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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 14, 1997

Attorney William Kennard
F.C.C.
Washington, D.C.

Re: Resolution of Pending Allocations Frozen in Comparative Hearing.

Dear Attorney Kennard,

I have been following this issue for years with more than a passing interest. I have a pending application for an FM allocation frozen in place and awaiting either FCC or legislative action.

Thank you for not giving up on the idea that these allocations should be awarded through some type of comparative process. I, too, would like to see new frequencies in the hands of broadcasters rather than financial groups able to out bid us.

While waiting for resolution I have turned my frustration towards studying the issue...FCC rulemaking, court challenges, articles in trade publications, etc. A recent article in Radio & Records quotes you as working on comparative criteria that would be "objective and easily administered".

Well, perhaps you could use another perspective on this issue. Please, at least read and consider this unsolicited advice. I have also enclosed a copy of my correspondence with Senator John McCain. Getting to him seems to be key to retaining some form of selection process.

Best personal regards,

KDC, INC./WLKK RADIO

Kathleen De Capua

Kathleen De Capua
Owner

cc: John Rifer

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OBJECTIVE CRITERIA FOR "COMPARATIVE" SELECTION

1. **PIONEER PREFERENCE:** Why? For starters it is one of the criteria mentioned at length in the "FCC's Notice of Proposed Rulemaking, 3/12/92". The NAB concurred that it should be included in the process and even filed in support of inclusion. ("Comments in Support of Petition for Rule Making", 6/25/91.) Since this criterion has been generally accepted but long neglected it deserves priority.

   Pioneer applicants also deserve preference to weight the investment they have made upfront. Engineering studies and legal fees to create the allocation.

   Favoring the "pioneer" has legal precedence in common law. It's the American way...staking a claim by being the first one there. A reward for "superior skill or ingenuity".. the basis of our economic system.

2. **AM STAND ALONE:** - [Greater weight for Daytime-Only] Preference for owners of day time only AM frequencies is also cited in rulemaking opinions. It is widely accepted that these operators are at a competitive disadvantage. According to industry data..so, too, are AM's in general.

   In addition to leveling the playing field, economically, for market revenue. This preference would also give an advantage to local broadcasters. Who else would find these stations even marginally profitable? "Mom and Pop" can still make it in a small market..but for how much longer?

   Preference to those already in the market would actually enhance diversification. Strengthening current broadcasters would discourage them from selling out to their competitors.

   Minority preference is no longer a big issue but these broadcasters usually start out with the frequencies nobody else wants..AM. That's also how "broadcasters" move into ownership...an AM daytimer can be had for a "severance pay" investment.

3. **REINSTATE THE THREE YEAR RULE:** This was a good policy that discouraged speculation. It also provided for applicants that actually wanted to be broadcasters. Once again, you favor the broadcaster over the investor and you get more diversification, more local involvement in programming.

AN EXAMPLE: A PENDING ALLOCATION IN ERIE PENNSYLVANIA:

KDC, INC. - (my application) filed by business partners/husband and wife, Kathleen and Timothy De Capua. C urrently own and operate, WLKK AM/Erie..a full service News/Talk Radio Station. No other broadcast interests [sold our "starter station"...an AM Daytimer in Youngstown, Ohio]. Both of us work full time at the station, raise a family in Erie and devote time to civic involvement.

We discovered that Canadian radio deregulations made a "drop in" possible in our market area. Our investment in engineering studies and legal fees for this allocation drew two challenges. As a result there are now three frequencies. One is on air, two are pending. Mine and one in Astabula, Ohio. [Palmer is applicant for both pending allocations]

THE OTHER APPLICANTS:

Fairview Radio, Inc. - primary stock holder, Rick Rambaldo, who already owns two FM stations that serve the Erie market (WRKT/WRTS). Combined they already get 23% of radio revenue in the market. Rambaldo lives in Rochester, N.Y.

Antoinette K. Palmer - lives outside of Cleveland, Ohio. No broadcast background...all monies to be provide by her father, John Kanzius, part owner and general manager of WJET-FM & WJET-TV/Erie. They also have an LMA relationship with WFGO. [West Erie Broadcasting]

West Erie Broadcasting Corp - Richards and Wiley have joined forces..they were competing applicants for the 80/90 FM dropped into Erie. Nedra and her husband, Roger were the high bidder for that allocation that became WFGO. Nedra Richards lives in Erie and is the president of West Erie Broadcasting. Ben Wiley is local and a minority.

MBS Communications - They have three pages of other filings attached to their application. James Martin, Jr., Arthur Belendiuk, and Gary Smithwick seem to be in the business of filing these competing applications.

Christopher J. Wegman - His address is listed as McAllen, Texas his money comes from an individual in New Orleans. Speculator, front man, or broadcaster?

John McWilliams - lives just outside of Erie County. Did his own engineering, filed his own application and proposes to build and operate the FM allocation for $65,000.

SUMMARY:

1). Evaluate comparative criteria and the entire spectrum allocation issue favoring the vast majority of broadcasters. Those outside the major radio markets.

> Pennsylvania has two major markets; Philadelphia [5] and Pittsburgh [20]. Six other cities are ranked as medium to very small markets. These ranked markets account for 138 or 32% of all the radio stations in Pennyslvania.

2). Allow the auction provision to apply to the top radio markets. It would indeed generate significant government revenue. Besides, broadcast operations in these markets is so costly that only the strongest of financial competitors can gain entry or succeed.

3). Retain control over allocations in the smaller markets. Encouraging diversity and local control will preserve and possibly create broadcast employment. These local dollars generated through operations would exceed the revenues returned to the government via auction.

4). Compromise on a "buy-out" of pending allocations on a priority basis. Offer a first right of refusal to the applicant that best fits the new criteria. Pending applicants for allocation are either going to profit or have to pay off to settle.

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COPY

May 7, 1997

Senator John McCain
SR-241 Russell Senate Office Building
Washington, D.C. 20510-0303

Re: Telecommunications/Spectrum Allocation

Dear Senator McCain,

Thank you for your response to my letter of February 5, 1997 regarding my interest in the resolution of FM allocations currently pending before the F.C.C. The Writ of Mandamus filed by Susan Bechtel and August Communications with the U.S. Court of Appeals tells me I am not the only applicant anxiously awaiting your legislative remedy to this situation.

I agree that for future allocations, an auction would not be an unfair method of selection. And you are quite right in your statement that most competitive pending applications will settle before the auction provision takes effect. How this "settlement" takes place is my key concern.

As I pointed out in my last letter, in my situation and many others, the comparative process encouraged speculation by competitors and out of town investors. If one of these other applicants has "deep pockets" they will walk away with the FM allocation that I found and desperately need to stay competitive in the Erie market.

I will profit financially as will all other six applicants. If you will not consider an outright grant to me, the pioneer applicant, how about first right of refusal. Since no rules apply anymore to pending competitive allocations...OFFER THE OPTION TO BUY THE ALLOCATION WITH THE PROCEEDS GOING TO THE GOVERNMENT.

The option could be offered to 1) the pioneer applicant, 2) the applicant with a stand alone AM daytimer and 3) the applicant with a stand alone AM; in that order. I have already given a lengthy explanation in my last letter for why this method of preference is in the best interests of fair market competition and also in line with past FCC policy.

This option would insure that speculators do not profit and the revenue generated would go directly to the government's coffers. How to determine a "fair market value" for each allocation? Jim Duncan is a respected broadcast "statistician".

The Justice Department consults him when considering the anti-trust impact of broadcast consolidations. He has in the past and I'm sure could provide the present "stick value" of an FM allocation on a market by market basis.

When evaluating this "suggestion" please consider the fact that I am not idly complaining about what is. I am committed to offering solutions and working towards a fair resolution. If you need any clarification... want more documentation, call me.

I am the kind of broadcaster you would want to have in your home town. Please help me stay in mine.

Best personal regards,

WLKK RADIO/kdc inc.

Kathleen De Capua
Owner

cc: Senator Arlen Specter
Senator Rick Santorum
Congressman Phil English