reasonable and, if it were not, to require MPA to make a new, more favorable lease offer.

Ruling on Motion to Dismiss, at 5. Rather more tersely, the District Court concluded:

> In fact, the Court finds no evidence to undermine the conclusion that, in negotiating with Premier, MPA was acting in a reasonable manner to advance legitimate goals, consistent with its legislated purpose.

Memorandum in Civil Action WMN–06–1733 (October 31, 2006), at 24, 25–26.

In the instant case, the Commission concludes that negotiation of a leasehold interest is inherently a discretionary process. *See, Ponca Tribe of Oklahoma* v. *State of Oklahoma,* 37 F.3d at 1436 ''[t]he act of negotiating * * * is the epitome of a discretionary act. How the state negotiates; what it perceives to be its interests that must be preserved; where, if anywhere, that it can compromise its interests—these all involve acts of discretion.''; *Seminole Tribe of Fla.* v. *State of Florida,* 11 F.3d 1016 (11th Cir. 1994) (rejecting application of *Ex parte Young*); *Poarch Band of Creek Indians* v. *State of Alabama,* 784 F.Supp. 1549 (S.D. Ala. 1992) (rejecting *Ex parte Young* claim where relief would require ordering the governor to exercise his discretion in negotiating with the Plaintiff). *But see, Spokane Tribe of Indians* v. *State of Washington,* 790 F.Supp 1057 (E.D. Wash. 1991); *Elephant Butte Irrigation Dist.* v. *Dept of Interior,* 160 F.3d 602 (10th Cir. 1998). Accordingly, the Commission finds that Premier's action falls outside the scope of *Ex parte Young.*

*Adequacy of Relief under the Shipping Act*

In any event, we believe that in enacting the Shipping Act of 1984, the Congress created a remedial scheme which provides adequately for relief to be extended to complainants, such as Premier, without resort to extraordinary procedures made available under *Ex parte Young. See Schweiker* v. *Chilicky,* 487 U.S. 412, 423 (1988) (''When the design of a Government program suggests that Congress has provided what it considers adequate remedial mechanisms for constitutional violations that may occur in the course of its administration, we have not created additional * * * remedies.'') Under authority conferred through the Shipping Act, as amended, the Commission has long administered programs which directly regulate government-owned and operated ports as well as the practices and operations of government-controlled carriers.

In *Federal Maritime Comm'n* v. *South Carolina State Ports Authority, supra,* the Court was called upon to determine whether state sovereign immunity would preclude the Federal Maritime Commission from adjudicating a private party's complaint that a state-run port violated the Shipping Act of 1984. Although commenting favorably that the ''FMC administrative proceedings bear a remarkably strong resemblance to civil litigation in federal courts,'' 535 U.S. at 757, the Court stated:

> * * * we hold that state sovereign immunity bars the FMC from adjudicating complaints filed by a private party against a nonconsenting State. Simply put, if the Framers thought it an impermissible affront to a State's dignity to be required to answer the complaints of private parties in federal courts, we cannot imagine that they would have found it acceptable to compel a State to do exactly the same thing before the administrative tribunal of an agency, such as the FMC.

535 U.S. at 760. Responding to the argument that federal regulation of maritime commerce limits sovereign immunity, the Court replied:

> ''[e]ven when the Constitution vests in the Congress complete lawmaking authority over a particular area, the Eleventh Amendment prevents congressional authorization of suits by private parties against nonconsenting States.'' *Ibid.* Of course, the Federal Government retains ample means of ensuring that state-run ports comply with the Shipping Act and other valid federal rules governing ocean-borne commerce. The FMC, for example, remains free to investigate alleged violations of the Shipping Act, either upon its own initiative or upon information supplied by a private party, see, e.g. 46 CFR 502.282 (2001). Additionally, the Commission ''may bring suit in a district court of the United States to enjoin conduct in violation of [the Act].'' 46 U.S.C. App § 1710(h)(1). Indeed, the United States has advised us that the Court of Appeals' ruling below ''should have little practical effect on the FMC's enforcement of the Shipping Act,'' Brief for United States * * *

535 U.S. at 767–68, citing *Seminole Tribe of Fla. v. Florida, supra* (footnote omitted).

Inasmuch as Congress has prescribed remedial measures to address violations of statutorily created rights, the courts should hesitate before casting aside such measures in favor of the judicially-prescribed protections of *Ex parte Young. Id.* at 74, citing *Schweiker* v. *Chilicky,* 487 U.S. 412, 423 (''where Congress had created a remedial scheme for the enforcement of a particular federal right, we have, in suits against federal officers, refused to supplement that scheme with one created by the judiciary.''). Accordingly, as the private parties herein remain free to complain to the Commission about unlawful state activity and the agency has authority adequate to the cause of investigating and taking action thereon, the fundamental justifications for the creation of *Ex parte Young* are not implicated. We see no sound reason to supplement the existing statutory remedies (Commission enforcement of the Shipping Act directly against state related entities) by extending *Ex parte Young* to privately-filed Shipping Act complaints. *Schweiker* v. *Chilicky, supra*; *Seminole Tribe of Fla.* v. *Florida, supra,* 517 U.S. at 74. Interpreting *Ex parte Young* as applying in every case where injunctive relief is sought constitutes the sort of ''empty formalism'' that undermines sovereign immunity. *Coeur d'Alene, supra,* 521 U.S. at 270.

## IV. Conclusion

For the foregoing reasons, the Commission *denies* the exceptions of Premier Automotive Services, Inc. from the Order dismissing the verified complaint; and *affirms* the Administrative Law Judge's initial decision to the extent consistent with this order.

*Wherefore, it is ordered,* that the above captioned proceeding is dismissed.

By the Commission.

**Karen V. Gregory,**

*Assistant Secretary.*

[FR Doc. E8–13489 Filed 6–13–08; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 2008.

**A. Federal Reserve Bank of Cleveland** (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

*1. Lewis County Capital Corporation, Ladera Ranch, California;* to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank, Lewis County, Vanceburg, Kentucky.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Charter Bancshares, Inc., Corpus Christi, Texas, and Charter IBHC, Inc., Wilmington, Delaware;* to acquire 51 percent of the voting shares of Charter Alliance Bank, Corpus Christi, Texas, a de novo bank.

Board of Governors of the Federal Reserve System, June 11, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–13455 Filed 6–13–08; 8:45 am]

**BILLING CODE 6210–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day-08–0572]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

**Proposed Project**

Health Message Testing System—Revision—National Center for Health Marketing (NCHM), Coordinating Center for Health Information and Service (CCHIS), Centers for Disease Control and Prevention, (CDC).

*Background and Brief Description*

The National Center for Health Marketing (NCHM) was established as part of the Centers for Disease Control and Prevention's Futures Initiative to help ensure that health information, interventions, and programs at CDC are based on sound science, objectivity, and continuous customer input.

Before CDC disseminates a health message to the public, the message always undergoes scientific review. However, reflecting the current state of scientific knowledge accurately provides no guarantee that the public will understand a health message or that the message will move people to take recommended action. Communication theorists and researchers agree that for health messages to be as clear and influential as possible, target audience members or representatives must be involved in developing the messages and provisional versions of the messages must be tested with members of the target audience.

However, increasingly there are circumstances when CDC must move swiftly to protect life, prevent disease, or calm public anxiety. Health message testing is even more important in these instances, because of the critical nature of the information need. Consider the following situations:

CDC must communicate about a hazard, outbreak, or other emergency that presents an urgent threat to one or more segments of the public. The national crisis in which anthrax spores contaminated mail, postal facilities, and congressional buildings is a striking example.

CDC receives a mandate from Congress with a tight deadline for communicating with the public about a specific topic. For example, in 1998 Congress gave CDC 120 days to develop and test messages for a public information campaign about *Helicobacter pylori,* a bacterium that can cause stomach ulcers and increase cancer risk if an infected individual is not treated with antibiotics.

Emerging lifestyle or technological trends create an ephemeral opportunity to leverage the attention or behavior of the public to increase the reach and/or salience of prevention messages. For example, media monitoring reveals a partnership between Napster, a music-based Web site, and the Pennsylvania State University. This partnership creates an ample opportunity for CDC to join in the collaboration to reach students with a salient health promotion message. For instance, a ticker found on the top of the Napster homepage screen might contain an informational URL followed by a message encouraging students, especially those residing in dormitories, to receive the meningitis inoculation series at their campus health center. This message would be tailored prior to the beginning of each academic year and would need to be posted in a timely manner before the arrival of the incoming freshman class.

Of equal importance, this communication mechanism can be effectively used in emergency ''rapid response'' situations such as the campus shooting incidents at Virginia Tech and North Illinois University.

In the interest of timely health message dissemination, many programs forgo the important step of testing messages on dimensions such as clarity, salience, appeal, and persuasiveness (i.e., the ability to influence behavioral intention). Skipping this step avoids the delay involved in the standard OMB review process, but at a high potential cost. Untested messages can waste communication resources and opportunities because the messages can be perceived as unclear or irrelevant. Untested messages can also have unintended consequences, such as jeopardizing the credibility of Federal health officials.

There is no cost to the respondents other than their time. The total estimated annualized burden hours are 2,470.