

earlier, radio "more closely approaches the free enterprise system than any other segment of the broadcast industry," and that, in large cities, served by many radio stations, "the 'scarcity' justification for content regulation does not exist."

He then suggested that the commission and OTP cooperate in the development of "a pilot program to test the feasibility of substantial deregulation of commercial radio in a major market." (A week later, Mr. Whitehead delivered a major speech in which he called for a radical revamping of broadcast regulation, including a start on the road to radio deregulation [BROADCASTING, Oct. 11, 1971].)

That plan never got very far. But next month, the present FCC, now under the chairmanship of Charles D. Ferris, will consider a plan to test deregulation of radio in major markets.

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## FCC hoping lid will stay on can of worms opened by Houma TV case

**Court orders FCC to admit one more applicant on ground that cut-off date wasn't properly publicized; similar situations exist in 17 other proceedings**

Among the nightmares broadcasters experiencing the pains of regulation may have had is one in which they receive a grant from the FCC, build a station and then find that a clerical error on the part of a minor FCC functionary somewhere along the line means they have to go back and start over.

Commission staffers say that is not—repeat not—the way they intend to deal with the consequences of a clerical error made almost two years ago. But a literal reading of a little-noticed court opinion last month conceivably could require such a scenario.

The problem began when a group calling itself Way of Life Television Network sought a waiver of the cut-off rule so that it could file an application for channel 11 Houma, La., following the May 23, 1977, deadline that was set in a cut-off list that had been issued on April 8. Way of Life argued it had not been aware of the cut-off date. The commission denied the waiver, and Way of Life appealed, which is when things became interesting.

Way of Life's attorneys discovered that the commission had neglected to publish the cut-off list in the *Federal Register*, as required by commission rules; it appeared only in a news release. And the U.S. Court of Appeals, in a unanimous opinion written by Judge George E. MacKinnon, held that, since the commission had failed to comply with its rules, no legal cut-off date was established, and Way of Life's applica-

tion "cannot be said to have been untimely filed."

As far as Houma channel 11 was concerned, the ruling affected five applicants—Texoma Broadcasters Inc. and Communications Corp. of the South, which had filed before the cut-off notice was issued, and GACO Communications Corp., Greater New Orleans Educational Television Foundation and Guaranty Broadcasting Corp., which had filed in response to the notice before the deadline.

If the court ruling stands, the commission will be obliged to issue a new cut-off list, which would allow not only Way of Life but any other interested parties to file for the channel. Although the commission does not appear interested in challenging the decision, the five applicants for channel 11 who filed before the cut-off have asked the court to rehear the case.

But the April 8, 1977, cut-off notice contained 17 applications besides the two for Houma. And if the notice is void as to those for Houma, it would appear to be void as to the 17 others. That is one of the arguments the five Houma applicants make in seeking rehearing.

Another is that "a mechanical application of the requirement that an agency follow its own rules will be prejudicial to the public interest in establishing a new local facility in Houma as expeditiously as possible and will be prejudicial to the rights" of the Houma applicants "who are innocent victims of the commission's error."

Although the commission has not announced a decision on how it will deal with the problem, it appears that it intends to live with the court's decision—though not to the point where it would be obliged to unscramble eggs.

Of the 19 applications on the April 8, 1977, list, only seven will be republished on a new list which is expected to be issued "shortly." Besides the two for Houma, they are Bohannon Broadcasting Co., for channel 42 in Concord, Calif.; Trinity Broadcasting of Oklahoma City and the Outlet Co., for channel 14 in Oklahoma City; WLVA-TV Lynchburg, Va., for a major change and Associated Christian Broadcasters Inc. for channel 44 in Lima, Ohio.

Four of the others have either already appeared on subsequent lists after filing major amendments or have dismissed their applications, one in a buy-out agreement that resulted in a grant to another applicant on the list, Delta Television Corp., for channel 24 in Memphis. Delta already has WPTY(TV) on the air.

Most of the grants had been made months ago, almost two years ago in some cases. But one, for channel 34 Oklahoma City, was made by the Broadcast Bureau to Seraphim Corp., a subsidiary of General Media Corp., on March 8. The grant was made after Seraphim reached a buy-out agreement with a competing applicant.

One of the other grants that has resulted in the construction of a new station was made to Taft Broadcasting Corp., for channel 31 in Hanover, N.H. However, another problem for anyone attempting to

unscramble an egg occurred on Oct. 16, 1978, when the permit was assigned to Northern New England Television, which is now operating WNNE(TV) Hanover, N.H. The third grant that has resulted in a new station was made to National Capital Christian Broadcasting Inc., for channel 66 in Manassas, Va. The station is WTKK(TV).

The other grants were made to Carolina Christian Communications Inc., for a new station on channel 22 in Raleigh, N.C.; to Cleveland Associates Co., for a new station on channel 61 in Cleveland; to Durham Life Broadcasting Service Inc., for a major change in its WPTF-TV (ch. 28) Durham, N.C.; and to Reel Broadcasting Co. Inc. for a major change in its WZTV(TV) (ch. 17) Nashville.

Commission staff members do not think commission actions granting those applications are in jeopardy. "We think no one would attempt to upset grants already made," one staffer said. "And we don't think the court would require us to rescind a grant." He noted that the parties receiving grants "acted in reliance on our action" and that the grants had not been challenged.

As for the chance of such a procedural snarl occurring again, staff members say it is not likely. The routine action of the minutes and rules division in seeing to it that cut-off lists are published in the *Federal Register* are now routinely double checked.

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## Ferris forces resignation of rules-policy chief

**Roscoe Long, holdover from Wiley administration, out as some top commission aides shift to new executive status**

A new federal law creating a senior executive service (SES) for civil servants (managers or supervisors) now holding supergrade positions—GS 16-18—has claimed its first and possibly only fatality at the FCC. Roscoe Long, a GS-16 and chief of the Broadcast Bureau's Policy and Rules Division, last week tendered his resignation, effective May 6.

Mr. Long is understood to have chosen that route after Chairman Charles D. Ferris summoned him to his office on April 5 and told him he was not being recommended for the new SES and that a letter terminating his services was being prepared for circulation among the commissioners.

The SES is designed to inspire higher performance by those on the top rungs of the civil service ladder. Among its benefits: sabbatical leaves and productivity bonuses of up to 20% of base salary, which could result in annual salaries up to \$66,000.

Commission officials said Chairman Ferris felt Mr. Long, who heads the division that drafts most of the agency's