

FCC Issues for Broadcasters - Is Washington Coming to Get You?

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What are they thinking?

- Lots of fundamental issues for broadcasters on the table – like the reclamation of the TV spectrum – that are pending
- Lots of other proposals out there that could impose new obligations on broadcasters – like the online public file, where we should see a resolution soon, or, like LPFM, where we could see an impact soon
- And lots of seemingly inconsequential (in the big picture) rules and policies to make your life a pain
- So here's my mix of practical and policy issues to worry about...

Remember License Renewal?

- Let's start with the basics – you need a license to operate!
- Coming sooner than you think – February 2013 for Radio, and February 2014 for TV
- New obligations on advertising contracts and being on the air
- Potential new scrutiny by interested groups
- Lots of little issues that can get you into trouble

Antidiscrimination Certification

- Must include a clause in contracts that says you don't discriminate in the sale of advertising, and that the advertisers don't either
- If you don't have sales contracts, put it on other sales documents (but think about some form of contract)
- Must make sure that rep firms and other agents do the same with their customers when selling on behalf of the station

That Old Favorite - EEO

- Every renewal application is scrutinized for EEO Compliance
- You file 2 years of Annual Public File Reports with the renewal – so the hiring that you do now will be reviewed
- Be sure to widely disseminate information about all job openings, absent unique circumstances
- Don't rely just on online sources

More on EEO

- Do the Supplemental Efforts – Non-vacancy specific outreach – teaching community about broadcast opportunities – job fairs, internships, EEO training, scholarships, outreach to schools and community groups
- Keep the paperwork!!!!!!!!!!!!
- Big fines for issues discovered at renewal or in an audit

So what if no one ever looks? – the Public File

- Accessible during normal business hours to all who ask
- Ownership information – did you file your Biennial Ownership Report on the new form back in December? Required for all commercial stations
- FCC applications
- Letters from the public about station operations
- LMAs/JSAs
- QPIs
- Contracts relating to station ownership and control – Articles and By-Laws, Stock Pledges, other documents that put significant restraints on your unencumbered operations – must be available in a week upon request, if not in the file

What you did and when you did it - Quarterly issues programs lists

- Until there are new rules, don't forget QPIs
- 10 days after the end of each quarter – they go in your public file
- 5 to 10 most important issues in your community and the programs that you broadcast to address those issues
- Every station should have them – these are the only official documents of how you served the public interest
- Biggest source of fines last renewal cycle – for commercial and noncommercial stations
- Fines up to \$13,000 for no QPIs in Public File

Future of Media and Localism

- Renamed Future of Media Report came out last Spring – “Information Needs of Communities”
- Suggested ending localism proceeding
- More interest in sponsorship and disclosure
- Suggested move to put public file online, and revise QPIs
- Silence about implementation for many months (except for Fairness Doctrine abolition)
- FCC now trying to implement some of its suggestions
- And FCC now looking for more information about how broadcasters serve the information needs of their communities

Online Public File and Form 355

- Outgrowth of Future of Media Report
- Looking for all TV Stations to put public file online
- Includes the political file
- A decision is scheduled for the FCC meeting on April 27 – the online file is probably coming
- Plus proposal for new form for reporting on public interest service
- Detailed information about the types of programs you broadcast
- Proposed now for TV, but FCC says it plans to expand to radio in the future

Watch Why You Say Things – Sponsorship Identifications

- Tell who paid you for what you say on the air – sponsorship ID issues and payola
- Noncommercial stations – be careful in saying thank you – don't be too enthusiastic in thanking donors and sponsors – no qualitative claims or calls to action
- Identify sponsor when Video News used by station when releases that are too promotional of a specific company's product or service, and when using free video or audio from proponents of a controversial issue
- Remember you have a duty to inquire if there are undisclosed sponsors of syndicated and network programs

Be Nice to Your Engineer

- Coming soon – implementing CAP protocols for EAS
 - Extended until June 30 from September deadline
 - FCC recently issued final rules – everyone must comply or ask for waiver
 - Requires broadband access
- November 9 National EAS Test – results being evaluated
- Stay on frequency
- Stay within authorized power
- AM stations with day/night power or pattern differences – observe them!
- If something goes wrong – ask for STA – don't ignore problems and hope that no one will notice

The Ups and Downs – Tower Issues

- Keeps lights lit
- Keep fences locked
- Keep fences in good repair
- Label High RF areas
- Make sure tower registration is correct after sale of station or tower – no automatic transfer with the FCC license
- Post Tower registration information where visible from outside the fences

New Accessibility Issues for TV

- Close captioning for all programs should be a reality for most stations
- FCC backtracking on issuing exceptions for things like church programming
- Remember emergency information must be made available visually
- Complaints from the public made more easy
- Video description requirements coming to larger markets and networks – to help visually impaired
- Captioning to be required this year for TV programs repurposed for the Internet
- CALM Act implementation



Watch What You Say

- Not just indecency – though that issue has certainly not gone away – Supreme Court decision this year
- Don't give away what you don't have – contest issues – announce all material rules and make sure that you follow them – major fines in this area
- Future issues? Fast food ads, prescription drug restrictions, emergency information in multiple languages

For a little guy, you sure make lots of noise – LPFM/translator issues

- LPFM law passed Congress December 2010 – deleting third adjacent channel interference protections to full-power stations, and providing for some second channel waivers
- FCC issued order last month that will probably result in the dismissal of many big-market translator applications from those filed in 2003,
- FM Translators can be used by AM stations and for HD-2 stations – but are they available?
- FCC Concerns about multiple hops when moving translators
- LPFM window coming – probably later this year

So Who Needs that Spectrum Anyway?

- FCC Broadband Plan Proposes Taking 20 Channels from TV for Broadband
- Congress passed legislation authorizing incentive auctions to entice TV to give up spectrum, with conditions
- FCC will also need to repack the TV spectrum
- Not a quick process, but FCC starting at its meeting this month to talk about spectrum sharing by TV
- Impact on LPTV and Class A TV – Make sure Class A requirements are met – FCC looking to take spectrum, LPTV must be digital by 2015

Other Issues to Watch

- Multiple Ownership
 - Newspaper cross ownership
 - Minority ownership
 - Radio market sub-caps for AM and FM
 - Small market TV duopoly and shared services agreements
- Noncommercial fundraising issues
- Patent issues – more and more issues for broadcasters in a digital world
- Music use issues

So, Is Something Happening in November?

- Political broadcasting issues already cropping up
- Need to make sure that you and your sales people are up to date on FCC rules
- While little has changed, in a big year, there will be more issues
- Start thinking about these issues now

Legally Qualified Candidate

- FCC rules on rates and access and equal opportunities all kick in once a candidate is legally qualified
- Usually easy question – is the candidate on the ballot?
- Issues with write-ins – candidate must make “substantial showing of candidacy” -some attempts to use write-in status for fringe messages

Reasonable Access

- Applies to Federal Candidates Only
- Access to all classes and dayparts – but not access to specific times – candidate can't dictate specific spot break
- Applies as soon as candidates are qualified, not just during LUR periods

Equal Opportunities

- Treat all candidates for the same office in the same way
- Be prepared to sell time to opposing candidates in same amounts
- Equal opportunities can also be triggered by employee-candidate – free time may be required
- Applies to Federal, State and Local candidates
- Keep up public file, as candidates look there for information about opposing uses

No Censorship

- Can't censor a candidate's ad
- Once you agree to sell time to a candidate, you pretty much have to run the message they provide
- You are immune from liability for the contents of candidate's ad, so don't worry about complaints from opponents

Third Party Ad Issues – Now That Everyone Has a Super PAC

- Third party ads on Federal issues – need to keep in your public file all the same records that you keep for candidate ads
- Unlike candidate ads, stations can have liability for contents of third party ads – especially once you are on notice of possible falsity – worry most about attacks on personal attributes of the candidate, less about policy positions
- No obligation to take third party ads, no obligation to give them Lowest unit rates
- As you are not immune from liability for third party ads, need to worry about copyright issues and defamation issues – especially after complaint from competitor or copyright holder

Lowest Unit Rates

- 45 days before the primary and 60 days before the general election
- Lowest rate for class of ad time – look at lowest rate for spot of that class that is running at the time
- You can have many classes of time – each with their own LUR – so there is no one LUR for a station
- Rates can actually change during the window, e.g. if a low rate schedule ends, or if rates set by day or by week

Lowest Unit Rates – more

- Candidates get benefit of all frequency discounts without buying in frequency
- Need to break down all packages into the classes of time in that package – candidates can't be made to buy same-station packages
 - Can actually be advantageous with long-term contracts, and with “no charge” spots
- Need to disclose what candidate gets for the rates – e.g. likelihood of preemption, make-good rights, issues that affect rotations, etc.

Political Disclosure

- Disclose rates and terms
- Need to make same disclosure to all candidates – so probably should be in writing
- Keep up public file with information about all buys by candidates – and about those who buy time on Federal issues or elections
 - Times and classes bought, rates, schedule, sponsor

Now it's your turn...

- Time for your questions.....



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