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BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)

Microstation Radio Broadcast Service)
Petitions for Rulemaking)

RM-9208

RM-9246

TO: The Commission

**COMMENTS IN OPPOSITION TO
PETITIONS FOR RULEMAKING**

Southern Minnesota Broadcasting Company (SMBC), by its attorney, hereby respectfully submits these Comments in Opposition to Petitions for Rulemaking seeking the establishment of a "Microstation Radio Broadcast Service". These comments are filed within the time allowed by the *Order Extending Time*, DA 98-437, released March 5, 1998.

Preliminary Statement

1. SMBC is one of the oldest family-owned broadcast licensees in the nation. It has been the licensee and operator of Standard Broadcast Station KROC, Rochester, Minnesota, since October, 1935. Today, SMBC is the licensee of eight commercial broadcast stations, and the permittee of an additional operating FM station: KROC(AM) and KROC-FM, Rochester, Minnesota; KYBA(FM), Stewartville, Minnesota;

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KXRB(AM), KSOO(AM), KKLS-FM and KMXC(FM), Sioux Falls, South Dakota; KIKN(FM), Salem, South Dakota; and KYBB(FM), Canton, South Dakota (operating under program test authority).

2. As a licensee which is just one year younger than the Communications Act of 1934, as amended, SMBC believes that the current allocation plan for AM and FM stations serves the public best, and that the addition of *ad hoc* "microstations" would cause chaos on the broadcast dial and would ruin the best broadcasting system in the world.

**The Microstations Proposal Will Cause Interference
and Will Disserve the Public Interest**

3. SMBC hereby associates itself with comments filed by Vernon Baker, an experienced broadcaster based in Blacksburg, Virginia. Mr. Baker retained the consulting radio engineering firm of Carl E. Smith Consulting Engineers, whose qualifications are well known to the Commission. The conclusions reached by the Carl E. Smith study were as follows:

- In order to properly protect the signals of existing broadcasters, it will be necessary to clear seven channels nationwide to institute this new proposed service, thereby requiring the displacement of many existing broadcasters.
- The FM band in many areas of the country is so congested, that it would be virtually impossible to

find even one clear channel for the microstation proposal.

- The Skywave propagation in the AM band during nighttime service would cause catastrophic interference, thereby reversing all of the recent improvements in AM service resulting from such proceedings as MM Docket 87-267.
- International treaty requirements are likely to stifle the institution of this new service in many areas.
- If, as requested, non-type accepted equipment is permitted, there will be destructive harmonic and spurious radiation problems, which could also result in risk to human life or public safety.

4. One example of the potential mischief that could be caused by microstations on the FM band is the situation where an FM channel is not in use in a major metropolitan area, but is instead in use in a medium-sized community about 100 miles away. A case in point is in the state of Minnesota. The frequencies 105.3 MHz and 106.9 MHz are not in use in the Minneapolis-St. Paul metropolitan area by licensed commercial broadcast stations; however, these are the frequencies utilized by SMBC in southeast Minnesota for stations KYBA(FM) and KROC-FM. It does not take much imagination to visualize "microstations" operating on these channels in the Twin Cities, which could cause enough interference to the service provided by KYBA(FM) and KROC-FM

to rural areas in southeast Minnesota which depend on those stations, particularly in winter for weather information.

5. Another example of microstation mischief which the Commission has documented is that which occurs when "pirate" microstations cause interference to radio communications affecting aviation generally and air traffic control operations specifically. There is appended hereto a Commission "Public Notice, Compliance and Information Action", Report No. CI 98-3, released March 20, 1998, detailing the interference caused by a "pirate" microstation on 107.2 MHz in the Sacramento, California region which affected aviation overhead the city of Napa, some 60 highway miles west-southwest of Sacramento. Indeed, according to the FCC's account, interference was caused by the microstation to a number of frequencies not immediately adjacent to 107.2 MHz, such as 119.5, 122.2, 125.0 and 126.8 MHz.

**The FCC's Mission Must Return to the Reason
for Its Formation--Interference Prevention**

6. The Communications Act of 1934 was passed, and the FCC was formed, in large part, to prevent radio stations from causing destructive interference to each other. Over the years, the FCC has taken a "frolic and detour" into

areas such as employment discrimination, where there is another federal agency which is expert in adjudicating discrimination claims (the Equal Employment Opportunity Commission). The Commission needs to get out of areas where it need not be acting, and return its focus to areas in which it is expert—such as the prevention of interference between existing stations, and the “gatekeeper” to any new stations which might create interference to existing stations.

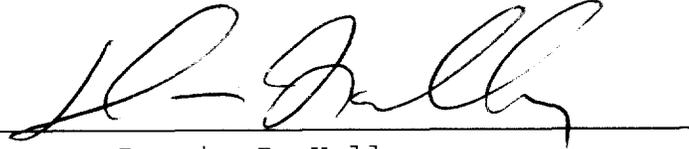
7. The instant “microstation” proposal would be a complete abdication of the FCC’s core responsibility to the broadcasting industry and to the public. The Commission should not be moved by a number of individuals who do not have the public interest at heart. Nor should the Commission be deterred by a lone renegade federal district judge in California who refuses, for reasons relating to her own personal agenda, to enforce the Communications Act of 1934.

WHEREFORE, it is urged that the Commission DENY the pending “Petitions for Rulemaking” and that the Commission TERMINATE THIS PROCEEDING.

Respectfully submitted,

SOUTHERN MINNESOTA BROADCASTING COMPANY

By

A handwritten signature in black ink, appearing to read "D. Kelly", written over a horizontal line.

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April 27, 1998



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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

Report No. CI 98-3 COMPLIANCE AND INFORMATION ACTION March 20, 1998

FCC CLOSES DOWN UNLICENSED RADIO OPERATION THAT THREATENED AIR SAFETY AT SACRAMENTO AIRPORT; FOURTH AIRPORT INTERFERENCE INCIDENT IN FIVE MONTHS

The Federal Communications Commission today announced it had located and shut-down an unlicensed radio broadcasting operation in Sacramento, California, that was reported by the Federal Aviation Administration (FAA) to be causing interference to safe air traffic control communications at Sacramento Executive Airport.

The FCC said that after investigating FAA complaints about interference at the airport on four different frequencies, it identified the source as an unlicensed radio station operating on 107.2 MHz from the office of Dollar and Sense Productions, 2251 Florin Road, Suite 128, Sacramento. FCC investigators informed the operator of the interference yesterday, and shortly thereafter the station shut down its operations.

In a letter to the FCC on the incident, the FAA told the FCC the unlicensed radio operation was "creating an unsafe condition in our National Airspace System."

This is the fourth time in the last five months that FCC investigators have had to make emergency-response investigations to locate illegal unlicensed broadcast stations which were interfering with air traffic communications. In October 1997, the FCC obtained voluntary shut down of two separate unlicensed operations interfering with air traffic control frequencies at Miami International Airport and West Palm Beach International Airport. In February this year, the FCC and Office of the United States Attorney for the District of Puerto Rico obtained a court order to confiscate transmission equipment from an unlicensed operator who was causing interference at San Juan International Airport and who refused to shut-down voluntarily.

FCC Chairman William Kennard said, "Unlicensed radio operations such as this pose a threat to critical air traffic communications and a risk to safety of life due to the interfering transmissions. I am concerned that we have now had multiple incidents of interference at four airports around the country. We will continue to inform the public of these dangers and to move swiftly to eliminate these potential hazards to air traffic communications."

- more -

In the Sacramento case, the FCC's San Francisco office was first alerted by the FAA on Wednesday, March 18, that aircraft over Napa, California, were receiving interference to their radio communications and that there was a radio station signal being heard on the pilots' air traffic control radio channel. The FCC began an immediate investigation, but was hampered by the fact that the signal was only being heard high in the air and the possible location of the source was anywhere in a 60 mile radius of Napa.

On Thursday, March 19, the investigation focused in the Sacramento, California, area when the FCC was notified that the FAA radios at Sacramento Executive Airport were receiving interference on several channels (119.5, 122.2, 125.0, and 126.8 MHz) from a radio station. The FAA reported that the station appeared to be drifting or changing frequency.

Two FCC investigators were immediately dispatched to Sacramento. FCC technical measurements showed that the transmitter of the illegal station was not only sending out the intended broadcast station signal, it was also sending out numerous other spurious signals on aviation frequencies. When notified of the interference, the operator of the unlicensed operation voluntarily shut down the transmissions.

Unlicensed radio transmissions, in general, can create a danger of interference to important radio communications services. Such illegal transmissions, using equipment of unknown technical integrity, raise a particular concern because of the potential for harmful interference to authorized radio operations, including public safety communications and aircraft frequencies, as in this case. Unlicensed broadcast stations are of particular concern because they operate on channels directly adjacent to those used for sensitive aviation communications and air navigation signals.

Under federal law, radio stations may be operated only upon the issuance of an FCC license covering such equipment. Unlicensed operation may subject the violator to serious penalties provided for in the Communications Act of a civil fine of up to \$11,000 and/or seizure and forfeiture of the radio equipment by court order. Violators could also be subject to criminal fines imposed by the Justice Department of up to \$100,000, and/or imprisonment for up to one year or both for a first offense.

In addition, interference with a government communications system, such as the FAA air traffic control or air navigation systems, is a federal felony and violators can be punished under the federal criminal code.

-FCC-

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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing "Comments in Opposition to Petition for Rulemaking" were served by first-class United States mail, postage prepaid, on this 27th day of April, 1998, upon the following:

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