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Hawaii Shared Services Arrangement Under Scrutiny *A harbinger of things to come back on the mainland?*

Steve Lovelady
lovelady@fhhlaw.com
703-812-0517

Controversy continues to simmer over a recent combination of operations at three television stations in Hawaii. A couple of months ago we reported on a public interest group's challenge to the Shared Services Agreement (SSA) signed by two companies holding FCC licenses for a total of three Honolulu-market television stations. The purpose of the SSA was to combine most of the day-to-day workings of the three stations into one operation. The most publicly visible result of this combination was the effective elimination of one station's local news staff and broadcast of a single newscast (branded "Hawaii News Now") on all three stations. This drew the ire of a citizen's media watchdog group in Hawaii, which enlisted Georgetown University Law School's Institute of Public Representation to file a complaint at the FCC about the arrangement.

Since the SSA did not involve any actual change in control of any of the licensees (at least according to SSA participants), no prior FCC approval was necessary. That, however, didn't stop the objectors from asking the FCC to put the kibosh on the deal. While the FCC declined to do so (by, *e.g.*, taking some form of "emergency" action), it did the next best thing: the FCC staff agreed to look into the deal.

First step: The staff asked the station licensees to provide copies of the various agreements between them. The licensees responded by filing redacted copies of the documents, which prompted the staff to take the . . .

Second step: The FCC insisted on *unredacted* versions of the documents in order to allow an analysis of the true relationships between the parties. Recognizing that the licensees might view some of the information in the documents as confidential and proprietary, the staff thoughtfully reminded them that the FCC does have formal procedures for requesting confidential treatment – and the licensees should feel free to follow those procedures if they wanted such treatment. In addition, the FCC staff asked pointed questions about the transaction and why the parties were not in violation of the FCC's multiple ownership rules.

So while the SSA arrangement has already been implemented, the deal is clearly not yet out of the woods, as the FCC staff is actively looking into this matter.

While you might think that an isolated deal way the heck out in the middle of the Pacific might not have much impact on mainland regulatory concerns, you would be wrong. The little lesion that is the Honolulu SSA deal shows signs of potentially metastasizing into a much more serious ailment for the TV industry as a whole.

The Honolulu deal – and particularly the combination-of-TV-newsrooms component – has become a rallying point for critics of broadcast media consolidation. Senators Kerry (D-MA) and Grassley (R-IA) sent a jointly-signed letter to FCC Chairman Genachowski expressing their concern about media consolidation, specifically mentioning the Honolulu news broadcast combination as an example of the problem.

And Commissioner Copps has publicly expressed (a) his displeasure that the “tsunami of consolidation” is not over yet and (b) his hope that the upcoming FCC quadrennial review of its media ownership rules will be an “important tool for getting a handle on big media run awry”. The American Cable Association (a trade organization representing more than 900 small and medium-sized independent cable companies) has jumped on the bandwagon by calling on the FCC to investigate Local Marketing Agreements (which are very similar to SSAs) that give television stations more leverage in local markets to negotiate high retransmission consent fees, among other perceived evils.

In other words, the Honolulu SSA may be drawing the focus of governmental attention onto informal deals (LMA’s, SSA’s, etc.) that have generally flown beneath the radar in recent years.

Meanwhile, back in Hawaii, the locals are still plugging away in the hopes of unscrambling the SSA egg. Laid-off (or would that be lei’ed-off?) news anchorpersons staged a “funeral for a newsroom” that attracted local coverage. And the objecting citizen’s group that first shone a spotlight on the Honolulu deal hosted a public forum called “Save Local Television, Stop Big Media” attended by the head of the Georgetown Law group leading the charge at the FCC. The stations’ newsroom consolidation was listed in one Honolulu newspaper’s roundup of important local stories in 2009.

For practical purposes all this activity seems unlikely to result in a restoration of separate local news operations at the three stations in question. After all, the FCC’s rules do not require a television station to have a local news broadcast at all. The attention sparked by this transaction, however, could have larger implications in future rulemaking that may restrict broadcast consolidations and agreements like SSAs that, in the eyes of some, achieve the same results as actual consolidation.