DOCKET FILE COPY ORIGINAL

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Petition for A)

Microbroadcasting) Docket No. RM-9208

Service)

WRITTEN COMMENTS BY THE RM-9208 PETITIONERS: NICKOLAUS E. LEGGETT, JUDITH F. LEGGETT AND ATTORNEY DONALD J. SCHELLHARDT

We, the undersigned Petitioners, whose Petition is the subject of Docket No. RM-9208, hereby submit written comments. We are three private citizens, motivated by a desire to advance the public interest and a deep concern for the future of America.

SUBMISSION OF A VIDEOTAPE AS ADDITIONAL EVIDENCE

With our written comments, we are also submitting -- as additional evidence of the need to license microbroadcasting radio stations -- a sealed videotape of the movie, PUMP UP THE VOLUME. The movie stars Christian Slater, at the beginning of his acting career, as a teenage microbroadcaster on the trail of corruption in a local high school administration. The high school administration then calls in the FCC to shield it from exposure by shutting the microbroadcaster down.

We submit this movie as a message to the FCC from a significant portion of the American population. While the movie is aimed at teenagers, and contains sexual humor which might charitably be called "sub-adolescent", it also demonstrates how easily current policies can be used to present the FCC to the public as imperious and/or a mindless ally of corruption.

No. of Copies rec'd 0+9
List ABCDE

We note that the movie received "Two Thumbs Up!" from Siskel and Ebert.

We also note that Americans can rent the movie for $2.98 or buy it for $9.95.

For a few thousand dollars (assuming volume discounts), a copy could be mailed to every Senator and Representative in America.

REQUEST FOR A COMMENT PERIOD EXTENSION

Today, in a simultaneous separate filing, we have asked the Commission to extend the public comment period in Docket No. RM-9208. We requested the Commission to extend the deadline for public comments in this Docket from 30 days after the date of issuance (the Commission's apparent current deadline of Friday March 6, 1998) to 90 days after the date of publication in the Federal Register (sometime after Friday May 22, 1998).

In the same separate filing, we included related requests for a consolidation of comment opportunities into Docket No. RM-9208 plus immediate publication of certain notices and information in the Federal Register.

If the requested comment period extension is granted by the Commission, we will use the additional time to discuss various policy issues with other parties who support licensing of microstations but differ with us on some of the details. It is our hope that these discussions, building upon discussions

which have already occurred, would lead to an expansion of the current points of consensus among the many advocates of microbroadcasting -- and/or to a clearer delineation of the differences in our individual approaches to our common goals.

Such developments, should they occur, could be brought to the Commission's attention through Additional Comments, filed by ourselves -- and almost certainly others! -- before the new comment deadline expires. Further, even if such developments do not occur, Additional Comments could be filed in order to communicate insights gained, and conclusions reached, through the further study of competing microbroadcasting proposals under less harried conditions.

Expanded points of consensus -- and/or Additional Comments which reflect substantially more study, reflection and dialogue -- would surely benefit the Commission and its staff as much as they would benefit the commenting parties (and potentially commenting parties).

POINTS OF APPARENT CONSENSUS WITHIN THE COMMUNITY OF MICROBROADCASTING SUPPORTERS

We are not microbroadcasters. However, since the Commission issued its limited solicitation of public comments in Docket No. RM-9208, we have had the opportunity to be in contact with dozens of current or potential microbroadcasters -- and with others who support them. They have come from all corners of the country: Rhode Island to California, Florida to Oregon.

It is readily apparent that microbroadcasters, and their friends, are independent thinkers. Even the collectivists are individualists!

Consequently, it would be unrealistic to expect that all microbroadcasting advocates will ever agree on everything. Nevertheless, at present there appear to be at least two points of consensus:

(a) Microstations should be licensed. Thousands of potential license holders are ready, willing and able to serve their communities. They will offer locally oriented, stylistically different alternatives to the "homogenized programming" on the larger radio stations -- which often report to corporations headquartered far from the station's listeners.

(b) Large to medium sized corporations should be kept out of the microstation market. They should not be allowed to bid for microstation licenses and they should not be allowed to enter the market, "through the back door", by acquiring microstations after they have been licensed. This market should remain a kind of human "wildlife preserve", where individuals can still make a mark without having to work through institutions. Competition can occur, and indeed cannot be avoided, but it should be competition that fosters success for the best -- not success for the biggest -- or the blandest.

As a closely related point, we believe that most current or potential microbroadcasters would oppose the use of auctions for the allocation of licenses.

Hopefully, there will be enough licenses to go around: a happy circumstance that is most likely to occur if the wattage ceilings for microstations are kept relatively low. If a shortage of licenses does develop, however, we believe that auctions would be the last choice of most microbroadcasters.

Auctions are certainly our last choice.

Whatever other system might be used, such as "first come first served" or a lottery, would be better than deciding who should broadcast as a function of who has the most money.

POSSIBLE "TIMESHARING" OF MICROSTATION LICENSES

We understand that one or more commenters may propose "timesharing" of licenses. This idea may have some merit, at least under some circumstances, but the Commission's abbreviated comment period has not left us with enough time to fully evaluate the concept or to discuss it with its proponents.

Our preliminary reaction is that timesharing is probably best suited for non-profit microstations. For commercial microstations, timesharing might make life easier if the license holders are fairly inexperienced. On the other hand, over the long run, the limit on air time could cripple a station's ability to raise enough advertising dollars to survive.

Also, of course, some broadcast times are more equal than others. Listenership, and with it both advertising revenues and potential influence on local politics and culture, can vary dramatically around the clock.

Perhaps the best approach would be allowing voluntary timesharing agreements between license applicants, who could then apply in tandem for a multi-party license.

MAJOR APPARENT DIFFERENCES IN PERSPECTIVE
WITHIN THE COMMUNITY OF MICROBROADCASTING SUPPORTERS

As we noted earlier, microbroadcasters and their friends tend to be independent thinkers. Although there are many details of microbroadcasting policy where differences of opinion may surface, it is our impression that the most intense differences of opinion relate to:

(a) the maximum ceiling on wattage power (and, as a related point, antenna height) for microstations;

(b) the regulatory requirements which should be imposed on microstations;

and

(c) whether the proposed policy of excluding large to medium corporations from the microstation market should be expanded into an exclusion of all profit-making institutions.

These are matters on which reasonable people can differ. We do not claim infallibility for our own proposal and we encourage the Commission to consider all reasonable perspectives.

Having said this, here are our own views on these matters:

(a) With respect to power wattage and antenna height, our Petition advocates maximum power of 1 watt and maximum antenna height of 50 feet. At the other extreme, Rodger Skinner, in a Petition filed with the Commission after our own, has advocated respective ceilings of 3,000 watts and 328 feet.

Our numbers translate into a typical transmission range of .6 miles (that is, a circle 1.2 miles across). The Skinner numbers translate into a typical transmission range of 15 miles (that is, a circle 30 miles across).

It has become evident to us, as a result of numerous discussions, that our power wattage ceiling is probably too low (although our antenna height ceiling has not drawn much fire). 1 watt, it appears, does not offer a broadcasting range that is far enough -- that is, a realm of potential impact on the public which is large enough -- to induce most "pirate" microbroadcasters to file for a license. Nor is the area served likely to generate a sufficient "critical mass" of advertising revenue for a small, entrepeneurial station.

On the other hand, although the Commission should probably set a ceiling higher than 1 watt, there are still definite advantages to keeping the power ceilings fairly low and the areas served fairly small. For one thing, as noted earlier, low power levels mean more room for more licenses.

Also, lower power ceilings mean that the "level playing field" on which microbroadcasters compete will require fairly low investments by all, leading to fairly easy market entry -- and a better chance for those with modest financial resources to compete on an equal footing. (To put it bluntly, low power ceilings mean that poor and lower middle class Americans will find it easier to "get into the game".) Further, low power ceilings mean less risk of electronic interference.

If the Commission adopts an extended comment period in this Docket, we may be able to endorse a specific number for the power wattage ceiling. As matters stand now, we have not had enough time to stand in good conscience behind a specific alternative to 1 watt.

We <u>will</u> say this, however: It is our impression that the vast majority of microbroadcasters, in their wildest dreams, do not seriously expect their first licensed station to have power above 100 watts. This may be an indicator of economic realities, rather than personal desires, but we nevertheless believe that a ceiling of 100 watts would be far above the level needed to energize a viable, legal microbroadcasting industry. In fact, a ceiling of 50 watts would probably be just as effective as an inducement.

Therefore, we urge the Commission to view 50 to 100 watts as <u>the absolute upper limit</u> to the ceilings it will consider.

As for Rodger Skinner's 3,000 watt transmitter, with its antenna taller than most urban buildings, we call it a "macro microstation". We do not begrudge him his station: in fact, with its requirement for 100% local ownership (a higher percentage than even we would require!), we would regard his station as a distinct improvement over most of the larger stations on the air today.

Nevertheless, his proposed station would serve a 30-mile circle: a region large enough to cover all but the very largest metropolitan areas in the United States. His station might well serve the public effectively, but the economics of its size range would tend to pull it toward mass markets, not communities, and toward "lowest common denominator" programming, not innovation and experimentation.

This 3,000 watt macro microstation probably merits a license, particularly with its local control feature, but it should be licensed as part of the smallest tier of the larger stations -- not the largest tier of the microstations.

Further, a station of this size should never be permitted to "bump" the real microstations, as the Skinner Petition provides (with the only defense against "bumping" being a mandatory "upgrade" that few true microbroadcasters could afford). Under this policy, the macro microstations could displace the real microbroadcasters, creating new pirates!

(b) As for regulatory requirements, including technological requirements, we have kept them to a minimum in our Petition. In particular, we have avoided type approval requirements and engineering studies, either of which can quickly yank the cost of a microstation far beyond the reach of the everyday American. We have also set the proposed licensing fees at the lowest levels we could reasonably defend.

At the other extreme, the Skinner Petition contains type approval requirements, relatively high license fees and other mandates which could place microstations beyond financial reach for many Americans.

Many of these differences are, we suspect, related to the different power levels and service areas we have in mind. For a macro microstation of the size Rodger Skinner envisions, there is a definite environmental impact (including possible zoning battles over the antenna), a major problem with potential electronic interference and a general need for fairly comprehensive regulatory oversight.

With a power level of 1 watt, however, or at least a power level with wattage in the low single digits, the impact on the surrounding environment is minimal. The level of regulatory oversight, therefore, can be minimal as well. As we said on page 8 of our Petition, a small radio transmitter should have "a minimum of harmonics and spurious emissions".

(c) As for providing exclusive access to the microstation market for non-profit organizations, we disagree.

In our Petition, we set forth some of the major ways in which licensed microstations would benefit our entire society:

- Increasing diversity of programming and ownership
- Providing increased opportunities for upward mobility
- Providing incentives for technological and economic innovation
- Providing incentves for individuals to increase their technological skills (and hence their marketability and the country's competitiveness)
- Strengthening community connections

In our view, only one of these benefits -- "strengthening community connections" -- would probably be enhanced by a "non-profit only" policy. Diversity of programming would probably be marginally less without a profit motive to encourage innovation, although this point is arguable: diversity of ownership, with entrepeneurs excluded, would automatically be less. The incentives for technological and economic innovation, and for individual acquisition of new technological skills, would clearly be much weaker in the absence of potential financial rewards. The opportunities for upward mobility, in a totally non-profit environment, would be reduced to minimal levels or obliterated completely.

We do not believe that a moderate increase in the strength of community connections would justify the moderate to severe

losses in all of the other areas. Therefore, we see a place for entrepeneurs in the microstation market.

Nevertheless, we note this caveat for the record:

We would rather see a totally non-profit microstation market than a microstation market filled with satellites of global corporations. Therefore, our opposition to a totally non-profit microstation market is premised on the Commission's erection of impenetrable "firewalls" to keep entrepeneurs safe from competition with -- and/or acquisition by -- larger corporations.

Incidentally, even if a totally non-profit microstation market were established, reasonable sales of air time for commercials -- to cover expenses -- should be allowed. Many small local advertisers, priced out of air time on the larger radio stations, could use the advertising opportunities (with "strengthening of community connections" a possible result). Further, the non-profits could then avoid having so many annoying fund-raiser appeals.

Even noble causes need money. Why not get it from the marketplace?

RACE-BASED AND/OR GENDER-BASED "SET ASIDES"

Some may propose "set asides", within the microstation market, for women and/or racial minorities: that is, reserving a body of licenses for members of the favored group(s).

We believe this would be a mistake.

Race-based and/or gender-based preferences will build resentments and poison the legitimacy of the process in the minds of many.

Further, we do not see why the favored group(s) would need such assistance. If the Commission keeps microstations at fairly low power wattage levels, and if the Commission also prohibits entry into the microstation market by any corporation larger than the smallest of small businesses, participation in this market should be possible with investments in the range of $1,000 or less. We sincerely hope -- and expect -- that even teenagers in the ghetto, or the barrio, with notoriously limited resources and opportunities, will be able to pool their resources and participate.

With such minimal barriers to market entry -- plus insulation from competition with all but individuals, non-profits and the smallest of small businesses -- why would special assistance be needed by black teenagers or suburban white women?

We are aware that "cultural conditioning" can be a real force, encouraging some women to hold themselves back from competing with men. However, judging by such women as Maya Angelou, Hillary Clinton, Elizabeth Dole, Sharon Stone and Madonna, this "conditioning" can be overcome.

Under our proposal, external barriers to advancement are not present. What to do about the barriers within should be a matter of individual choice.

As our closing comment on this particular subject:

We do not oppose the concept of market "set asides", which can be very helpful in promoting beneficial business activity that laissez-faire competition would crush. Indeed, under our proposal, the entire microstation market would be a form of market "set aside". Earlier, we called it "a kind of human 'wildlife preserve', where individuals can still make a mark without having to work through institutions".

What we oppose are market "set asides" based on the arbitrary factors of race and/or gender. The courts have ruled that policies based on these factors are automatically "suspect" under the United States Constitution: not invalid "on their face", but "suspect". We agree!

If the Commission believes that it must establish special assistance for certain groups, then we urge the Commission to base such special assistance on income, not race or gender. This approach would at least recognize that today -- in the America of 1998, not 1898 or 1928 or 1968 -- lack of money is the single biggest cause of lack of opportunity. In the America of 1998, a poor white man in Appalachia may still have more opportunity than a teenager in the ghetto, but he almost

certainly has less opportunity than a middle class black man, or a middle class white woman, in the suburbs.

A POINT OF CLARIFICATION

The Commission's Web Site notice suggests that the Commission views Nickolaus and Judith Leggett as the Petitioners, with Attorney Donald J. Schellhardt as their hired counsel.

This impression is not correct. All three of us are Petitioners, deserving an equal share of the credit or blame for our proposal. Attorney Schellhardt has donated his services pro bono -- "for the good of the public" -- and has earned no income from this project.

In fact, none of the Petitioners has a financial motivation in this proceeding. We are neither current nor potential microbroadcasters. Nor do any of us have any current plans to invest in microbroadcasting.

Other than the possibility that publicity generated by this Petition might lead to some attractive job offers, we have nothing to gain -- financially -- from this proceeding.

We have acted out of love for our country.

CONCLUSION

For the reasons set forth herein, we urge the Commission to proceed with a rulemaking to establish licensing of microbroadcasting radio stations, setting parameters which keep such stations as affordable as possible -- and also

prohibiting all except individuals, non-profit organizations and the smallest of small businesses from obtaining microstation licenses or acquiring licensed microstations.

Respectfully submitted,

Nickolaus E. Leggett
1432 Northgate Square, #2A
Reston, VA 20190-3748
"Ham" Radio Call Sign:
N3NL
703/709-0752
PETITIONER

Judith F. Leggett
1432 Northgate Square, #2A
Reston, VA 20190-3748
703/759-0752
PETITIONER

Attorney Donald J. Schellhardt
45 Bracewood Road
Waterbury, CT 06706
E-Mail:
capistrano@earthlink.net
203/591-9177
PETITIONER

Dated: March 4, 1998

Please respond to:

Nickolaus E. Leggett
1432 Northgate Square, #2A
Reston, VA 20190-3748
"Ham" Radio Call Sign:
N3NL
703/709-0752

Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

o An oversize page or document (such as a map) which was too large to be scanned into the RIPS system.

o Microfilm, microform, certain photographs or videotape.

o Other materials which, for one reason or another, could not be scanned into the RIPS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.