

# Radio Business Report™

Voice Of The Radio Broadcasting Industry®

June 3, 2002

Volume 19, Issue 21

## Andersen out, E&Y in at Radio One

Embattled Arthur Andersen is no longer the auditor for Radio One (O:ROIA). Ernst & Young took over those duties as Andersen sold its Baltimore office's corporate auditing and tax services operations to E&Y.—JM

## FCC says Yes to 196 more LPFM apps.

The FCC says 196 new LPFM applications are not in conflict others pending and is giving the public 30 days to file protests/comments about the proposed new stations. The applications are from the LPFM filing window that open from 6/11-6/15. Petitions to deny must be on file by 6/24. —CM

## Sirius adds nine states

Sirius Satellite Radio announced 5/30 that beginning 6/1 the service will be available in an additional nine new states including Delaware, Florida, Illinois, Maryland, upstate New York, North Carolina, Pennsylvania, South Carolina, Virginia and Washington, DC. This brings Sirius' availability to 37 states. Sirius will be national on 7/1. —CM

## Fergie to launch US Talk show?

The *NY Post* reports 5/24 that **Sarah Ferguson**, the UK duchess, is considering hosting her own daily talk show in the US. "I can confirm she has been approached and that there are discussions going on now," her spokeswoman told *The Post*. "She is considering it, but it is not a done deal." —CM

## Clear Media expands in China

Clear Channel's Clear Media plans to buy 240 outdoor faces from the government of Shenyang China for close to \$2M. The deal also gives Clear Media rights to the development of bus-shelter advertising. —CM

## AP names Executive Editor

AP President/CEO **Louis Boccardi** has named **Kathleen Carroll** to Executive Editor 5/29: "Kathleen brings a broad array of skills and experience to the direction of the AP news report. At AP, she has helped fashion our coverage in Texas, New Jersey, California and in Washington D.C., for both print and broadcast members. At Knight Ridder, she has directed Washington and international coverage for newspapers and multimedia." —CM

## Harris launches more IBOC products

Harris is offering more equipment for the transition to IBOC. Products include Dexstar AM and FM IBOC excitors, the Z-IBOC line of FM transmitters and a plug-in IBOC module for the Intraplex STL Plus digital link. —CM

## FCC approves Ackerley sale

The FCC has given its blessing to Clear Channel's (N:CCU) \$800M acquisition of The Ackerley Group (N:AK). The 5/29 order gives Clear Channel 12 months to spin off excess stations to comply with the radio-TV crossownership limits in the Binghamton, NY; Rochester, NY; Syracuse, NY; Utica, NY and Santa Maria, CA markets.

In response to complaints by Buckley Broadcasting and Rep. **Sam Farr** (D-CA) that Ackerley (and Clear Channel post-closing) had an attributable interest in a second TV station in the Monterey-Salinas, CA market, the FCC found that Ackerley had been in compliance with conditions previously imposed by the FCC staff regarding the joint sales agreement and LMA of less than 15% of the station's daily programming. However, the FCC said its staff had not gone far enough and required further modifications to limit the JSA to apply only to revenues provided by programming under the LMA. The Commission didn't penalize Ackerley, since it had complied with the FCC staff's previous interpretation of the attribution rule.



Michael Copps

Commissioner **Michael Copps** (D) dissented from approving the transfers in the five markets where the temporary waivers were granted. "The television markets in which Clear Channel will acquire stations in violation of our local ownership restrictions are not among the largest or most diverse in the nation. Indeed, they range from Syracuse, NY, the 71<sup>st</sup> largest market, to Utica, the 168<sup>th</sup> largest. Our ownership rules, as well as the statute on which those rules are based, permit ownership of multiple stations in a direct relationship to the size of the market—the larger the market, the more stations one owner may own. Congress and the Commission set those limits to ensure diversity in those markets. I do not see where a waiver of those limits served the public interest," Copps said.

**RBR observation:** Although the Ackerley merger creates numerous TV-radio market overlaps for Clear Channel (*RBR* 10/15/01, p. 6), it adds only five radio stations to CCU's tally—all in the Seattle market, where CCU previously had none.

Although the easiest way for CCU to get into compliance in its five waiver markets is to sell off a few small radio stations (10 at most), there's still a good possibility that the company will shop around some of the Ackerley TV stations as well. In either case, look for tax-free swaps to be preferred over cash sales.—JM

## Honig blasts broadcasters on EOE

The Minority Media and Telecommunications Council and a host of civil rights groups have charged at the FCC that broadcasters are blatantly shirking their Equal Opportunity Employer responsibilities. In reply comments on whether the FCC should reinstitute some sort of equal employment rules for broadcasters (after two previous attempts were shot down by the courts), MMTC Executive Director **David Honig** said the group's research found that broadcasters aren't taking seriously their claim to hire without regard to race, sex or ethnicity.

"Probably the biggest surprise is our finding that of the 837 job listings on the 35 state broadcasters' websites, 348 (42%) did not have EOE notices. For over 30 years, virtually all broadcasters held out to the public that they were equal opportunity employers by putting 'EOE' or a comparable tag at the end of their help wanted ads. Now, however, a very substantial number of broadcasters have actually gone to the trouble to take down their self-identifications as equal opportunity employers. In our view, this pretty much demolishes the argument of the NAB and the state broadcast associations that broadcasters will abide by nondiscrimination requirements even without FCC oversight," Honig said.—JM



Kathleen Abernathy

## KROQ fine upheld

The FCC has upheld a \$2K fine for indecency against Infinity's KROQ-FM Los Angeles, even though the complaining listener was unable to provide a tape or transcript of the allegedly indecent broadcast. Infinity had said it was doubtful that an unedited version of the song "You Suck" was broadcast at 9:10 pm on 3/28/97, the listener insisted that she heard the unedited version, not the edited-for-radio version that was in the station's normal rotation. Infinity had appealed the FCC staff's decision to accept the listener's claim, although there was no evidence to corroborate her memory. For its part, the station did not maintain a tape of the broadcast and could not prove which version actually aired. In an order issued Friday (5/24), the four Commissioners voted unanimously to uphold the FCC staff and affirmed the \$2K fine.

As far as Commissioner **Kathleen Abernathy** (R) is concerned, it doesn't really matter which version aired. "Furthermore, I would have been inclined to impose a forfeiture even if we found the station aired the edited version. Since the parties in this proceeding were not put on notice of this issue, the order does not speak to the edited version. If it had, I would have been hard pressed to find that the edited version does not also contain indecent material that describes sexual activities in patently offensive terms," she said.

Commissioner **Michael Copps** used the occasion to renew his call for all broadcasters to maintain tapes of all broadcasts, insisting that the FCC had "clarified" its position — that tapes or transcripts were never required for indecency complainants, but that asking for them was merely "a procedural practice" that's no longer being adhered to in all cases.

"This step should help correct some broadcasters' erroneous view that without tapes they cannot be found liable on an indecency complaint and that the retention of tapes can only serve to buttress claims against them," Copps said. "This case also makes clear that the retention of tapes would be a valuable tool in determining what was broadcast and when, information essential to the Commission's enforcement of the indecency law. I am very pleased to see the Commission begin to respond to the increasingly clear call of the American people for more responsive enforcement of the indecency laws. Today's decision should serve as a wake-up call for those who have been fueling programming's disturbing race to the bottom."

**RBR observation:** What's the FCC's indecency policy this week? Who knows? This is hardly the first time that the Commission has retroactively changed its rules on indecency without either a public rulemaking or a court order—and it probably won't be the last. Small wonder that the FCC always cuts and runs whenever it faces the prospect of actually having to defend one of its decisions in court.—JM

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Executive Editor ..... Jack Messmer  
Managing Editor ..... Dave Saylor  
Senior Editor ..... Carl Marcucci  
Production ..... Michael Whalen  
VP Administration ..... Cathy Carnegie  
FCC Research Consultant ..... Mona Wargo  
Administrative Assistant ..... April Olson  
**Publisher..... Jim Carnegie**  
VP/GM, Associate Publisher ..... Ken Lee  
Senior Account Executive ..... John Neff  
Account Executive ..... June Barnes

**Editorial/Advertising Offices**

6208-B Old Franconia Road  
Alexandria, VA 22310  
PO Box 782 Springfield, VA 22150

Main Phone: ..... 703/719-9500  
Editorial Fax: ..... 703/719-7910  
Sales Fax: ..... 703/719-9509  
Subscription Phone: ..... 703/719-7721  
Subscription Fax: ..... 703/719-7725

**Email Addresses**

Publisher: ..... JCarnegie@rbr.com  
Editorial: ..... RadioNews@rbr.com  
Sales: ..... KLee@rbr.com  
JNeff@rbr.com

**Bradenton, FL Office**

Jack Messmer

Phone: ..... 941/792-1631  
Fax: ..... 253/541-0070  
Email: ..... JMessmer@rbr.com

**Nashville, TN Sales Office**

June Barnes

Phone: ..... 615/360-7875  
Fax: ..... 615/361-6075  
Email: ..... JBarnes@rbr.com

**Brookfield, CT Sales Office**

David Frankel

Phone: ..... 203/775-3928  
Email: ..... dfrankel@rbr.com

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# RADIO NEWS®

## Sexton gets to the Point as COO

Point Broadcasting LLC has named **Miles Sexton** COO, putting him in charge of day-to-day operations at 11 stations in two California markets. Point, which operates as Gold Coast Broadcasting and High Desert Broadcasting, owns six stations in Oxnard-Ventura and five in Palmdale-Lancaster.



Miles Sexton

"We are delighted to have someone with Miles' vast experience in radio station management to head up the current and future operations of the Point Broadcasting stations," said President & CEO **John Hearne**.

Sexton had previously been GM of McDonald Media Group's stations in Oxnard-Ventura and Santa Barbara.—JM

## Phoenix move-in in the works

American Media Services (Ed Seeger, Frank McCoy) is working with KVNA-FM 97.5 Flagstaff to do a move-in to Phoenix, to the town of Dewey near Prescott. The 100-kW station, currently owned by W. Grant Hafley/Yavapai Broadcasting (he bought it from Regent) wants to relocate to a mountaintop location in the area of Crown King. It will remain 100-kW non-directional. This will require the forced short spacing or a channel change of stations near Phoenix, including KRXS-FM 97.3 (a C2). McCoy tells *RBR* there's a good chance the FCC will approve the CP and that more will be known about the deal in a week or two.—CM

## Citadel sells Interactive Services to MediaSpan

MediaSpan, a media services provider for radio and newspapers, announced it has purchased the website and e-mail technologies developed by Citadel Interactive for Citadel's 150

station websites. Terms of the deal were not disclosed. MediaSpan will continue to provide the services to some Citadel stations. Terms of the deal were not disclosed. Citadel's website design, publishing and hosting services allow stations to define the look and feel of their sites. The e-mail services enable stations to efficiently manage listener databases and e-mail transmittals.—CM

## Slager Radio to pay \$1M in overdue fees

Emmis' Slager Radio in Hungary announced 5/29 it is ready to pay around \$1M, a part of its overdue broadcasting fee, to prove that it was committed to fair play in the commercial radio market. The broadcaster said it had initiated talks with other commercial broadcasters and the ORTT to tailor broadcast fees to revenues. Slager Radio executives had said the broadcast fee was unrealistically high, because radios' share on the advertising media market has dropped from 9% to 5% since 1997, and the number of commercial stations has increased.—CM

## Jim Murphy upped to Jones VP/Integrated Country Media

**Jim Murphy** has been promoted from Director/Integrated Country Media for Jones Media Networks to VP/Integrated Country Media. In addition to overseeing all programming decisions for the three of Jones' 24-hour Country formats, he will now oversee cross-platform utilization of country music content for all JMN entities, including cable Great American Country and Countrystars.com. He will also act as the company's ambassador to the Nashville recording industry and oversee artist relations. Murphy joined Jones in 1994 as OM of the 24-hour Country format.—CM

## Ex-dancer to join KDND-FM morning drive

Entercom's (N:ETM) KDND-FM Sacramento has hired **Christina Silvas**, a 24-year-old nude dancer, to join the CHR station's "Morning Rave" crew beginning 5/31. She became a local celebrity when she had to quit dancing to keep a church-run private school from expelling her daughter from kindergarten.

"We haven't figured out exactly what she's going to do," GM **Steve Weed** tells the *Sacramento Bee*. "We're going to have her answer some phones and participate in dis-

## Washington Beat



Ernest Hollings

## Hollings latest to request consolidation investigation

Only days after the news surfaced that Sen. **Russell Feingold** will be introducing a bill to reform industry practices (*RBR.com* 5/24), Senate Commerce Committee Chairman **Ernest Hollings** (D-SC) wrote to FCC Chairman **Michael Powell** 5/24 asking him to examine if consolidation, especially in the television industry, has made programming less diverse.

From the letter: "The effort to promote diverse voices has been undermined over the last decade by extensive media concentrations and changes to FCC rules governing media outlets." —CM

cussions on-air, and we'll see how much she's capable of doing." —CM

## KORB-FM/Cumulus hit with \$150K suit over tattoos

Two Quad-Cities men say Cumulus' KORB-FM made a promise of \$30K a year for five years before for having a logo of the station permanently tattooed across their foreheads. The lawsuit in Scott County District Court filed by the men says the station not paid them yet as promised. **Richard Goddard Jr.** and **David Winkleman** are suing Cumulus and DJ **Ben Stone** (Stromberg). **Craig Levien**, attorney for Cumulus, said the company is "vigorously contesting" the suit: "Stromberg made the false promise as a practical joke, so that persons who responded to the announcement with the intention of receiving tattoos could be publicly scorned and ridiculed for their greed and lack of common good sense," the lawsuit states.

Stromberg announced on air 11/29/00, that the station would provide backstage passes and concert tickets to anyone who put a temporary 93 Rock tattoo on their forehead, and then made the tattoo offer. Winkleman and Goddard called the and were told the promise was legitimate, the lawsuit states. The men then met with officials at the radio station. The two then went to a local tattoo parlor, where a individual who said he was with KORB paid for the tattoos, documents state. The radio station took pictures of the tattoos and placed them on its Web site. Winkleman and Goddard are suing for breach of contract, fraud and negligence. A trial date has not yet been set.—CM

## RIAA sues AudioGalaxy

The Recording Industry Association of America (RIAA) and the National Music Publishers Association have filed suit against AudioGalaxy.com (5/24) for copyright infringement,

claiming the online music file sharing site "willfully and intentionally encouraged and facilitated millions of users to copy and distribute copyrighted work of artists." AudioGalaxy, with 15M users, is similar to Napster, which was shut down by the courts almost a year ago. AudioGalaxy claims it was taking measures to prevent copyrighted music from being illegally shared, but RIAA officials complained that the measures were insufficient.—CM

## The Source, Excelsior launch "The Source Radio Network"

The Source Entertainment, a division of The Source Enterprises announced a multi-year contract with Excelsior Radio Networks to co-produce, distribute and market "The Source Radio Network," programming and prep service content for Hip-Hop stations. The network launches 7/1. Ad inventory for will be sold by Excelsior's Dial Communications-Global Media. The launch will feature "The Daily Dose" hip-hop prep service, with up-to-the-minute text and audio content covering the latest news and trends in music, culture, politics, sports and fashion. Also featured will be "The Source Street Beat," a three hour music/interview show airing live Sundays. It will be hosted by The Source's **David "Go-Go Dave" Mays** and **Ray "Benzino" Scott**, with deejay Jeff 2X. The programs and services will be produced in NY at The Source's HQ and at XRN's production studios.

Said **Larry Kahn**, Excelsior VP/GM: "Because The Source is the most respected brand in hip-hop, we could think of no better partner for this exciting radio content project. By combining the name recognition of The Source with top quality content, we have created a valuable offering for radio stations nationwide and are able to provide a powerful edge to each affiliate in their local ratings races." —CM

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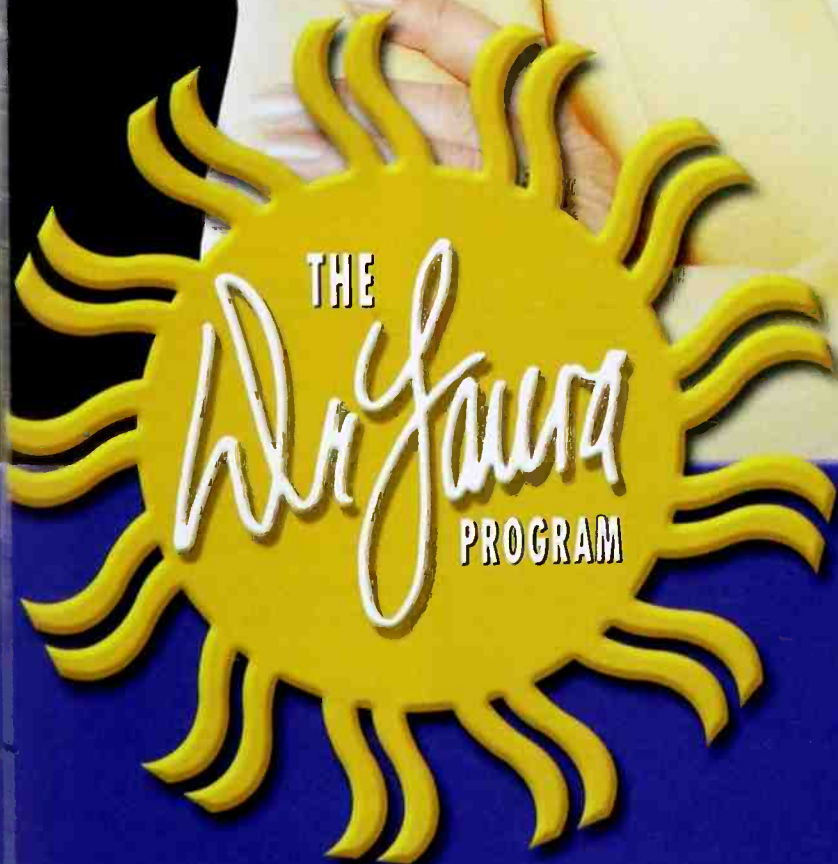
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# Television Business Report

TM

## Handicapping the upfront

### from Wall Street

As the TV networks—and then cable and syndicators—sell their next season to advertisers, investors are watching. *TVBR* asked a couple of veteran Wall Street analysts for their comments on what The Street is looking for this upfront.

#### Chen: A more normal upfront

Wachovia Securities bond analyst **Bishop Chen** has been crunching broadcast numbers for the better part of two decades. From where he sits, this upfront season should bring a return to more normal negotiations between buyers and sellers.

"CBS played tough last time. The conventional wisdom is that they will not play tough this time, although **Mel [Karmazin]** tells anyone who wants to listen that it all worked out fine—he did not have to severely discount his scatter," Chen told *TVBR*. But while the scatter market has been strong lately, Chen notes that many observers think CBS had to do some deep discounting to move its unsold inventory in the weeks following 9/11. "While it came back, we don't know how much was sold at the discounted rate," he noted. "The other wildcard to watch is the backlash. If you raise rates too much, there is speculation that you will drive a significant amount of the budget into cable, which has—just by its inherent nature—a much smaller rate structure compared to broadcast TV. CPMs are much smaller on cable. It's going to be very dramatic to see, if the networks demand too much of a rate increase, how the advertisers will respond," Chen said. "My guess is that the rates will go up some single-digit number. Demand will be high. And both sides will claim victory."

What about ABC?

"God help ABC. Every year or two or three there's always a network admit. You and I have been talking to each other for a long time and over the course of that we have talked about beleaguered NBC, beleaguered CBS and this year it's beleaguered ABC," Chen noted.

"Clearly CBS' demographics are going younger. Fox has got more sports to talk about. NBC has got all of its high-end Emmy shows to talk about and its incredible success—the aftermath of the Olympics... Poor ABC—you get the feeling that whatever they throw on the wall is the program of the week." Gone are the glory days of just three years ago, when

#### FCC getting tough on DTV laggards

The Federal Communications Commission began a Notice of Proposed Rulemaking 5/16 to set penalties for TV stations that miss digital conversion deadlines. The proposed penalties would begin with a letter of admonishment and gradually escalate to revocation of the station's DTV construction permit. In such an extreme case, the station might also have to face competing applications if it eventually wants to switch to DTV on its original analog channel.

"It demonstrates that while there are opportunities for waivers, that the leash is short, as it must be," said FCC Chairman **Michael Powell**. "We're not going to be unreasonable about it. The transition is complicated. There are bumps on the road that are beyond people's control." The Chairman added that the FCC's intention is that the transition continue "quickly but prudently."

The FCC's Media Bureau staff had praise for big four network affiliates in the top 30 markets for generally meeting the first DTV deadlines in 1999, with only nine exceptions remaining today—a 92% completion rate. In each of those nine cases, the licensees were unable to begin digital transmissions due to circumstances beyond their control, such as local zoning hang-ups. An order approved 5/16 by the Commission grants each of the nine an additional six-month extension. Five other top-30 market stations were chastised, however, for firing up only low-power DTV transmitters. Those minimal facilities were OK'd by the FCC for smaller markets and stations last November, but today's order spells out that they are not permitted for big-four network affiliates in the top 30 markets.—JM

#### Second station signs for Boston People Meters

Nielsen Media Research has finally signed a second commercial TV station for its local People Meter service in Boston, although all of the big four network affiliates are still holdouts. Entravision's (N:EVC) WUNI-TV (Ch. 27), a Univision affiliate, has joined independent WNDS-TV (Ch. 50) as a subscriber to the metered ratings service. Most Boston TV stations have been boycotting the switch from diaries to Nielsen's electronic set-top boxes, which took place nearly a month ago. Besides the two stations who have now signed up, Nielsen is selling its Boston ratings service to three cable channels—plus hundreds of ad agencies and advertisers who pay considerably less than station subscribers.—JM

#### Clinton downplays TV talk show idea

Former President **Bill Clinton** has told NPR's "The Tavis Smiley Show" that while the idea had some appeal, it's unlikely he'll do a TV talk show. Clinton told Smiley the idea didn't originate with either NBC or his own associates, but rather an outside group of potential investors whom he didn't identify. He did acknowledge having talks with NBC, but said no deal is imminent. "I don't know if it's going to happen or not, but I'd be kind of surprised if it is, because I just sort of think that it may be hard to make it work commercially, either for a network or private syndicators or anybody else," Clinton said. "The former President did, however, seem intrigued by the idea of having his own TV show. 'The appeal of it is that I could speak about the things I care about in an environment where people would be free to listen in larger numbers than I could speak to [in person]," he told Smiley.—JM

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#### TVBR News Briefs

##### Univision claims bragging honors in big three markets

Univision (N:UVN) says its O&Os beat all comers, English and Spanish, to be number one among Adults 18-34 in New York, Los Angeles and Chicago in the March Nielsen Sweep. That's for the entire broadcast day (and Chicago was a tie). In prime time, Univision said, each was number two (also a tie in Chicago).—JM

##### NBC offers to buy out Telemundo bondholders

In accordance with "change of control" provisions in the terms of the 10.5% Senior Notes issued by Telemundo, General Electric's (N:GE) NBC has offered to buy back those \$305M in outstanding bonds of its new subsidiary, which otherwise won't mature until 2006. Under the tender offer, Telemundo is offering to pay \$1.010 per \$1000 face value. The offer will expire 6/10.—JM

##### Viacom closes on second LA TV

Viacom (N:VIA) closed 5/15 on its \$650M purchase of KCAL-TV Los Angeles from Young Broadcasting (O:YBTVK), giving Viacom a second station in the nation's second-largest market. That sets a six-month clock ticking for Viacom to divest one radio station in the LA market.—JM

Drew Marcus



#### Marcus: Expect a bullish swing

ABC was the "Millionaire" network, he noted. "But this too shall pass. The press is going to make it sound like ABC is going out of business—and it is not." The Wachovia analyst predicts that demand will be good for both network TV and cable in this upfront—that advertisers are more confident about the economy and ready to make commitments. "It feels different to me than it felt in early May of 2001," Chen said. "It just feels different."—JM

At Deutsche Bank Securities, **Drew Marcus** has been valuing broadcasting stocks longer than most of the broadcasting companies have had public stock (and through several mergers and name changes by his employer). "We're looking for the total upfront—including everything, including the cable networks and every-thing—to be up 5% this year, versus being down 14% last year—so, it will be an impressive, bullish swing," Marcus said. "We're looking for the big four to be flat, the big six to be up 3%, cable to be up 7% and Univision to be up 18%—so the whole thing total is up 5%." Of course, within that "flat" forecast for the big four networks, where will be winners—and there will be losers. "We're looking for the biggest winner to be CBS, up over 20%. NBC to be up over 10%. And then Fox and ABC each to be down 1.5-20%," Marcus said.

ABC's current troubles are well known, so we decided to play devil's advocate and ask Marcus what his pitch would be if he were the one trying to sell ABC's ad inventory to advertisers. "I would assure them that we're spending a lot of money to develop lots of pilots and thus hope to have above-average success in our new shows. And I would pray to the TV viewing gods," he replied. Is that prayer likely to work?

"TV programming is a tricky science, so it might work well as other things," Marcus chuckled. Marcus is expecting advertisers to pay higher prices this year.

"We see pricing, on average, up about 4-5%," he said. "The advertisers realize it's not a buyers' market like it was last year. Certainly the scatter, where all of the networks are having very healthy scatter prices above last year, foreshadow a strong upfront. But I don't think the advertisers have conceded that it's a sellers' market yet. That is what the networks are claiming."—JM

Rupert Murdoch, Gary Chapman and others, TV groups report Q1 results. Pages 6-7.



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Harris is offering more equipment for the transition to IBOC. Products include Dexstar AM and FM IBOC exciter, the Z-IBOC line of FM transmitters and a plug-in IBOC module for the Intraplex STL Plus digital link. —CM

## FCC approves Ackerley sale

The FCC has given its blessing to Clear Channel's (N:CCU) \$800M acquisition of The Ackerley Group (N:AK). The 5/29 order gives Clear Channel 12 months to spin off excess stations to comply with the radio-TV crossownership limits in the Binghamton, NY; Rochester, NY; Syracuse, NY; Utica, NY and Santa Maria, CA markets.

In response to complaints by Buckley Broadcasting and Rep. **Sam Farr** (D-CA) that Ackerley (and Clear Channel post-closing) had an attributable interest in a second TV station in the Monterey-Salinas, CA market, the FCC found that Ackerley had been in compliance with conditions previously imposed by the FCC staff regarding the joint sales agreement and LMA of less than 15% of the station's daily programming. However, the FCC said its staff had not gone far enough and required further modifications to limit the JSA to apply only to revenues provided by programming under the LMA. The Commission didn't penalize Ackerley, since it had complied with the FCC staff's previous interpretation of the attribution rule.



Michael Copps

Commissioner **Michael Copps** (D) dissented from approving the transfers in the five markets where the temporary waivers were granted. "The television markets in which Clear Channel will acquire stations in violation of our local ownership restrictions are not among the largest or most diverse in the nation. Indeed, they range from Syracuse, NY, the 71<sup>st</sup> largest market, to Utica, the 168<sup>th</sup> largest. Our ownership rules, as well as the statute on which those rules are based, permit ownership of multiple stations in a direct relationship to the size of the market—the larger the market, the more stations one owner may own. Congress and the Commission set those limits to ensure diversity in those markets. I do not see where a waiver of those limits served the public interest," Copps said.

**RBR observation:** Although the Ackerley merger creates numerous TV-radio market overlaps for Clear Channel (*RBR* 10/15/01, p. 6), it adds only five radio stations to CCU's tally—all in the Seattle market, where CCU previously had none.

Although the easiest way for CCU to get into compliance in its five waiver markets is to sell off a few small radio stations (10 at most), there's still a good possibility that the company will shop around some of the Ackerley TV stations as well. In either case, look for tax-free swaps to be preferred over cash sales.—JM

## Honig blasts broadcasters on EOE

The Minority Media and Telecommunications Council and a host of civil rights groups have charged at the FCC that broadcasters are blatantly shirking their Equal Opportunity Employer responsibilities. In reply comments on whether the FCC should reinstitute some sort of equal employment rules for broadcasters (after two previous attempts were shot down by the courts), MMTC Executive Director **David Honig** said the group's research found that broadcasters aren't taking seriously their claim to hire without regard to race, sex or ethnicity.

"Probably the biggest surprise is our finding that of the 837 job listings on the 35 state broadcasters' websites, 348 (42%) did not have EOE notices. For over 30 years, virtually all broadcasters held out to the public that they were equal opportunity employers by putting 'EOE' or a comparable tag at the end of their help wanted ads. Now, however, a very substantial number of broadcasters have actually gone to the trouble to take down their self-identifications as equal opportunity employers. In our view, this pretty much demolishes the argument of the NAB and the state broadcast associations that broadcasters will abide by nondiscrimination requirements even without FCC oversight," Honig said.—JM



Kathleen Abernathy

## KROQ fine upheld

The FCC has upheld a \$2K fine for indecency against Infinity's KROQ-FM Los Angeles, even though the complaining listener was unable to provide a tape or transcript of the allegedly indecent broadcast. Infinity had said it was doubtful that an unedited version of the song "You Suck" was broadcast at 9:10 pm on 3/28/97, the listener insisted that she heard the unedited version, not the edited-for-radio version that was in the station's normal rotation. Infinity had appealed the FCC staff's decision to accept the listener's claim, although there was no evidence to corroborate her memory. For its part, the station did not maintain a tape of the broadcast and could not prove which version actually aired. In an order issued Friday (5/24), the four Commissioners voted unanimously to uphold the FCC staff and affirmed the \$2K fine.

As far as Commissioner **Kathleen Abernathy** (R) is concerned, it doesn't really matter which version aired. "Furthermore, I would have been inclined to impose a forfeiture even if we found the station aired the edited version. Since the parties in this proceeding were not put on notice of this issue, the order does not speak to the edited version. If it had, I would have been hard pressed to find that the edited version does not also contain indecent material that describes sexual activities in patently offensive terms," she said.

Commissioner **Michael Copps** used the occasion to renew his call for all broadcasters to maintain tapes of all broadcasts, insisting that the FCC had "clarified" its position -- that tapes or transcripts were never required for indecency complainants, but that asking for them was merely "a procedural practice" that's no longer being adhered to in all cases.

"This step should help correct some broadcasters' erroneous view that without tapes they cannot be found liable on an indecency complaint and that the retention of tapes can only serve to buttress claims against them," Copps said. "This case also makes clear that the retention of tapes would be a valuable tool in determining what was broadcast and when, information essential to the Commission's enforcement of the indecency law. I am very pleased to see the Commission begin to respond to the increasingly clear call of the American people for more responsive enforcement of the indecency laws. Today's decision should serve as a wake-up call for those who have been fueling programming's disturbing race to the bottom."

**RBR observation:** What's the FCC's indecency policy this week? Who knows? This is hardly the first time that the Commission has retroactively changed its rules on indecency without either a public rulemaking or a court order—and it probably won't be the last. Small wonder that the FCC always cuts and runs whenever it faces the prospect of actually having to defend one of its decisions in court.—JM

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# Television Business Report

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## Handicapping the upfront from Wall Street

As the TV networks—and then cable and syndicators—sell their next season to advertisers, investors are watching. *TVBR* asked a couple of veteran Wall Street analysts for their comments on what The Street is looking for this upfront.

### Chen: A more normal upfront

Wachovia Securities bond analyst **Bishop Chen** has been crunching broadcast numbers for the better part of two decades. From where he sits, this upfront season should bring a return to more normal negotiations between buyers and sellers.

"CBS played tough last time. The conventional wisdom is that they will not play tough this time, although **Mel [Karmazin]** tells anyone who wants to listen that it all worked out fine—he did not have to severely discount his scatter," Chen told *TVBR*. But while the scatter market has been strong lately, Chen notes that many observers think CBS had to do some deep discounting to move its unsold inventory in the weeks following 9/11. "While it came back, we don't know how much was sold at the discounted rate," he noted. "The other wildcard to watch is the backlash. If you raise rates too much, there is speculation that you will drive a significant amount of the budget into cable, which has—just by its inherent nature—a much smaller rate structure compared to broadcast TV. CPMs are much smaller on cable. It's going to be very dramatic to see, if the networks demand too much of a rate increase, how the advertisers will respond," Chen said. "My guess is that the rates will go up some single-digit number. Demand will be high. And both sides will claim victory."

What about ABC? "God help ABC. Every year or two or three there's always a network adrift. You and I have been talking to each other for a long time and over the course of that we have talked about beleaguered NBC, beleaguered CBS and this year it's beleaguered ABC," Chen noted.

"Clearly CBS' demographics are going younger. Fox has got more sports to talk about. NBC has got all of its high-end Emmy shows to talk about and its incredible success—the aftermath of the Olympics... Poor ABC—you get the feeling that whatever they throw on the wall is the program of the week." Gone are the glory days of just three years ago, when

## FCC getting tough on DTV laggards

The Federal Communications Commission began a Notice of Proposed Rulemaking 5/16 to set penalties for TV stations that miss digital conversion deadlines. The proposed penalties would begin with a letter of admonishment and gradually escalate to revocation of the station's DTV construction permit. In such an extreme case, the station might also have to face competing applications if it eventually wants to switch to DTV on its original analog channel.

"It demonstrates that while there are opportunities for waivers, that the leash is short, as it must be," said FCC Chairman **Michael Powell**. "We're not going to be unreasonable about it. The transition is complicated. There are bumps on the road that are beyond people's control." The Chairman added that the FCC's intention is that the transition continue "quickly but prudently." The FCC's Media Bureau staff had praise for big four network affiliates in the top 30 markets for generally meeting the first DTV deadlines in 1999, with only nine exceptions remaining today—a 92% completion rate. In each of those nine cases, the licensees were unable to begin digital transmissions due to circumstances beyond their control, such as local zoning hang-ups. An order approved 5/16 by the Commission grants each of the nine an additional six-month extension. Five other top-30 market stations were chastised, however, for firing up only low-power DTV transmitters. Those minimal facilities were OK'd by the FCC for smaller markets and stations last November, but today's order spells out that they are not permitted for big-four network affiliates in the top 30 markets.—JM

## Second station signs for Boston People Meters

Nielsen Media Research has finally signed a second commercial TV station for its local **People Meter** service in Boston, although all of the big four network affiliates are still holdouts. Entravision's (N:EVC) **WUNI-TV** (Ch. 27), a Univision affiliate, has joined independent **WINDS-TV** (Ch. 50) as a subscriber to the metered ratings service. Most Boston TV stations have been boycotting the switch from diaries to Nielsen's electronic set-top boxes, which took place nearly a month ago. Besides the two stations who have now signed up, Nielsen is selling its Boston ratings service to three cable channels—plus hundreds of ad agencies and advertisers who pay considerably less than station subscribers.—JM

## Clinton downplays TV talk show idea

Former President **Bill Clinton** has told NPR's "The **Tavis Smiley** Show" that while the idea had some appeal, it's unlikely he'll do a TV talk show. Clinton told Smiley the idea didn't originate with either NBC or his own associates, but rather an outside group of potential investors whom he didn't identify. He did acknowledge having talks with NBC, but said no deal is imminent. "I don't know if it's going to happen or not, but I'd be kind of surprised if it is, because I just sort of think that it may be hard to make it work commercially, either for a network or private syndicators or anybody else," Clinton said. The former President did, however, seem intrigued by the idea of having his own TV show. "The appeal of it is that I could speak about the things I care about in an environment where people would be free to listen in larger numbers than I could speak to [in person]," he told Smiley.—JM

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## TVBR News Briefs

### Univision claims bragging honors in big three markets

Univision (N:UVN) says its O&Os beat all comers, English and Spanish, to be number one among Adults 18-34 in New York, Los Angeles and Chicago in the March Nielsen Sweep. That's for the entire broadcast day (and Chicago was a tie). In prime time, Univision said, each was number two (also a tie in Chicago).—JM

### NBC offers to buy out Telemundo bondholders

In accordance with "change of control" provisions in the terms of the 10.5% Senior Notes issued by Telemundo, General Electric's (N:GE) NBC has offered to buy back those \$305M in outstanding bonds of its new subsidiary, which otherwise won't mature until 2006. Under the tender offer, Telemundo is offering to pay \$1,010 per \$1,000 face value. The offer will expire 6/10.—JM

### Viacom closes on second LA TV

Viacom (N:VIA) closed 5/15 on its \$650M purchase of KCAL-TV Los Angeles from Young Broadcasting (O:YBTVK), giving Viacom a second station in the nation's second-largest market. That sets a six-month clock ticking for Viacom to divest one radio station in the LA market.—JM

Drew Marcus



### Marcus: Expect a bullish swing

ABC was the "Millionaire" network, he noted. "But this too shall pass. The press is going to make it sound like ABC is going out of business—and it is not." The Wachovia analyst predicts that demand will be good for both network TV and cable in this upfront—that advertisers are more confident about the economy and ready to make commitments. "It feels different to me than it felt in early May of 2001," Chen said. "It just feels different."—JM

"We're looking for the total upfront—including everything, including the cable networks and everything—to be up 5% this year, versus being down 14% last year—so, it will be an impressive, bullish swing," Marcus said. "We're looking for the big four to be flat, the big six to be up 3%, cable to be up 7% and Univision to be up 18%—so the whole thing total is up 5%." Of course, within that "flat" forecast for the big four networks, where will be winners—and there will be losers. "We're looking for the biggest winner to be CBS, up over 20%. NBC to be up over 10%. And then Fox and ABC each to be down 15-20%," Marcus said.

ABC's current troubles are well known, so we decided to play devil's advocate and ask Marcus what his pitch would be if he were the one trying to sell ABC's ad inventory to advertisers. "I would assure them that we're spending a lot of money to develop lots of pilots and thus hope to have above-average success in our new shows. And I would pray to the TV viewing gods," he replied. Is that prayer likely to work?

"TV programming is a tricky science, so it might work well as other things," Marcus chuckled. Marcus is expecting advertisers to pay higher prices this year. "We see pricing, on average, up about 4-5%," he said. "The advertisers realize it's not a buyers' market like it was last year. Certainly the scatter, where all of the networks are having very healthy scatter prices above last year, foreshadow a strong upfront. But I don't think the advertisers have conceded that it's a sellers' market yet. That is what the networks are claiming."—JM

Rupert Murdoch, Gary Chapman and others. TV Groups Report Q1 results. Pages 6-7.