The Washington Outlook for Broadcasters - 2010

Oklahoma Association of Broadcasters
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A New Administration – Revisiting All the Old Premises

- Can’t tell the players without a scorecard – and the ink is still drying
- Chairman Genachowski only arrived this past summer
- Mignon Clyburn and Meredith Attwell Baker fill out the Commission, with the return of Commissioners McDowell and Copps
- Chairman sets the agenda for the future
- Personalities and personal agendas set the policy

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At First, It Was All Broadband All the Time, But Then…..

- At first, it seemed like good news for broadcasters as there was less time and focus on broadcast issues
- Net Neutrality
- Subsidies for Broadband roll-out – facilities and encouragement for adoption
- Focus on telco issues
- But then……..

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Who Needs Those TV Stations Anyway?

- Perceived demand for more wireless broadband spectrum – though some question it
- Questions about efficiency of broadcasters' use of DTV spectrum
- Infatuation with new technology
- So – should some or all of the TV spectrum be used for wireless broadband?
  - Broadband Report to Congress issued this week
  - Some Congressional action required for action
  - Mobile DTV is crucial

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Just What Did the FCC Propose for TV?

- Voluntary offers to TV stations to sell out part of all of their spectrum
- Principally in large markets, probably rules to preserve some over-the-air service
- Efforts to combine stations using Digital subchannels – perhaps giving them all primary status for cable
- Re-packing spectrum after returns
  - Potentially less power and closer spacings
- Spectrum Fees to force broadcasters to recognize true value of spectrum

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And if Broadcasters Don’t Agree?

- Spectrum fees (worth mentioning again)
- Cellularization
- Forced changes in allocations and TV spectrum use

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Congress Hasn't Forgotten Broadcasters Either….

- Performance Royalty
- LPFM 3rd Adjacent Channel Interference Waiver
  - Some protections for broadcasters
  - Issues about translator priority – important for AM broadcasters who want FM translator
- Loud commercial issues
- In the wings – content issues?
  - Prescription drug ad limitations
  - Violent programs
  - Ads for unhealthy food

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What Comes Out of This?- If I Had to Guess…..

- Much more will be heard about the TV reallocation issues
- Some degree of localism regulation – but different from what we worried about last year
- More concern about content issues
- More EEO enforcement
- More emphasis on new technologies
- Probably more sympathy for copyright owners
- Though predictions can change as politics and people change…..

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Other Issues Facing Broadcasters

- Issues that are on the top of the table
  - Localism Discussion – Different From the Old Localism Discussion
  - Multiple Ownership
  - Other copyright issues – like radio ASCAP/BMI fees
  - LPFM and Translator issues
  - Enforcement Issues
- Issues that seem to be less emphasized
  - Nitty gritty localism
  - Sponsorship issues

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Performance Royalty for Radio

- Proposal to Force Radio to pay not only composers (ASCAP, BMI and SESAC) but also performers of music
- Copyright Royalty Board would decide royalty, which based on satellite radio decision, could see the royalty as having a value as high as 20% of gross revenue
- Small station provisions - $1000 per station for noncommercial stations, $5000 for commercial stations with less than $1.25 million annual revenue, $2500 for those with between $100,000 and $500,000 in revenue, $500 per year for between $50,000 and $100,000, and $100 for less than $50,000
- House and Senate Committees Have Approved The Bill
- IT IS STILL AN ISSUE – DON'T THINK THIS IS GOING AWAY

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Everyone Wants a Bigger Piece of the Action

- ASCAP and BMI royalty agreements for radio end this year – and they want more, while broadcasters want to pay less
  - Could be a big issue
  - Many sub-issues over what any royalty will cover
- SESAC seeking separate royalties for streams and HD2 channels
- TV Issues with ASCAP, BMI and SESAC too
- Potential new royalties on new uses – like mobile apps
- More litigation over other rights issues
  - Using music in commercials, TV productions, and in podcasts – demands for payments by copyright holders
  - Technical patent issues over ad-insertions and other streaming issues
- DOJ appoints new Copyright enforcement task force

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Media Ownership Back in Play – and Consolidation Has Raised a Host of Issues

- FCC Must Examine Ownership This Year
- TV Duopoly Issues
- TV JSAs
- Rural Radio Markets
- Newspaper-Broadcast Cross Ownership Still Unresolved
- Could there be other consolidation issues?
- A Series of Hearings Planned…..remember what hearings did last time? – already have had expert panels, but first "public" one next week, seems more broadcaster oriented
- How will Spectrum battle interact with this analysis?

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Localism Inquiry – Not the Focus on the Nitty Gritty, But Much Broader Review of All Media

- Not as much discussion of the nitty gritty rules and regulations proposed in the localism proceeding a few years ago
- Instead, Chairman has appointed special assistant to review how the media is serving local communities
- Looks at all media – not just broadcasters
- But question is still whether local communities are getting the news and information that they need

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Putting Words in Your Mouth?

- The Fairness Doctrine –talked about again from time to time – though there are real philosophical and constitutional issues
- Hate Speech regulation? – requested but real constitutional issues
- Regulation through localism requirements?

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LPFM and Traditional Broadcasters – A Complicated Relationship

- LPFM may provide an outlet for new programming
- Supposed to be a secondary service
- But proposals to make it more primary – could preempt and displace translators, could block FM upgrades
- House of Representatives approved proposals to eliminate restrictions on 3rd Adjacent channel protections – but some protections for broadcasters
- Will slow any expansion of FM translators for AM stations and HD channels
- Commission already slowing processing of translator moves, and already has significant limits on use for AM rebroadcasts

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Diversity Initiatives – Shaking Up Broadcast Ownership

- New Ownership Report Filing – was planned for November 2009 – now delayed
  - To Collect Information on Minority Ownership
  - May apply to Noncommercial and LPTV
- Review of preferences for new owners – perhaps more emphasis on minority and female ownership
- Other diversity initiatives – tax certificates, certain ownership waivers

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A Modest Proposal?

- DTV provides opportunities for more spectrum for radio
- Channel 6 is adjacent to the NCE portion of FM band
- Proposals to take Channels 5 and 6 and make them FM channels
- Proposals to immediately assign top part of that band to LPFM – 87.9, 87.7, 87.5
- What will happen to this proposal given the Spectrum reallocation issue?

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Enforcement Issues

- Technical issues – EAS, Tower Lights, Tower Fencing, Technical compliance with license
- Current Main Studio requirements
- Commercial sponsorship issues – embedded advertising
- Noncommercial sponsorship issues
- Contests – Disclose the rules and follow them
- EEO rules – big fines lately
- Current public file and Quarterly Programs Issues list requirements

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Political Broadcasting – More Money, More Issues

- ***Citizens United*** case lets corporations spend money on election ads
- But you can be responsible for the content of non-candidate ads
- Remember the basics – LUR for all candidates, equal opportunities, disclosure issues
- Public file!

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Who Pays for What You Say

- Commercial issues like payola still out there
  - Occasional issues on commercial sponsorship
  - Less movement seen on FCC proceeding on embedded advertising and other sponsorship issues
- Noncommercial underwriting announcements
  - No call to action
  - No qualitative statements
  - No price information
  - Limited length
  - Just the facts about the sponsor
  - Be careful about promotions, remotes, live appearances
- No immunity for violations in programs produced by others

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