

# Washington Issues for Broadcasters

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# So What is Up in Washington?

- Waiting for the election
- FCC still working, but there is some sense that new issues are waiting for next year
- Congress unlikely to do anything big
- FCC finishing what's on the table – some issues still of importance to broadcasters
- Lots of speculation about what happens in any new administration

# But There are Always Legal Issues....

- ⦿ The TV spectrum auction and its aftermath
- ⦿ AM improvement/FM translators
- ⦿ Ownership rules
- ⦿ Online Public File for Radio
- ⦿ Political broadcasting/sponsorship ID
- ⦿ Music rights
- ⦿ Lots of other issues

# TV - Taking Your Spectrum

- It's a reality – bidding finishes this week for Phase 2 reverse auction – but will there be enough money from wireless for auction to finish in second stage?
- Issues about post-auction repacking
  - FCC proposes repacking plan the week before last
  - Reimbursement filing tool out in beta
  - FM stations should be planning if they are on TV tower
- LPTV and TV translator issues remain too
  - Enough spectrum for them to find places to relocate?
  - Will there be a set-aside channel or two for Google and unlicensed devices?

# More on the New TV

- ATSC 3.0
  - Proposal to allow voluntary transition - some stations stay behind to multicast in old digital format
  - Allows all sorts of new technology – better mobile reception, data, ultra-high definition – all in IP formats compatible with digital devices
  - FCC review underway – some hope for roll-out with post-auction repack
    - FCC needs to issue NPRM with specific proposals
    - Then lobbying on the specifics before FCC approval

# What's Up With AM Radio?

- Lots of translators for AM stations already granted, window for 250 mile waiver for translator moves to serve AM ends at the end of the month
- 2017 open application window for AMs that did not get translators through 250 mile waivers
- Further thought on issues including:
  - Reduced skywave protection for Class A stations
  - Relaxed main studio obligations
  - More relaxed interference rules between AM stations – more interference, but hope for more power in central service areas
  - More relaxed translator rules
- Not officially on the table yet
  - Cellularized AM and all-digital operation

# Ownership

- Multiple Ownership Rules Decisions
  - Not much changed
  - No cross-ownership relief
  - JSAs still banned, but most existing ones grandfathered until 2025
  - SSAs still under scrutiny
  - Some opportunity for small businesses to buy expiring CPs
  - No more UHF discount – may limit post-auction trading
- Foreign ownership rule clarification
  - Mostly to help public companies
  - But actions pending in specific cases that may help small broadcasters too

# That Silly Season – What’s New in Political Advertising

- \$540,000 fine for inadequate sponsorship ID on issue ad
  - Not regular Media Bureau decision
  - Caution for running local issue ads without clear sponsorship ID
- TV public file and PAC sponsorship issues pending



# PAC and Issue Ads

- Issues about truth of political ads in PAC and issue ads
- Don't come up with candidate ads as you can't censor them
- But if you are put on notice of falsity of non-candidate ad, you need to investigate or have potential liability

# Paperwork

- Ad disclosure statements
- Public file
  - Records of all “uses” of your station by candidate
  - Price, schedule, class of time, specifics as to when spots ran
  - All the same info for spots on Federal election or issues
  - Sponsor name and executive officers or directors for state and local issues

# Online Public File for Radio

- March 20, 2018 for stations outside Top 50 markets, or small stations in big markets
- Few complaints so far from big stations that already converted
- Can convert early – some stations doing it now to avoid having to upload Quarterly Issues Programs Lists and other material just before the March 2018 deadline
- You can decide when to go live
- Proposal to get rid of local files altogether by doing away with requirement to keep letters from the public

# Music Issues Take Center Stage

- New streaming rates went into effect in 2016 – rates drop 1/3 for radio but performance complement issues now need to be dealt with
- Lots of issues now from the composer's side – ASCAP and BMI want new rights (and maybe higher royalties)
- Performance royalty still comes up regularly in DC discussions
- New performance rights issues from Flo & Eddie decision on pre-1972 sound recordings
- SESAC antitrust litigation – SESAC must arbitrate their rates – some stations may have just received RMLC letter
- ASCAP and BMI royalty rates expiring too

# Consideration of Songwriter Concerns

- DOJ just finished looking at amending the antitrust consent decrees that govern ASCAP and BMI – what PROs wanted:
  - Did not want rate review by Court (arbitrator instead)
  - Wanted different rate setting standards
  - Want to be able to do more with music rights than just public performance
  - Want to allow publishers to partially withdraw their catalog
- Issues for broadcasters
  - Less experienced forum reviewing rates (and more expensive)
  - No more three-stop shopping to get rights to all songs
  - Don't know who owns what songs, so difficult to manage too many collection groups

# What DOJ Did

- No changes to basics of the consent decrees
- Instead, DOJ required “100 percent licensing” of “joint works”
- Esoteric concept dealing with songs that have multiple composers – important where those composers are not part of the same PRO
- DOJ said that if a broadcaster or other user licenses part of the work – they get full rights to use it, and songwriters need to take care of paying their co-owners – really what music services thought that they had now
- But, last month, BMI rate court judge rejected DOJ interpretation
- More to come!

# Other Composition Issues

- GMR – Global Music Rights – new PRO seeking to license music rights – have withdrawn these rights from ASCAP and BMI for composers including the Eagles, John Lennon, Pete Townsend, Pharrell Williams
  - Already seeking licenses from business music services – broadcasters next?
- Other big publishers considering withdrawals too
- Could result in a fracturing of music rights

# Sound Recording Issues

- Broadcast Performance Royalty still kicking around in Congress
- Pre-1972 sound recording royalty suits
  - Pre-1972 US sound recordings not covered by Federal law
  - Courts in NY and California have found state performance right in pre-1972 sound recordings, Florida court went the other way
  - Appeals being considered now – if a right is found, oldies stations might have to pay sound recording performance royalties for over-the-air broadcasts
    - But there are questions about whether digital versions of songs are really pre-1972 recordings



# Odds and Ends

- TV retransmission consent “good faith negotiation” review ended by FCC – with warning that they can still review egregious cases
- EEO audits and Mid-Term Reports
- Biennial ownership reports for all stations due in December 2017 – will need SSNs from every attributable owner
- EAS test – Should have reported issues with national test
  - FCC looking at rules on accessibility of emergency warnings – extension on maps to speech on SAP channels for TV

# Other Copyright Issues

- Big issue for many websites is unauthorized use of content found on the Internet
- Lots of legal action by photographers when website operator takes a picture found on the Internet and posts it on their own website without permission
  - Use clearinghouses for photos to get rights to use lots of stock photos to illustrate content on your site
- Generally – users don't give up copyrights just because they post material on the Internet
- If material is registered with the Copyright Office, damages can be as high as \$150,000 – usually lower unless infringement is willful or repeated, but can reach that high

# Online Sponsorship ID

- FTC requires disclosure of sponsors of any online content
- Includes not only program material, but even social media posts
- Includes not just money, but getting anything of value – including free stuff for use in reviews
- Like FCC rules, but potentially stricter
- Big fines for violations, and long periods of government supervision

# For More Information

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