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### FCC Opens Second Review of DTV Transition

The Commission late last month opened its second review of the transition from analog to digital television, issuing a *Notice of Proposed Rulemaking* seeking comments on channel election, replication, and maximization. The first review, begun in 2000, adopted modified build-out rules that allowed stations to go on the air with lower power and less expensive facilities to allow broadcasters additional time to gain experience with digital operation before being required to replicate their NTSC service area. The Commission also allowed broadcasters more time to elect their post-transition channel.

#### Channel Election

The *Notice* proposes **May 1, 2005** as the channel election deadline for both commercial and

noncommercial stations that have two assigned channels in the 54 to 698 MHz band (channels 2 to 51), and seeks comments on alternative deadlines.

#### Replication and Maximization

The *Notice* proposes to end replication and maximization interference protection for the top-four network affiliates (i.e., ABC, CBS, FOX and NBC) in the top 100 markets on **July 1, 2005**. For all other licensees, commercial and noncommercial, the protection would terminate on **July 1, 2006**. The *Notice* also seeks comments on the possible adoption of an intermediate signal coverage requirement beyond a broadcaster's current obligation to cover its community of license, expanding into nearby areas of the market.

#### Other Issues

The Communications Act provides that licenses for analog television service will expire on **December 31, 2006**. Under Section 309(j)(14)(A) of the Communications Act, the FCC is required to reclaim the analog spectrum from broadcasters at that time, unless one of three conditions exists: (1) one or more of the stations in a market that is licensed to or affiliated with one of the four largest television networks is not broadcasting a digital

### It Is Never Too Soon To Begin Thinking About Your License Renewal Application

We take this opportunity to remind all of our clients that the license renewal cycle begins this year, starting with radio stations located in the District of Columbia, Maryland, Virginia and West Virginia, which must file their license renewal applications with the FCC by June 1, 2003. Since the license renewal application is quite complex, involving a number of certifications, it is never too soon to begin thinking about preparation of the application, particularly if any engineering work will need to be done in order to complete the certifications.

signal, and the FCC finds that each such station has exercised due diligence and satisfies the conditions for an extension of the applicable deadlines; or (2) digital-to-analog converter technology is not generally available in such market; or (3) in any market in which an extension is not available under (1) or (2) above, that 15% or more of the TV households in the market do not subscribe to a cable or satellite service that carries one of the digital channels of each station broadcasting such a channel in the market, and where those households do not have at least one DTV receiver or at least one NTSC receiver that is equipped with a digital converter. The *Notice* seeks comments on how the Commission should interpret the extension criteria: when should stations be required to file an extension request with the FCC (how far in advance of December 31, 2006); how should the FCC define a television market for purposes of an extension (using DMAs or the Grade B contour of the station seeking the extension); how should it interpret the requirement that digital-to-analog converter technology be “generally available” in a television market; and how should the FCC interpret the test to determine if at least 85% of viewers have access to digital broadcast signals either over-the-air or via cable or satellite delivery.

The *Notice* also seeks comments on the following issues:

- Whether the Commission should retain, revise or remove the requirement that licensees simulcast a certain percentage of their analog channel on their DTV channel;
- Whether there are steps that the Commission needs to take to assist noncommercial stations in the transition;
- Whether any labeling requirements for TV-related consumer equipment would assist in the transition and protect consumers;
- Whether and how the Commission should license multiple lower-powered DTV transmitters, similar to cellular telephone systems, called distributed transmission systems;
- Whether broadcasters should be required to include Program System and Information Protocol (PSIP) within their digital signals to ensure the availability of certain functions, including channel number identification, virtual channel numbering, captioning, V-chip features, and program listing and event description;
- Whether the Commission should adopt digital V-chip requirements; and
- What station identification requirements should apply to DTV.

The *Notice* also seeks additional comments in three other ongoing rulemakings involving broadcasters’ public interest obligations in the digital world: *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket 00-168 (2000), *Children’s Television Obligations of Digital Television Broadcasters*, MM Docket No. 00-167 (2000), and *Public Interest Obligations of TV Broadcast Licensees*, MM Docket No. 99-360 (1999). The Commission asks how public interest obligations should be applied to broadcasters that choose to multicast on their digital channel, and asks whether the FCC’s approach to public interest obligations for multicast signals should vary with the scope of whatever final digital must-carry rules the FCC adopts.

**Comments in response to the *Notice* are due by April 14, 2003, and reply comments are due by May 14, 2003.** For more information on the *Notice*, as well as assistance in the preparation and filing of comments and reply comments, please contact any of the lawyers in the Communications Practice Group.

## Biennial Ownership Reporting Underway

The FCC’s biennial ownership reporting cycle is underway again, with filing deadlines on the anniversary of the filing date of a station’s license renewal application (February 1, April 1, June 1, August 1, October 1 or December 1, depending on the state in which the station is located). This year, all Form 323 and Form 323-E filings must be made electronically using the Commission’s website, at <http://www.fcc.gov/mb>. For more information on the biennial ownership reporting requirements, as well as assistance in the preparation and electronic filing of the reports, please contact any of the lawyers in the Communications Practice Group.

## FCC to Hold Public Hearing on Broadcast Ownership Rules

The Commission has announced that it will hold a public hearing on its broadcast ownership rules on Thursday, February 27, 2003 in Richmond, Virginia. The hearing will be conducted from 10:00 a.m. to 4:00 p.m. at the Greater Richmond Convention Center, 403 North Third Street, Ballroom Building, Level 1, Meeting Room 15AB.

According to the Commission, “[t]he purpose of the hearing is to give the general public another opportunity to voice its opinions about broadcast ownership rules. The FCC’s goal is to promote competition, diversity and localism in the media.”

Chairman Michael Powell, in announcing the hearing on December 4, 2002, said that the FCC had chosen Richmond as a location so that it could hear from citizens

of a mid-sized city. Commissioner Michael Copps has pressed repeatedly for a substantial number of such public hearings at locations around the country. Chairman Powell has responded that Commission budgetary concerns preclude such hearings, and that the public can file comments with the FCC either electronically or in paper form. For more information on the hearing, as well as assistance in communicating views to the Commission, please contact any of the lawyers in the Communications Practice Group.

### **Media Bureau Freezes Filing of TV and DTV Maximization Applications in the Channel 60 to 69 Band**

The Media Bureau announced late last month that it was immediately freezing the filing of TV and DTV maximization applications in the channel 60 to 69 band (746 to 806 MHz). The freeze is intended to assist Commission staff in clearing the band for public safety and land mobile uses.

Modification applications that would increase a television broadcast station's analog or DTV service area in the band in one or more directions beyond the combined area resulting from the station's parameters as defined in the following: (1) the DTV Table of Allotments; (2) Commission authorizations (license and/or construction permit); and (3) applications on file with Commission as of January 24, 2003, will no longer be accepted.

The Bureau noted that it "will consider, on a case-by-case basis, requests for waiver of the freeze where the modification application: (1) would permit co-location of transmitter sites in a market in circumstances consistent with the Commission's policy of encouraging co-location to reduce the cost of construction, particularly of DTV facilities, or to achieve more efficient spectrum use; or (2) is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as where zoning restrictions preclude tower construction at a particular site or where unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site." For more information on the freeze, please contact any of the lawyers in the Communications Practice Group.

### **Reminder: TV Broadcasters' Obligations to Provide Closed Captioning Have Increased**

Television broadcasters are reminded that, effective January 1, 2003, 30% of an English language station's pre-rule nonexempt programming being broadcast each calendar quarter must be closed captioned. The FCC's rule applies to both analog and digital pre-rule

programming (i.e., analog video programming that was first published or exhibited before January 1, 1998 and digital video programming that was first published or exhibited before July 1, 2002). Beginning on January 1, 2008, 75 percent of all pre-rule nonexempt programming must be closed captioned. The captioning rule is mandated by Section 305 of the Telecommunications Act of 1996.

The FCC Rules also require that English-language stations have at least 900 hours of new (post-rule) nonexempt programming closed captioned in each calendar quarter. On January 1, 2004, this amount will increase to 1,350 hours. For more information on the Commission's closed captioning requirements, including the requirements for Spanish-language stations, please contact any of the lawyers in the Communications Practice Group.

### **Broadcast Auxiliary Service to Go Digital**

The Commission has announced new rules updating the Broadcast Auxiliary Service (BAS), and bringing it into the digital age. According to the Commission, the new rules will enable broadcasters to have an end-to-end all digital broadcasting system.

The new rules will:

- ❑ Permit TV and aural BAS stations to use any available digital modulation technique in all BAS frequency bands so that BAS stations can take advantage of the latest developments in technology and smooth the transition to digital TV and digital radio.
- ❑ Update BAS emission masks to facilitate the introduction of digital equipment and to provide consistency with emission masks used in Part 101 of the FCC Rules.
- ❑ Modify the equation used by BAS and CARS services for determining the maximum effective isotropic radiated power (EIRP) for short path lengths. This change eliminates the steep reduction in EIRP for BAS and CARS for path lengths shorter than the minimum.
- ❑ Allow BAS and CARS stations to use automatic power control (ATPC) in order to facilitate more efficient spectrum use.
- ❑ Update transmitter power rules for BAS and CARS services to provide EIRP limits for all frequency bands.
- ❑ Require TV BAS and CARS services to engage in prior coordination regarding their frequency use when using shared frequency bands to

minimize the potential for harmful interference occurring when a new station begins transmitting.

- ❑ Institute temporary conditional authority for all BAS stations to operate upon filing of a license application, provided certain conditions are met.
- ❑ Modify the Remote Pickup BAS channel plan to provide compatibility with the channel plan adopted for private land mobile radio (PLMR) in the Commission's Refarming proceeding.
- ❑ Modify the BAS short-term operation rules.
- ❑ Modify the BAS application rules to make them consistent with the Universal Licensing System (ULS).
- ❑ Authorize wireless assist video devices (WAVDs) to operate on certain VHF and UHF channels on a non-interference basis to services allocated on that spectrum. These devices, which are already used by broadcasters, are needed to aid film and television producers in filming at various locations in a safe and cost-effective manner.

The new rules, which were released last November, will take effect upon their publication in the *Federal Register*. For more information on the new rules, please contact any of the lawyers in the Communications Practice Group.

### Commissioner Copps Announces Two Additional Public Hearings on Broadcast Ownership

Commissioner Michael Copps announced earlier this month two additional public hearings on the FCC's broadcast ownership rules. One will be held in early March at the University of Washington in Seattle and the other will be held later in March at Duke University in Durham, North Carolina. The full Commission is already scheduled to attend a public hearing in Richmond, Virginia on February 27.

The broadcast ownership proceeding, according to Chairman Michael Powell, has generated 13,000 comments from the general public. The Commission is scheduled to vote on modification of the rules sometime this spring.

Commissioner Copps, in announcing the additional hearings, said that he has "invited each of the other Commissioners to these hearings, which will give us the opportunity to receive testimony from interested parties in

regions directly impacted by our decisions. I think that talking to citizens in places like Washington State and North Carolina is needed before we can make an informed decision. We can't pretend everyone reads the Federal Register or has lobbyists to make their voice heard at the FCC. We have a responsibility to reach out."

Chairman Powell released a statement disclosing the number of comments received in the rulemaking, and noted that "[t]his record clearly demonstrates that in the digital age, you don't need a 19<sup>th</sup> century whistle stop tour to hear from America. In addition to poring through this exhaustive record, I will attend the FCC's hearing in Richmond, Virginia on February 27. I commend others for their interest in attending additional forums."

Commissioner Copps said that the FCC should establish a special procedure to combat retribution against those who testify against industry consolidation: "It has been a revelation to me that there are media professionals with strong feelings about the downsides of consolidation for the American people who are afraid to speak for fear of retribution. I hear privately that speaking out would cost many people their careers. If this is true then we need to find a way for them to be heard without fear of retribution. I am working with my fellow Commissioners to establish an anonymous testimony procedure for any producer, writer, musician, actor, broadcaster, or other media professional who feels threatened. I recognize that this presents challenges for a public proceeding, but so, too, does a climate of fear that chokes off needed input for important decisions."

### New FM Allotments

The following new FM allotments have been announced recently by the FCC. Allocations marked with an asterisk are reserved for noncommercial educational use. Filing windows will be announced in future auction *Public Notices*. For more information, please contact any of the lawyers in the Communications Practice Group.

Community	Channel
Goliad, TX	282A
Dickens, TX	294A
Floydada, TX	255A
Rankin, TX	229C3
San Diego, TX	273A
Westbrook, TX	272A
Hooks, TX	231A
Snyder, TX	235C3
Vici, OK	249A
Big Lake, TX	246A
Leakey, TX	275A
Pampa, TX	277C2
Buttonwillow, CA	265A
Albany, VT	233A
Groom, TX	223A
Sonora, TX	272A

Spur, TX	254A
Sparkman, AR	259A
Moberly, MO	223A
Kiowa, OK	254A
Menard, TX	242A
Menard, TX	287C3
San Isidro, TX	247A
Crawfordville, GA	234A
Enderlin, ND	233C1
Jasper, FL	298A
Tigerton, WI	295A
Saint Joseph, LA	257C3
Clayton, LA	266A
Wisner, LA	300C3
Blanket, TX	284A
Stuart, OK	228A
Iraan, TX	269C2
Ozona, TX	289C1
Oak Grove, LA	289A
Eldorado, TX	258C1
Milan, NM	270A
Alpena, MI	289A
Channing, TX	284C
Escobares, TX	284A
Ozona, TX	275C3
Rotan, TX	290A
Wellington, TX	248A
Memphis, TX	292A
Matador, TX	227C3
Arthur, NE	300C1
McLean, TX	267C3
Wheeler, TX	280C2
Jayton, TX	231C2
Genoa, CO	288C3

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