DOCKET FILE COPY ORIGINAL
RECEIVED
APR 27 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

LAW OFFICES
COHN AND MARKS
SUITE 300
1920 N STREET N.W.
WASHINGTON, D.C. 20036-1622
TELEPHONE (202) 293-3860
FACSIMILE (202) 293-4827
HOMEPAGE WWW.COHNMARKS.COM

JOEL H. LEVY
ROBERT B. JACOBI
ROY R. RUSSO
RONALD A. SIEGEL
LAWRENCE N. COHN
RICHARD A. HELMICK
WAYNE COY, JR.
J. BRIAN DE BOICE
SUSAN V. SACHS
KEVIN M. GOLDBERG
JOSEPH M. DI SCIPIO

OF COUNSEL
MARCUS COHN
LEONARD H. MARKS
STANLEY S. NEUSTADT
RICHARD M. SCHMIDT, JR.

DIRECT DIAL: (202) 452-4836
INTERNET ADDRESS:

April 27, 1998

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: RM-9208
RM-9242

Dear Ms. Salas

Transmitted herewith, on behalf of Roswell Radio, Inc., licensee of broadcast stations KCKN and KBCQ, both Roswell, are the original and five (5) copies of its Comments in the above-captioned proceedings.

Should you have any questions with respect to this filing, please contact the undersigned.

Very truly yours

Wayne Coy, Jr.

Enclosures

DS1/45227-1

No. of Copies rec'd 0+5
List ABCDE

DOCKET FILE COPY ORIGINAL

P.O. Box 670 • Roswell, New Mexico 88202-0670 • (505) 622-6450 • Fax (505) 622-9041

April 27, 1998

RECEIVED
APR 27 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Micro-radio Petitions
RM-9208
RM-9242

Dear Ms. Salas

I recently attended the annual convention of the New Mexico Broadcasters Association and, thanks to the thorough and thought-provoking presentation by Roy Stewart of the Mass Media Bureau, became aware of the potential significance of the Petitions now pending before the Commission regarding the creation of one or more variants of a "micro-radio" service.

After reviewing the Petitions now open for Comment before the Commission, I have reached the conclusion that the confusion that would result in the marketplace, the increased interference and related enforcement issues that would result, and the uncertainty that the new secondary class of stations would actually result in the kind of service envisioned by the Commission make the proposals disruptive, unsettling and counter-productive, far out-weighing any possible chance of benefit to the public. In support of these conclusions, I offer the following:

Background

1. First of all, it comes as some surprise to those of us who have been broadcasters since 1961, and who have had the licenses of our stations renewed many times over that time period, that the Commission feels the need to create a whole new service to provide an opportunity, but far from a certainty, for programming that serves the heretofore unserved

specialized needs of the minorities in our community. We have been fully complying with the Commission's regulations regarding the presentation of programming that is responsive to the needs, interests, and concerns of our community of license for many years now. Further, we have been putting reports in our public inspection file every three months all those years giving a detailed description of that programming. Before that, in response to earlier regulations, we provided quarterly summaries that detailed representative programming that we broadcast responsive to the needs, issues, and concerns that then existed in our community. Every one of those lists were also placed in our public inspection files. Over the years, no one, as in not a single person, has asked to review those lists for any purpose, despite the fact that we routinely announce their availability for inspection as part of each renewal filing. Furthermore, no one has filed any pleading, informal or otherwise, against any of the renewal applications themselves.

2. So far as we know, neither the FCC nor any other organization or agency has undertaken anything remotely close to systematic examination of the public service record of a representative group (never mind all) of stations in this State or in the country as a whole to determine if the present regulations are not producing the kind of result that the FCC desires. Neither have any of us who work in this industry been put on notice, either in our individual renewals or as part of an industry-wide study, that significant sections or subsections of our community are not being adequately served. To be characterized as operating in a deficient manner is both unfair and unwarranted. To have it further suggested that "thousands" of new station are needed to overcome this alleged deficiency seems, at best, premature if not preposterous.

Interference/Enforcement

3. However, let's leave all of that aside and look at the merits of the proposals. The first matter that bears close scrutiny, although swept aside by the Petitioner as unwarranted, is the two-headed issue of interference and enforcement. The allocation of radio channels among the communities of the United States is a matter of Commission policy that dates back more than fifty years. The plan was carefully conceived, judiciously studied, and thoughtfully implemented. It had to meet the statutory requirement, survive political review, and still serve the needs of each community in the country. The separations between the allocated facilities were painstakingly and rigorously followed. The goal, even then, was not to create an allocation for everyone who might want one, but to make the fullest possible use of the available spectrum, provide the most service to the public, and keep the stations from harmfully interfering with each other. Each and every proposal to modify the table of allocations has been given the closest possible scrutiny to be sure that the overall plan was not impaired in any way. A system of localized services, free from

interference was the objective. The fact that some crippled services (e.g., directional antennas, low power) were left out was not an accident. For allocation purposes, your proposal fit or it didn't. The notion of shoe-horning in stations here and there was rejected. Even without the shoe-horning, interference occurred when actual transmissions did not match predicted contours. But the interference-free zones or cushions built into the system absorbed all but a relatively few cases of interference. Yet radio station KOB in Albuquerque was engaged in a struggle for more than two decades because of interference with WABC in New York City despite the care taken to develop the plan.

4. These new proposals, whether by set-aside or shoe-horning, would put tremendous pressure on these interference-free contours. Buffers that are now measured in miles will be cut down to feet or yards. The tension between the new stations and other new stations, as well as between the new stations and the established stations will result in constant fighting, countless pleadings and counter-pleading and bring unbelievable pressure to bear on the FCC's enforcement division to resolve the disputes that will arise wherever the predicted contours don't match actual service rendered. The differences between a theoretical "fit" and harmful interference will become an unending struggle with little or no hope of resolution. The "losers" in this interference-filled environment will be the public.

5. In addition, though Mr. Stewart took great pains to keep the issues separate, broadcasters such as myself believe the already troublesome matter of "pirate radio", encouraged by the claim of legitimacy, protected by the assertion of filing for licensing, will flourish beyond all imagination and become an overwhelming problem for all authorized broadcasters, large and small. Pirate operators will claim they have or are filing applications. It is in the nature of people who operate such stations in the first place, that they will not go away just because others get licenses to do what they do, especially if they can assert that what they are doing is legally authorized. Bound by the rules of due process, the enforcement efforts of the FCC will simply not be able to keep up with all of the parties "entitled" by the new provisions.

Programming

6. Speaking of "pirate radio", it provides a transition to the next subject. Assuming for the sake of argument that micro-radio is authorized and that the field offices can suppress the pirates. What can the FCC do to assure that the noble purposes of the proposed service will be met? One petitioner suggests that limiting the authorizations to one-to-a-customer will assure the divergence of ownership by keeping the established powers out of the business. But what can be done to assure that the programming offered by these micro-broadcasters will be of interest or

useful to the neighborhood that they serve? After all the FCC cannot and will not regulate the content of what is broadcast. What's to keep militiamen, religious fanatics, drug culturists, alternative life stylists and various and assorted crackpots, hucksters, and con artists from taking over the new service? What's to prevent even the most idealistic licensee from selling/leasing his or her air time to commercial entity for a tidy profit if the cost of running a service cannot be sustained?

7. Even under present conditions, there is precious little hard evidence to suggest that minority ownership, or small business ownership, or other ownership restriction can be correlated to programming limited or directed to the minority community. The existence of the pirate radio community suggests that those most interested in such enterprises are ego driven not either profit or community service driven. What will change if the service becomes authorized? In short, the FCC may be creating a monster without having any way of assuring that its noble purposes will be met, and one which, once created, will not easily be dispensed with. Just imagine the number of trips to the Court of Appeals if the FCC later determines this was a mistake.

8. Are the proposed sizes of these operations such that they will or will not to be able to purchase national or regional programming? Are they effectively limited to whatever they can produce locally? Will they be able to provide the local weather and traffic information that the public has come to rely on from their local stations? Can they sustain news coverage beyond the falling tree on Maple Avenue? Is simply playing different music or playing it more often enough to justify the other problems these stations will create? How many of these stations will be able to keep up with changes in the FCC's Rules and Regulations? Will they be required to be EAS equipped and prepared to participate in this vital national alert system? Will they have to be Affirmative Action employers? Will they have to maintain a public inspection file and keep records of the public interest programming they broadcast? Can the licenses be challenged at renewal and by whom? In short, how hard a hit will the "public interest, convenience, and necessity" take in order to carve out a niche for these stations? At whose expense?

Confusion in the Marketplace

9. The radio marketplace is already a difficult one for many in the listening audience to understand. There are full power station licensed to the community. But then there are other stations, licensed to nearby communities, that put some sort of signal into at least part of the market. Then there are translators, licensed to different, often far away communities that also put a signal into all or part of the community. Soon digital satellite-delivered programming will also put potentially hundreds of signals into every community. Now the FCC wants to add

neighborhood radio to the mix. As broadcasters we have nothing to fear by way of economic competition from such a service, but what's the audience to make of this hodge-podge? Stations will be available in one block only to fade in the next. Interference may pop up where it is least expected. Listening to a simple newscast may become an adventure in push-button tuning. Poor confuse advertisers are going to need a skeleton key to decipher the advertising proposal being offered them by a potpourri of salesmen. Rating services are going to be challenged by the mosaic of stations, neighborhoods served, times of day on the air, consistency of scheduling and fluid formats. How is the audience going to remember for very long what kinds of services that they can expect from which stations? It does not require a giant leap of the imagination to think that the fabric of free over-the-air radio broadcasting is threatened.

Conclusion

In conclusion, the issues and problems raised above suggest that if the radio industry is to move toward a primary, mass audience, service and a secondary, neighborhood audience, service, both of which are supplemented by digital satellite national services, we need to carefully assess the damage that will be done to the existing time-proven audience-accepted interference-free service we now enjoy. If the new services are successful, what may result is segregated radio - full power station for the "majority" and neighborhood radio for minorities. If it is unsuccessful either because is economically inviable or because the programming does not meet any or all of the noble purposes intended, we may end up with garbage radio. I can alreday hear the "First Amendment" cries of those who will do anything to foil any attempt to get rid of it.

Respectfully submitted

Roswell Radio, Inc.

John Dunn by WC