness” characterization) asked whether a production of Hamlet might be found indecent, and Judge Hall queried whether a news report on Wednesday's oral arguments would be allowed to include the original uncensored clips from the 2002 and 2003 broadcasts.

The FCC's counsel suggested in response that both of those examples would probably *not* be found held indecent, noting that the Commission “bends over backwards” to protect news programs and editorial decisions. The Court, reflecting apparent skepticism, asked pointedly whether the First Amendment allows it to rely on an agency's promise to “bend over backwards.”

Counsel for Fox (and NBC and CBS, who participated as intervenors), as well as the judges, also expressed concern over the impact of the FCC's enforcement policy on smaller local broadcasters. The limited resources of small broadcasters, the argument went, might prevent them from implementing a delay system – and, without that safety net, the threat of enhanced penalties could lead them to self-censor their broadcasts, and particularly their news coverage. The court seemed unconvinced that (as Justice Scalia seemed to suggest in his opinion) this concern might be alleviated because folks living in smaller towns were less likely (at least according to Scalia) than “foul-mouthed glitteratae from Hollywood” to use such expletives.

The Court and FCC counsel also parted ways on whether the Supreme Court's 1978 decision in *Pacifica* governs the current case. The FCC clung to that decision, claiming that *Pacifica*'s approval of indecency regulation, combined with the FCC's (supposed) guidance since then about what is and is not indecent, foreclosed the argument that the current regime was unconstitutionally vague. The Second Circuit strongly disagreed, with Judge

(Continued on page 10)

Any Commission elation must have been tempered by the grim reality that it was about to jump out of the frying pan and into the fire.



This is only a test . . .

Annual National EAS Test Proposed

By Peter Tannenwald
 tannenwald@fhhlaw.com
 703-812-0404

The FCC has proposed rules providing for an annual test of the national alert capability of the broadcast Emergency Alert System (EAS). What's more, all EAS participants in the country will have to tell the FCC whether they received the test, whether they retransmitted it, and if not, what went wrong.

Just about every full power radio and television station in the country is required to have an EAS decoder in place, and most are also required to have an encoder and to conduct weekly and monthly alert tests. All tests must be recorded in the station's log. Not every station is fully attentive to these responsibilities, and fines for non-compliance pop up fairly frequently.

The EAS is capable of both national alerts and alerts restricted to a smaller area, such as one state. If a national alert is received, all stations must cease normal programming and either (a) put the alert on the air or, if they can't put it on the air, (b) shut down. Retransmission of smaller area alerts is optional on the part of the licensee.

The FCC has never tested the national alert system, so they are starting to wonder what would happen if the President ever pushed the magic button and tried to get his voice on every station in the country. A lot of EAS decoders are automated, and a lot of stations operate unattended all or part of the day. Would the nationwide system really work, or would it crash with a dull thud?

(Actually, the Commission *does* have an idea of what might happen. It turns out that, in 2007, some FEMA workers in Illinois accidentally triggered a national-level EAS alert. Since it was not intended to be a test, presumably the alert looked like a *real* alert, and therefore it should have rocketed coast-to-coast lickety-split. Oops. Apparently, it "caused some confusion to broadcasters and other communications in the Ohio Valley and beyond" and ultimately ran out of gas because of a "combination of EAS Participant intervention and equipment failure". That hardly encourages confidence that the system will work when it's triggered on purpose.)

Such uncertainty may soon come to an end, if the FCC

has its way.

The Commission has issued a Notice of Proposed Rule Making proposing to conduct a national test once a year. Stations would be given at least two months' advance warning that the test was coming but would not be told the exact time and date. Every EAS participant would be expected to air the test, to log it, **and** to provide the test results to the FCC within 30 days. If the test was not received or retransmitted, a station would have to find out what went wrong, fix it, and tell the FCC about it.

Comments on this proposal will be due 30 days after the NPRM is published in the *Federal Register*. (Check our blog at www.CommLawBlog.com here for updates on the filing deadline.)

Every EAS participant would be expected to air the test, to log it, and to provide the test results to the FCC within 30 days.

Presumably the national test will be set up so that listeners and viewers will be amply warned that it is only a test, thereby avoiding (at least in theory) a "War of the Worlds"-like panic. (For you

young 'uns, the "War of the Worlds" refers to a 1938 radio dramatization of the H.G. Wells science fiction classic, produced by Orson Welles' Mercury Theatre on the Air. It caused widespread panic among listeners.)

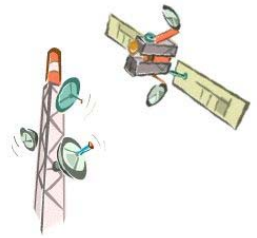
But will your station be ready, and will its equipment perform? Wise licensees will check out everything *now* and make sure that their equipment is shipshape, that no one kicked the plug out of the wall, and that they can receive the required two stations they are supposed to monitor. One thing in particular to check is whether your encoder/decoder requires a Federal Information Processing Standards (FIPS) location code in order to respond to a message. That code identifies the geographic area to which an alert applies. A nationwide message might not have one, and some decoders are known to ignore messages with no FIPS Code.

Digital radio and TV stations should make sure that the alert is retransmitted on each of their audio or video streams. We do not know now the format in which stations will have to report to the FCC, but we would not be surprised if the FCC's website suffers

(Continued on page 7)

FCC Tells Sky-High And Down-To-Earth 7/10/13 GHz Users How To Co-exist

By Peter Tannenwald
tannenwald@fhhlaw.com
703-812-0404



The FCC has issued a Report and Order adopting new rules formalizing frequency coordination requirements between Earth Stations in the Geo- and Non-Geostationary Orbit Satellite Services (GSO/NGSO) and Broadcast Auxiliary and Cable Television Relay Service (BAS/CARS) Stations in the 7, 10 and 13 GHz frequency bands.

Satellite operators use these bands to talk to their “birds” (satellites) through uplink and downlink earth stations. The same bands are used by BAS/CARS stations for fixed and mobile microwave feeds to TV stations and cable systems (such as studio-transmitter links and relays for news and other remote programming). The FCC normally requires interference mitigation through a coordination process prior to filing for a new license. That process involves sending notices to anyone in the FCC’s license database who might be affected, waiting 30 days for responses, and resolving any objections. The process is complicated enough that most applicants farm it out to an engineering firm (such as Comsearch, Inc.).

Formal procedures have been in effect for some time for coordination between GSO/NGSO applicants and existing GSO/NGSO operations. Ditto for coordination between BAS/CARS applicants and existing BAS/CARS operations. But the Commission has not previously formally adopted any procedure for coordination between the two types of services. The FCC has now decided that the same “notice and response” rules and procedures will be in effect for coordination between as well as within the various services, when BAS/CARS stations are at fixed locations.

While the notice and response system works fine for fixed stations, it is not so simple for stations which move

around, because you can’t coordinate if you don’t know where your station will be located at any given time. Therefore, the FCC has permitted mobile or temporary fixed BAS/CARS applicants to coordinate on an *ad hoc* informal basis, often through a third party like the local chapter of Society of Broadcast Engineers (SBE), which keeps track of who is doing what around town and when they plan to do it. The FCC has decided that all GSO/NGSO earth station applicants must use the notice and response system to coordinate with all BAS/CARS licensees, but temporary fixed and mobile BAS/CARS applicants may choose between notice and response and *ad hoc* coordination with GSO/NGSO entities.

When responding to a coordination request, temporary fixed and mobile BAS/CARS licensees are expected to seek protection only for frequently used locations and not for the entirety of a wide geographic area. The receive location for a temporary fixed or mobile system may be protected, as may frequently-used program origination venues such as arenas, stadiums, and convention centers.

The FCC also looked at coordination in the 10 GHz band, used by terrestrial fixed microwave services and NGSO satellite links. A while back, terrestrial operators proposed a “Growth Zone” policy, under which they could ask satellite operators to protect not only an existing path but also an anticipated future growth path. The FCC neither accepted nor rejected the idea but declined to adopt it at this time on the ground that the satellite parties who originally supported it are no longer pursuing 10 GHz licenses. If the issue is raised again in the future, the FCC will take a new look at it.

The FCC normally requires interference mitigation through a coordination process prior to filing for a new license.



(Continued from page 6)

from a simultaneous reporting requirement for over 10,000 stations the way it has teetered in the face of other simultaneous mass filings dictated by arguably ill-chosen FCC deadlines.

The FCC’s Enforcement Bureau might view these national tests as an opportunity to ring up their cash register at the expense of stations which drop the ball.

Of course, the national test is just a proposal at this

point. But the FCC appears convinced already that it’s a good idea, and it’s hard to imagine that there will be much public sentiment against greater national security. So it’s a pretty good bet that the national test proposal will become a national test reality in due course – probably not before next year at the earliest, but you never can tell. In any event, before the Commission adopts the national test, it would be a good idea for all broadcasters to check out their EAS gear now, and help protect our country, to say nothing of their wallets.



FCC ISO 411

FCC Seeks To Build A Better Website

By Kevin Goldberg
goldberg@fhhlaw.com
703-812-0462

Depending on whom you ask, 2010 may or may not be the start of a new decade. Depending on who answers, 2010 may or may not be the start of a new FCC. That's because the FCC is relying on you (and you and you, the guy in the brown shoes reading this during his lunch break) to help decide on the direction in which the agency should be moving. They've labeled this process "Reboot.FCC.Gov" and, like all the kids are doing nowadays, they've not only set up a website at that domain, but also tied the whole thing together with the Blogging, and the Twittering and the Facebooking, and the YouTubing (there's a bunch of other social media connections as well, including, for some reason MySpace, in case the next big indie band wants to participate).

A more conventional format was used to launch the rebooting process on January 13: a press release (the website does contain a one minute "welcome" video from FCC Chairman Julius Genachowski). As that release explains, the Commission is "soliciting public input on ways to improve citizen interaction with the FCC." The Chairman elaborates on this, explaining that the goal is to "get input from all corners of the country on ways to improve usability, accessibility, and transparency across the agency."

The project's efforts focus on five key elements:

Redesign of FCC.gov – Because the public's first point of contact is the FCC website, the bulk of the efforts (and, hence, the name of this project) are focused on FCC.gov. In addition to airing your complaints about the site, you can tell the FCC how to retain those aspects that work. This is, we assume, the best place to leave comments that don't neatly fit into the other categories.

Data – In the White House's recently-released "Open Government Directive" discussed in a bit more detail below, the Obama Administration accentuated the need for public access to the original data underpinning agency decisions. It said that "[w]ithin 45 days, each agency shall identify and publish online in an open format at least three high-value data sets...and register those data sets via Data.gov. These must be data sets not previously available online or in a downloadable format."

The FCC is implementing this requirement through a new www.fcc.gov/data webpage that is part of this Reboot.FCC.gov process. You can not only gain direct ac-

cess to FCC data, but also suggest to the FCC the types of data you feel the Commission should emphasize on its website and in what format that data should be presented.

Engagement – Consistent with its enthusiastic embrace of social networks, the Commission is focusing on increasing direct engagement with the public – not just in terms of presenting more data to the public or redesigning existing databases, but also in terms of turning these one-way streets into the proverbial (Warning: 1990s cliché dead ahead) "Information Superhighway" that allows information to flow in both directions.

The FCC wants you to share how you'd like the agency to share information with you. Should there be more streaming of live events, or is it more important that the FCC offer the public the opportunity to engage in real time feedback? You'll learn more about the FCC's new print and video logs, Twitter feed, video workshops and even how to break down those walls and directly interact with staff as never before.

Systems – This might be the area that excites us most: the potential redesign of the Commission's public databases, like the Electronic Comment Filing System (ECFS) (which has already undergone a recent facelift), the Consolidated Database System (CDBS) and the Universal Licensing System (ULS). These are among the most accessed portions of the FCC's website, allowing anyone to get basic information about most any Commission licensee or proceeding. No need to travel to the FCC's reference room or even file a Freedom of Information request. All the information you want, when you want it.

Except, not always. Many of these systems tend to be clunky, difficult to navigate and sometimes out of date. They're difficult to use, even for attorneys who use these databases every day! As big believers in maximum access to government information, we're hoping that user comments strongly support upgrading these databases to achieve their promise of delivering accurate and useful government information in a timely fashion.

Rules and Processes – This is probably the section that most correctly wears the "inside baseball" tag: the revision of FCC rules and processes. That's because the FCC's rules and processes are largely the domain of specialized FCC practitioners like the attorneys of this very law firm.

(Continued on page 9)

*The Commission is
"soliciting public
input on ways to
improve citizen
interaction with
the FCC."*



(Continued from page 8)

But arcane as it may be, this section is important for two reasons. First, as our colleague Mitchell Lazarus has aptly explained on several occasions, the FCC's byzantine rules and processes have a tendency to hinder the development of new technologies. Second, the FCC wants you to be able to participate in these proceedings to the greatest extent possible. Does that mean you'll ditch the lawyers? Well, of course we'd hope not, but we firmly believe that we are able to do our jobs better when our clients understand and take an active role in FCC proceedings.

How to Participate

This is all part of the Obama Administration's larger efforts to increase transparency and public participation in government. The Reboot.FCC.Gov website has a very similar look and feel to a site the White House launched in 2009 as part of its government-wide "Open Government Initiative" that promoted open government through transparency, participation and collaboration.

This make sense, of course, as Reboot.FCC.Gov is the required response to the Open Government Initiative's edict that "[w]ithin 60 days, each agency shall create an Open Government Webpage located at [http://www.\[agency\].gov/open](http://www.[agency].gov/open) to serve as the gateway for agency activities related to the Open Government Directive and shall maintain and update that webpage in a timely fashion". (If you click on www.fcc.gov/open you get redirected to Reboot.FCC.Gov). It not only *looks* the same, but it *acts* the same, right down to the main function of taking user suggestions and allowing other users to comment on those suggestions as part of reinvent-

ing agency processes where possible.

So, if you're wondering how *you* can participate in this highest of democratic callings, well, it's quite easy. The Commission is soliciting open comments and ideas from anyone and everyone about improvements that can be made in all these areas. At the bottom of each substantive area's home page (all these home pages can be reached by going to the "Reform" page of Reboot.FCC.Gov), there is a section marked "Join the Discussion" where you'll find a short list of suggestions offered by other folks. Click on any of them and you'll be able to comment on existing ideas that others have already offered. You'll also be able to suggest your own ideas for reforming the FCC. Every idea, no matter how crazy or outlandish, will stand for public scrutiny. All you need to do is login and, at least in theory, you've got a direct path to the FCC Chairman, the kind of access that you usually only enjoy by hiring a highly connected, Washington-based attorney specializing in FCC matters.

Now, by no means do we suggest you ditch your highly-connected, Washington-based attorney specializing in FCC matters. Quite the opposite, in fact. But we do encourage you to check out Reboot.FCC.Gov. Kick the tires, take her out for a test drive. Our early nosing around the site indicates that it's pretty user-friendly and easy to understand. You read some stuff, you vote or comment on some stuff, and you post some stuff of your own. As the Commission says, "No one knows how to reform FCC.gov better than the collective public opinion of the website's users." If you've had a gripe or a constructive suggestion for the FCC, now is the time to make it.



FHH - On the Job, On the Go

On January 14, **Scott Johnson** presented an FCC regulatory update program with the Chief of the FCC's Atlanta Field Office at the South Carolina Broadcasters Association Convention. While there, **Scott** also presented a political broadcast seminar with the FCC's Bobby Baker.

On January 26, **Frank Montero** participated in a roundtable discussion on "Broadband Strategies for Minority Radio" convened by the FCC at the FCC's headquarters in Washington.

As reported last month, on March 1, **Jim Riley** will be a presenter on a panel at the National Religious Broadcasters' annual convention in Nashville (which will run from February 28 - March 2). **Jim**'s panel is titled "Today's FCC Through the Looking Glass: What You Really Need to Know." **Jim** won't be lonely down in Music City. It turns out that both **Harry Martin** and **Lee Petro** will be attending the convention as well, **Harry** from February 28-March 2, **Lee** from February 27-March 1.

In an inspired piece of casting, **Alan Campbell** will be starring as Oscar Madison in the Westmorland Players production of *The Odd Couple* which is being staged in Callao, Virginia.

On March 16, **Kevin Goldberg** will speak on a panel about "(b)(3)" exemptions to the Freedom of Information Act at the National Freedom of Information Day Conference held at the American University Washington College of Law. And the following week, **Kevin** will be jetting down to sunny Aruba, where (on March 21) he will speak on "Transparency and Open Government" at the Inter-American Press Association Mid-Year Conference. Nice work if you can get it.

Christine Goepf reports that she attended **Frank M**'s presentation at the FCC (noted above) and that she "looked extremely attentive during the discussion". Nice try, Christine, but Media Darlings don't pay attention, they *get* attention. Like **Frank M**'s presentation – all over the trades with a swell quotability rating, it got attention, and it got **Frank M** the nod as the *Media Darling of the Month!*



(Continued from page 5)

Leval at one point telling the FCC to “stop telling us *Pacifica* ruled on this – it didn’t,” and advising Commission counsel that if he didn’t think the *Pacifica* decision was extremely narrow, he needed to read it again. Judge Leval explained that whereas *Pacifica* narrowly approved of the regulation of a specific list of “seven dirty words”, it had not addressed the “great miasma” of things now regulated in the “breadth of the Commission’s menace.”

(Appellate law practice tip: When a judge refers to the status quo your client’s conduct has created as a “great miasma” and tells you to go back and re-read the most important case that you’re relying on, things are probably not looking good for your side.)

When the discussion turned to the supposed purposes of the indecency policy, things didn’t get better for the agency. The Commission claimed that the main purpose of the policy was to protect children from hearing expletives. Judge Hall asked in response how that purpose was served by the “exception” for news programming, questioning whether children could tell the difference in the use of expletives in different types of programming. The Court also queried FCC counsel about why use of the V-Chip was not a better, less-restrictive solution to enable parents to protect their children from broadcast expletives. Judge Leval asked whether, if technology exists that could allow parents to filter programming for their children, parents with the low-

est tolerance for questionable language – those who may not let their children outside due to fear they might “hear a nasty” – should be allowed to dictate what other viewers and listeners should hear.

While the Second Circuit’s decision probably won’t be issued for a couple of months, there is little doubt that it will find the FCC’s current indecency regime, at least as it applies to “fleeting expletives”, unconstitutional. Of course, that is not likely to be the end of things. The next decision out of the Second Circuit is almost certain to be appealed to the Supreme Court, which would then have the opportunity to address the constitutional issues it declined to address the last time.

Meanwhile, moving along on a parallel track is CBS’s appeal of the FCC’s decision fining it for broadcast of Janet Jackson’s infamous “wardrobe malfunction” in 2004. As we all know, the Third Circuit initially found that fine to be arbitrary and capricious, but was asked by the Supreme Court to rethink that decision in light of the remand of the Second Circuit’s original decision. Oral arguments in the Third Circuit are scheduled for February 23, which could mean a new Third Circuit decision sometime in the late spring or summer. It is possible that both Courts’ decisions could be consolidated in a single Supreme Court case, probably in the 2010-2011 term.



(Continued from page 2)

of its document, the Commission has invited comments on who should be eligible for licenses in the future, how licensed and unlicensed operation should be permitted, and what technical standards should apply. The FCC must figure out power limits, whether new units must be digital to minimize interference potential, which TV channels should be available, and the interference implications to and from “white space” devices, including the details of database registration for wireless microphones. The rules are likely to forbid data transmission, interconnection with the telephone network, wireless telephone headsets, and after-market RF amplifiers. (Comments on these questions will be due 30 days after the order is published in the *Federal Register*; reply comments will be due 51 days after Fed Reg publication.)

And enough, says the FCC, of selling wireless microphones to customers who do not understand the license requirements. Effective **February 28, 2010**, conspicuous disclosure will be required throughout the distribution chain – on websites, in catalogs, in displays, and even on the boxes in which microphones are sold – to warn buyers about which frequencies are legal and who needs a license. (We have posted a link at www.CommLawBlog.com to the actual verbiage the FCC wants to see in such disclosures.) The FCC is even

considering making customers sign an acknowledgment that they understand the rules (which might work as well as their requirement, given up some decades back, that made everyone with a CB radio get a license).

Retailers must pull 700 MHz-capable units off their shelves immediately. Those units may now be manufactured only for export, and starting April 15, 2010 (the Office of Management and Budget willing, that is), must be labeled in all cases with a clear advisory that the units cannot be used in the U.S. Manufacturers are encouraged to continue trade-in and rebate programs that replace noncompliant devices and are expected to notify users who have filed warranty registrations.

Current licenses that authorize 700 MHz band operation will automatically be modified to delete those frequencies effective June 12, 2010, but will remain valid for lower frequencies. A few licenses which are for only the 700 MHz band will be void.

So your clergy will not be forced to shout from the pulpit, Broadway will not shut down, and rock bands will still split your ears, thanks to a better organized and more realistic regulatory scheme. And the FCC can keep on using the wireless microphones in its meeting room.





Au secours

FCC Expedites Waivers To Permit NCE Fund-raising For Haiti Relief Efforts

As the horrific stories and images reach the mainland from earthquake-devastated Haiti, broadcast stations may want to undertake fund-raising efforts to support relief efforts. The FCC clearly does not want to do anything to discourage such laudable humanitarian impulses. However, rules are rules – and the Commission’s rules (Sections 73.503(d) for radio and 73.621(e) for TV) generally prohibit noncommercial educational (NCE) broadcasters from engaging in on-air fund-raising activities on behalf of anybody but the station itself.

Not to worry. The Commission has historically waived that prohibition following “disasters of particular uniqueness or magnitude” – things like Hurricanes Andrew and Katrina, the January, 2005 Southeast Asia tsunami and, of course, the September 11, 2001 attacks. And just to be sure that we all know that the FCC views the Haiti earthquake to be in the same league, the Commission has issued a public notice laying out the procedures by which NCE licensees may request waivers so that they can engage in fund-raising for relief efforts.

Stations seeking such waivers should prepare an informal request providing the following basic details of their fund-raising activity:

-  the nature of the fund-raising activity;
-  the proposed duration of the activity;
-  the organization(s) to which fund will be donated; and
-  whether the fund-raising activity will be part of the station’s regularly-scheduled pledge drive or fund-raising efforts



The informal request should then be emailed to the FCC. NCE **television** licensees should address their requests to Barbara Kreisman (barbara.kreisman@fcc.gov) and Clay Pendarvis (clay.pendarvis@fcc.gov). NCE **radio** licensees should address their requests to Peter Doyle (peter.doyle@fcc.gov) and Michael Wagner (michael.wagner@fcc.gov).

The FCC’s openness to these waivers is just one element of a broad-based, Commission-wide commitment to provide domestic and international communications expertise and resources to support the Haitian relief efforts.



(Continued from page 4)

which it proposes to require every commercial and noncommercial webcaster to pay an annual minimum fee of – you guessed it – \$500 per channel. These webcasters will only pay more at such time as their cumulative webcasting royalties for the year exceed \$500.

Our conversations with clients lead us to believe that the \$500 per channel annual minimum payment was one of the *least* controversial aspects of the 2007 CRB decision. Most commercial webcasters are going to exceed \$500 pretty quickly anyway, so this is merely a down payment applied to later royalty payments. The noncommercial webcasters view the \$500 payment as minimally burdensome even if they never exceed the monthly allowed maximum of 159,140 aggregate tuning hours which triggers additional payments.

As a result, we envision minimal objection or contrary suggestions and expect the \$500 annual minimum payments to be reinstated in the near future. But for the time being, at least, the \$500 annual minimum payment is **not** something that needs to be paid.



(Continued from page 4)

with the seven percent discount for the bridge period) – don’t have to do anything. But stations that (a) have not authorized the RMLC to rep

them (or stations that aren’t certain if they have done so) but (b) still but want to be subject to these terms, can still opt in by completing an appropriate form (check out www.CommLawBlog for links to the various forms) and sending it to the RMLC. (Note: the third major performing rights organization, SESAC, engages in separate negotiations with the RMLC not subject to court oversight).



(Continued from page 1)

mid-term election season and brings in players with even deeper pockets than PACs and candidate committees. Perhaps just as important, the corporate/union advertisements that the Supremes have now declared to be legal would not ordinarily be “uses” subject to lowest unit rate limitations. In other words, the rates that stations could charge the newly-

liberated corporate/union advertisers would **not** be subject to the LUC caps to which ads directly sponsored by candidates (*i.e.*, “uses”) are subject.

Links to a complete copy of the 183-page decision (with various concurring and dissenting opinions) can be found on our blog (www.CommLawBlog.com).

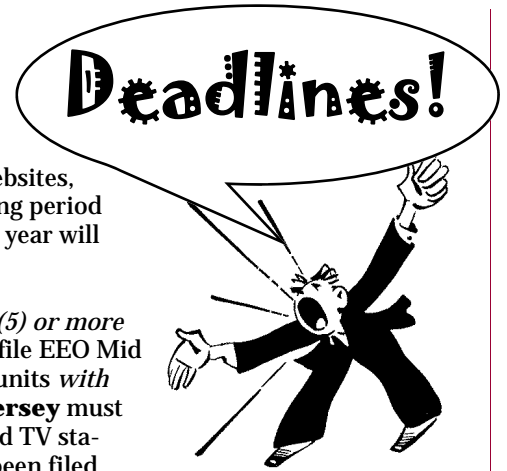
February 1, 2010

EEO Public File Reports - All radio and television stations with five (5) or more full-time employees located in **Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York** and **Oklahoma** must place EEO Public File Reports in their public inspection files. 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 station employment units with five (5) or more full-time employees and located in **Kansas, Nebraska** and **Oklahoma** must file EEO Mid-Term Reports electronically on FCC Form 397. All radio station employment units with eleven (11) or more full-time employees and located in **New York** and **New Jersey** must file EEO Mid-Term Reports electronically on FCC Form 397. For both radio and TV stations, this report includes a certification as whether any EEO complaints have been filed and copies of the two most recent EEO Public File Reports for the employment unit.

Noncommercial Television Ownership Reports - All noncommercial television stations located in **Kansas, Nebraska** and **Oklahoma** must file a biennial Ownership Report. All reports must be filed electronically on FCC Form 323-E.

Noncommercial Radio Ownership Reports - All noncommercial radio stations located in **Arkansas, Louisiana, Mississippi, New Jersey** and **New York** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323-E.

**April 1, 2010**

EEO Public File Reports - All radio and television stations 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. 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 station employment units with five (5) or more full-time employees and located in **Texas** must file EEO Mid-Term Reports electronically on FCC Form 397. All radio station employment units with eleven (11) or more full-time employees and located in **Delaware** or **Pennsylvania** must file EEO Mid-Term Reports electronically on FCC Form 397. For both radio and TV stations, this report includes a certification as whether any EEO complaints have been filed and copies of the two most recent EEO Public File Reports for the employment unit.

Noncommercial Radio Ownership Reports - All noncommercial radio stations located in **Delaware, Indiana, Kentucky, Pennsylvania** and **Tennessee** must file a biennial Ownership Report. All reports must be filed electronically on FCC Form 323-E.

Noncommercial Television Ownership Reports - All noncommercial television stations located in **Texas** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323-E.

April 12, 2010

Children's Television Programming Reports - Analog and Digital - For all commercial television and Class A television stations, the first quarter reports on FCC Form 398 must be filed electronically with the Commission, and a copy must be placed in each station's local public inspection file. Please note, however, that for television stations, only digital programming will be included, as all analog programming ended last year. Only Class A stations will need to use the analog programming section of the form.

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

(Continued on page 13)

FM ALLOTMENTS PROPOSED – 10/21/09-1/19/10

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
TX	Lake Brownwood	132 miles NE of Waco, TX	294C2	09-181	Comments: 03/01/10 Reply: 03/16/10	Drop-in
TX	Eden	72 miles S of Tyler, TX	250A	09-181	Comments: 03/01/10 Reply: 03/16/10	Accommodation Substitution
TX	Bangs	73 miles SE of Abilene, TX	262C3	09-181	Comments: 03/01/10 Reply: 3/16/10	Accommodation Substitution

Notice Concerning Listings of FM Allotments

Consistent with our past practice, Fletcher, Heald & Hildreth PLC provides these advisories on a periodic basis to alert clients both to FM channels for which applications may eventually be filed, and also to changes (both proposed and adopted) in the FM Table of Allotments which might present opportunities for further changes in other communities. Not included in this advisory are those windows, proposed allotments and proposed channel substitutions in which one of this firm's clients has expressed an interest, or for which the firm is otherwise unavailable for representation. If you are interested in applying for a channel, or if you wish us to keep track of applications filed for allocations in your area, please notify the FHH attorney with whom you normally work.



(Continued from page 3)

The FCC originally proposed a \$20,000 fine for these violations. However, the penalty was reduced to \$17,500. The reduction was attributed to the public file failures; the penalties for failing to notify the FCC of the microwave relocation and the EAS failures remained unchanged.

Stations should be aware that the FCC regulates not only the TV or radio transmitters at the station, but also microwave links, news vans with mobile links and perhaps even your walkie talkies. When studio moves occur, care must be taken to (a) identify all FCC licenses that are affected by the move and (b) obtain FCC approval that may be necessary for all such moves.



(Continued from page 12)

to substantiate compliance with those limits, must be placed in the public inspection file.

Website Compliance Information - Television station licensees must place and retain in their public inspection files records sufficient to substantiate a certification of compliance with the restrictions on display of website addresses during programming directed to children ages 12 and under.

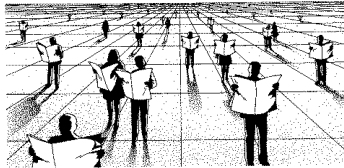
Issues/Programs Lists - For all commercial and noncommercial radio, television, and Class A television stations, a listing of each station's most significant treatment of community issues must be placed in the station's local public inspection file. The list should include a brief narrative describing the issues covered and the programs which provided the coverage, with information concerning the time, date, duration, and title of each program.

Stuff you may have read about before if back again . . .

Updates On The News

Power to the Parents Redux, Extended – A couple of months ago we described the Commission’s inquiry into “Empowering Parents and Protecting Children in an Evolving Media Landscape”. Comments on any (or all) of the wide-ranging issues raised there were originally due by January 25 (and replies by February 24). But at the request of a number of parties who plan to chip in their two cents’ worth, the Commission has extended those deadlines. Now comments are due on **February 24, 2010** and replies on **March 26, 2010**.

Return of the tech advisers? – Way back in the day, each Commissioner enjoyed not only his/her own in-office lawyer (dubbed “legal assistant”) on hand, but also an engineer to help personally guide the Commissioner through the technical arcana that necessarily populate most every FCC decision of any moment. Somewhere along the line, what with belt-tightening and all, the “engineering assistant” positions got sloughed off. As a result, the Commissioners – none of them engineers, as far as we can tell – have tended to rely increasingly on the Office of Engineering and Technology (OET) for direction when it comes to the technical nitty-gritty.



That has not been a bad thing, by any means. Fortunately for us all, OET currently consists of some of the most seasoned and well-respected engineers in the Commission. Their shop runs efficiently, largely out of the public eye, and manages to maintain an admirable level of consistency in engineering standards and practices. Driven by the physics and not the politics, they do their job and they do it well.

But look out. There’s a move afoot on Capitol Hill to bring individual technical advisers back to the Commissioners’ offices. Senators Snowe (R-ME) and Warner (D-VA) introduced a bill in December that would do just that. Their proposal is no doubt born of the best intentions. Warner wants to make sure that the Commissioners have “access to the best information possible, from all relevant disciplines, and in a timely manner.” Snowe wants each Commissioner to have “in-house technical expertise to make well informed regulatory decisions.”

Hard to argue with all that . . . except that the unstated assumptions are that Commissioners do not already have

such timely access to expertise, and that the additional staffing layer would automatically provide it and thereby improve the pace and quality of the FCC’s decisionmaking. And it’s not intuitively obvious that those assumptions are accurate. Rather, the addition of personal “technical advisers” for the Commissioners could lead to the unnecessary politicization of technical issues and unwanted delay in resolution of proceedings as more individuals get injected into the process.

Sure, it might be nice to think that each Commissioner is in a position to engage in individualized evaluation of highly technical stuff. But do we really need five separate assessments of scientific/physical/technical information which, at least in theory, should not be open to much debate? Agreed, we can all dicker about the policy implications of data, but that’s what lawyers are for. Generating, organizing and presenting the data in the first place – that’s OET’s job.

So while there may be some surface appeal to the Snowe/Warner proposal, it seems at least unnecessary and possibly counterproductive – particularly when the Commissioners already have OET on hand.

At this point it’s impossible to reliably predict whether the Snowe/Warner bill will make it into law.

McDowell on localism – Remember a couple of years ago, when the FCC was red hot on the idea of reimposing dramatic additional burdens on broadcasters in order to achieve “localism”? The Commission’s attention has since been diverted from that idea, although the “localism” proceeding is still technically pending. Recently, Commissioner McDowell authored an op-ed piece on the subject of that proceeding. His comments were refreshingly candid: “all of us should be asking why the Commission needs to devote scarce time and resources to reviving any old localism rules at all. Broadcasters today face a level of competition for audiences that was unimaginable 40, 20 or even 10 years ago. They must adapt to meet the needs and desires of their communities if they want to stay alive.” That makes sense. Ideally that approach will prevail if localism ever wends its way back onto the Commission’s agenda – which, in view of the FCC’s seeming monomaniacal fixation on all things broadband (to the exclusion of all things NOT broadband), may not be anytime soon.