

# Time-brokering seen as FCC loophole

Time-brokering is a hot subject these days at the Federal Communications Commission and in Congress. Supporters see it as an avenue for diversity and a savior for small radio and TV stations. Detractors say it lets the FCC wink at its own policies.

"Time-brokering is nothing more than the FCC's ill-conceived attempt to circumvent its own rules," insists Frederick A. Polner, a former FCC attorney now practicing communications law in Pittsburgh.

"[License-marketing agreement] can wreak havoc on a local market by upsetting the basic ground rules of competition," said Polner. The LMA or time-brokering concept — one station purchasing time on another in the same market — started with radio stations and soon spread to television.

TV stations in Birmingham, Ala., and Greensboro and Winston-Salem, N.C., are practicing time-brokering. In other markets, stations have bought time on competitors to run newscasts.

"The FCC gives lip service to its structural requirements, but they're taking the position that —

in concept — LMAs are permissible and they will look at any actual problems that arise in practice," said Polner, speaking in general terms and not about the local arrangement.

"So if one station impermissibly controls the other station, then they will take action. But that's a very elusive and hard-to-enforce concept."

The difficulty in evaluating an LMA comes in discerning who's calling the shots. "The basic concept is the station that sells its programming time must retain not only legal control of its programming, but actual control of its programming as well," said Polner.

"So the question then becomes, 'If the station that has sold its program time simply rubber-stamps everything the other station programs on it, have they fulfilled their obligation of legal control?' How do you get into someone's mind to really see whether or not they are exercising their control or merely acting as a rubber stamp?"

Two U.S. congressmen have sponsored legislation that would limit the amount of time that can

be sold to any one programmer to 10 percent, and limit the total time a station can sell to 25 percent.

It turns out that KDKA-TV had entered into preliminary discussions with WPTT owner Eddie Edwards about buying the 10 p.m.-11 p.m. hour to air a KD news show. KD would have used a separate anchor and news set and tried to appeal to the early-to-bed audience.

KDKA's discussions abruptly came to an end, however, when it was announced that WPTT was selling its 3 p.m.-midnight block to competitor WPGH. Channel 53 runs back-to-back episodes of "I Love Lucy" on WPTT at 10 p.m. On its own channel, WPGH airs reruns of the hour-long drama "Hunter."

Edwards confirmed this week that he had preliminary discussions with KDKA, and said the station was one of many that inquired about his plans for WPTT.

When WPGH was sold, new owner David Smith of Sinclair Broadcast Group indicated he planned to produce a 10 p.m. newscast at some point. No timetable for such a program has been announced.

accounting, billing and equipment repair. The letter provides no documents as proof, and it doesn't distinguish between billing for the time-brokered hours and regular billing, for instance.

Channel 53 employees say they designed the "on-air look" of "The New 22." That involved blending graphics with sound and producing what viewers see on their screen. The new logo features a series of geometric shapes and the slogan "The New 22."

Station morale, one employee said in an interview, has plummeted. "We had esprit de corps that would have rivaled the Marine Corps. We would do anything, anywhere and get it on the air yesterday."

This latest challenge to operations

## WPGH 53

at the stations comes on the heels of a complaint about WPGH's owner filed with the FCC by a Baltimore television station.

WNUV-TV alleged that Sinclair used "coercive economic pressures" to deny it quality programming, although it refused to cite specific shows it may have lost. It's expected that Sinclair will respond this week to that charge to the FCC.

In a letter designed to fend off union approval, WPGH's general manager acknowledged how unsettling some recent changes have been.

Frank, who came here from Tampa-St. Petersburg, stated in his letter to potential IBEW members that since starting work Sept. 15, "I have been required to take some actions which were unpleasant, but absolutely necessary in order for the station to survive and preserve jobs for the vast majority of our employees."

In this Jan. 8 letter, he added: "I understand why many of our employees are angry and concerned about

## The New 22

these changes already made and those that are yet to be made. Unfortunately, our banks have imposed financial objectives which must be met."

Frank closed his correspondence by stating that if a union were approved but no contract reached, an economic strike could result. "If that happens, we will hire permanent replacements. That means your job is gone unless and until one of the replacements leaves. ...

"These are hard times on both you and Channel 53. The union will not change that situation."

In a phone call this week, Frank explained his comment about the banks. "In any television station, there's a debt service. We're doing what the banks are telling us to do to make a profit."

***Exhibit G***

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE  
SECRETARY

861-1580

February 19, 1992

*Rm 222*

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Re: FCC File No. BPH-911206IF

Dear Ms. Searcy:

This letter is submitted on behalf of Scripps Howard  
Broadcasting Company ("Scripps Howard") in connection to the

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Commission not to permit Cunningham's principals to benefit from their misconduct. Indeed, as shown below, sound agency practice requires that Nationwide's application be granted so that Cunningham's principals will not be permitted to escape appropriate administrative scrutiny of the Four Jacks application's proposal to add forty feet in height to an existing tower.

The first misstatement in Cunningham's letter is the claim that Nationwide, an FCC licensee, had no authority to correct erroneous information about its antenna tower's height. In fact, the FCC expressly requires its licensees to ensure that tower height data be kept accurate. See 47 C.F.R. §§ 73.1690(b)(1) and 17.7. Nationwide's application, which was filed contemporaneously with its notification to the FAA of the same facts, is the means specified by Section 73.1690(b)(1) for maintaining the accuracy of the FCC's antenna height records.

Cunningham's second misstatement is its false and dangerous suggestion that the FCC need not be advised of tower height reductions. No source is identified for the unsubstantiated claim in the February 11th letter that Cunningham was so "advised." In any event, the experienced communications counsel who filed Cunningham's letter is surely aware:

(1) that FCC and FAA rules make no distinction between height increases and decreases with respect to licensees' plain obligation to report all tower height alterations, see, e.g., 47 C.F.R. §§ 73.1690(b)(1), 17.7(a), 17.57, and 14 C.F.R. §§ 77.13(a)(1), 77.5(b); and

(2) that it is the Commission's unambiguous policy that tower height reductions as well as height increases may give rise to air hazard navigation issues, see, e.g., Abacus Broadcasting Corp., MM Dkt. No. 91-350, DA91-1481 (released December 5, 1991).

It is remarkable that Cunningham, an entity owned by principals who are both (1) applicants for a new FCC license and (2) current broadcast licensees, would present such a reckless and plainly false assessment of licensees' responsibilities.

Importantly, by its owners' own recent admission, Cunningham's tower apparently has been at a different height from that reflected in the FCC and FAA records for some period of time due to the actions of Cunningham's owners in relocating their Station WBFF-TV television antenna to a new location. See Four Jacks' Opposition to Petition to Deny (File No. BPCT-910903KE), filed February 12, 1992, at 4. Cunningham's principals wrongfully never reported that they had changed the tower's height either to the FCC, to the FAA,

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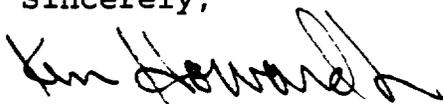
or to the National Ocean Service as required by FCC and FAA rules so that the tower's actual height would be accurately reflected in these agencies' databases and in the aeronautical charts based on these databases.. This failure to keep the appropriate governmental

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location. This fact is simply incontrovertible, and the tower's existing height must be accurately recorded in the FCC and FAA records so that proper procedures will be followed in processing Four Jacks' application. Scripps Howard is separately arguing in a Petition to Deny that Four Jacks' continuing pattern of misconduct in concealing the true height of this tower, inter alia, warrants the dismissal of its application.

Please contact the undersigned if you require any additional information.

Sincerely,



Kenneth C. Howard, Jr.  
Counsel to Scripps Howard  
Broadcasting Company

0749:2789  
9911091008  
Attachment

cc: Chief, Mass Media Bureau, FCC  
Chief, Video Services Division, FCC  
Chief, Television Branch, FCC  
Chief, Field Operations Bureau, FCC  
Chief, Public Service Division, FCC  
Chief, Antenna Survey Branch, FCC  
Mr. Harold Becker, FAA  
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VIA HAND-DELIVERY:

Ms. Donna Searcy  
Secretary  
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1919 M Street, N.W.  
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Re: FCC File No. BPH-911206IF

Dear Ms. Searcy:

This letter is written on behalf of Cunningham Communications, Inc., the owner of the tower specified in the above-referenced application. It has come to our attention that Nationwide Communications, Inc. ("Nationwide"), a lessee of

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application should be dismissed because it had no actual or  
apparent authority for making its filing and because there is a  
pending proposal to use the full height of the present structure.

Very truly yours,



Martin R. Leader

MRL/dp  
3070-014

cc: Edward W. Hummers, Jr., Esq.

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bcc: Richard J. Janssen  
Arnold Kleiner  
Donald Zeifang

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