

Alabama Broadcasters Association

ABA E-News for March 20, 2008

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ABA Will Host Important Conference Call For All Owners and Operators

The ABA will host a conference call on Thursday, March 27 at 2pm for all station owners and operators to discuss a response to the "Localism" rules as proposed by the FCC.

Scott Johnson of Fletcher, Heald & Hildreth in Washington, our Legal Advisor, will lead the call. An agenda will be provided in advance.

We will be discussing the proposed requirement that studios be maintained in city of license and 24 hour operation in addition to other portions of the Notice of Proposed Rule Making.

Mark your calendar and keep these numbers for the afternoon of the 27th:

You will need to dial in a couple of minutes before 2pm. The number is 888-847-8686. You will be prompted for an ID number. At that point you should punch in 2004676.

Quello says Time to Apply Constitutional First Amendment Rights to Broadcasting

The following article was written by former FCC Commissioner and Chairman James H. Quello and was provide to us by the Texas Association of Broadcasters. This article will appear in trade publications this week.

The recent FCC Notice of Proposed Rulemaking on localism released concurrently with the Report and Order regarding revised Form 355 mandating more detailed programming and ascertainment than ever required before, represent grossly untimely and blatant government mandated violations of the First Amendment.

In today's ABA E-News:

ABA to Conduct
"Localism" Conference
Call

Former FCC Chairman
Speaks Out for
Broadcasters

Send Letters from Your
Public File ASAP

Supreme Court Takes
Indecency Case

How Can You File Your
Comments Online With
the FCC?

FCC In Hot Water Over
Complaint Processing?

FCC opens LPFM
proceeding

CRB Royalty for
Streaming Rates a
Lawsuit

The excessive burdensome additional governmental FCC requirements are counter to the urgent need to update regulatory and ownership rules of the past. It is time to recognize the current era of superabundant programming and multi-channel transmissions of the omnipresent internet, TV, cable, satellite, and DSL, along with upcoming increases in digital channel availability.

In this surging competitive multi-channel communication world, the government should lend some priority to assuring the future viability of television and radio's expensive but vital emergency, news, local information and community services.

The internet alone is now utilized by over 100 million people according to published reports. It is by far the fastest growing communications entity in advertising as well as in public usage. It provides an amazing variety of local news and information and personal interexchanges. In fact, the internet has practically preempted the media consolidation issue - - all media - - newspaper, TV, radio, magazine, periodicals etc. are immediately available to all the public on the net.

The NPRM by over-emphasizing the need for government mandated localism and advisory boards, is especially untimely and burdensome.

Government mandating localism for broadcasters is like government

Birmingham Broadcasters Provide Platform for FM-based Alert System

Radio Reaches 235 Million

Opp Rattlesnake Rodeo Media Luncheon

TV Converter Boxes to be Sold in Grocery Stores?

Sales Consultant Jeffrey Hedquist Writes About "Feelings"

On the Road Again

Special ABA Notes!

mandating breathing for human beings. Localism is the very lifeblood of broadcasting.

Everyone should realize that not only the success of broadcasters, but their very survival relies on serving and attracting their local audiences as measured by impartial public audience rating services. In the case of networks or station groups survival relies on attracting an essential national gross number of measured local audiences.

Thus, the American public is actually in final control of broadcast programming through public audience measurements. Programs only survive with overall public acceptance.

It should also be noted that even well meaning professional public interest activists do not represent the overall public interest. They represent their own private version of the public interest, which they have a constitutional right to do. Sometimes they provide useful programming proposals and sometimes they urge excessive, unconstitutional government mandates or controls to further their own private interest agenda.

In fact, professional public interest groups have been very effective in promulgating the misconception that broadcasters received broadcast stations free and are using public spectrum for free. It has caused

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some strange misguided statements from some usually responsible sources. . . Such as, referring to the proposed new programming and reporting requirements, "citizens will have the tools necessary to see whether or not local broadcasters are living up to their end of the bargain to serve the public interest for free use of the people's property". Another usually responsible but misdirected FCC source has said "The American people have a right to know how broadcasters, TV and Radio alike, are using the public airwaves. This is akin to Wall Street investors receiving quarterly reports on their investments". The current climate of unwarranted misguided criticism has encouraged competitive malice like this outlandish quote from a formidable cable source "I am not sure why broadcasters are allowed in any way to restrict the right of any consumer to get their free over the air publicly owned broadcast spectrum by invoking things like retransmission consent. I believe advertising time as well should be free on the public's spectrum".!!

Let's get the facts straight. First, broadcasters today did not acquire stations free. They paid the full marketplace price. Second, the general public never paid for or invested in the initial radio and TV station operations. They were financed by risk capital investments. Radio in the initial broadcast stages, in 1919-1920, was financed by private capital utilizing vacant spectrum. Nothing happened on that vacant

ABA Convention Dates

A few "Save the Date" cards got out the door with the wrong dates. The 2008 convention will be held at the Grand in Point Clear JULY 17-20. Don't miss our opening night dinner with entertainment provided by BMI's singer/songwriter John Ford Coley.

In addition, Alabama native Jan Crawford Greenberg will speak at lunch on Friday. Jan covers the US Supreme Court for ABC and has a new book, *Supreme Conflict*.

Roy Wood, Jr Returns as ABBY Awards Emcee

Comedian, Birmingham native and former broadcaster Roy Wood, Jr was such a hit at our first ABBY Awards that we are bringing him back. Join Roy and your fellow Alabama broadcasters on Saturday night, March 29th for our second annual ABBY Awards dinner. (You've seen

spectrum until investors bought or rented buildings and engineering equipment, hired talent and initiated radio broadcasting, the first wireless wonder. Initial investors lost money developing the radio medium. Government licensing was necessary to prevent interference and licenses were issued to serve "the public interest, convenience and necessity". TV spectrum risk capital investors also lost money developing television.

The relative "scarcity" of broadcast frequencies was the rationale used by the courts to justify government regulation of the medium. We are now in a 1000 channel universe of superabundant programming. Thus the "scarcity" used to justify government regulation and limited non-monopoly ownership no longer exists.

Overall, there is no reason in the current multi-channel multi-faceted era of programming and internet superabundance to return to outdated government mandated ascertainment and program content regulation once applied discriminatorily to broadcasting. Such ill-conceived mandates were eliminated over thirty years ago.

In my opinion, with the cataclysmic communication advances in the past ten years, a compelling case exists for a well reasoned relaxation of burdensome government control. Today the public has access to a super abundance of programming, views, information and election year

Roy on David Letterman, Craig Ferguson, Comedy Central, BET, etc.)

Make ABBY Reservations Now!

We will begin mailing ABBY tickets on Monday to those with reservations. Call the office at 800-211-5189 or go online at www.al-ba.com and reserve your great seat today!

Army Guard Needs Your Help in the Fort Payne Area

The ARNG is hosting a Re-Opening Celebration at the Fort Thomas W. Jester Armory on Saturday, April 5th from 3 to 6pm. Please help promote this event on your stations between now and then. We want to help them have a great crowd that day.

US Congressman Robert Aderholt, State Senator Lowell Barron, the Fort Payne Mayor and other dignitaries will be present. There will be food and fun for everyone. Contact SPC Michael Hester for more

political opinion exchange. The internet alone has made available an unprecedented proliferation of news and ideological opinion. According to figures in trade publications there are millions of local political blogs, podcasts and blog based operations providing every variety of political and ideological analysis. Also note the local information and public interchange available through e-mail and sophisticated cell phones. Then consider the bountiful diversity of local and national news and political opinions available on cable, satellite, TV, radio, newspapers, magazines, newsletters, periodicals, etc. Plenty of local and national news and information for everyone.

Special note on broadcast deregulation: The most vital usage of spectrum for information and news for consumers remains two of the very first wireless communications entities - - radio in the early 1920's and television later. Broadcasters remain the prime originators and providers of emergency warnings, local news, information and community service integration. Why should they continue to be the most regulated, with only circumscribed First Amendment rights?

If broadcasting had existed in 1776, it certainly would have been a prime beneficiary of constitutional guarantees of free speech and freedom of the press. Print existed at that time, so newspapers have operated with First Amendment rights and deservedly so. It is past time

information...
256.927.3348 or
256.310.8791.

to extend those constitutional freedoms to TV and radio, the most vital and pervasive news and information mediums.

Send Letters from Your Public File ASAP

In our effort to compile a response to the "Localism" NPRM, we need letters from your audience that express gratitude for your service to their group, community, organization, etc. Please go through your public inspection files for letters and emails from listeners and viewers that compliment your station(s) for anything they've done that was of help to the community. Please copy at least three and send them to the ABA office ASAP. (Letters and emails about radio station entertainment formats should not be included.) Try to include letters from local government officials in the selection. Mail them to Sharon Tinsley, ABA, 2180 Parkway Lake Drive, Hoover, AL 35244.

Supreme Court Takes Indecency Case

CommLaw Blog sponsored by Fletcher, Heald & Hildreth, P.L.C. published a new entry entitled "Supreme Court Takes Indecency Case" on 3/17/2008 2:12:09 PM, written by FHH Law.

The Supreme Court has agreed to hear the FCC's defense of its "Omnibus" Indecency order, which involved the FCC's decision to punish "fleeting" expletives. The case, *FCC v. Fox Television Stations*, marks the first real Supreme Court review of the FCC's indecency rules since the famous *FCC v. Pacifica* case considered George Carlin's "seven dirty words." The outcome of the case could entirely overturn the FCC's authority to regulate indecency content or further entrench that authority.

At issue in the case is the FCC's decision in its Omnibus Indecency order to sanction Fox Television Stations for "fleeting" or "isolated" uses of indecent words, reversing decades of prior policy on "fleeting expletives". The Supreme Court's decision to hear the case is somewhat surprising, given the fact that the Court of Appeals for the Second Circuit (which issued the decision under appeal) specifically limited the basis of its decision to a point of administrative procedure, rather than direct First Amendment grounds. Moreover, the Court of Appeals for the Third Circuit is still considering the appeal of the Super Bowl/Janet Jackson case. Traditionally, the Supreme Court prefers cases that involve issues of Constitutional significance that different appeals courts have decided in different ways. In appealing the case to the Supreme Court, however, the FCC argued, among other things, that the Second Circuit's decision was really an attack on the entire basis of the FCC's indecency regulation and, by extension, an attack on the Supreme Court's decision in *FCC v. Pacifica*. If the Supreme Court follows that argument, we could see a reconsideration of FCC's authority to regulate indecent broadcast content. On the other hand, the Court may simply weigh in on the procedural point, setting up another round of reconsiderations and appeals that could take years to resolve.

Legal pundits will spend the next few months debating on the Supreme Court's motives for taking the case and predicting the ultimate outcome. For now, we will limit ourselves to noting that the FCC has a backlog of dozens, perhaps hundreds, of indecency cases that have been held in limbo while the FCC has tried to get more guidance from the courts and Congress. While today's announcement is a significant event, given that the Supreme Court won't actually hear arguments until fall of this year, those cases may expect to stay in limbo until at least 2009.

Permalink: commlawblog.com/2008/03/17/supreme-court-takes-indecency-case.aspx

How Can You File Your Comments Online With the FCC?

If you wish to file comments online with the FCC, you must go to this website: <http://www.fcc.gov/cgb/ecfs/>. Click on "Submit a Filing" in the right hand column under "ECFS Main Links." You will first be directed to fill out a "cover sheet" which will help people search for your filing. You will need to enter the proceeding/docket number, your contact information, and the type of filing you are submitting (i.e. comments, petition for reconsideration, etc.). You have the option of either (i) uploading your comments, petition for reconsideration, etc. as an attachment or (ii) typing your comment into a text box. To submit your filing as an attachment, simply click on the button "Send Attached File to FCC." You will then be directed to a confirmation page which you will be able to download for your records.

You can only enter one docket number per submission. The docket number for the NPRM is MB Docket No. 04-233. The NPRM proceeding should be distinguished from the FCC's proceeding adopting two new television regulations: an online public inspection file requirement and a standardized disclosure report form requirement. The docket number for that proceeding is: MM Docket No. 00-168. If you wish to file for reconsideration of those actions, you should submit your filing in that docket only.

GAO/FCC disagree over complaint processing

RBR 3/18

The Government Accountability Office says the FCC complaint handling process is busted -- the Commission may very well process 95% of the complaints received, but it is said to do a poor job of resolution tracking and enforcement. The FCC responded that it recognized and addressed some of the problems GAO points out several years ago, and the GAO doesn't know it because it is relying on data that is several years old. Ed Markey (D-MA) jumped right on the case, noting GAO's finding that over 100K complaints flow in, but

only about 10% are properly investigated. "Without an effective FCC enforcement program, consumers are left out in the cold," he said. "Unfortunately, solely relying upon FCC enforcement for consumer protection is utterly unreasonable in light of the GAO's findings.

The FCC was immediately ready with a response. It said GAO was using four-year-old data. In that time, it says it has implemented procedures to clear the backlog of complaints which at one point numbered 113K, and with that cleared, is better able to keep up with the flow as it comes in. The FCC's defense ran over 100 pages. Looking at the period between 1/1/03 and 12/31/06, it took 3.4K enforcement actions resulting in 65.7M in fines forfeitures and consent decree payments; and has added **43M to that total in 2007 alone**. The perception that complaints are not acted upon can be explained in part by the fact that in the case of 71% of them, the target of the complaint was found to be in compliance with FCC rules and regulations.

FCC opens LPFM proceeding

RBR 3/13

Both the FCC and Congress think that the time is ripe to open up third-adjacent FM channels to the new low power FM service. The FCC is looking in general into ways to facilitate new stations, and is now accepting comment on the topic. The item is MM Docket No. 99-25 Low Power FM Notice of Proposed Rulemaking. It is in fact a Third Report & Order and Second Further Notice of Proposed Rulemaking. It hit the Federal Register 3/6/08, and comments are due 4/7/08 with the deadline for reply comments set at 4/21/08. The FCC advises commenters to "follow the filing instructions provided in paragraphs 86 to 88 of the Second Further Notice," which is available on its website.

CRB royalty scheme rates a lawsuit

RBR 3/12

The National Association of Broadcasters is joining with Bonneville International and the National Religious Broadcasters Music License Committee in challenging the rate schedule imposed by the National Copyright Board on internet music streaming. A key complaint: "The Board's threshold ruling that terrestrial radio stations that stream their stations on the Internet ("Simulcasters") must pay a per-performance, per-listener royalty, instead of an annual flat fee royalty, was unlawful." CRB is supposed to enforce an agreement that "a willing buyer and willing seller would have negotiated in the marketplace," among other things, and the plaintiffs say they produced ample

evidence that this means a flat rate fee rather than the per-performance per-listener regime CRB came up with. The lawsuit will be filed in the DC Circuit.

Even if the Board could have justified a per-performance fee structure for Simulcasters, the Board's determination of the precise royalty rates was unlawful for four principal reasons. First, the Board's decision to use royalty agreements between record companies and interactive webcaster services as benchmarks was arbitrary and violated the Act's "willing buyer/willing seller" standard. Although the statute permits the Board to look at rates and terms from market agreements involving "comparable types of digital audio transmission services," interactive services are not remotely "comparable" to the non-interactive services at issue here. Second, the Board's brief discussion of why Simulcasters should not pay a lower per-performance rate than Internet-only webcasters was arbitrary and failed to consider the record evidence. Third, the mathematical model on which the Board relied in its attempt to adjust for indisputably significant distinctions between interactive and non-interactive services produces absurd results, and the Board's one-sentence rejection of Simulcasters' criticisms was patently arbitrary. Fourth, the Board did not consider the record evidence in refusing to permit Simulcasters to use the alternative "aggregate tuning hours" method for calculating royalties.

Birmingham broadcasters provide platform for FM-based alert system

RBR 3/12

Global Security Systems announced ALERT FM, an FM-based digital alert and messaging system, is now available in the Birmingham metro area. Local radio stations - WBHJ, WBHK, WBPT, WNCB and WZZK - join Mobile and Florence stations as some of the first in the state to deploy a local platform for ALERT FM. ALERT FM will allow emergency managers to send emergency alerts and messages to citizens, businesses and schools before, during and after a crisis. ALERT FM is the first system to use commercial radio broadcast signals to transmit NOAA weather warnings and FEMA Presidential alerts.

Radio reaches 235 million

MBR 3/18

Arbitron released preliminary findings from RADAR 96, showing 95% of adults age 18-49 with a college degree and an annual household income of 50,000+, tune into radio over the course of a week. RADAR Network affiliates (which account for over 50% of all radio stations) reach 84% of this coveted demo. They also reach 84% of adults 25-54 in households with a college degree and an annual household income of 75,000+.

Opp Rattlesnake Rodeo Media Luncheon

Tuesday, March 25 -- Noon

The Opp Rattlesnake Rodeo Media luncheon will take place at the Opp Senior Citizens Center next to Channel-Lee Stadium (home of the Rodeo).

We'll have snakes available for interview! Snakehandlers will be onhand. And, we'll have folks who have been involved with the rodeo for years.

Food will be served at noon and snakes will make their scheduled appearance at 12:30.

Please confirm and let us know how many people will attend the luncheon.

CONTACTS:

DON CHILDRE 334-493-4571 CITY HALL

CARI MORGAN 334-493-7840 RODEO OFFICE

ROBERT BOOTHE 334-493-4545 WOPP

www.opprattlesnakerodeo.com

This year's Rodeo will feature Joe Diffie and Craig Morgan.

We have audio spots on the website and WAKA's Mike Smith is producing TV spots. E-MAIL YOUR REQUEST FOR TICKETS TO ROBERT BOOTHE rbt@wopp.com. Be sure to include your mailing address!

One celery stalk, a gallon of milk and a converter box

TVBR 3/13

Not every town in the US can support a consumer electronics store, but you can bet that almost all of them have a grocery store or two. To make sure all consumers have easy access to digital-to-analog converter boxes, NAB is asking NTIA to put grocery stores on its list of approved converter box retail outlets. In a letter to NTIA head Meredith Attwell Baker, NAB's David K. Rehr wrote, "I believe that an accommodation should be made for grocery stores, and that at a minimum information on NTIA's program and its waiver criteria should be made available to stores, especially those in rural areas." A day earlier, Rehr made another appeal to Baker. Noting that over 20% of seniors are over-air only TV viewers, he asked that special arrangements be made to get coupons to assisted living facilities and nursing homes. "We understand that current NTIA policies and procedures could hinder the efforts of seniors in assisted living facilities and nursing homes to obtain coupons, by utilizing too narrow a definition of "household" for purposes of coupon eligibility. Surely, this is something that can be fixed, perhaps with a designation to identify

seniors at an address that has multiple eligible recipients. These citizens deserve to be admitted to the government's program to ensure continued television reception. While we all value our favorite television programs and rely on television broadcasts for vital weather and emergency information, our senior population above all others cannot be cut off from receiving television programming."

Feelings

Contributed by Sales Consultant Jeffrey Hedquist

Feelings, nothing more than feelings...

How will the audience feel when they use your client's product or service? If you can transmit that emotional experience in a commercial, you'll get listeners to visit the advertiser or even begin using the product or service in their minds. Their imaginations will provide the most powerful "test drive" on the planet. Create a story that will put the listener in the situation where they'll experience those feelings.

Another approach: have the audience feel what life would be like *without* the product or service in their lives, and then how much better they'll feel with it. It takes the problem/solution scenario and turbo charges it with emotion. Make the feelings come alive with sight, sound, touch, taste and smell. Make them want it. Then show them how easy it is to get that feeling -- go to the store, call the number or log onto the web site.

We all want to be happy. Write your commercial to show us how we can be happy. Help us picture in our minds being happy using your client's product or service. It's the ultimate benefit sell.

OK, your mind is bursting with questions and you want answers. You can't stand it anymore. You have to tell someone, someone who'll understand. Quickly you email jeffrey@hedquist.com. Or mail a letter to P.O. Box 1475 Fairfield, IA, or fax him at 641-472-7400, or just call 641-472-7400. You feel better already.

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On the Road Again

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