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March 11, 1991

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MAR 11 1991

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

93-199

Federal Communications Commission
Office of the Secretary

Re: Rule Making No. 7610 ✓

Dear Ms. Searcy:

Transmitted herewith on behalf of Grass Roots Radio, Inc., Guy Gannett Publishing Co., Inc., King Broadcasting Company and Nationwide Communications Inc. are an original and four copies of comments in Rule Making No. 7610.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,

FLETCHER, HEALD & HILDRETH



Edward W. Hummers, Jr.
Counsel for
Grass Roots Radio, Inc.
Guy Gannett Publishing Co., Inc.
King Broadcasting Company
Minnesota Public Radio
Nationwide Communications Inc.

EWH/sj
Enclosure
cc: Mr. John R. Furr (w/enc.)

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

MAR 11 1991

In the matter of)
)
Petition for Rulemaking)
Amendment of Part 87 of the)
Commission's Rules to)
Establish Technical Standards)
for Receivers Used in the)
Aeronautical Services)

RM 7610

Federal Communications Commission
Office of the Secretary

COMMENTS IN SUPPORT OF RULEMAKING
AND
REQUEST FOR ISSUANCE OF NOTICE OF INQUIRY

The following comments are submitted on behalf of Grass Roots Radio, Inc., Guy Gannett Publishing Co., Inc., King Broadcasting Company, and Nationwide Communications Inc. (hereinafter jointly referred to as "Broadcasters") in support of the Petition for Rulemaking filed On December 1, 1990 by John Furr & Associates, Inc.

Broadcasters are applicants, permittees and/or licensees of FM and TV broadcast stations, and include owners of tall towers subject to ancillary regulation by the Federal Aviation Administration. Broadcasters have experienced significant difficulty in obtaining FAA Determinations of No Hazard to Air Navigation for improved facilities for existing stations and for new stations because of alleged electromagnetic interference (hereinafter referred to as "EMI").

As the Commission is well aware, the FAA presently evaluates, by computer, potential EMI using the Airspace Analysis Model (hereinafter referred to as "AAM"). It is believed that the AAM computer program functions to provide

intermodulation interference protection to the "worst case" aeronautical receivers believed to be in general use. The inclusion of such a criterion and the use of the AAM to predict EMI for the specific location, height and power of FM and TV stations has resulted in the frustration of the processing of TV and FM applications.^{1/} The following experiences of Broadcasters are illustrative.

King Broadcasting has applied to the FCC to increase the antenna height of KING-TV and KING-FM, Seattle, Washington, by 349 feet at the presently licensed site, File Nos. BPCT-870811KG and BPH-861104IE, respectively. The increase in height of the FM station was necessary to preserve the Class C status of its allotted channel and to increase the service area of the station to reach the expanded Seattle metropolitan area. The increase in height of the TV station was necessary to overcome signal degradation resulting from new high-rise buildings and to increase the service area of the station to reach the expanded Seattle metropolitan area. In 1984, King sought from the Northwest Mountain Region of the FAA determinations of no hazard to air navigation for the tower height increase necessary for those facilities changes. In 1987, three years later, A Determination of Hazard to Air Navigation was issued for both the FM and TV proposals, citing "frequency interference" to Boeing Field International

^{1/} The Commission's March 1, 1991 Status Report of Applications for Construction Permits to Modify FM Facilities lists 325 blocked applications, of which 77 or 24% are designated as having an FAA problem.

and Seattle-Tacoma International Airports' ILS navigational aid from "brute force" interference to overflying aircraft. It should be noted, a computer study of the existing KING-FM and KING-TV facilities under the FAA's AAM also predicts brute force interference although no interference from the existing facilities has ever been reported in over 40 years of broadcasting from the site.^{2/} The engineering and legal expenses incurred by King have been substantial and the delay in approval of pending applications has denied FM and TV service to the public.

The experience of Nationwide Communications Inc. is no better. Since 1983, Nationwide has been endeavoring to increase the antenna height of FM Station WKZL, Winston-Salem, North Carolina. In informal discussions, the FAA advised that an increase in the tower height at its licensed location would create a hazard to air navigation. After extensive studies and further discussions with the FAA, Nationwide chose a new site and filed an application to change the site and increase the antenna height in order to maintain the Class C designation of its allotted channel, File No. BPH-860505IF. The FAA issued a Determination of Hazard to Air Navigation for that site on September 30, 1986. After further coordination with the FAA, a new site was specified but, on July 20, 1987, the FAA issued a

^{2/} The FAA's determination of hazard is the subject of an appeal in the U. S. Court of Appeals for the D. C. Circuit, King Broadcasting Company v. Skinner, Case No. 89-1399. The matter is presently the subject of settlement discussions between the parties.

Determination of Hazard for the amended site. After additional studies and in accordance with FAA recommendations, a third site was chosen only to have the FAA identify EMI "problems" from that site. Extensive EMI studies have been filed by Nationwide with the FAA, which presently has the matter under consideration. The engineering and legal expenses associated with this matter have been substantial and the public has been denied increased radio service for a prolonged period.

Broadcasters submit that the Commission has the statutory right and obligation to establish standards for receivers used in the aeronautical services.

The Communications Act of 1934, as amended, requires the Commission to:

make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of [the Communications] Act;

Section 303(f), 47 U.S.C. § 303(f), and to:

make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of [the Communications] Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

Section 303(r), 47 U.S.C. § 303(r).

The United States, by treaty, is a party to the Convention on International Civil Aviation (hereinafter

referred to as "ICAO Convention") which, in Annex 10,3/ requires, after January 1, 1998, ILS localizer receiving systems to provide adequate immunity to intermodulation interference caused by VHF FM broadcast signals. Annex 10, Chapter 3.1.4.1. Further, after January 1, 1998, ILS localizer receiving systems must not be desensitized in the presence of specified levels of unwanted signals from VHF FM broadcast signals. Annex 10, Chapter 3.1.4.2. After January 1, 1995, all new installations of airborne ILS localizer receiving systems must meet the immunity performance standards of Chapters 3.1.4.1 and 3.1.4.2. Annex 10, Chapter 3.1.4.3.

In light of the statutory mandate of Sections 303(f) and (r) and the Annex 10 provisions of the ICAO Convention, it is clear that the Commission has the authority and obligation to regulate aeronautical receivers under the circumstances that exist today.4/

The Airport and Airway Safety and Capacity Expansion Act of 1987, amending Section 1101 of the Federal Aviation Act of 1958, 49 U.S.C.A. (Appendix) § 1501(c), requires that "[i]n the administration of laws relating to broadcast towers and the conduct of aeronautical studies relating to broadcast

3/ International Standards, Recommended Practices and Procedures for Air Navigation Services, Aeronautical Telecommunications, Volume I.

4/ Broadcasters recognize that the Commission is examining its jurisdiction to establish technical standards for receivers with regard to aircraft earth stations. Notice of Proposed Rule Making, Amendment of Part 87, PR Docket No. 90-315, 5 FCC Rcd 3933 (1990).

towers, the [FCC] and the [FAA] shall take such action as may be necessary to efficiently coordinate the receipt, consideration of, and action upon such applications and the completion of associated aeronautical studies." Nothing is that language or its legislative history suggests that Congress intended to alter the traditional responsibilities of the two agencies. This mandate for cooperation between the FAA and the FCC requires meaningful dialogue and the adoption of rules and standards leading to the more efficient use of air space and spectrum. The establishment of minimum aeronautical receiver specifications will promote air safety and spectrum efficiency. It is incumbent upon the FCC to utilize its engineering and technical expertise to accomplish these worthy objectives.

To fulfill its statutory obligations, Broadcasters urge the FCC to issue a notice of inquiry and rulemaking to permit all interested parties to provide the legal and technical information necessary for the development of rules and standards necessary for the protection of the public interest. It is suggested that the notice of inquiry seek comment upon such matters as the following:

- * Evaluation of aeronautical receiver performance relative to the signal levels of navigational aids.
- * Evaluation of the receiver immunity standards promulgated in Annex 10 to the ICAO Convention.
- * Evaluation of the Commission's jurisdiction to adopt technical standards for aeronautical

receivers.

- * Evaluation of the impact of technical standards for aeronautical receivers on the ANN presently being used by the FAA to predict EMI.
- * Evaluation of the impact of technical standards for aeronautical receivers on the efficient use of radio spectrum.

In light of the complexity of the requested inquiry, the need for informed comments by all parties representing the broadcast and aeronautical interests and the immediate need for more efficient use of airspace and spectrum, it is imperative that the Commission issue a notice of inquiry at the earliest practical date.

Respectfully submitted,

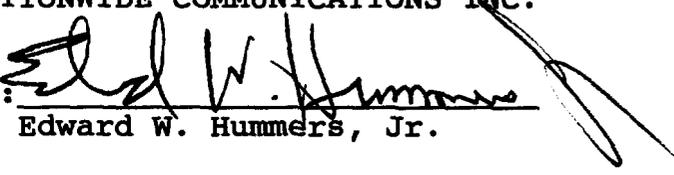
GRASS ROOTS RADIO, INC.

GUY GANNETT PUBLISHING CO., INC.

KING BROADCASTING COMPANY

MINNESOTA PUBLIC RADIO

NATIONWIDE COMMUNICATIONS INC.

By: 
Edward W. Hummers, Jr.

Their Attorney

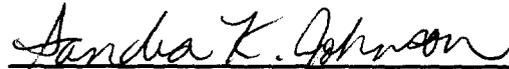
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March 11, 1991

CERTIFICATE OF SERVICE

I, Sandra Johnson, a secretary at the law firm of Fletcher, Heald & Hildreth, do hereby certify that a true copy of the foregoing comments in "Rule Making No. 7610" was sent this eleventh day of March, 1991, by U.S. postage paid mail to the following:

John R. Furr, President
John Furr & Associates, Inc.
2700 N. E. Loop 410
Suite 325
San Antonio, Texas 78217



Sandra K. Johnson