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RADIO

Radio Left Out of Relaxed Rules

By JENNIFER 8. LEE

WASHINGTON -- It happened in June, but for much of the media industry it might as well have been Christmas morning last Monday when Michael K. Powell, the Federal Communications Commission's chairman, and two of his Republican colleagues dispensed many of the gifts that had been on industry wish lists.

Despite the sweeping deregulation the F.C.C. enacted by a 3-to-2 vote along partisan lines, however, one medium was left out of the celebration: radio. Not only were radio ownership caps left in place, some of the restrictions were effectively tightened.

How radio got left out of the party is more a tale of politics than of business. And the story almost exclusively centers on [Clear Channel Communications](#), the company that began rising from obscurity in 1996, when radio ownership caps were raised, to amassing nearly 1,250 stations. As it has grown into the nation's largest radio company, owning more than 10 percent of the commercial stations in the United States, Clear Channel has drawn the wrath of musicians, who accuse it of using its concert division to strong-arm musicians, and the scrutiny of Congress, where many members contend that the company has engaged in anticompetitive practices.

Although Clear Channel is widely respected on Wall Street, in Washington good business necessarily means practicing good politics, especially for the media business. Politicians, after all, depend on local

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Bloomberg News

Lowry Mays, chief executive of Clear Channel Communications, addressed the Senate Commerce committee in January. Clear Channel, which owns 1,250 radio stations, has drawn criticism for homegenizing radio play.

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media outlets to reach constituents through both advertising and news coverage. And as much as it purports to be independent, the F.C.C. is a political creature, influenced by public opinion and pressure from Capitol Hill.

These are fundamentals that Clear Channel evidently grasped too late. The F.C.C. ruling last week will make it much more difficult for Clear Channel to continue its longstanding strategy of growth through station acquisitions.

"Everyone, regardless of party, is running away from Clear Channel as fast as they can," said John Dunbar of the Center for Public Integrity, who has put together a searchable database of media ownership at www.openairwaves.org. "They've had a terrible run of publicity."

The company opened a Washington office only last December — more than a year after it started drawing criticism for homogenizing radio programming across the country, particularly in smaller markets, where the company sometimes broadcasts disc jockeys who may be thousands of miles away.

Now the company has three former Capitol Hill aides working as lobbyists, including Andrew Levin, who worked in the House for the Michigan Democrat John D. Dingell.

But the real power of lobbying is in preventing issues from becoming an open debate, and by the time Clear Channel had assembled its Washington team, the debate had long become public. The best its team could do was limit the damage.

Clear Channel did not fare well under the glare. When Lowry Mays, its chief executive, testified at the Senate Commerce committee in January, he had to listen to harsh rebukes from the Senators. His defensive replies to questions about the company's policy on payola and its commercial monopoly in Minot, N.D., failed to resonate with the inquisitors. "We have zero tolerance for pay-for-play," Mr. Mays said, even as Don Henley of the Eagles testified that musicians were often billed by record labels for promotional costs charged by radio stations.

Because Congressional hearings are as much show as substance, nuanced explanations, even if they hold true, do not make for good sound bites.

"Once these allegations get made on Capitol Hill, if they are not refuted with the truth, they become like an urban legend," Mr. Levin said in a telephone interview.

As Clear Channel wants the story to be told, it is a capitalist success built largely by one entrepreneur, Mr. Mays, through smart, aggressive acquisitions. The company casts itself as a savior, reviving struggling radio stations and diversifying formats to better serve listeners around the country.

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Why pick on the radio industry? the company asks. The lobbyists wave ownership charts for the recording, film and cable businesses, showing that radio is the least concentrated media sector. But Clear Channel, despite controlling only about 10 percent of the commercial radio market, stands so far above the second- and third-largest companies — [Cumulus Media](#), with 250 stations and Infinity Broadcasting, with 180 — that it acts as a lightning rod for fears about big media. In the politically charged atmosphere leading up to the Iraq invasion, the company's management in San Antonio was accused of coordinating the Clear Channel stations across the country to rally support for the war. Though the executives denied any active role in the pro-war rallies promoted by some of the company's individual stations, the controversy highlighted the potential political power than can come with media consolidation.

In many ways, Clear Channel's naïveté resembles the early political trip-ups of [Microsoft](#), another company that grew huge and found itself unprepared for life in the spotlight of public opinion and government scrutiny. Over time, Microsoft established a Washington presence and formed a political strategy.

Clear Channel, too, is reacting to pressure. In April, it announced it would cut ties with the independent promoters whose activities are sometimes accused of skirting antipayola laws.

So what exactly do last week's F.C.C. actions mean for the radio industry? One effect involves the maximum number of stations a company can own in a single local market — a number that in many cases will shrink under the commission's new methodology. Under the old system, which defined a local market by the reach and overlap of radio waves from adjacent markets, Ithaca, N.Y., was considered to have at least 32 commercial radio stations, which allowed any one company to own up to 7 stations there. But under the new method of counting, Ithaca is considered to have only 9 commercial stations, and any single company can own no more than 5.

Though the F.C.C. is not requiring radio companies to give up any stations they already own, the companies say the tighter limits will make it hard to continue expanding to achieve the economies of scale they see as necessary to be profitable.

But the F.C.C. did give the radio industry a few consolation prizes. The new rules, for instance, will increase the overall station count in many local markets by including noncommercial broadcasters, like Christian and educational stations, which in some cities could allow a company to own a few more stations.

But Clear Channel's competitors say the net effect of the F.C.C.'s new rules will make it even more difficult now for them to catch up with the industry leader. And many industry analysts agree.

Clear Channel, though, viewed itself as the victim of an F.C.C. political sacrifice last week as the commission made regulatory life easier for

newspaper and television companies. "They needed to have something to point to and say, 'We've tightened the rules in this area, so obviously we've done a balanced review,'" Mr. Levin said. "They needed to have a scapegoat."



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