

ORIGINAL RECEIVED  
FILE

MAR 11 1991

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

Federal Communications Commission  
Office of the Secretary

93-199 /  
RM-7610 ✓

In the Matter of  
Request for Rulemaking Setting  
Standards for Aviation Receivers

To: The Commission

**COMMENTS OF THE  
FEDERAL COMMUNICATIONS BAR ASSOCIATION**

The Federal Communications Bar Association ("FCBA"),<sup>1/</sup> pursuant to Section 1.405(a) of the Commission's Rules, hereby submits its comments in support of the above-captioned Petition for Rulemaking ("Petition") filed December 21, 1990, by John Furr & Associates, Inc. ("Furr"). The Petition was included in an FCC Public Notice (Report No. 1836) released February 7, 1991.

Furr requests the Commission to promulgate standards for aviation receivers. He notes that his communications clients have repeatedly experienced conflicts with the FAA and in many cases have received adverse "hazard" determinations under the FAA's model for predicting radio frequency interference ("RFI")

<sup>1/</sup> The FCBA is an organization of attorneys involved in the development, implementation and practice of communications law and policy. Although FCC employees constitute a significant portion of the FCBA's membership and are represented on the FCBA's Executive Committee, these members did not participate in the preparation of these comments or in the Executive Committee's consideration of these comments.

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with aircraft navigation receiver instruments.<sup>2/</sup> However, the assumptions and models on which the FAA bases its determinations of the potential for RFI are the subject of strong criticism from the FCC and others.<sup>3/</sup> Yet an adverse FAA determination may effectively prevent a station from building at the desired transmitter site or with the optimum technical facilities (thereby reducing spectrum efficiency); impose added burdens on broadcasters and applicants who may then lose financing or incur increased costs; and may ultimately prevent or delay communities from receiving timely new or improved broadcast services.

Adverse FAA determinations thus have a significant impact on the ability of the Commission to process efficiently applications for new or modified facilities, and on the ability of applicants and potential applicants to operate such facilities.<sup>4/</sup> Further, the FAA has proposed to require an FM or

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<sup>2/</sup> Petition at 1.

<sup>3/</sup> See FCC comments, in FAA Docket No. 26305, filed December 31, 1990, at 3 and 7. The assumptions and models were also criticized in many other parties' comments in the FAA proceeding. The Commission is well aware of these problems as it has for some time been negotiating with the FAA to revise the FAA's computer model and underlying assumptions. While the FAA has made minor alterations in its model, the problems noted herein and in Furr's Petition persist.

<sup>4/</sup> As of March 1, 1991, 77 applications for construction permits to modify FM facilities are being blocked by lack of FAA clearance. See FCC, Applications for Construction Permits to Modify FM Facilities Status Report as of Mar. 1, 1991. See also, Memorandum Opinion and Order in MM Docket No. 88-358, FCC 91R-16, adopted February 13, 1991, released February 27, 1991, ¶ 7, where the Review Board noted that "[a]fter recent negotiations with the  
(Footnote continued on following page)

television station, or a satellite uplink facility, to notify the FAA of "any alteration of a radio transmitting station".<sup>5/</sup> That proposal expressly portends an expansion of the scope of the FAA's evaluation of interference to air navigation to encompass a wide range of communications facilities, and, depending upon how the notification requirement is construed, it could be expanded regardless of whether the alteration would have any effect on air navigation. Such an expanded role for the FAA, under the current circumstances, would greatly exacerbate the conflict between the two agencies.

In the 1987 Amendments to the Federal Aviation Act, Congress required the FAA and the Commission to coordinate the handling of aeronautical studies related to broadcast applications.<sup>6/</sup> We think it clear that the Commission and FAA

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<sup>4/</sup>(Footnote continued from preceding page)  
FAA, the Bureau has adopted a policy of supporting grant of applications with EMI problems only when FAA approval has been obtained." The problem is aggravated in comparative new broadcast proceedings, wherein the great uncertainty related to the FCC's position on EMI issues and the degree to which the FCC defers to FAA hazard determinations result in administrative delay and waste of valuable FCC and private litigation resources. The FCC's ALJs and the Mass Media Bureau would be helped by guidelines to apply in these circumstances.

<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. 36,152 (August 28, 1990), and 55 Fed. Reg. 37,287 (September 10, 1990).

<sup>6/</sup> See 49 U.S.C.A. (Appendix) § 1501(c) (West 1990). ("In the administration of laws relating to broadcast applications and the conduct of aeronautical studies relating to broadcast towers,  
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have not yet achieved the level of cooperation that Congress mandated, and that is essential to protect aeronautical frequencies from harmful EMI while also providing Commission licensees, permittees and applicants fair, effective and timely access to spectrum.

The FCBA believes that the Commission should initiate a Notice of Inquiry to provide it with a record that will assist it in working with the FAA to develop appropriate avionic receiver and interference protection standards and policies. In addition to the matters raised in the Furr Petition, we urge that any inquiry also include the following issues:

- (1) the extent and nature of interference to aircraft and navigational communications caused by broadcasting stations;
- (2) the extent to which FAA adverse determinations, based on findings of EMI, have prevented the initiation of new and improved broadcast services to the public;
- (3) what approach the Mass Media Bureau, the Administrative Law Judges, and other subordinate authorities should apply in comparative new broadcast proceedings where EMI concerns are raised by the FAA or competing applicants;
- (4) the extent to which any interference problems can be eliminated through improving the immunity to interference of avionics receivers, and the extent of the Commission's

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<sup>g</sup>(Footnote continued from preceding page)  
the Federal Communication Commission (FCC) and the FAA shall take such action as may be necessary to efficiently coordinate the receipt, consideration of, and action upon such application and the completion of associated aeronautical studies.")

authority to regulate receiver performance;  
and

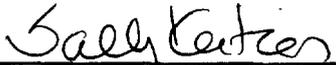
- (5) the proper roles of the FCC and FAA in determining methods of predicting interference to aviation communications and the methods that should be used to predict such interference.

**CONCLUSION**

For the reasons stated above, the FCBA requests the Commission to initiate an inquiry concerning aviation receiver standards and related interference issues.

Respectfully submitted,

THE FEDERAL COMMUNICATIONS BAR  
ASSOCIATION

  
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March 11, 1991

CERTIFICATE OF SERVICE

I, Judy Thorpe-Mitchell, do hereby certify that a true and correct copy of the foregoing "Comments of the Federal Communications Bar Association" was sent, via first class mail, on this date, March 11, 1991, to the following:

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