



June 2009

Updates on the News

And then there were five . . . – After six short-handed months, it looks like we will soon have a full five-member Commission on board. The formal nominations (in late June) of Mignon L. Clyburn and Meredith Attwell Baker would fill the last two vacancies on the Commission, bringing it up to capacity for the first time since former Commissioner Tate departed in January, following closely out the door by former Chairman Martin. The 8th Floor Shuffle has been particularly complicated by the fact that Commissioner Adelstein was nominated to move over to the Department of Agriculture’s Rural Utility Services months ago, and has been hanging around presumably because, if the Commission were to drop below three active members, it would cease to function. But that worst-case scenario has now been averted with the Senate confirmation of Chairman Julius Genachowski (*see* story below) and Commissioner McDowell, who has re-upped for another hitch. Since Commissioner (and former Acting Chairman) Copps is still mid-term, we now have a “permanent” three-member Commission – Commissioner Adelstein was heading out the door just as soon as Chairman Genachowski was going in – with nominees for the other two seats well on their way through the nomination process. (No word yet on the schedule for their confirmation hearings, but ideally, we hope to have profiles of all five Commission members in our next issue.

Meet the new boss . . . – Julius Genachowski was sworn in as Chairman of the FCC on June 29. Hitting the ground running, he promptly announced his staff, consisting of nine individuals boasting stellar résumés, including several with extensive Commission experience. Genachowski himself is no stranger to the Commission, having served as a senior advisor to Chairman Reed Hundt in the 1990s. Joining him in his new gig will be three veteran Commission officials (Mary Beth Richards, Ruth Milkman and Bruce Gottlieb) along with an array of talent from the private sector and elsewhere in the government. While broadcast experience is not a hallmark of the new regime, at least one Special Assistant previously served as an executive at CBS (although his work there involved “new media initiatives” and the “network’s growing mobile business”). Sherese Smith, Genachowski’s Legal Advisor with particular responsibility for media and enforcement issues, was most recently Vice President and General Counsel for Washington Post Digital. She has extensive background in the area of intellectual property.

Breaking news – AM’s on FM translators approved – As we go to press, the FCC has just released its long-awaited Report and Order authorizing AM stations to rebroadcast their signals on FM translators. We will provide more in-depth coverage of this item in next month’s *Memo to Clients*, and on our blog at www.commlawblog.com. An initial skim of the decision indicates that it specifically approves origination of programming on FM translators by Class D AM licensees during times when their AMs aren’t operating. While we hail the opening of this long-overdue opportunity for AMers, we can’t help but observe that this new twist adds yet one more type of radio station vying for spectrum.

Did she at least pay the right application fee? – In early June, one Angela Lee filed an application for modification of the license of Station WAEO(FM). The application was dismissed the next day with a terse – but remarkable – public notice reading as follows:

License to modify was dismissed 6/2/2009 via public notice only (no letter sent). The only station construction permit expired 5/25/1987 and this applicant was not the permittee. No application to assign the long-expired permit was ever filed. No authority to operate the station has ever been issued to Angela Lee. No authority to change community of license to Detroit, MI.

As best we can figure, an initial construction permit had been issued for WAEO(FM) in 1985, specifying La Grange, Indiana, as its community of license. It appears that that station was never built and the permit thus expired in 1987. It also appears that Ms. Lee figured that all she had to do was ask the FCC to move the station – which she presumably thought was still alive and kicking – to Detroit, and it would be so moved. Too bad that (a) the station had died 20 years ago, (b) she didn’t own it anyway, and (c) a move from La Grange to Detroit probably would have raised some 307(b) problems in any event. Oh well, no harm in asking.

If we can’t have pepperoni rolls, we probably don’t need beer – The Commission has added to the lexicon of things you can’t say on the radio, if you’re a noncommercial broadcaster and you’re referring to people or companies who have provided you with underwriting support. We last alerted our readers to the issue of prohibited “advertisements” in a post on www.commlawblog.com in March. Readers may recall that one of the terms declared *verboden* by the Commission then was “world famous pepperoni rolls”. This time around, the target is nothing less than (cue ominous music) . . . “cold refreshing beer”. According to the Bureau, the expression “cold refreshing beer” “promote[s] that product through use of qualitative terms”.