Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of	)	MM Docket No. 90-638
	)	
HEIDI DAMSKY	)	File No. BPH-880816MW
	)	
WEDA, LTD.	)	File No. BPH-880816NR
	)	
HOMEWOOD PARTNERS, INC.	)	File No. BPH-880816NU
	)	
For a Construction Permit for a New FM Station on Channel 247A in Homewood, Alabama	))))	

TO: The Full Commission

REPLY TO CONSOLIDATED OPPOSITION TO PETITION FOR RECONSIDERATION AND REQUEST FOR STAY

Heidi Damsky ("Damsky"), by her attorney, hereby respectfully replies to the "Consolidated Opposition to Petition for Reconsideration and Request for Stay", filed in this proceeding by Homewood Radio Co., L.L.C. ("Homewood Radio") on June 15, 1998. In reply thereto, it is alleged:

1. In her Petition for Reconsideration, Damsky complained that she had been found financially unqualified on the basis of technicalities; that she had twice the amount of money she

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needed from the day that she filed her application; but the ALJ improperly refused to allow her to prove that. In its Opposition, Homewood Radio argues in substance that it does not make any difference whether Damsky had the money; that she was found disqualified, independently, for failing to have an itemized, written budget on the day when she filed her application.

2. Like the Commission, itself, Homewood Radio simply ignores the applicable law, which was presented in Damsky's Exceptions.[1]

3. Damsky's application was filed in 1988, at a time when the application form did not require an applicant to include in the application either an estimate of costs or a showing of funds to meet those costs. In Northampton Media Associates, 4 FCC Rcd 5517 (1989), recon. denied, 5 FCC Rcd 3075 (1990), aff'd sub nom. Northampton Media Associates v. FCC, 941 F.2d 1214 (D.C. Cir. 1991), the Commission dealt specifically with the situation presented here, where an applicant filed on the "old" Form 301, which did not require an applicant to include in the application either an estimate of costs or showing of sources of funds to meet those costs. In Northampton, the Commission said the following at ¶14:

> "Nevertheless, as the Commission explained in Certification of Financial Qualifications, 2 FCC Rcd at 2122, the certification procedure was designed to 'spare [applicants] the time and effort necessary to prepare and submit the documentation previously required to demonstrate their qualifications.' (emphasis added). In this manner, the certification procedure was intended to 'provide significant benefits both to applicants and to the Commission.' Id. Cf. Metromedia Radio & TV, 102 FCC 2d 1334, 1350-52 ¶¶ 30-32 (1985) (usual practice is not to require the assignee, who certified its financial qualifications, to produce the detailed documentation that would have been required prior to 1981). Thus, we conclude that, under the 1981

[1]A review of the Commission's decision suggests that the Commission acted on the basis of an "easy read", which Damsky's opponents "helpfully" supplied. It is unclear whether Damsky's Exceptions to her disqualification were actually read, since key arguments advanced by Damsky are missing from the decision and not disposed of.

> requirements governing certification cases like the one before us, reasonable assurance does not necessarily require that an applicant have the written documentation (which would have been required before the 1981 revision of FCC Form 301) when it certifies its financial qualifications. Although the supporting documentation must be produced upon the Commission's request, the applicant may prepare and submit it after certification, provided that the applicant actually had a reasonable assurance of adequate funds at the time of certification." 4 FCC Rcd at 5519.

Thus, the rule would appear to be that an applicant may prepare and submit documentation supporting its certification at a time subsequent to certification, provided that the applicant actually had a reasonable assurance of available funds at the time of certification.

4. That is exactly the case here. Damsky knew from her consulting engineer that she needed up to $300,000 to construct a station and operate it for three months with no revenues of any kind.[2] That is a far more generous and conservative estimate than was involved in the Northampton case. There, the applicant, Cutter, was proposing to construct and operate the entire station for a total cost of only $38,836. See, Northampton at ¶5. In any event, the Damskys actually had cash or cash equivalent well in excess of $300,000. Thus, it would appear that Heidi Damsky clearly falls within the scope of an applicant who, under Northampton, "may prepare and submit [documentation] after certification, provided that the applicant actually had a reasonable assurance of adequate funds at the time of certification".

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[2] HPI argued at ftnt. 12 to its reply findings that, because William E. Benns, III was not presented for testimony, the figure which he gave to Damsky was suspect, citing United Broadcasting Corp., 53 RR 2d 57 (1983). HPI forgot that in Damsky Exhibit 10, pg. 2, a complete itemization of the costs comprising the figure was set forth and that it was known from prior testimony that Damsky got her figures from Mr. Benns. Thus, if any party had wanted to cross-examine Mr. Benns, they could have requested him to appear and Damsky would have been obliged to make him available (F. 11; Tr. 1123-24). However, no party made such a request for the obvious reason that the figures supplied were reasonable and consistent with the estimates of the other two applicants in the proceeding, i.e., WEDA and Partners.

5. In its decision, the FCC ignored Northampton. Instead, it cited Aspen FM, Inc., 6 FCC Rcd 1602 at ¶13 (1991), for the proposition that because she did not have a written budget at the time of certification, Damsky did not have good cause to substitute a good showing at hearing. The problem with that is simply that ¶13 of the Aspen decision says no such thing. It simply says that "an applicant may not certify its financial qualifications and then obtain financing"; it says nothing whatsoever about cost estimates. Damsky submitted proof that she had financing in the form of cash already on hand and in the form of a bank commitment, and Damsky's bank letter, proffered at the hearing, made it clear that the bank loan was available to her at all times from the day when she first filed her application.

6. It is interesting that on reconsideration the Mass Media Bureau attempted to persuade the FCC that it should adhere to a strict standard of requiring advance documentation and not allowing applicants to submit documentation prepared after the filing of their applications, but the Commission completely rejected the Bureau's recommendation saying that:

> "Although the Bureau contends that the public interest would be best served by granting reconsideration, it has provided no basis for the disparate treatment of applicants that it proposes and we find none ourselves. Nor does the Bureau show why the evidentiary submissions demonstrating that the applicant was financially qualified at the time its application was filed, as specified by our decision herein, are sufficient to meet the requirements of the certification procedure. More importantly, given the previous clear indications that an applicant need not prepare the documentation contemplated by the certification procedure requirements until requested to do so, 4 FCC Rcd at 5518 ¶14, we believe that there is no valid basis for such an approach. In view of the foregoing, we will deny the Bureau's petition." (Footnotes omitted.) Northampton, 5 FCC Rcd 3075 at ¶7.

7. On appeal, the Court of Appeals was critical of the flip-flops in Commission

policy, saying that the Commission failed to explain its apparent departure from the policy of requiring written documentation after the time of filing of the application. Nevertheless, it affirmed the Commission. Northampton Media Associates v. FCC, 941 F2d 1214 (D.C. Cir. 1991). Thus the Commission is "stuck" with Northampton and must apply it here. Melody Music v. FCC, 345 F.2d 730, 733 (D.C. Cir. 1965).

8. Before leave this subject, Damsky acknowledges that the Gonzales case[3], relied upon in the Commission's decision, was upheld by the U.S. Court of Appeals on June 16, sub nom. Jelks v. FCC, Case No. 97-1544 (Slip Op., D.C. Cir., 1998). Gonzales, however, has nothing to do with the situation presented here. Gonzales was a case in which an applicant, Jelks, declared in his application that he was not financially qualified. He sought to amend his application to demonstrate that he had become qualified. Damsky, by contrast, certified in her application that she was qualified, and the ALJ expressly determined that her certification was not false, declining to add a false certification issue.

9. Turning now to the question of compliance with the antitrust laws, the arguement that Damsky waived her objections to the Cox deal by not raising them last September is ridiculous. Damsky's objections are predicated on 1997 gross revenue figures which were not even available last September.

10. Damsky recognizes that the acquisition of 40% of the revenues in a particular market does not automatically create an antitrust issue. In some small markets, served by only one station or by only a very few stations, it may be impossible to avoid a situation in which one owner

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[3]Gonzales Broadcasting, Inc., 12 FCC Rcd 12253 (1997).

controls more than 40% of the revenues, or even more than 80%. Birmingham, however, is the 53rd market in the United States. It has 24 radio stations. In large markets, e.g., Birmingham, the Justice Department has raised red flags, even if a merger brought about control of as much as 35% of radio broadcast revenues.

11. Attached and marked Exhibit A is an article from Wall Street Journal dated September 18, 1997, and entitled "Golden Oldie: A Wave of Buyouts Has Radio Industry Beaming with Success". In the article, Reporter Eben Shapiro quotes industry executives as saying that "once you control about 35% of the radio advertising in New York City, as Westinghouse does, you will be able to drive up rates". In the same article, Mr. Shapiro points out, as Damsky did in her Petition for Reconsideration, that the "Justice Department has already forced changes in deals that would give one company control of 40% of the radio revenues in a single market".

12. On November 7, 1997, another article, dealing with the same subject, appeared in the Journal. This article, a copy of which is attached and marked Exhibit B, was written by John R. Wilke and entitled "U.S. Files Suit to Bar Radio Merger as Consolidation Appears to Hit Crest". In the article, Mr. Wilke describes Justice Department efforts to block efforts by Chancellor Media Corporation to acquire stations which would have given Chancellor control of about 65% of the radio broadcasting revenues in the Long Island, New York, radio market. In the article, a prominent Justice Department official, Joel Klein, the assistant attorney general for antitrust is quoted as saying, "When you're doing a deal that's in the 35%-and-above range - or that consolidates a large part of a particular format even when that involves less than 35% of the overall market, you would should bring in antitrust counsel early on."

13. The FCC has recognized that it has a responsibility along with the Justice

Department to insure that the transactions which it approves are consistent with antitrust law. Recently, some 15 transactions have been blocked or held up at the Commission level because of antitrust considerations. See the attached article from Broadcasting Magazine, marked Exhibit C. It would appear that if the transaction contemplated by Cox in this case had taken the form of an application by Cox to purchase the Homewood station, the FCC staff would have blocked a grant of the application. Cox should not be permitted to do indirectly what the staff would not have permitted if Cox had filed an ordinary application for assignment or transfer of control.

14. The Opposition attacks the article in the Birmingham News relied upon by Damsky in her Petition as "inaccurate". Attached to the Opposition is a brief Declaration from Timothy J. O'Rourke, an expert on antitrust law and a former Deputy Assistant Attorney General in the Civil Division, United States Department of Justice. The Declaration is carefully written so as not to divulge too much information and thereby inadvertently open up a can of worms. Oddly, however, the Declaration confirms Damsky's allegations both with respect to the types of transactions which the DOJ cites objectionable and with respect to the fact that the acquisition of the Homewood station by Cox is a prime facie violation of the antitrust laws.

15. Mr. O'Rourke explains that on July 3, 1997, Cox gave a notification under the Hart-Scott-Rodino Act, advising that it intended to acquire the ownership of FM Stations WBHK and WBHJ in the Birmingham market. The Hart-Scott-Rodino Act is codified at 15 U.S.C. §18a. It provides, in substance, that where a company acquires another business with assets in access of $15 million it must give notice of the proposed transaction to the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the DOJ. Thereafter, there is a waiting period of 30 days during which the acquisition must be held in abeyance to give the

government an opportunity to evaluate the acquisition on antitrust grounds.

16. Here, Mr. O'Rourke is a recognized expert on antitrust law. He states that, "Prior to any contact with DOJ, Cox made a unilateral determination that the DOJ review process for Cox's Brimingham transactions would be expedited by assigning the rights to WENN-FM to a third party". He explains that WENN-FM was sold to Dick Broadcasting and that, "Cox's decision to sell WENN-FM was made based on format, not revenue share, considerations, and was not required or mandated by DOJ."

17. It is apparent, however, that Mr. O'Rourke recommended that Cox sell Station WENN to Dick Broadcasting. It is also apparent that the reasons for that recommendation related to compliance with the antitrust laws. After all, Mr. O'Rourke is an antitrust expert; not an expert on communications law or real estate law. Thus, while the article in the Birmingham News may not have been accurate in every detail, the article was substantially correct when it stated as it did that in 1997 Cox disposed of a station in Birmingham for antitrust reasons.

18. In its Opposition, Homewood Radio cites a number of cases in which the DOJ has approved transactions involving larger revenue shares than those presented here. Those, presumably, are cases arising under the Hart-Scott-Rodino Act, where notification was given to the DOJ that a particular transaction was contemplated. Here, Cox has circumvented Hart-Scott-Rodino, by purchasing a construction permit for a price which falls below the Hart-Scott-Rodino threshold. That is just another reason why the FCC needs to step in and make an antitrust analysis of this transaction. Such an analysis would mandate that the Commission find a violation of the antitrust laws. All of the elements of such a violation are present. The market has the requisite size. Even more importantly, as pointed out in Damsky's Petition for Reconsideration, Cox is the largest player

in the market. There is no other entity which can effectively compete. While Homewood Radio argues that the station is just a "Class A start-up", that argument ignores the enormous market power which Cox already possesses in Birmingham. It can and will use this radio station to enhance and augment its existing position in a position which already raises antitrust issues.

19. At footnote 4 of the Opposition, counsel for Homewood Radio attacks Damsky's characterization of Homewood Partners' principals as "intelligent and adept liars", claiming that it is "rhetorical overkill" and a "cheap shot". Counsel for Homewood Radio apparently forgets that in his own Exceptions in this case, filed on behalf of WEDA, Ltd., he too attacked the principals of Homewood Partners on similar grounds, accusing them of dissembling and lack of candor (WEDA Exceptions, quoted verbatim at pages 9-10 of Damsky's "Opposition to Joint Request for Approval of Settlement Agreement", filed September 19, 1997). Damsky simply cannot understand how a lawyer who has vigorously attacked the truthfulness and honesty of a witness or group of witnesses can ethically switch sides and defend the same people who he previously depicted, accurately, as dissembling and less than candid with the Commission.

Respectfully submitted,

June 22, 1998

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EXHIBIT A

9/18/97 WSJ A1
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1997 WL-WSJ 14166674

The Wall Street Journal

Thursday, September 18, 1997

Golden Oldie: A Wave of Buyouts Has Radio Industry Beaming With Success

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Giants Gobble Up Stations, Driving Up Ad Revenue; In Bull's-Eye: Newspapers

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'There's Hysteria Going On'

By Eben Shapiro
Staff Reporter of The Wall Street Journal

In the 1988 film "Working Girl," Melanie Griffith hatches a daring plan to help Trask Industries break into the glamorous world of broadcasting. "My idea is they get their feet wet in radio and build from there," says the actress, playing a Wall Street secretary striving to get ahead.

"Radio is small potatoes," a seasoned investment banker says with a sneer. "I don't see them biting."

But Melanie was right after all, and they are biting with a vengeance.

Since Congress greatly relaxed ownership restrictions last year, the once sleepy 77-year-old radio industry has become the hottest sector of the media business. More than a quarter of the nation's 10,000 stations have changed hands in deals valued at $24.7 billion during the past 20 months, giving a handful of companies a lock on the airwaves in the nation's big cities. After gobbling up major radio broadcasters, two companies, Westinghouse Electric Co.'s CBS Radio and Chancellor Media Corp., now control roughly half the radio- advertising market in New York, Los Angeles, Chicago, San Francisco, Philadelphia and Detroit. Radio stocks, meanwhile, have soared nearly 80% this year, compared with about 28% for the Standard & Poor 500, as Wall Street scrambles to cash in on the bonanza.

The feeding frenzy isn't over. In a few weeks, investment bankers expect American Radio Systems Corp. of Boston to be auctioned off for more than $2 billion. A popular lapel pin at a recent broadcast convention reads, "Quick, Who's Your Owner?" making light of the feeding frenzy that has resulted in one country-western station in Seattle, KYCW, having had four separate owners since January 1996.

Some in the industry are already warning that the market is getting way overheated, especially after last month's purchase of New York-based SFX Broadcasting Inc. by an affiliate of Dallas buyout firm Hicks, Muse, Tate & Furst Inc., in a deal valued at $2.1 billion. "Prices are starting to get into the danger zone," says George Sosson, senior vice president of Clear Channel Communications Inc., a large radio group based in San Antonio. Clear Channel "looked at the SFX deal very hard, but it did not make sense at that level," he says, adding, "We've hit the red line on the tachometer." Frank Wood, a Cincinnati-based broadcaster who just completed selling a group of 12 stations for $550 million, a profit of nearly 600%, agrees. "There is a hysteria going on," he says. "I decided to sell after I woke up one day and they looked like tulip bulbs, not radio stations," he adds, alluding to the 17th-century investment craze that ended in a big bust.

Driving the second Golden Age of Radio is a classic bet on the benefits of a long-overdue consolidation. The logic is that the bulked-up station groups are able to sharply increase revenues by attracting big, new advertisers and raising rates, while at the same time slashing costs by firing engineers and programmers and moving as many as six once-competing stations into a single studio. By buying up stations nationwide, radio owners can offer big brand names one-stop shopping for national ad campaigns.

For the radio industry, the lifting of the federal ownership limits was perfectly timed, coinciding with growing anger at the skyrocketing cost of advertising on network television at the same time that the networks' audience share was slipping. "The cost of television has become so outrageous. Radio is being used as an alternative," says Sheryl Standifer, an advertising executive who worked with J.C. Penney Co. to double the big retailer's radio spending in the past two years.

Executives at Penney and a growing number of big marketers argue that radio is the perfect medium for America's increasingly fragmented, mobile society. "Now we are able to get women as they are driving to work or taking their kids to soccer practice," says Lynn Greiner, national media manager for Penney. The lengthening of commuting time has been a boon to the industry, and radio executives quickly spit out statistics on the increase in licensed drivers and number of vehicles miles traveled.

Scott K. Ginsburg, chief executive of Irving, Texas, radio giant Chancellor Media, says 20 million people are expected to move to California during the next 20 years. "That means increased traffic congestion, more time in the car and less time with newspapers and TV," Mr. Ginsburg says. "While other people stuck in traffic get very frustrated and angry, I tend to giggle."

Radio executives say they can sharply increase radio's share of the advertising pie to 10%, up from the 7% slice that radio has attracted for the past decade or so. Last year, radio accounted for $12.26 billion of the $178.8 billion spent on all forms of advertising, according to Veronis, Suhler & Associates Inc., a New York investment-banking firm.

To get those extra three percentage points, radio salespeople will have to peddle an extra $5.5 billion worth of 30-second spots. And rather than try to take the ad dollars away from television, radio groups have zeroed in on newspapers as the primary target, emphasizing the publishing industry's declining circulation and scant appeal with young people.

Of course, the radio industry has stubbornly been going after newspaper advertisers since 1922, when the first commercial broadcast aired in New York, carrying advertisements for Long Island real estate. "When I went to my first sales meeting 28 years ago, they said, 'We are going to take market share from newspapers,'" recalls Mr. Sosson of Clear Channel. "If you overpay with the hope that you are going to take it away from newspapers, you are fooling yourself."

But publishers are worried enough to gird for a fight. The Newspaper Association of America just printed thousands of glossy booklets for its members titled "When It Comes to Advertising, Newspaper Has Radio All Wrapped Up," which includes "fact-based arguments" on "radio's limitations."

"Radio has become a stronger competitor" says Miles E. Groves, chief economist of the trade group. "We take it pretty seriously."

The Justice Department is watching closely to prevent the radio groups from too aggressively taking advantage of their new heft. While radio executives are loath to discuss it publicly given the high level of government scrutiny, privately industry executives say that once you control about 35% of the radio advertising in New York City, as Westinghouse does, you will be able to drive up rates.

Advertisers are already complaining that the beefy groups are trying to force unpalatable package deals down their throats. Jean Pool, an executive with the J. Walter Thompson advertising agency, says she was trying to purchase time on a top American Radio station in the Rochester, N.Y., area for a car-dealer client. Executives at American Radio, she says, responded by saying, "Take my weak stations, or you can't have my strong one." Ms. Pool says, "we called the Justice Department and got that cleaned up." Ms. Pool keeps the name and telephone number of the Justice Department attorney that monitors radio markets on her desk for ready access.

An American Radio executive declined to comment.

Six attorneys are evaluating radio mergers full time and monitoring their aftermath, says Joel Klein, U.S. assistant attorney general, to avoid monopolistic pricing. The Justice Department has already forced changes in deals that would give one company control of 40% of the radio revenues in a single market. Last year, the agency forced both Jacor Communications Inc. and American Radio Systems to scale back deals that would have resulted in the companies' dominating Cincinnati and Rochester, respectively. And last year, the antitrust regulators required CBS Radio and Infinity Broadcasting Corp. to divest stations in Boston and Philadelphia before allowing CBS's acquisition of Infinity for $4.9 billion, creating the nation's largest radio company. CBS's radio empire is expected to contribute more than 50% of CBS's cash flow this year, outshining its higher profile television business.

Market forces may help keep things in check, too. Major advertisers have put the radio barons on notice they won't tolerate sharp increases. "If prices go up appreciably, we will have to rethink our strategy for using radio," says Michael Neavill, director of media services for AT&T Corp., one of the top radio advertisers in the country. "I'll look for other alternatives."

Still, Mr. Neavill notes one of the reasons he is such a heavy buyer of radio time is that it is "a terrific bargain." Radio costs about one-half as much as network TV to reach 1,000 consumers, according to a study by BT Alex. Brown Inc.

Steven Dodge, chairman and chief executive of American Radio, won't answer directly whether radio's business model calls for increasing prices in a city dominated by one or two companies. "It's part of our business plan to increase demand for radio, which is what drives prices," he says carefully. He adds, "There is a limited amount of radio inventory. If we are able to increase demand for it, its value will go up."

The industry can point to some early

than 200 transactions large enough to be reviewed by the government, and eight were challenged. Most were settled after forced divestitures, however, and none of the government's cases had been brought to court, until now.

Broadcast mergers are a rising concern at the Federal Communications Commission as well. "The pace of consolidation was probably more dramatic than anybody anticipated, and there are a number of pending proceedings which will give us the opportunity to address these issues," said the agency's new chairman, William Kennard.

Earlier this year, Mr. Klein said he applauded the new law and said it had "led to a lot of healthy consolidation." But he also warned that radio would now have to be subject to traditional antitrust enforcement. He warned a group of broadcasters that while the department would weigh many factors, including demographics, station format and signal, any merger giving control of one-third of a market could face trouble.

"When you're doing a deal that's in the 35%-and-above range -- or that consolidates a large part of a particular format even when that involves less than 35% of the overall market, you should bring in antitrust counsel early on," Mr. Klein said.

---- INDEX REFERENCES ----

COMPANY (TICKER): Chancellor Media Corp.; SFX BROADCASTING INC. (AMFM SFXBA)

NEWS SUBJECT: High-Yield Issuers; Acquisitions, Mergers & Takeovers; Antitrust News (HIY TNM TST)

MARKET SECTOR: Consumer Cyclical (CYC)

INDUSTRY: Broadcasting; All Entertainment & Leisure; Media (BRD ENT MED)

PRODUCT: Leisure; Media (DLE DME)

GOVERNMENT: Justice Department (JUS)

REGION: North America; New York; Texas; United States; Eastern U.S.; Southern U.S. (NME NY TX US USE USS)

LAYOUT CODES: Large Majors; Marketing & Media; Business and Finance Column Stories (LMJ MMK TPT)

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EXHIBIT B

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11/7/97 Wall St. J. B8
1997 WL-WSJ 14172932

The Wall Street Journal

Friday, November 7, 1997

Marketing & Media

U.S. Files Suit to Bar Radio Merger As Consolidation Appears to Hit Crest

By John R. Wilke
Staff Reporter of The Wall Street Journal

WASHINGTON -- The Justice Department for the first time sued to block a radio merger, signaling that the industry's rapid consolidation may have crested.

The department alleged in federal district court in Brooklyn that Chancellor Media Corp.'s acquisition of four Long Island, N.Y., stations from SFX Broadcasting Inc. would violate antitrust law and result in local advertisers paying higher prices.

The case could test the Justice Department's evolving policy on radio consolidation. More than 4,000 radio stations have changed hands since the 1996 Communications Act eased ownership rules; antitrust enforcers have forced some mergers to be scaled back, but this is the first time they have sought to block a deal.

On Long Island, Irving, Texas-based Chancellor is New York-based SFX's biggest competitor. "These stations have been locked in a daily competitive battle," said Joel Klein, assistant attorney general for antitrust. "This deal will end that battle and consumers would lose." The department's complaint said the $54 million merger would create a dominant, six-station radio group controlling 65% of the local market.

Edward Henneberry, Chancellor's lawyer, argued that the government should have included New York City stations in its review, since 70% of Long Island radio listeners tune in to those stations and other media. "They didn't give adequate weight to pro-competitive benefits you realize from consolidation, particularly the ability to attract new advertisers to radio to compete with newspapers and cable, for example."

The challenge also suggests a tough review in store for a much larger deal, Capstar Broadcasting Partners' $1.2 billion plan to buy SFX Broadcasting. Capstar is owned by Hicks, Muse, Tate & Furst Inc., a Dallas investment group that also owns 15.7% of Chancellor, now the nation's second-largest radio company.

A Justice Department official said that "we are just in the beginning stages of reviewing that transaction, and right now there is no reason to link it" with the Long Island lawsuit. The antitrust official, Charles Biggio, added, "we are aware of some market overlaps and are looking at them, but it's too early to draw any conclusions."

Prior to last year's communications act, the number of radio deals each year was small because of strict ownership limits. Since the act, enormous pent-up demand triggered more successes. This year, Jacor Communications, a medium-size broadcaster, swooped into Dayton, Ohio, and agreed to buy a group of six stations that jointly control nearly half of the Dayton market. To save on rent and equipment, the stations moved into a converted warehouse in April, with an urban-dance station sharing space with a station that plays Perry Como favorites. The Dayton group retooled its sales force, dividing up the major advertisers in town. Instead of six separate sales representatives pitching six different stations, one salesperson calls on big local businesses with a package offer of six stations. "Now we can provide critical mass to our advertisers," says Deborah Parenti, general manager of the Dayton stations.

Radio has come full circle in the media world. In 1920, KDKA in Pittsburgh inaugurated the radio age by broadcasting to about 1,000 listeners that Warren G. Harding was elected president of the U.S. During the 1930s and '40s, radio was the dominant form of mass communication, with the nation collectively tuning in to Walter Winchell's "Jergen's Journal" or Franklin D. Roosevelt's fireside chats. But in the 1950s, television unceremoniously shoved radio to the back burner.

While remaining a profitable business, radio largely stayed in the background until Congress passed the Telecommunications Act last year, setting off a land rush for radio stations by greatly relaxing restrictions on station ownership. Under the new rules, Congress completely erased national ownership restrictions. (Previously, a group could only own 40 stations nationwide.) In big cities, owners are able to buy as many as eight stations, double the old limit.

Radio investors say that the regulatory changes give them a window of opportunity to grab market share, and the advantages of size justify the steep prices for station groups. "I've always liked the radio industry," says Thomas Hicks of Hicks Muse, which since 1994 has invested in companies that combined control more than 400 radio stations. "The market had been artificially curtailed for 50 years" by regulation, he adds, "and now it's having a chance to work."

Mr. Hicks acknowledges that he paid "a full price" for SFX, but says "it will be an outstanding investment." Indeed, cash flow for the big radio companies has increased by as much as 30% in recent quarters, and the growth of radio advertising revenues has outstripped TV and newspapers for most of the 1990s, according to the Veronis Suhler firm. Salomon Brothers calculates that revenues at the major radio companies increased by a "spectacular" 13.5% for the second quarter of 1997, compared with 3.6% for TV companies and 9% for newspapers, compared with the year-earlier period.

There are a number of immediate benefits to owning the dominant stations in a single market. One favorite tactic is buying up a station's head-to-head competitor. Last year, Clear Channel, which owned a country-music station in Oklahoma City, stormed into town and bought its two main rivals. "The three were beating each other's brains out," Mr. Sosson of Clear Channel says. Ratings were diluted and each station was spending hundreds of thousands of dollars on billboards and other marketing expenses. Clear Channel quickly changed the format of one of the stations to alternative rock and immediately cut spending on promotions. Ratings and profits soared.

The surviving companies are also quickly moving groups of stations into a single building. In San Francisco, Chancellor will save about $1.2 million a year by moving four stations into a single building. Of course, lots of jobs are being eliminated. Mr. Dodge, American Radio's chairman, estimates that about one-third of the industry's general managers are out of work or are working in "redefined" positions.

Gary Taylor had spent 20 years in the radio business when the country station he managed in Seattle, KYCW, went through a dizzying series of ownership switches, changing owners three times in 90 days. Mr. Taylor, 50, says he was called in one day by his new boss, who abruptly told him, "I need your salary to make my numbers." The station has since been sold to American Radio, and the executive who dismissed Mr. Taylor confirmed his account.

Mr. Taylor went back to school and recently landed a job at a company that sells furniture and equipment to radio stations, after failing to find another job in broadcasting. "I started doing this when I was a kid in college," Mr. Taylor says. "I miss radio terribly."

---- INDEX REFERENCES ----

COMPANY (TICKER): American Radio Systems Corp.; Chancellor Media Corp.; Westinghouse Electric Corp. (AFM AMFM WX)

NEWS SUBJECT: Newspapers' Section Fronts; High-Yield Issuers; Industry Overview; Labor, Personnel Issues; Marketing; Front-Page Stories; Acquisitions, Mergers & Takeovers; Antitrust News; World Equity Index (FRT HIY IOV LAB MRK PAG TNM TST WEI)

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INDUSTRY: Broadcasting; All Entertainment & Leisure; Media; Newspaper Publishers; Publishing (BRD ENT MED NWP PUB)

PRODUCT: Leisure; Media (DLE DME)

GOVERNMENT: Justice Department (JUS)

REGION: Massachusetts; North America; Pennsylvania; Texas; United States; Eastern U.S.; Southern U.S. (MA NME PA TX US USE USS)

LAYOUT CODES: Page One Umbrella; Right Leader (PGO RGT)

Word Count: 2225

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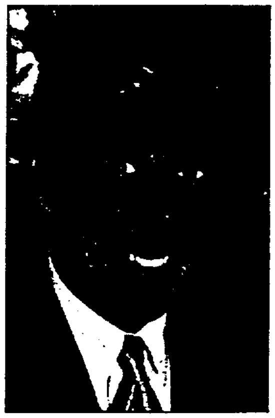
Meidel exits USA

Bob Fleming will oversee domestic TV operations

By Michael Stroud



Greg Meidel is the latest to leave USA Networks since Barry Diller took over.

Studios USA Chairman Greg Meidel resigned again last week, effective June 30.

The departure of Meidel, who oversaw television production and distribution for the company, follows the resignation of USA Networks Chairman Kay Koplovitz in April, just two months after USA Networks Inc. Chairman Barry Diller took control of domestic TV operations. Within two weeks of that departure, Diller brought in Fox alumnus Steven Chao to help run the cable networks that Koplovitz had overseen.

It is unclear whether Meidel will be replaced. In conjunction with last week's announcement, Studios USA Executive Vice President and CFO Bob Fleming was named group president, Studios USA. He will oversee the operations that had reported to Meidel.

The presidents of the three domestic TV divisions will now report to Fleming. They are Ken Solomon at Studios USA Television, Barbara Fisher at Studios USA Pictures and Steve Rosenberg. Rosenberg will add first-run production to his oversight of syndication distribution as the newly named president of Studios USA Domestic Television. But the chairman's spot would still be available if Diller wanted to move someone in above Fleming.

Like Koplovitz, Meidel saw his influence shrinking in the new regime. "The job I agreed to two and a half years ago was no longer there," Meidel said last week. "International used to report to me and I used to be in direct to video. A lot more emphasis is going to be placed on producing shows for the USA Network. Barry was more than gracious about it. If there were something more entrepreneurial, I would come back to Barry in a second. After being around Barry and electronic commerce, I was really intrigued."

Meidel said he didn't have any immediate plans, but would be open either to a studio position or starting up his own production company.

Meidel had resigned once before. Last November he said that he was leaving after failing to come to an understanding about his role with the company once Diller took control. Within 48 hours, he had changed his mind (B&C, Nov.24).

By last March, however, Meidel and USA had concluded a departure agreement that will leave Meidel about $10 million richer, sources say, and free either to start his own production venture or join another studio.

"If we could find a way to work with Greg, we would love to do it," said Universal Studios chief Frank Biondi. Diller also suggested in a statement that he and Meidel would "find a way to be associated in a future project."

Meidel said he had agreed to stay to help oversee the transition, the network pilot season and recent presentations to advertisers in New York.

Appointed in January 1996, Meidel restructured Universal's anemic television operations and bolstered production of such hit shows as *Xena* and *Hercules*.

His chief accomplishment was his acquisition of Multimedia Entertainment, which immediately turned then-Universal into a first-run talk force with shows that include *Jerry Springer* and *Sally Jessy Raphael*. Bought for $46 million, Multimedia today is worth at least $300 million, an executive close to Meidel estimates.

In network production, he oversaw long-running drama *Law and Order* as well as network shows scheduled for release next fall, including Fox's *Hollyweird* and CBS's *Turks*. ■

FCC looks at local radio deals

Ness, Tristani push FCC to evaluate impact of mergers on local competition

By Chris McConnell

FCC commissioners are taking a look at radio deals in which one company can gain a dominant share of the local radio market.

The discussion follows the Mass Media Bureau's decision late last month to sign off on Regent Communications' acquisition of four radio stations in Redding, Calif. Although FCC officials gave the deal a green light only after the Justice Department said it would conduct its own review of the merger, Commissioners Susan Ness and Gloria Tristani criticized the commission decision to OK the deal without its own analysis of the merger's impact on local competition.

"The bureau's action, therefore, should not be viewed as having any precedential weight," the commissioners said in a joint statement. They said the deal would give one company 64% of the local radio revenue and would also give two companies "a whopping 99.6% of the market's radio revenue."

That deal was one of six that Justice officials agreed to review last month after consultation with FCC officials.

Officials say that the two commissioners have since begun talking with the other offices about developing a plan for dealing with future deals. One source says that the commissioners hope to develop a plan that would involve a public interest review of a merger's impact on local competition. The official also says that regulators want to decide which cases would be flagged for such a review.

Another official, however, predicts that it could be weeks before all five commissioners agree on a plan.

While conducting the new discussions, regulators last week were expected to approve more of the deals that Justice Department officials had agreed to review.

The commission's effort comes amid mounting broadcast industry frustration with FCC inaction on some deals involving radio combinations in small markets. A few of the deals now subject to Justice review have been awaiting FCC approval for four months or more. Communications lawyers, speaking on the condition of anonymity, criticize the regulatory delay.

"Business people need to plan," says one lawyer. "To have an open-ended review period is an unwise way to do business." The lawyer also speculates that the FCC is ill-equipped to conduct the competitive analysis described in the Ness/Tristani statement.

In her statement, Ness cited the business considerations and conceded that "even a negative judgment is better than no decision at all." ■

Payola plagues Spanish-language stations

DOJ investigation triggered by company's admission

By Sara Bown

The Department of Justice is investigating a possible payola scheme in which Fonovisa, a U.S.-based Spanish-language music company, paid radio stations to play its music, according to a statement released last Thursday by Fonovisa parent Grupo Televisa.

Grupo Televisa, which owns U.S. Hispanic network and station group Univision, had informed Justice that an internal investigation revealed activity on the part of Fonovisa's radio promotions department in "apparent violation of applicable laws." The company says it is cooperating with Justice.

As many as 18 music distributors reportedly have been subpoenaed, and 20 radio stations also are scheduled to receive subpoenas. Although no one has been arrested, certain radio station employees may be subject to criminal prosecution both for payola and for tax evasion.

The allegations against Fonovisa involve the employment of an independent radio promoter who allegedly distributed payment to radio stations via courier—as much as $10,000 per month—for playing the company's artists.

Although Fonovisa is based in the U.S., parent Grupo Televisa is based in Mexico—where promotional payments to radio stations are legal and common. It is unclear whether the individuals implicated in the investigation were aware that payola is illegal in the U.S.

Officials at Grupo Televisa and the U.S. Attorney's office in Los Angeles refused to comment.

The investigation may lead to a broader examination of the Latin music industry and could have a damaging effect on Spanish-language broadcasting.

"This will obviously raise awareness of the type of relationships labels have with programmers," says John Bustos, executive vice president of Z-Spanish Radio, which owns Spanish-language stations in the U.S. Bustos expects the investigation to "expand beyond the Hispanic radio stations to look at the whole subject."

Although payola—paying a station to play a label's artists without acknowledgment of the payment by the station—is illegal, it is acceptable for a station to take promotional fees, provided that listeners are notified.

"We've had relationships with record companies," Bustos says, "but they will buy commercial time that's tagged at the beginning and end." The ads last no longer than 60 seconds and are labeled and treated as advertising, Bustos says. "That has always been our way. So it's always been very clean within laws—fully billed and acknowledged." ■

Fox stepping up syndication efforts

The 22 Fox [illegible]

That news came from Mitchell Stern after he was named chairman of Fox Television Stations Inc. last week and also was put in command of Fox's syndication division, Twentieth Television. Stern, who had been president/COO of the Fox stations since 1993, will work with Twentieth Television President Rick Jacobson in moving the two sides closer together and to deliver more syndicated programming for Fox O&Os and affiliates. The 22 O&Os cover 40% of the U.S. and nearly all of the top 20 markets. "We're looking to get into a lot more first-run productivity," Stern said last week.

While Stern would not elaborate on the kind of syndicated programming that he and Jacobson want to produce, Fox sources say it likely will be such daytime fare as talk shows and reality programming. Stern said that his promotion was "not in any way" a slap at Twentieth Television's productivity and that Jacobson's division [illegible]

Fox station chief Mitchell Stern now is in charge of syndication, and he's looking for synergy.

[illegible] already—Stern said. "I think Twentieth does a very good job now, and I think they are doing a very good job with off-net sales of *King of the Hill*. All this really means is it's the formalization of what has sort of been happening here for the past year. Rick and I are partners and good friends. We talk just about every day, and this is a way to put together a more formal organization that makes sure we get the most out of the two companies."

Stern and Twentieth executives said that most, but not all, of the shows developed by the syndication wing will go to the O&Os.

"There is no question that our stations have huge daytime needs and that we have not developed at the local level as well as we possibly could," says one Fox executive. "That is what this is all about. The stations don't need to keep buying expensive programs like *Jerry Springer* and *Rosie O'Donnell;* we need to be developing that, and that's what we are going to do." —*Joe Schlosser*

CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 2nd day of June, 1998, to the offices of the following:

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