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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

93-199

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MAR 11 1991

In the Matter of

Request for Rulemaking Setting  
Standards for Aviation Receivers

RM-7610

Federal Communications Commission  
Office of the Secretary

To: The Commission

COMMENTS OF FISHER BROADCASTING INC.

Fisher Broadcasting Inc. ("Fisher"), by its attorneys and pursuant to Section 1.405(a) of the Commission's Rules, hereby submits its Comments in support of the captioned Petition for Rulemaking ("Petition") filed by John Furr & Associates, Inc. ("Furr").<sup>1/</sup>

I. BACKGROUND

1. Fisher supports Furr's Petition and urges the Commission to adopt a Notice of Inquiry into the establishment of standards for aviation receivers used for navigation ("Avionics"). The Commission's proceeding should propose economically viable minimum Avionic receiver performance standards.

2. As the licensee of television stations KOMO-TV, Seattle, Washington, and KATU(TV), Portland, Oregon, Fisher has

<sup>1/</sup> The Petition was included in FCC Public Notice, Report No. 1836, released February 7, 1991. These Comments are timely filed by virtue of the fact that they are being tendered to the FCC on March 11, 1991, thirty days after release of the Public Notice.

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experienced the financial and technical burdens resulting from adverse FAA EMI determinations on a first-hand basis. For existing stations, FAA hazard determinations impede a broadcaster's implementation of improved technical facilities, as the processing of their applications by the FCC is expressly contingent on obtaining FAA clearance.<sup>2/</sup> For example, an adverse FAA determination will often force a broadcaster to change the height or location of a new tower or alter the station's proposed power levels. These measures frequently result in a loss of potential coverage area and signal quality to the public. Moreover, for proposed stations, such hazard determinations often preclude station construction at desired locations or with desired facilities, and the accompanying relocation and reengineering costs may erode an applicant's financial support. Thus, despite having no jurisdiction over communications licensing, the FAA has become a major impediment to the licensing of new or modified broadcast facilities.<sup>3/</sup>

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<sup>2/</sup> See, e.g., Memorandum Opinion and Order in MM Docket No. 88-358, FCC 91R-16, released February 27, 1991, para. 7, where the Review Board related that "[a]fter recent negotiations with the FAA, the [Mass Media] Bureau has adopted a policy of supporting grant of applications with EMI problems only when FAA approval has been obtained."

<sup>3/</sup> As of March 1, 1991, 77 applications for construction permits to modify FM facilities are being held up by lack of FAA approval. See FCC, Applications for Construction Permits to Modify FM Facilities Status Report as of Mar. 1, 1991.

3. The FAA is authorized to evaluate antenna tower construction proposals for effect upon the safety of airspace navigation.<sup>4/</sup> The focus of that evaluation has traditionally been on structural obstructions to the navigable airspace. However, in the last two years, the FAA has enlarged the scope of its evaluation to include the potential to cause EMI to aircraft and ground communications and navigation facilities. Furthermore, the proposals reflected in the FAA's recent Notice of Proposed Rulemaking make it clear that the agency seeks to subject more applications to their evaluation.<sup>5/</sup> Fisher believes that the FAA's focus is misguided. Rather than enacting interference regulations based on substandard reception equipment, the Furr Petition correctly suggests that the rational manner in which to limit harmful interference to Avionic receivers is for the FCC to establish reasonable minimum technical standards for Avionic receivers.

## II. FCC HAS STATUTORY AUTHORITY TO ESTABLISH AVIONIC RECEIVER STANDARDS

4. In 1934, Congress enacted the Communications Act (the "Act") and created the Federal Communications Commission for the purpose of regulating "communication by wire and radio so as to

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<sup>4/</sup> See 14 C.F.R. Section 77.23 (1988).

<sup>5/</sup> Notice of Proposed Rulemaking ("Notice"), Docket No. 26305, 55 Fed. Reg. 31,722 (August 3, 1990), subsequently corrected at 55 Fed. Reg. 32,999 (August 13, 1990), 55 Fed. Reg. 35,152 (August 28, 1990), and 55 Fed. Reg. 37,287 (September 10, 1990).

make available . . . to all the people of the United States a rapid, efficient, Nationwide, and worldwide wire and radio communication service. . . ."<sup>6/</sup> Moreover, the Commission is authorized to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions."<sup>7/</sup> The FCC's authority over radio communications is governed by Title III of the Act.<sup>8/</sup> In Title III, Congress specifically instructed the Commission to "encourage the larger and more effective use of radio in the public interest."<sup>9/</sup> To this end, Congress authorized the Commission to promulgate "such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act. . . ."<sup>10/</sup>

5. Congress in 1934 acted in a field that was "both new and dynamic", and it therefore gave the Commission "a comprehen-

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<sup>6/</sup> 47 U.S.C. Section 151 (1982). The statutory definitions of "communication by wire" and "communication by radio" include "all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission[s]." 47 U.S.C. Section 153(a)(b) (1982) (emphasis added).

<sup>7/</sup> 47 U.S.C. Section 154(i) (1982).

<sup>8/</sup> 47 U.S.C. Section 301 et. seq. (1982).

<sup>9/</sup> 47 U.S.C. Section 303(g), see National Broadcasting Co. v. United States, 319 U.S. 190, 219 (1943).

<sup>10/</sup> 47 U.S.C. Section 303(r) (1982).

sive mandate", with "not niggardly but expansive powers".<sup>11/</sup> Indeed, the legislative history of the Communications Act of 1934 indicates that the Commission was given "regulatory power over all forms of electrical communication. . . ." <sup>12/</sup> Hence, it was precisely because Congress wished to "maintain, through appropriate administrative control, a grip on the dynamic aspects of radio transmission," <sup>13/</sup> that it conferred upon the Commission a "unified jurisdiction" <sup>14/</sup> and "broad authority". <sup>15/</sup>

6. Within this framework, the Commission has previously found it in the public interest to regulate and set standards for reception equipment. For example, in the case of reception facilities associated with satellite systems, the Commission recognized that Title III of the Act gives the FCC the authority to establish technical standards for, and even license, reception

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<sup>11/</sup> National Broadcasting Co. v. United States, 319 U.S. 190, 219 (1943).

<sup>12/</sup> S. Rep. No. 781, 73rd Cong., 2nd Sess. 1 (1934), reprinted in A Legislative History of the Communications Act of 1934, at 711 (1989).

<sup>13/</sup> FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 138 (1940).

<sup>14/</sup> S. Rep. No. 781, 73rd Cong., 2nd Sess. 1 (1934), reprinted in A Legislative History of the Communications Act of 1934, at 711 (1989).

<sup>15/</sup> H.R. Rep. No. 1850, 73rd Cong., 2nd Sess. 1, reprinted in A Legislative History of the Communications Act of 1934, at 723 (1989).

equipment in order to "assure the quality of service intended for end use by the public."<sup>16/</sup>

7. As demonstrated herein, the "larger and more effective use of radio" is served by the use of efficient and reliable aviation navigation reception equipment. As the use of the spectrum grows, interference concerns are of increasing significance to the public at large. Even the slightest improvement in aviation reception equipment would significantly reduce any potential interference received by aviation navigation equipment and would result in the more efficient use of the radio spectrum by all users. This goal has its roots in the Communications Act of 1934, wherein Congress granted the FCC the authority to establish a pervasive system of regulation. Section 303 of the Act gives the Commission such numerous and far reaching powers that no doubt exists as to the extent of its authority to regulate aviation receivers.

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<sup>16/</sup> Domestic Communications Satellite Facilities, 22 F.C.C. 2d 86, 18 R.R.2d 1631, 1645 n.10 (1970). Cf. United States v. Southwestern Cable Company, 392 U.S. 157 (1968). The Commission subsequently found that it was in the public interest to deregulate Receive-Only Earth Stations. In re Regulation of Domestic Receive-Only Satellite Earth Stations, 74 F.C.C. 2d. 205, 46 R.R.2d 698 (1979). Similarly, in 1962, Congress passed the All Channel Receiver Act to allow the Commission to require that all television receivers "be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting." 47 U.S.C. Section 303(s) (1976) (emphasis added).

III. PETITIONER'S REQUEST FOR RULEMAKING  
SHOULD BE GRANTED

8. While the FAA's ostensible concern with safeguarding air navigation reception equipment from harmful EMI is laudatory, its focus on regulating transmitters is misguided. The essence of the FAA's concern stems from interference to the Avionic receivers in the form of "Third Order Modulation."<sup>17/</sup> This occurs within the receiver itself!<sup>18/</sup> Moreover, it is only the poorly conceived and constructed receivers that are particularly vulnerable to "Third Order Modulation."<sup>19/</sup> Hence, instead of promulgating interference regulations based on substandard reception equipment, the most efficient and economical method of limiting interference is to establish reasonable minimum performance standards for Avionic receivers. As was recently demonstrated in the Persian Gulf, there is no shortage of advanced aviation technology. Indeed, the Furr Petition indicates that "the Aviation Industry already uses Avionics that are superior to the 'worst case' equipment tested by the FAA. . . ."<sup>20/</sup> Not only is the burden of upgrading a few inferior receivers outweighed by public benefit of improved radio communication service, but public safety would be greatly served by replacing

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<sup>17/</sup> Petition at 2.

<sup>18/</sup> Petition at 2.

<sup>19/</sup> Petition at 2.

<sup>20/</sup> Petition at 3.

equipment susceptible to signals providing "false information to the pilot."<sup>21/</sup>

9. When Congress enacted the Communications Act of 1934, it established the FCC as the federal agency in charge of allocating and governing the use of the electromagnetic spectrum. Similarly, when Congress enacted the Federal Aviation Act of 1958, it established the FAA as the federal agency in charge of ensuring the safety of airspace navigation. Accordingly, the FCC was given the task of developing regulations to minimize interference problems, while the FAA was responsible for enacting rules to promote safety in air commerce in the navigable airspace. Although the Federal Aviation Act requires interagency sharing of jurisdiction and coordination between the FCC and the FAA,<sup>22/</sup> the FAA is attempting to preempt the field. The FAA's Notice proposes to adopt changes to Part 77 which were unilaterally cultivated, without public comment, and without FCC coordination. The FAA's current standards and proposed changes demonstrate its unwillingness to balance the needs of broadcasters for adequate access to the broadcast spectrum with the need to protect navigable airspace from interference. Consequently, Fisher believes that the Commission should initiate a public inquiry into the establishment of interference protection standards with a discerning eye focused on the development of minimum technical performance standards for Avionic receivers.

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<sup>21/</sup> Petition at 2.

<sup>22/</sup> 49 U.S.C.A. Section 1501(c) (West 1990).

IV. CONCLUSION

In view of the foregoing, Fisher Broadcasting Inc. supports the captioned Petition for Rulemaking filed by John Furr & Associates, Inc., and urges the Commission to adopt a Notice of Inquiry into the establishment of reasonable minimum technical standards for Avionic receivers.

Respectfully submitted,

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