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Federal Communications Commission
Office of the Secretary

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April 16, 1992

VIA UNITED PARCEL OVERNIGHT

Ms. Donna M. Searcy, Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Re: RM Number 7932

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Dear Ms. Searcy:

Enclosed you will find an original and six copies of the
Comments of this firm opposing the Petition for Rule-
making listed above and contained in your Report No.
1882.

Sincerely yours,



E. Harold Munn, Jr.

EHM:mag

Enclosure

cc: National Association of Broadcasters

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APR 20 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
FCC MAIL BRANCH

In the Matter of)
)
Review of Commission Commercial)
FM Allotment and Licensing Policy)

RM - 7932

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APR 21 1992

COMMENTS OF E. HAROLD MUNN, JR. & ASSOCIATES, INC. Federal Communications Commission
Office of the Secretary

Preliminary: These comments are directed in opposition to the request of the National Association of Broadcasters (NAB) for a temporary suspension of new commercial FM station allotment and application processing. Substantial reasons exist which render the requested action wholly inappropriate for the Commission at this time and patently at odds with the public interest. These include but are not limited to the following:

1. FM technical Rules have been developed through the years with the most recent major refinements being placed in position effective October 2, 1989, just over two years ago.

2. The "sorting out" process for granting of construction permits under the "window" process has not been procedurally completed in many cases.

3. The Commission has already taken steps to require adequate financial showings on the part of applicants.

4. The upgrading process for existing stations creating a more technically viable service is just now well underway.

5. Suggested economic evaluations could provoke extended litigation, vastly increasing the burden on applicants and the Commission's processes.

6. President Bush has urged that governmental agencies not add to the economic burden of private business and industry through the application of needless Rules and/or procedures.

7. The Commission has taken a position with respect to digital audio broadcasting (DAB) apart from the FM band.

DISCUSSION

1. The Technical Rules: Probably the most noteworthy progression under the Commission's Rules has been that of the lowly Class A station, designed primarily to serve a smaller locality and its immediate environs. Initially, the Commission authorized these facilities at a maximum of 1 kW ERP at 250 feet HAAT. This later moved to 3 kW ERP at 300' HAAT, then to 3 kW ERP at 100 meters (328') HAAT, and, effective October 2, 1989, to 6 kW ERP at 100 meters HAAT. This has progressively increased the service area of such stations, many of which have become accustomed to providing service well beyond their 60 dBu (1 mV/m) protected contour. The Rules have stretched the service radius from a nominal 10-11 miles to 15-17 miles, enabling such stations to have a greater economic base. At the same time, listeners 25 to 30 miles from the station have been brought under interference as the allotments under the "80-90" and "84-231" actions have come into existence. (This parallels interference outside the 0.5 mV/m groundwave contour of an AM Broadcast station.) Clearly, just because a station can be heard under some or even most circumstances does not justify "freezing out" local service to some other community by stopping the allotment of a station 70+ miles distant, where little commercial competition would result.

§73.207 of the Commission's Rules has been revised, providing increased minimum separations between co-channel and adjacent channel stations. Class B stations are protected to the 0.5 mV/m contour (54 dBu) and Class B1 stations to the 0.7 mV/m contour. §73.215 of the Rules and its footnotes effectively provide for contour protection, limitation by footnote to a limited distance the amount of short-spacing to even be considered (8 km), and the requirement that full facilities for the Class -- not the licensed facilities -- of a station or unused allotment be assumed for the purposes of protection.

Given the international agreements to which the United States is a party, and the basic structure of the FM band, there simply is no possibility for anything approaching major restructuring of the FM band. It is time to leave it alone and devote the Commission's energies to the technical problems of DAB and HDTV.

To the extent that many major metro areas are "full up" with a diversity of FM services, FM expansion is over. The industry is now occupied with the scramble of highly leveraged "buyouts," hustling for position with LMA's, increasing cash flow (if not admitted profits) through diminution of local services and utilization of satellite-based program sources and remoted transmitter monitoring as a means of reducing personnel costs. The FCC is still completing the cycle of application processing, hearing decisions or settlements. Actual station construction is getting underway in the smaller city and single market areas of the nation. The "dropin channel" remains the only means whereby newly-developing areas can achieve a local aural media voice.

Suspension of processing through a "freeze" will resolve no issue worthy of the name. The typical FCC "freeze," while termed "temporary," has lasted two or more years. The ill-famed Clear Channel Freeze lasted 33 years, costing this nation dearly in terms of channel utilization as against neighboring nations.

The Commission, under its present chairperson, does not need to follow the pattern of some predecessors who, rather than pursuing running solutions to perceived problems, retreated into the tortoise shell of a "freeze."

2. The "sorting out" process: The Commission currently has pending before it a number of comparative hearing cases providing for new FM Broadcast stations. Several of these represent the first local aural means of expression in their respective communities. Others provide for 24-hour service to be added to a daytime-only AM station, which, in some cases, may surrender its license with the FM service becoming its substitute, thereby meeting one of the Commission's goals for AM band improvement. Still others in the uncontested application process simply represent the first proposal for service in and for the community involved.

Denial of a prompt decision in comparative hearing cases is patently unfair. The applicants have invested substantial sums of money in the hearing fee paid to the Commission and in the expenses of the hearings themselves. A "freeze" would be a denial of "due process" and, absent a true emergency, is simply inequitable. A freeze-imposed delay would place an improper financial burden on many applicants, some of whom could be expected to succumb as viable entities.

Among the clients of this firm is one whose AM station is barely making its expenses as a stand-alone facility, daytime only, in a market about 40 miles from a major metro area. The Class C FM stations (some of whom are NAB members) are mountaintop located and extend their 60 dBu signals into his community. His uncontested Class A application (which will not impact the metro market) is currently wending its needlessly slow and tortuous way through the FCC even though FAA and local zoning approvals have already been received. A "freeze" of any duration, further delaying his hope for economic life, could kill the only station existing in this somewhat isolated city.

Another client of this firm worked his way through the FCC's Rule-Making procedures to an allotment. He filed an application serving three rather isolated but economically viable mountain-country communities, was stalled for almost two years by the FAA's EMI review procedures, and is now ready for grant of the application bringing the first aural broadcast media service to his communities. He would be adversely impacted by a "temporary" freeze. The residents of his community area would be denied their first local aural broadcast service. There is no "emergency" demanding that the Commission freeze such allotments or applications. His proposal meets all separation requirements contained in the present Rules. He filed in good faith in the "window" announced by the FCC and is entitled to prompt consideration and grant of his application.

3. Financial showings: For reasons not immediately apparent, the Commission under another administration attempted to

"fill up" the FM band through the forced-feeding process of announcing filing "windows" rather than allowing the market process to take its course on a demand basis as was true with the original FM "high band" (88-108 MHz) allotments in 1948. (For a period of time the Commission abandoned the use of allotments to communities and followed a contour protection allotment plan. This resulted in a number of the now-grandfathered short separations, especially in the northeastern portion of the country. At one point, Class B stations were normally 20 kW. In some cases superpower was authorized, with a few such stations still operational though not legally protected beyond the maximum facilities for their class.) The filing of multiple and spurious applications was encouraged by the fact that the earlier financial showings of ability to build and operate the station were deleted in favor of a weak and unsupported self-certification. We believe this spawned the apparent flaunting of Commission processes with filings of "strike" applications submitted for the sole purpose of "getting a payoff" from the successful applicant.

The Commission, without a "freeze," has dealt with both the problem of excessive payoffs and requiring of greater financial details which demonstrate an applicant's ability to build and operate the proposed facility. The opening of the field for expensive economic studies would subject applicants to the potential of being "bled to death" by the objections, petitions and threatened protracted litigation financed by those who may fancy themselves as aggrieved, or see a chance for profit from litigation. The Commission would be ill-served by this additional

workload and its processes would be subjected to the potential of "greenmail" on a scale never before seen in regulatory administration.

Enforce the present showing requirements. Do not hesitate to verify representations and claims submitted in sworn applications. Employ the weapon of prosecution for perjury where such occurs. Become fast, fair and firm in the application of the Rules and the forms which seek information under them. Demonstrate administrative precision and effectiveness. Do not allow the FCC to become the follower of any trade organization.

4. The upgrading process: The NAB proposes that upgrading be continued for existing stations. That is proper.

However, upgrading, relocation of transmitters and like activities may impact the availability of channels for first services. In the context of a "freeze" applied only to new applications, Rule-Making proposals, etc., the Commission would deny itself the ability to weigh the comparative merits of potentially conflicting proposals. The NAB request is obviously self-serving in that it protects the freedom of action for the "haves" and denies for an undetermined period of time any equity for the "have nots."

A simple example would be the use of a transmitter relocation on the part of an existing station to accomplish a de facto move to another city or market while closing up an area where a new allotment could otherwise be made, providing for diversity of services or the initiation of new services.

5. Economic evaluations: Depending upon the standards set, such a requirement would spawn a whole new cadre of personnel within the Commission with untold budgetary impact. It would delay the processing of applications. It would add greatly to the cost of proposals. It would open opportunities for litigation and challenge. At best, it would be subjective, relying on generally available economic information, providing novel tracks for litigation, assuming an unproven level of expertise on the part of the licensee or applicant, and ignoring the impact of the type of format to be broadcast. Years ago the application filing pattern included the collection of letters showing potential advertiser support. These were found to be worthless then, in the 1940's and 1950's, and they would be worthless now. The lack of objectivity in such an approach renders it valueless as a processing tool.

6. Economic burden: President Bush has rightly called upon the administrative agencies to restrict the adoption of Rules which add to the economic burden of the nation. Given the total lack of any emergency and the evident financial burden the proposals could add for both the Commission and prospective applicants, it is clear that the NAB's request is contrary to the spirit of the President's request.

7. DAB: The trade press reports the U. S. position with respect to DAB to be favoring spectrum space above 2 GHz. Canada appears set on 1.5 GHz. In both cases, the FM band would not be involved. Even if the FCC should change its mind about use of the present band for DAB, the impact of continued processing of applications (few as they are) is minimal when compared with the

investment in the existing 6,123 commercial and non-commercial FM broadcast stations in the United States. Again, this is no draconian emergency where DAB is even inhibited by the completion of the present FCC processes and continued orderly development of the FM band.

POTENTIAL SOLUTIONS

Given the fact that the Commission should not take action in the absence of an emergency which would deny the rights of present applicants, there still remain alternatives which would improve the process and assuage the fears of existing broadcasters. These can include, but are not limited, to the following:

1. Delete unused and unapplied for allotments six months after their being added to the Table of Allotments, §73.202.

2. Eliminate the use of the filing "window." This tends to pressure the potential applicants and has encouraged multiple and in many cases predatory filings. The firm application of §1, above, would be sufficient encouragement for filing of a well-planned application.

3. Verify financial exhibits and claims for sources of financing. Require sufficient information so as to permit FCC personnel to rapidly and effectively perform this verification.

4. Require an analysis with Rule-Making proposals to illustrate the electrical impact on other allotments. This could include identification of a typical site, calculation of contours from such a site to permit determination of co-channel and adjacent channel effective limits while maintaining the minimum separations of §73.207. Where competing Rule-Making requests are filed, make

the presumption that the proposal providing at full facilities the least impact on existing allotments would have a technical preference. This would not be decisional apart from community need factors, but should be considered.

5. Reassert the preemption of spectrum allocation by the FCC as opposed to the FAA. Eliminate the unconscionable actions of the FAA in its refusal to act promptly on structural matters while delaying processing at the Commission as a result of application of its flawed EMI computer program. Where structural clearance only can be obtained, the Commission should actively enter into the fray by making conditional grants of construction permits, providing for field evaluation of perceived potential EMI problems, and assisting the FAA and applicants in the identification of alternatives such as proper assignment of FAA radio facilities. (It is noted that the current FAA EMI programming suggests that major airports such as Chicago O'Hare, the world's busiest, cannot be safely used! This aberration and unilateral assumption of FCC prerogatives by the FAA must be brought to a halt!)

6. The Commission should review its own internal processing procedures. Delays should be minimized and internal coordination improved.

7. Enforcement of license terms should be made a top priority. The potential for over-power operation is present more now in FM than ever before. Effective inspection will assist in caring for this growing problem. Recognition of the interference this creates and the prompt remediation of violations should be a priority with the FCC. Lack of prompt response can encourage

violaters and permit intolerable interference to continue. Coordination of field inspection with prompt and even-handed enforcement actions will go far in reducing the cheating which now occurs too often. The ready availability of transmitting equipment having power capabilities unrelated to the limitations of the allocation or license has fostered such abuse. The lack of definitive antenna mounting and operational requirements and verification has also contributed to this problem. This is not "freeze" material, however.

Some of the complaints of interference or poor coverage can be attributed to poor antenna performance due to mounting positions such as on the side of large cross-section towers. A number of studies have shown that "non-directional" patterns can actually be reduced to 25% field in either the vertical or horizontal radiation mode, or both, by an uncorrected condition resulting from substandard mounting of the FM transmitting antenna. The Commission could make a running change in the Rules looking toward enforcing improvements on existing stations at a future date, as well as requiring all new stations to make an appropriate study/showing concerning the antenna proposed and its method of mounting. The FM Translator Rules have been strengthened -- why not the FM Broadcast Rules?

CONCLUSION

The NAB's request was, perhaps, not totally untimely, but it is misdirected. It calls for retreat rather than advance. It implies that the Commission is incapable of leadership excepting in a dormant state. It ignores the roots of the situations it

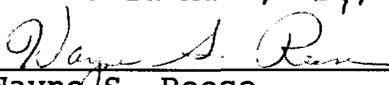
deplores, it exaggerates their nature and seriousness, and it calls for a non-solution with a benefit for the "haves." We believe that the Commission is capable of exceptional leadership, and that the suggestions made above can assist it to once again rise to the challenges which lie ahead. A refreshing zephyr can blow across the troubled chords of the industry when the Commission calls for a march forward and refuses the siren call to "sound retreat."

Respectfully submitted,

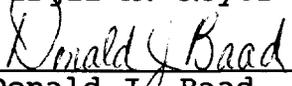
E. HAROLD MUNN, JR. & ASSOCIATES, INC.

April 16, 1992

By 
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CERTIFICATE OF SERVICE

I hereby certify that two copies of the attached COMMENTS OF E. HAROLD MUNN, JR. & ASSOCIATES, INC. have been placed in the U. S. Mails, first class, with postage fully prepaid, addressed to the party listed below.

April 16, 1992



C. Ella Munn, Vice President

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