

**ORIGINAL
FILE**

O'MELVENY & MYERS

400 SOUTH HOPE STREET
LOS ANGELES, CALIFORNIA 90071-2899
TELEPHONE (213) 669-6000
FACSIMILE (213) 669-6407

1999 AVENUE OF THE STARS
LOS ANGELES, CALIFORNIA 90067-6035
TELEPHONE (213) 553-6700
FACSIMILE (213) 669-6779

610 NEWPORT CENTER DRIVE
NEWPORT BEACH, CALIFORNIA 92660-6429
TELEPHONE (714) 760-9600
FACSIMILE (714) 669-6994

CITICORP CENTER
153 EAST 53RD STREET
NEW YORK, NEW YORK 10022-4611
TELEPHONE (212) 326-2000
FACSIMILE (212) 326-2061

555 13TH STREET, N.W.
WASHINGTON, D. C. 20004-1109
TELEPHONE (202) 383-5300
TELEX 89622 · FACSIMILE (202) 383-5414

EMBARCADERO CENTER WEST
275 BATTERY STREET
SAN FRANCISCO, CALIFORNIA 94111-3305
TELEPHONE (415) 984-8700
FACSIMILE (415) 984-8701

10 FINSBURY SQUARE
LONDON EC2A 1LA
TELEPHONE (071) 256-8451
FACSIMILE (071) 638-8205

AKASAKA TWIN TOWER, EAST 18TH FLOOR
2-17-22 AKASAKA, MINATO-KU
TOKYO 107
TELEPHONE (03) 3587-2800
FACSIMILE (03) 3587-9738

AVENUE LOUISE 106
1050 BRUSSELS
TELEPHONE (02) 647-06-50
FACSIMILE (02) 646-47-29

June
12th
1 9 9 2

WRITER'S DIRECT DIAL NUMBER

(202) 383-5233

OUR FILE NUMBER

600,000-012

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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JUN 12 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Comments of O'Melveny & Myers on the Review of the
Commission's Regulations and Policies Affecting
Investment in the Broadcasting Industry
(MM Docket No. 92-51)

Dear Ms. Searcy:

Enclosed for filing please find one original and nine copies of the Comments of O'Melveny & Myers on the Review of the Commission's Regulations and Policies Affecting Investment in the Broadcasting Industry.

Please direct any questions or correspondence with respect to this matter to the undersigned, John Beisner or Bill Satchell of this office.

Sincerely,

Kari E. Dohn

Enclosures

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JUN 12 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Review of the Commission's)
Regulations and Policies)
Affecting Investment in the)
Broadcasting Industry)
_____)

MM Docket No. 92-51

COMMENTS OF O'MELVENY & MYERS

June 12, 1991

John H. Beisner
William H. Satchell
Kari E. Dohn
O'MELVENY & MYERS
555 13th Street, N.W.
Washington, D.C. 20004-1109

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SUMMARY OF COMMENTS

(1) The broadcast industry faces a significant capital crisis that will only worsen as broadcasters respond to various technological initiatives, such as Digital Audio Broadcasting and Advanced Television.

(2) Financial institutions would be less leery of loaning to broadcasters if the Commission declared that limited security interests in broadcast licenses, the major item of value held by a broadcaster, are consistent with the Communications Act and relevant policy considerations.

(3) To the extent that the Commission believes that prior rulings prohibit security interests, the Commission should be mindful that it is not powerless to change prior statutory interpretations and policies and that under Supreme Court precedent, it should consider alternatives on a continuing basis.

(4) A refusal by the Commission to endorse limited security interests because of prior Commission precedents would be difficult to reconcile with the fact that (1) those precedents do not consider or address limited security interests, (2) the language of the Communications Act does not prohibit such security interests, (3) the legislative history of the Act manifests a congressional intent to allow (not prohibit) such

security interests, and (4) policy considerations (particularly the need to satisfy increasing capital demand among broadcasters) dictate the need for allowing limited security interests.

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In the Matter of
Review of the Commission's
Regulations and Policies
Affecting Investment in the
Broadcasting Industry

MM Docket No. 92-51

COMMENTS OF O'MELVENY & MYERS

On April 1, 1992, the Commission released a "Notice of Proposed Rule Making and Notice of Inquiry" ("NPRM") seeking "comment on possible means for reducing unnecessary regulatory constraints on investment in the broadcast industry." (NPRM at 1.) These Comments respond to the NPRM request for comments on the statutory and policy implications of allowing security interests in FCC licenses.¹ (NPRM at 9-12.)

The law firm of O'Melveny & Myers frequently advises clients, including banks and other financial institutions, concerning purchases or sales of communications companies,

¹ These comments do not address in detail the Commission's request for comments on possible changes in its ownership attribution rules (NPRM at 9), on the permissibility of reversionary interests in broadcast license (id. at 9-12), or on the "other financing mechanisms" referenced by the NPRM. (Id. at 12.)

acquisition and working capital financings for communications companies, workouts of troubled communications companies, and related bankruptcy matters.

These Comments urge a Commission declaration that limited security interests in FCC broadcast licenses are consistent with the Communications Act and relevant policy considerations. For purposes of these Comments, a "limited security interest" means a security interest that (a) leaves control of the license with the licensee (even following a default on the loan to which the security interest is related) unless and until the Commission has approved an assignment of the license to a new party and (b) requires that in the event of foreclosure, the license be offered at public or private sale together with the assets in which the security interests are held.

I. THE COMMISSION'S POLICIES REGARDING SECURITY INTERESTS IN BROADCAST LICENSES ARE A MAJOR IMPEDIMENT TO ATTRACTING CAPITAL TO THE BROADCAST INDUSTRY.

As the Commission has recognized, the broadcast industry is highly leveraged. (NPRM at 1 n.1.) As such, the industry is more susceptible to financial pressures. The Federal Reserve Board has noted that

[t]he high volume of debt relative to equity that is characteristic of [highly leveraged businesses] leaves little margin for error or cushion to enable [them] to

withstand unanticipated financial pressures or economic adversity. Two principal financial risks associated with leveraged buyout financing are: (1) the possibility that interest rates may rise higher than anticipated and thereby significantly increase the purchased company's debt service burden; and/or (2) the possibility that the company's earnings and cash flow will decline or fail to meet projections, either because of a general economic recession or because of a down turn in a particular industry or sector of the economy.

Federal Reserve Commercial Banking Examination Manual, Commercial Loans, § 206.1, at 2.

Because broadcasting organizations are dependent on cash flows and are therefore prone to volatile financial performance, such organizations, particularly small, locally-owned stations and minority-controlled licensees, have difficulty accessing public credit markets. See "TV Stations Can't Bank on Wall Street," Broadcasting, June 1, 1992, at 39. Indeed, except for a short period during the 1980s, investors (other than banks and similar lenders) have shown relatively little interest in the non-investment grade debt of broadcasters. The broadcasting industry thus is far more reliant on financial institutions for capital than many other industries.

This situation has created a capital crisis for broadcasters because financial institutions are coming under increasing pressure to avoid broadcast industry loans. Because broadcasting and other media loans often are highly leveraged and rely heavily on cash flows, federal banking regulators have

insisted that many such loans, even loans to relatively strong borrowers, be designated as "Highly Leveraged Transactions" or "HLTs." See, e.g., "Bank Regulators Proposed Changes on Highly Leveraged Transactions," 23 Sec. Reg. & L. Rep. (BNA) 1079 (1991); "ABA Task Force to Meeting with Regulators on HLT Definition," XIV Bank Letter, No. 4, at 6 (Jan. 29, 1990). These designations make such loans much less attractive to financial institutions.² This situation has been compounded by heavy criticisms from both regulators and the marketplace that some banks have extended what are perceived as excessive levels of risky broadcast debt. See, e.g., The American Banker, Apr. 6, 1992, at 2; The American Banker, Apr. 2, 1990, at 1.

Obviously, there is little the Commission can do to change the inherent qualities of broadcast loans. But the Commission's failure to declare that financial institutions may obtain limited security interests in broadcast licenses has made a bad situation much worse.

The risks involved in making highly leveraged term loans to the broadcast industry make it difficult for lenders to even consider extending credit that is not fully collateralized. The importance of collateral in term lending to a highly

² Recent regulatory actions purporting to eliminate the uniform definition of HLTs (see NPRM at 1 n.1) cannot be relied upon to remove this source of difficulty. The SEC may force financial institutions to retain the uniform definition, maintaining market pressure on institutions with high HLT exposure.

leveraged borrower has been noted by federal banking regulators.

The Federal Reserve Board, for example, has stated that

[t]erm loans involve greater risk than do short-term advances, because the length of the time the credit is outstanding. Because of the greater risk factor, term loans usually are secured and may require amortization. Loan agreements on such credits normally contain restrictive covenants during the life of the loan [G]iven the amount of debt involved in leveraged buyouts, the value of collateral is extremely important, and the risk that collateral coverage may be insufficient to protect the bank is a significant factor in evaluating the credit worthiness of these loans.

Federal Reserve Commercial Bank Examination Manual, Commercial Loans, § 206.1 at 1-2.

In almost any other U.S. industry, a financial institution can reasonably expect to obtain a security interest in the key assets of a borrower. Such collateralization greatly improves the likelihood that the loan will be repaid even if the borrower fails. A broadcast license is by far the most valuable asset of a broadcasting business. Thus, by purportedly adopting a "policy prohibiting third party security interests" in broadcast licenses (NPRM at 11), the Commission has hindered adequate collateralization of broadcast industry loans, making them even less attractive.

The concern of financial institutions that the apparent Commission broadcast license/security interest policy obstructs proper collateralization of broadcast industry loans is not just

an idle worry. In Oklahoma City Broadcasting Co., 112 B.R. 425 (Bankr. W.D. Okla. 1990), a bank loaned money to a television station and obtained a security interest in all of the station's assets. Id. at 427-28. Thereafter, the station entered a Chapter 11 reorganization. Id. at 427. The bank argued that its security interest encumbered the full \$3 million value of the station. Id. at 430. However, the court held that the bank had a priority interest in only \$2 million, the value of all assets other than the broadcast licenses. Id. at 430-31. It reasoned that the bank did not have a security interest in the FCC license and that the full value of the station therefore was not encumbered by the bank. Id. The \$1 million differential was distributed among unsecured creditors. Id.

Similarly, in Tak Communications, Inc., 70 RR 2d 810 (W.D. Wis. 1992), a federal district court affirmed the finding of a bankruptcy court that due to FCC policies, several banks did not have valid security interests in the FCC licenses of a broadcaster in Chapter 11 proceedings to whom they had earlier lent \$170 million. As a result of the ruling, the banks became unsecured creditors with respect to the most valuable assets of their borrower -- the broadcaster's licenses.

As discussed above, loans to broadcasters are by definition often riskier than loans in other industries. The significant losses sustained by banks in cases like Oklahoma City and Tak Communications further deters lending to broadcasters

because the debtors are unable to pledge their most valuable assets -- their FCC licenses. In short, Commission policies on security interests exacerbate the capital crisis faced by broadcasters by further discouraging financial institution investment in broadcasting. This reluctance to loan to broadcasters disproportionately impacts small, locally-owned stations and minority-controlled broadcasters, which frequently lack the outside resources necessary to convince lenders that loans will be repaid.

II. ALL RELEVANT FACTORS FAVOR ALLOWING CREDITORS TO HAVE LIMITED SECURITY INTERESTS IN BROADCAST LICENSES.

In its NPRM, the Commission specifically sought comments on "possible means for reducing unnecessary regulatory constraints on investment in the broadcast industry." (NPRM at 1.) As previously shown, the Commission's apparent hostility toward broadcast license security interests is a major impediment to the flow of capital into the broadcast industry. As is outlined below, that hostility clearly is "unnecessary" inasmuch as it is required by neither the Communications Act, its legislative history, prior Commission precedent, nor relevant policy considerations.

A. A Limited Security Interest In A Broadcast License Would Not Violate the Communications Act.

The NPRM states that the Commission's "policy prohibiting third party security interests" is based upon "statutory provisions prohibiting the grant of ownership interests in the spectrum," namely 47 U.S.C. §§ 301, 304, and 309(h)(1). (NPRM at 11 & n.33.) A limited security interest, however, would offend none of these statutory provisions.

Section 301 establishes that the purpose of Title III of the Communications Act is

to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of a license.

A limited security interest in a broadcast license would not "create any right, beyond the terms, conditions, and periods of the license." By definition, a debtor cannot give a security interest in a privilege that the debtor does not have. For the same reason, a security interest would not in any way impair "the control of the United States" over any privileges granted by the license.

Similarly, a limited security interest would not cause "channels of radio transmission" to be "owne[d]." The NPRM notes

that section 1-201 of the Uniform Commercial Code defines a security interest as "'an interest in personal property or fixtures which secures payment or performance of an obligation.'" (NPRM at 9 n.25.) The quotation of this isolated UCC section seems intended to suggest that allowing even limited security interests in broadcast licenses would be, in contravention of section 301, an acknowledgement that a broadcast license is a vested property right. But the term "property" is defined very broadly under the UCC. Indeed, one category of "property" included in this definition is any privilege that would be of value as between private parties. For example, in Freightliner Market Devel. Corp. v. Silver Wheel Freightlines, Inc., 823 F.2d 362, 369-70 (9th Cir. 1987), the court validated a security interest in a transportation operating license, holding that it was "property as between private parties," even though it was a privilege rather than property in the eyes of the agency that issued the license. Similarly, in Paramount Finance Co. v. U.S., 379 F.2d 543, 544-45 (6th Cir. 1967), the court validated a security interest in a liquor license which could not be transferred to another holder without approval of the issuing agency.

As the Commission previously noted in Bill Welch, 3 FCC Rcd. 6502, 6503-04 (1988), section 301 was intended to address "congressional concerns that the Federal Government retain ultimate control over radio frequencies, as against any rights, especially property rights, that might be asserted by licensees

who are permitted to use the frequencies." But as the Commission also noted in Bill Welch, even though a broadcast license may not create ownership rights in a license frequency, it does create rights that are of value as between private parties:

"While a station license does not under the Act confer an unlimited or indefeasible property right -- the right is limited in time and quality by the terms of the license and is subject to suspension, modification or revocation in the public interest -- nevertheless the right under a license for a definite term to conduct a broadcast business requiring -- as it does -- substantial investment is more than a mere privilege. A broadcasting license is a thing of value to the person to whom it is issued. . . . [P]rovisions of the Communications Act itself . . . recognize that a broadcasting license confers a private right, although a limited and defeasible one."

Id. at 6505 n.27 (quoting L.B. Wilson, Inc. v. FCC, 170 F.2d 793, 798 (D.C. Cir. 1948)).

It is that "value to the person to whom [a broadcast license] is issued" in which institutional lenders seek a limited security interest. Obviously, allowing such a security interest would not transform a broadcasting license into an unlimited and indefeasible right to a frequency, which was Congress' only concern in enacting section 301.

A limited security interest is also consistent with section 304. That section states that

[n]o station license shall be granted by the Commission until the applicant therefor shall have

signed a waiver of any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

The creation of a limited security interest does not have the effect of granting any license; it merely creates an interest in a license that has already been granted. Thus, this section simply does not apply to the creation of a limited security interest. And in any event, by the terms of a limited security interest, no transfer of control or assignment of the license could occur until after approval of the Commission, at which time the required waiver could be obtained from the new grantee.

Finally, section 309(h) specifies that any station license shall be subject to a condition that the license "not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein." As stated previously, a limited security interest in a license cannot bestow rights to any privileges beyond the scope of the license. Thus, a limited security interest is necessarily consistent with section 309(h).

The NPRM also states that the "policy prohibiting third party security interests" also is based upon "statutory provisions prohibiting . . . the assignments by licensees of their interest in a license without prior Commission approval,"

namely sections 310(d) and 309(h)(2). (NPRM at 11 & n.34.) But as noted previously (see p. 2 supra), a limited security interest, by its terms, may not be exercised so as to effectuate a transfer of control of the license until that transfer is first approved by the Commission, as required by section 310(d).

According to the NPRM, Capstar Communications, Inc. ("Capstar"), has suggested that the "possession of a security interest will enable lenders to gain a property right that is independently enforceable outside the bounds of the Commission's statutory control, such as in a state court." (NPRM at 10.) This assertion is patently false. In support of its position, Capstar cited section 9-503 of the Uniform Commercial Code, which provides that "unless otherwise agreed, a secured party has on default the right to take possession of the collateral" and that "a secured party may proceed with that judicial process if this can be done without breach of the peace" (Id. (emphasis added).) In making its argument, Capstar ignores the "unless otherwise agreed" language in Section 9-503. As noted above, under a limited security interest, the parties would "otherwise agree" that the broadcast license could not be assigned without prior Commission approval, leaving no possibility that section 310(d) could be violated.

Capstar also ignores the fact that nothing in the UCC purports to supersede or excuse secured creditors from compliance with other bodies of state or federal law. To the contrary, UCC

section 1-103 specifically incorporates other laws so as to invalidate rights purportedly created by the UCC that are inconsistent with those laws. Consequently, any restrictions on the remedies of secured creditors with respect to broadcast license collateral imposed by the Commission under authority of the Communications Act will be incorporated by the UCC. Further, any authority arguably granted by the UCC in contravention of section 310(d) or other provisions of the Communications Act or FCC rules would be rendered inoperative under federal preemption principles. See, e.g., City of New York v. FCC, 486 U.S. 57, 63, 64 (1988); Metro Broadcasting, Inc. v. FCC, 110 S.Ct. 2997 (1990). In sum, there is no merit to the suggestion that if a limited security interest were permitted, the UCC would authorize secured creditors to assign licenses without prior Commission approval or otherwise cause the Commission to lose control of matters subject to its supervision.

B. Nothing In The Communications Act Legislative History Suggests A Congressional Intent To Prohibit Limited Security Interests.

As noted previously, the NPRM suggests that the terms of sections 301, 304, 309(h) and 310(d) of the Communications Act prohibit security interests. (NPRM at 11 & nn. 33, 34.) Not only is this assertion unsupported by the language of these sections, as discussed above, but nowhere in the hundreds of pages of the Communications Act legislative history is there any suggestion of a congressional desire to prohibit the granting of

limited security interests. In fact, at the several junctures when Congress discussed creditors rights, it did not even consider the issue of security interests in drafting sections 301, 304, 309(h) and 310(d).³

As the Commission emphasized in its Bill Welch decision, legislative history indicates that sections 301, 304, and 309(h) were intended merely to clarify that no property rights may be obtained in the radio frequencies assigned by the Commission. 3 FCC Red. at 6503. See also 75 Cong. Rec. 789-91 (1932) ("[t]he clear intent of the law is . . . that the license to operate a radio station [is] only a temporary permit") (statement of Rep. LaGuardia); id. at 791 (statement of Rep. Chipperfield). These provisions, however, were not intended to reject the self-evident notion that broadcast licenses bestow limited privileges that are valuable to the holder and to other private parties. See Bill Welch, 3 FCC Rcd. at 6503.

The legislative history of Sections 1, 5, 11, and 12 of the Radio Act of 1927, the predecessors to Section 301, 304, 309(h), and 310(d) of the Communications Act,⁴ similarly does not manifest a congressional intent to prohibit limited security interests in broadcast licenses. To the contrary, Congress'

³ See Hearings on H.R. 5589 before the House Committee on the Merchant Marine and Fisheries, 69th Cong., 1st Sess. at 24-25 (1925); 75 Cong. Rec. 3688 (1932).

⁴ S. Rep. No. 781, 73d Cong., 2d Sess. 6-7 (1934) (outlining prior bills leading to the 1934 Act).

concern was to prevent station operators from obtaining ownership rights in the radio spectrum, not in the limited privileges bestowed by the license itself.⁵

If anything, legislative history indicates that prohibiting limited security interests would not accord with congressional intent. An overriding goal of the 1927 Radio Act was to strike a balance between (a) correcting the "chaotic"⁶ disarray in the radio industry at the time and (b) allowing the radio industry to operate unencumbered by undue government restrictions that could hinder the industry's development. The legislative history of the Radio Act evidences considerable concern that the new radio legislation not place excessive government limitations upon the development of the broadcast industry. As Representative Chindblom stated, "[i]t is not the purpose of this legislation to interfere with the rights of anybody, but the purpose is to make it possible for everybody to enjoy the wonderful privilege of sending messages through the air."⁷ Senator Dill, the chief drafter of the 1927 Act, similarly described congressional intent:

⁵ See, e.g., 68 Cong. Rec. 2870-2871 (1927); 68 Cong. Rec. 3123 (1927); 62 Cong. Rec. 8400 (1922); and House hearings on H.R. 5589 at 24.

⁶ See, e.g., H.R. Rep. No. 1416, 67th Cong., 4th Sess. 2 (1923) ("present chaos"); 68 Cong. Rec. 4418 (1927) ("present chaotic conditions"); Hearings on H.R. 5589 at 10 ("too much crowding together, unscientific geographical distribution, overlapping, and confusion").

⁷ 64 Cong. Rec. 2344 (1923).

Radio has made such marvelous development in the United States, largely because it has been unhampered, that the committee hesitated to impose even the restrictions that are contained in the bill for fear we might hamper its future development⁸

Prohibitions on limited security interests are required by neither the plain language of the Communications Act nor its legislative history. Such restrictions are precisely the type of unnecessary regulatory hindrance to the growth and advancement of the broadcasting industry that the framers of our federal communications regulatory scheme were attempting to avoid.

C. Prior Commission Precedents Do Not Address Or Analyze The Characteristics Of Limited Security Interests.

In its NPRM, the Commission noted that its "policy prohibiting third party security interests" may be found in two cases: Radio KDAN, 11 F.C.C. 2d 934, on recon., 13 RR 2d 100, 102 (1968), aff'd on other grounds sub nom. Hansen v. FCC, 413 F.2d 374 (D.C. Cir. 1969), and Kirk Merkley, 94 F.C.C. 2d 829 (1983). Both cases involved conduct by creditors tantamount to the assumption of control over a license. Indeed, in Kirk Merkley, a creditor apparently ignored the Commission's authority altogether. However, neither case involved a limited security interest enforced by the creditor in accordance with the Communications Act.

⁸ 67 Cong. Rec. 12352 (1926).

In Radio KDAN, the former owner of a radio station sought to reclaim ownership pursuant to a "mortgage" on the station. As part of this reclamation effort, the former owner filed at the FCC an application to transfer control of the station back to himself in which he signed as both the assignor and assignee, claiming that the "mortgage" gave him, "in the event of default, the right to execute an assignment application as the mortgagor's attorney in fact." 11 F.C.C. 2d at 934 n.1. Not surprisingly, the Commission rebuffed the creditors' effort to sell the license to himself as though it were "a mortgageable chattel in the ordinary commercial sense." Id. at 934 n.1.

In Kirk Merkley, the former owner of a radio station asserted a state law-based reversionary interest in the station and obtained from a state court an order allowing recovery of the station to the exclusion of a third party to whom the radio station had been sold with the prior approval of the FCC. 94 F.C.C. 2d at 831-34. Again, not surprisingly, the Commission ruled that it had exclusive authority over a broadcast station's license and that the party it had approved as the licensee should retain the license, regardless of any adverse state court judgment against that licensee. Id. at 837-39.

The issues addressed in Radio KDAN and Kirk Merkley have nothing to do with limited security interests. Limited security interests do not transform FCC licenses into "mortgageable chattel[s] in the ordinary commercial sense" or

provide lenders with unfettered self-help remedies that contravene the Communications Act. Moreover, such security interests recognize that the federal regulatory authority of the Commission preempts any state remedies and that no transfer of control of a broadcast license may occur without the Commission's prior approval.

In the course of its rulings in both Radio KDAN and Kirk Merkley, the Commission made several broad statements about the availability of "mortgages" and "liens" with respect to broadcast licenses. Those statements, however, were outside the legal issues presented by those cases. Neither decision provides any explanation whatsoever as to how any provisions of the Communications Act prohibit such interests or even mentions (let alone analyzes) any legislative history on this point. Most importantly, however, there is simply no basis for arguing that these prior decisions prohibit limited security interests in broadcast licenses when, in fact, those decisions do not even consider or analyze the characteristics of a limited security interest.

D. Policy Considerations Favor Limited Security Interests.

In its NPRM, the Commission asked for comments on several "fundamental policy concerns that must be weighed in deciding whether to permit security . . . interests in broadcast licenses." (NPRM at 11.)

First, the NPRM asks "whether granting such [security] interests would be effective in increasing capital availability." (Id. at 11-12.) As noted at the outset, many considerations weigh against bank lending to broadcasting organizations. The apparent inability to obtain limited security interests exacerbates this problem, making the broadcast industry a less attractive candidate for loans versus most other industries, which typically do not have such restrictions. A clear signal that limited security interests in broadcast licenses are permissible would cause financial institutions to look more favorably on proposed loans in the broadcasting arena.

The NPRM also expresses concern about whether "the independence of stations [would] be maintained if security interests are permitted." (NPRM at 12.) In particular, the NPRM inquires about "the effect that holding a security . . . interest" may have on the "likelihood that creditors will attempt to exercise control or have substantial influence over a borrower station." (Id.) This inquiry ignores the fact that collateralized loans often afford borrowers relatively greater managerial latitude than unsecured loans. It is precisely because banks prefer not to run the businesses of their debtors, and because debtors prefer to maximize their flexibility to manage their own businesses, that lenders and borrowers frequently agree that highly leveraged term loans will be secured by collateral of substantial value in exchange for relatively

fewer operational covenants. In the broadcast arena, however, Commission policies on security interests make unavailable the key collateral -- the license itself. Because of the absence of ideal collateral, some financial institutions are inclined to protect themselves by including in their borrowing arrangements strict covenants and conditions that limit the entrepreneurial flexibility of the borrower. In short, Commission restrictions on security interests foster (not discourage) lender limitations on the independence of licensees.

This situation is exacerbated by the bankruptcy court rulings mentioned above. (See pp. 5-6 supra.) As discussed previously, those rulings, which deny the existence of security interests in broadcast licenses, render financial institution loans to broadcast entities largely unsecured. Obviously, if a broadcast borrower encounters financial difficulties, an unsecured lender will be much more tempted to inject itself in the business affairs of the licensee in an attempt to avoid a loss than a lender whose loan is fully secured. In short, allowing limited security interests would lessen the cause for lender involvement in a broadcast licensee's management.

III. THE COMMISSION SHOULD DECLARE THAT LIMITED SECURITY INTERESTS ARE PERMISSIBLE.

The NPRM is somewhat disturbing to the extent that it suggests a belief that prior Commission precedents tie the hands of the Commission, precluding careful consideration of the