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LEGAL REVIEW

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Legal Memorandum

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November 2nd to 9th, 2021: Filing Window for Applications for New NCE FM Station Construction Permits on FM Reserved Band; 10-Application Limit Applicable to Filing Window

NCE broadcasters seeking to apply for one or more new FM stations in the reserved band (i.e., channels 201 to 220 / 87.9 MHz to 91.9 MHz) may do so later this year—a filing window will be open from **12:01 AM ET on November 2nd to 6:00 PM ET on November 9th, 2021**. The FCC's Media Bureau recently issued a Public Notice (the "Notice") announcing the 7-day window and noting that at some point "in advance of the filing window" the Bureau plans to "provide detailed information about filing procedures and requirements." On the same day as the Bureau's Notice regarding the filing window, the Commission adopted a 10-application cap that will apply to applications filed in the window.

As for the application cap, the 10-application limit mirrors the cap that was previously imposed during the last NCE filing window in October 2007. According to the Commission, such a cap helps to restrict the number of mutually exclusive applications; allows the Commission to process and grant applications at a more expeditious rate than would be possible without the application cap; and deters mass "speculative" filings. For purposes of the forthcoming window, the FCC intends to apply the cap such that if a party to an application has an attributable interest in more than 10 NCE FM new station applications, the Media Bureau will retain the 10 applications that were filed first—based on the date of application receipt—and dismiss all other applications.

As the FCC noted in establishing the application cap: "The last NCE FM filing window was over 13 years ago," which is in line with "the historically long period between NCE FM filing windows." Given that, we strongly encourage any interested NCE broadcasters to contact their consulting engineer and communications counsel to help determine whether the filing window might be beneficial to their specific factual circumstance. If history is any indicator, it may be some time before such an opportunity again arises!

Media Bureau Solicits Comments on FCC's CALM Act Rules at Behest of Congresswoman Eshoo

A recent Public Notice (the "Notice") issued by the FCC's Media Bureau seeks comment from television consumers and the broadcast industry regarding "whether any updates are needed to the Commission's rules implementing the Commercial Advertisement Loudness Mitigation (CALM) Act." The Notice appears to be responsive to an early-April letter sent to acting FCC Chairwoman Rosenworcel by Representative Anna Eshoo—one of the authors of the 2010 CALM Act—requesting "that the FCC investigate the rise in the loudness of TV advertising complaints and take enforcement actions as appropriate."

The FCC adopted rules implementing the CALM Act in 2011, and has since updated the rules only once. Generally speaking, the FCC's CALM Act rules (1) impose a technical standard that is designed to prevent digital television commercial advertisements from being broadcast at louder volumes than the program material they accompany, and (2) provide various avenues for full-power commercial broadcasters and MVPDs to demonstrate compliance with such technical standard, depending on from where the commercial advertisement originated (e.g., a broadcast station may demonstrate compliance in different ways for commercials inserted by the station versus commercials embedded in the programming). The CALM Act's obligations generally do not extend to LPTV stations or NCE stations, (unless an NCE station airs advertisements as part of its ancillary and supplementary services).

According to Rep. Eshoo's letter and her prior correspondence with former FCC Chairman Ajit Pai, the FCC has never brought a CALM Act enforcement action despite receiving well over 1,000 complaints per year since 2012. The last time the FCC took formal action in response to a CALM Act complaint was in 2013, when the FCC issued two letters of inquiry on which no further action was taken. Yet CALM Act complaints appear to have been increasing over the past year or so. Accordingly, the Notice requests comment on "whether the Commission's CALM Act rules are effectively serving their intended purpose and on specific areas in which commenters believe updates are needed given improvements in technology or new industry practices." The Notice indicates that comments will help the FCC to determine whether (and if so, what) additional action is warranted.

Comments are due June 3, 2021. Reply comments are due July 9, 2021.

New Full Power DTS/SFN Rules Set to Take Effect on May 24th; Low Power Stations Still Waiting

According to a recent *Federal Register* publication, May 24, 2021, will mark the effective date for many of the Commission's new rules "modestly easing limitations" on transmitter deployment for distributed transmission systems ("DTSs," also known as single frequency networks, or "SFNs") and providing additional clarity regarding certain aspects of the FCC's DTS rules for full power stations. At a high level, the rules that will take effect are (1) the extended, "bright-line" limits on permissible spillover (replacing the current "minimal amount" standard), for full power stations, and (2) the removal of the requirement that low power (i.e., Class A, LPTV, and TV translator) stations apply for DTS facilities on an experimental basis. Class A, LPTV, and TV translator station operators should note, however, that the rules governing the new application process for such low power stations will **not** go into effect on May 24, 2021. (The low power rules require many additional regulatory processes before they can take effect, including "the modification of . . . Schedules C, D, E, and F of FCC Form 2100 . . . and the revision of TVStudy.") Until the new low power rules take effect—the date of which is currently uncertain—low power stations may seek DTS authorization on a case-by-case basis by filing a request for Special Temporary Authority (i.e., an "STA" request), which the FCC will process based on the new DTS guidelines.

As we've previously written, DTS networks permit digital television stations to address signal loss throughout the station's authorized service area by deploying two or more DTS transmission sites within the station's service area, all of which broadcast using the same RF channel and are synchronized to manage self-interference. DTS networks therefore allow broadcasters to both (1) avoid signal-reach limitations that might result from operating a single transmitter site, and (2) augment the primary station's signal by deploying additional transmitters that operate on the same RF channel throughout the station's authorized service area (as compared to, for example, operating television translators on different RF channels than the main facility).

In January 2021, the FCC adopted a Report and Order (the "Order") that, among other things, (1) redefines—and, in so doing, slightly liberalizes—the permissible amount of spillover beyond a station's authorized service area that a DTS transmitter may cause; and (2) removes the requirement that Class A, LPTV, and TV translator stations apply for experimental authorization when seeking to deploy DTS. The Order was issued with the hope that the rule changes would help "unlock the potential of DTS at this crucial time when many stations are considering migrating to the next generation broadcast television standard"—ATSC 3.0 / NextGen TV.

With the majority of the new DTS rules now set to take effect, broadcasters may wish to review the new permissible spillover standards and consider whether DTS deployment might benefit their particular operations.

Tim Nelson, Editor

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