10 Legal Issues To Watch For In The Next 10 Years

A radio talk celebrates 20 years. It was asked to speculate what might be the legal issues for our radio industry in the next 10 years. While forecasting the future, particularly in a field as technology-based as radio, is difficult, with a bit of confidence that many of the following issues will be subjects of discussion within our industry. We may possibly even see one or two of them be resolved.

1. Music performance fees. At the top of the list of radio issues for the coming 10 years: music licensing rights for all platforms. Right now, the licensing of music, both for performances and songs, is disjointed. Pandora pays a different performance fee than satellite radio, which pays a different fee than Internet radio, and over-the-air broadcasting pays no performance fee whatsoever. The fees paid to songwriters through BMI and ASCAP are controlled by court decisions, while the fees paid to SESAC are, for now, whatever the market will bear. There is a significant argument that the various fees for performances and songs need to be part of more coherent structures. Whether that happens or whether much of the issue devolves into marketplace arrangements will be something that will be argued over, litigated, and litigated in the coming years.

2. Radio ownership. The number of radio stations a single owner is allowed to own in a radio market, whether AM and FM stations should be counted separately, whether radio ownership in rural markets should be tightened, and whether there should be no radio ownership restrictions at all—all are issues for the coming years. None of radio’s common restrictions is necessarily governed by government ownership restrictions, and our industry generally argues for less regulation, while public interest groups largely advocate for increased ownership restrictions.

3. Spectrum. Transmitter-site moves, upgrades, and benefits of licensure all raise FCC policy decisions—sometimes based upon interference concerns, but more often based upon purported public interest rationales. For both facility-enhancement and audience-delivery reasons, radio stations will continue to pursue greater and more productive service areas, pushing back against the FCC’s often arbitrary restrictions on station moves and upgrades. LPFM will continue to seek spectrum, at the possible expense of broadcasters using FM translators.

4. AM radio. The FCC and our broadcasters’ organizations in the next several years will dive deeply into various proposals to renovate or revitalize AM, as our oldest radio band suffers from a variety of ills. There are two aspects to this issue. One aspect involves possible solutions to improve the AM technical facility; while the other addresses the preservation of the radio broadcast service of communities’ AM stations via some other facility, such as an FM translator, an all-digital facility, or on a new band. There are no easy answers for most AM issues.

5. Indecency. A diversity of political forces continues to be in favor of vigorous indecency restrictions on broadcasting. Despite our First Amendment, some on the political left do not believe the federal government should license stations whose programming does not rise to a certain level, and some on the political right believe that moral and religious tenets compel the government to restrict the airwaves to courses of conduct offensive or inappropriate for all audiences. As long as the FCC’s amorphous indecency restrictions remain in place, radio broadcasters will remain second-class citizens under the First Amendment and indecency will continue to be an issue.

6. License-renewal expectancy. Percolating immediately before the commencement of the current license-renewal cycle were various proposals to change, in significant ways, the standards for evaluating broadcast stations’ license-renewal applications. Once the cycle started, however, changing the standards mainstream became unlikely. But upon the conclusion of the current renewal cycle, expect that once again public interest groups will attempt to change the criteria for license renewals, arguing that any system that results in 100 percent of broadcast stations’ renewal applications being granted is a system without standards.

7. HD Radio. The HD Radio system of broadcasting was largely financed upon the FCC and our industry by major broadcasters in a quest to maintain the status quo. Unfortunately, the status quo as it existed when HD Radio standards were adopted may not continue to serve broadcasters in the 21st century. HD Radio as presently implemented has significant engineering and consumer-usability flaws, and many stations have accepted by our industry and our consumers—or HD Radio’s technical and interface issues may result in such consumer unhappiness that the system is finally interred along with such artifacts as AM stations and FM Q103. Then the question will be why our industry did not design a system to make radio more technically admirable, rather than primarily attempting to maintain the status quo. The possible repositioning of the HD Radio system with different technology will continue as an important radio issue.

8. Radio on Mobile DTV. One of the lesser-known aspects of the new Mobile DTV standard being implemented by television broadcasters is the ability of Mobile DTV to provide hundreds of new, addressable radio channels. The recent threats in favor of new radio bands to accommodate AM broadcasters and LPFM, such as utilizing Channels 5 and 6, may be largely blunted by the availability of hundreds of new radio channels courtesy of local TV broadcasters. The Mobile DTV system is currently a technical and a consumer-acceptance question mark, and perhaps, Mobile DTV could fall as consumers choose 3G and 4G devices for TV signals. But it could succeed in providing new radio services for AM broadcasters, LPFM, and new entrants, for sooner than any other technology near on the horizon.

9. Interference. According to many, the only issue the FCC should be worrying about is interference. For broadcasters, interference is a serious problem when it newly occurs in an area in which one’s broadcast station has historically enjoyed reception. Going forward, however, such new interference may be inevitable. Hundreds of new LPFM stations will soon be broadcasting. Many full-service FM stations currently enjoy robust signals well beyond the FCC-issued contour. A new LPFM station on the same channel as a Class A station can be located as close as 1/2 mile to the Class A station’s transmitter site. Many Class A stations have experienced interference from LPFM stations during their 35-mile contours, well beyond the approximate 17-mile FCC-issued contour, but except for one state in the nation, co-channel interference from LPFMs is not subject to remediation. For FM broadcasters, interference may be one of the most significant issues in the next 10 years.

10. The public interest. Even since the Communications Act of 1994 was adopted, the FCC and courts have wrestled with what specifically defines the “public interest” standard under which radio stations licenses are awarded, sold, and renewed. Exactly what constitutes the public interest is likely incapable of a precise definition—nonetheless, the quest to define it will continue to haunt radio regulation discussions in the coming years. The definition of the public interest and whether to retain it as the standard under which broadcasting is regulated will be central to any re-do of the Communications Act, will impact FCC policies and regulation overall, and could ultimately dictate whether our system of broadcasting remains as we know it or radically changes.

A CRYSTAL BALL FOR SALES MANAGERS OF THE FUTURE

By Sean Luce
Luce Performance Group would like to congratulate Eric Rhodes and Radio Ink on this 20th anniversary. The last 20 years of managing media sales have seen endless changes. Over the next 20 years, the world will look very different than it does today, and so will the sales manager’s role.

Below are the top 10 characteristics I feel will be important for sales managers of the future.

1. They will need to manage multiple media platforms, since radio and digital will look different than they do today.

2. They will need to know the technology and technology to program properly. Sales managers must know how to sell the people and whatever else develops over the next 20 years. The paper presentation obstacle will have its most likely have disappeared, and it will be essential for sales managers to keep up.

3. They will need to have a highly sophisticated recruiting system for identifying sales reps earlier in the hiring process. Finding potential reps earlier in their education or career will be key component for assisting with successful sales force.

4. They will have a good understanding of developments in the global media marketplace. What starts globally will eventually work its way to the local market. They will need to be more reactive to economic developments and how those developments affect their areas of responsibility.

5. They will have their own in-house training system. Training will remain a key component of the successful sales force as new developments in the marketplace will necessitate frequent training.

6. They will work with what they do! Leadership, leadership, and more leadership. Listen, listen, and develop people. Always be the motivating force.

Sean Luce is the lead intellectual driver at Luce Performance Group and can be reached at sean@luceperformancegroup.com.