AMERICAN SECURITY BANK

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 12, 1992

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

Re: Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; MM Docket No. 92-51

Dear Ms. Searcy:

MNC Financial, through its subsidiary, American Security Bank (collectively "MNC"), is pleased to have this opportunity to file Comments in this proceeding.

INTRODUCTION

MNC has been an active lender to radio and TV broadcasters for approximately 15 years. We actively expanded our communications business line during the 1980's, developing a loan portfolio in excess of $250 million, making MNC one of the largest lenders to communications businesses in the Washington/Baltimore Metropolitan areas. The bank's policy towards communications lending has been to make loans on a secured basis, which is consistent with our lending practices in connection with other commercial loans. The banking industry has been concerned with obtaining the appropriate security for communications loans due to: the high leverage inherent in a broadcast company; the reliance on cash flow, which can prove volatile, for debt repayment; and, the comparatively small amount of fixed assets or other collateral sources relative to the loan balances.

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List A B C D E

Because of a combination of unusual circumstances, the Commission is currently faced with a unique situation where two major industries -- the banking industry and the broadcast industry -- are both facing significant concerns. By implementing proposals to grant security interests in broadcast licenses to lenders, the Commission can do a great service to both industries. The fact that banks are not currently looking favorably upon loans to broadcasters is clearly illustrated in a recent article in Broadcasting, by Peter Viles, entitled "Are There Any Bankers In The House?" (April 20, 1992, p.36). That article points out, among other things, that at the recent National Association of Broadcasters convention there were no bankers present for a panel discussion on the relationship between broadcasters and their bankers, and that while the broadcast industry appears to be full of good opportunities, financing problems make it impossible to take advantage of these opportunities. MNC believes that the greater availability of capital which may be provided by allowing security interests in broadcast licenses could strengthen both the broadcast and banking industries in this time of recession.

MNC CURTAILS LENDING ACTIVITY

With the onset of the recession, MNC along with other lenders to this industry, experienced a substantial decline in the quality of the loans in the communications portfolio, due to high leverage and declining advertising revenues. As a result, some of these loans became criticized by federal regulators, as the stations were unable to comply with the terms of their original agreements. Amidst these difficulties, we curtailed lending activity in the communications market due to structural reasons (i.e., we could be effectively unsecured) and to reevaluate the risks and our desire to continue financing this industry. The troubled loans in this portfolio have been difficult to resolve due to concerns over the treatment of the FCC licenses and how those licenses would be treated in a bankruptcy situation; the inability to have a security interest in a license, in effect, reduces the value of the bank's collateral and limits the standard rights and remedies that normally exist in other commercial loans. A ruling by the FCC to allow a security interest to be taken in a license would have facilitated timely resolutions of problem loans, by providing adequate security for the loans, and made the risks inherent in lending to the communications industry consistent with the risks existing in other commercial loan situations.

VALUE OF COLLATERAL

The bank's primary concern has been with the value of its collateral. We typically secured the broadcast loans with all the assets of the borrower and a pledge of the common stock of the broadcast company. The collateral was valued on a going concern basis as the hard assets were minimal, and the market value of the properties were based on a multiple of cash flow. Similar to other commercial loans, the bank is reliant on the cash flow of the borrower as its primary source of repayment for an obligation; but we must also ensure that the collateral provides adequate protection in case the borrower is unable to repay the loan in accordance with the previously agreed upon terms. This structure is standard for any commercial loan. The primary asset of value is the FCC license. Given the minimal hard assets, limited alternative sources of collateral exist to support their obligations. As such, the previous financing had been based on the going concern value of a broadcast property as the bank believed that in troubled situations the bank could sell the station(s), subject to FCC approval, to repay the obligation.

RECENT RULINGS

Recent court rulings are sending mixed signals to lenders (see, e.g., New Bank of New England v. Tak Communications, Inc., DC WWis, No. 91-C-935-C, 3/23/92 (4 BBLR 402, 4/9/92, and In re Oklahoma City Broadcasting Co., 68 RR/2d 94, US BankrCt WOK 1990) and have heightened our concern with respect to being adequately protected as the outcomes have resulted in the lenders having been denied their standard rights as secured creditors; since most of the value of a station is held in the FCC license, its exclusion from UCC liens virtually places the lenders in an unsecured position in bankruptcy. Without adequate security in the bankruptcy as well as the general context, it makes it difficult, if not impossible, for banks to extend financing and still comply with the banking regulations requiring that loans be made in a safe and prudent manner.

LENDERS CONTINUE TO EXIT

MNC is currently revisiting the communications market; however, our credit policies must remain prudent and preclude us from lending the amounts required by stations on an unsecured basis. The collateral issue is significant in determining our ability to re-enter the market as our policies are firm. The market for broadcast properties is primarily driven by financing sources; however, if lenders are forced to consider these situations on an effectively unsecured basis, many lenders may exit the market as this structure exceeds our industry's risk tolerance. Broadcast financing has already experienced a decline due to the concern that our previously perceived secondary source of repayment is at risk. If broadcast financing continues to be limited, sales of radio and TV properties will be difficult, if not impossible to achieve as the transactions will require all equity.

ADDRESSING COMMISSION CONCERNS

The Commission raised the following concerns relating to the granting of security interests: 1) the likelihood that creditors will attempt to exercise influence over a borrower station; and, 2) lenders will not be encouraged to help stations work through temporary problems. These concerns are not unlike concerns faced in any commercial loan situation. Banks are in the business of making successful loans that comply with the terms of the loan agreement; banking institutions are not in the business of operating businesses obtained through foreclosure, and are penalized financially for loans that result in that situation. Thus, we have a greater incentive to "work through" temporary problems. In fact, banks face "lender liability" risks in exercising control over its borrowers and are prohibited by law from being in nonfinancial businesses. In a troubled situation, banks are extremely concerned about exercising management control over its borrowers due to the liability associated with operating a company. We are solely interested in ensuring that the sale of the broadcast property, subject to normal FCC transfer approvals, can be effected to satisfy the outstanding obligation. This is based on the fact that a going concern has the greatest value, and a lender will always attempt to ensure the highest and best use of all of the borrower's assets.

CONCLUSION

In allowing stations to grant a security interest in their FCC licenses, the FCC will allow banks to make communications loans with the same risk rating as other commercial loans. If the risk of lending to communications companies is not artificially higher than other commercial situations, then lenders might be more willing to enter the market for the mutual benefit of both industries.

Thank you for your consideration in this matter.

Sincerely,

Kristen P. Lamb
Vice President