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September 14, 1998

Federal Communications Commission
Office of the Secretary
Room 222
1919 M St., NW
Washington, DC 20554

Dear Ladies and Gentlemen of the Federal Communications Commission:

It is with utmost urgency that I write to you in pleading that the FCC reconsider some of the implications that the proposed rules of Section 309(j) of the Communications Act will have upon the small business community. I come to you as a small businessperson who has spent over 2 ½ years working on a project to start a new radio station. I am now faced with the real possibility of having a government policy enable someone else to basically steal the rewards of an opportunity that I personally created. There have been some recent local developments that will further illustrate the potential peril that I have been placed in as a result of these new rules. To award a Construction Permit based solely on the ability to pay is a great miscarriage of justice.

As I have stated in earlier correspondences, I may be the only entity that may be affected by these rules in this fashion and at this time, but hopefully I may help you realize that the incentives for any other small entity to ever again undertake the task I have up to this point will be nil and thus will eventually lead to the total elimination of the small entity in the broadcasting field.

Please take a few moments to read the enclosed articles from several local publications and consider their consequences on any small businessperson trying to gain access into the radio broadcasting industry. I am a self-employed contractor and single father of two, having pursued this project to create an opportunity so I may better provide for the future for my children. I undertook the task of having a frequency allocated to the FM dial (101.5 FM) in this area with the eventual intended result of securing a Construction Permit for the station at this frequency. Based on all publications and counsel received at the

time of application, I expected to be able to defend my application based on technical and administrative merit. It was upon my expected ability to defend my application that I had hoped to prevail against any competition without too great of additional financial expenditures. As it now appears, the most significant expenditure of the entire project will be the amount required to secure the Construction Permit at auction. The potential exists for this amount alone to be several times greater than the construction and total start-up costs for the station. This was a totally unexpected cost up to the time of the filing of the application.

As a small businessperson, I must secure capital from investors to finance this project; however, I am unfairly being placed in the position of having to borrow an excessive amount required for the Construction Permit auction. This additional cost component may no longer make this a viable investment due to the short-term return often required from an outside investor as repaying the auction investment may keep the station from showing a profit for a longer period of time. Please refer to the enclosed articles entitled, "Simmons Mounts a Media Surge", "Park City Media Group Sells Controlling Interest to Simmons Radio Group", and "*Journal* Negotiating Deal". As illustrated in these articles, the Simmons Group, one of the other mutually exclusive applicants for the Construction Permit for the station I created, is a formidable financial entity. With all of their vast resources, they were unable to realize that an opportunity existed to drop-in a frequency as I did, yet FCC policy is condoning that they are able to thief my work. When one of the entities with whom I am forced to compete at auction is also the bank, as the accompanying articles allude to, the need to justify the auction amount and make it work in a cash-flow model does not exist. They have the financial resources to operate this single entity with negative cash-flow and rely on income from their other holdings until necessary in order to eliminate their competition. After recently acquiring two publications and a TV station in the area, the only piece left for their broadcasting monopoly would be a radio station. How am I, a sole proprietor with limited personal resources able to compete with a regional bank, especially if what is at stake will not provide a return for several years because of the auction "investment" ? I must beg for your sense of fairness regarding the situation in which I have been placed and ask you to consider the adoption of more significant bidding credits or other advantages to those in this position and in need of recompense from their government.

I have taken the liberty of also enclosing copies of prior correspondences to your office so you may be reacquainted with the entire evolution of my application and the arguments pleaded earlier. Throughout this process I have retained legal counsel and used the National Association of Broadcasters' (NAB) publications as reference materials to formulate my strategy and to evaluate the potential that my application will prevail on technical and administrative merit. Per the NAB's "Buying or Building a Broadcast Station in the 1990s", all of the factors that influence an applicant's chance of winning are established by the content of the initial application. NAB goes on to further state that "...strategy for a comparative case must be planned before the application is filed. This early stage of the process often determines the outcome of a case." Another process mentioned was that competing applicants would be required to answer interrogatories

about their applications. The adoption of the proposed rules would seriously compromise these three aspects of my business strategy formulated from the information above. Instead of the content of the initial application bearing weight and being defensible, it has been rendered worthless. I have more knowledge of the history of events that led to the announcement of a filing window for the Construction Permit than any other applicant as I initiated the process and based the formulation of a strategy on that preliminary information. With a combination of the knowledge gained while researching this project together with the expected requirements of the process, it would now appear that each of the other mutually exclusive applications are flawed due to the then existing technical and administrative requirements. I expected that interrogatories would lead to their disqualifications and enable me to be awarded the Construction Permit. Disallowing the interrogatory phase only further compromises my position. Following all instructions and requirements of the FCC Form 301, the officially-issued document by the FCC, has now been rendered as inconsequential due to changes in rules of Section 309(j). Yet at the time of application it contained the official instructions and requirements for the application process. I am still amazed that the U.S. Government can sanction the retroactive enforcement of a set of rules and dictate that the instructions that applicants were told to adhere to at the time of filing the application were, in fact, incorrect. At the completion of FCC 301, there is a signature required that all information was furnished in good faith by the applicant. Where is the reciprocal good faith from the FCC ?

Existing rules all seem to be directed toward a fixed number of already existing entities. As stated in "Buying or Building a Broadcast Station in the 1990s" , "...a reasonable market exists for broadcasting licenses - a market in which a virtually fixed number of licenses represents the only means of entry into the industry." If someone such as myself is able to create an additional entity by undertaking the procedures required to have a frequency added to the Table of Allotments, justice would prescribe that credit be given to this person for their undertaking. Current trends indicate that the major competitors are only interested in frequencies that already exist, and therefore 1) are not interested in creating new allotments, and 2) simply are waiting for the opportunity to secure access to newly created or already existing allotments through the construction permit auction process. With established players already set in a fixed market, the only entity that would undergo the process of an allotment, would be one like myself who is trying to gain entry into an already supposedly full field. The entrepreneurial spirit required to overcome the necessary obstacles to enter the broadcasting field has been squashed by the adoption of the auction-based method.

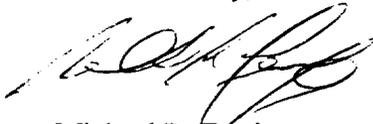
The entrepreneur above is more than likely the "Local" referred to in Commissioner Tristani's speech "Keeping the Local in Local Radio" before the Texas Broadcasters Association on September 3, 1998. Frequently the entrepreneur has more ingenuity than capital and tries to use that ingenuity to create opportunity. Realizing that an opportunity exists where it was otherwise unknown will certainly be accomplished by someone personally involved with the local area. This person would most likely be a sole proprietor and one who would involve the audience of the area where this need was discovered. Unfortunately the trend is to push this individual out of the broadcasting field as a result of

conglomerate station ownership. As stated in the Commissioner's speech, there are less and less owners of the same number of stations. We are at a critical juncture where great caution must be exercised in order to prevent the total elimination of the local broadcaster whose genuine interests are to serve the local constituents.

If the charge of the FCC is to insure maximum diversification of the airwaves, evidence suggests that this charge is being directly contradicted by the effects of the current rules as substantiated by the decline in ownership numbers. This trend is most dangerous to the future of broadcasting as fewer and fewer owners will be able to control more and more editorial content through multiple station ownership. Each station's format might be different while still maintaining the same editorial direction and attitudes, thus further homogenizing and censoring the information being given to an ever-growing audience. The possibility to control and manipulate political and/ or economic agendas to suit certain philosophies is very real. Individuality of ownership interests must be maintained at all costs. The survival of the local in the broadcasting field is directly dependent upon a deviation from the current direction to one more amenable to the small entity.

In closing, the apparent redirection of the FCC from a regulatory board to one whose primary concern seems to be that of revenue generation is most troubling. Perhaps in the zealous quest to raise revenue to balance the federal budget, one of the primary objectives of the FCC, which is to insure maximum diversification of the airwaves, has been lost. This objective will only be accomplished by insuring that we keep the "local" in local radio, as opposed to adopting rules which will be the direct cause of his/her demise.

Most Sincerely,



Michael R. Ferrigno

Enclosures

OLYMPIC
WATCH

1,261

78 UNTIL THE GAMES

SALT LAKE OBSERVER



SMART LOCAL NEWS

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VOLUME I NUMBER VII

AUGUST 28-SEPTEMBER 10, 1998

Simmons Mounts a Media Surge *Zions Bank Family Expands Holdings*

BY JEFFREY HOWRY

PARK CITY — Utah's unvarnished version of David Letterman says "no worries" about this community's tiny television station being taken over earlier this month by Simmons Media Group Inc.

"I fear nothing," Randy Barton said the other day with a smile. "It would be their loss to change things."

Completely unrehearsed, live and totally unscripted, the homegrown production showcases Mr. Barton's droll sense of humor as he stares into a stationary camera while conducting eye-rolling interviews with colorful Park City characters ranging from the famous to the street-level insignificant. It's not unusual to see town drunks, Cub Scout troops, real estate agents, religious leaders, city officials, rugby players and even minor movie stars on "Park City Faces."

Whether it survives remains to be seen.

"Our intention is to improve upon and upgrade the product," said B.

Thomas, chief financial officer of the small but very successful multi-state media empire based in Salt Lake City.

When Simmons bought low-powered cable Channel 8/UHF 45 on Aug. 5, it was part of a package deal in which local entrepreneurs Rick

Shapiro and Steve Marriott also sold Simmons (for an undisclosed sum) *The Kimball Junction Journal*, a weekly newspaper, and a tourist-oriented publication called *This Week in Park City*. Together, the papers and the television station compose the Park City Media Group.

Its acquisition comes on the heels of Simmons' takeover of popular Salt Lake FM station—X-96 in March. It brought the company's holdings to 18 radio stations, six along the Wasatch Front, the rest in New Mexico, Texas and other parts of Utah. Simmons, with corporate headquarters in Salt Lake City, is also active in multimedia outdoor sign advertising and has recently started a personalized Internet-based news service.

The Simmons group has local roots with and is still owned by a banking family that holds a sizable stake in the publicly traded Zions Bank, one of the most prosperous financial institutions



Simmons

— CONTINUED FROM PAGE 1 —

in the West. David Simmons, president of Simmons Media Group, is the younger brother of Harris Simmons, CEO of Zions Bank. Their father, Roy Simmons, is chairman of the bank and the media company.

All are members of the Church of Jesus Christ of Latter-day Saints, an affiliation that begs the question of how the family's religious values affect their media holdings.

"We certainly are careful to keep our values very personal and private to ourselves," said David Simmons. He noted that Simmons radio properties run the gamut from the sometimes racy X-96 and its often-raucous disc jockeys, to the staid KDYL-AM, whose often-crotchety playlist includes the likes of Frank Sinatra and Perry Como.

"We in no way try to put our values on (our media properties)," said

Simmons Media Holdings In Salt Lake

KDYL 1260 AM
KXRK X-96 FM
KSFI, FM 100
KQMB, Star 102.7
KRSP, Arrow 103.5

Elsewhere

Six radio stations in Albuquerque, N.M.

Five stations in St. George/Cedar City/Mesquite, Ariz.

One station in Austin, Texas

Simmons Outdoor Media, a billboard company with 100 signs in Utah County

Simmons News Media, a Salt Lake-based Internet news service

And now, in Park City

The Kimball Junction Journal
Television station Cable Channel 8/UHF 45

This Week in Park City

Mr. Simmons. "We have no real restrictions in our advertising policy or programming content other than it be legal."

The Park City move is meant to capitalize on a robust local media market and to build Simmons' local advertising base, said Mr. Thomas.

Park City, Mr. Thomas said, is a potential gold mine, "a hybrid, separate from the Wasatch Front, rapidly growing, with attractive demographics." He said the company might also have designs for a radio presence in Park City, though he did not elaborate. That arena seems ripe for the picking, as KPCW, the National Public Radio affiliate, is currently the sole radio voice in the market.

The possibilities for new media in the area seem substantial. Park City sits in the middle of the fastest-growing part of Summit County, one of the top five fastest-growing counties in the country. Although there are officially fewer than 10,000 full-time residents within the city limits (and about that many again in the outlying areas), it seems that everyone here these days is college-educated and affluent — the median income in town is over \$60,000. Tourists who double the town's population during the ski season represent more of the same, and the combination is exactly what advertisers are looking for.

The 128-year-old *Park Record*, owned by another media conglomerate — Diversified Suburban Newspaper Inc. (whose holdings include the *Denver Post* and the *Houston Chronicle*) — stepped up to twice-weekly publication in May 1996. Less than a year later *the Journal* appeared, publishing twice a month and then weekly in late July. Its debut was in a somewhat cluttered market. In late June, the *Record* started *The Wasatch Ranger*, a direct-mail entertainment paper published every other week. A tabloid publication called the *Mountain Times* appeared in mid-June, augmenting but not adding much to a monthly arts guide, *The E.A.R.* and the quarterly warm-and-fuzzy *Lodestar*.

Record publisher Andy Bernhard dismissed the flurry as pre-Olympics positioning. "Everybody is looking to the Olympics. They believe if they establish themselves now and find a niche then they'll make a lot of money for three weeks (in 2002)."



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Arts & Entertainment

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Park City Media Group Sells Controlling Interest to Simmons Radio Group

by Kathy Eckel
Editor, *The Journal*

On July 17, the Park City Media Group sold a controlling interest of its company to the Simmons Media Group. The sale includes two print publications, *This Week in Park City* and *The Journal* newspaper, and Park City Television.

The Simmons Radio Group owns and operates radio stations in the western United States. Craig Hansen, vice president of the Simmons Media Group, said "We are very interested in expanding our media outlets as well as growing our company. We see this as an opportunity to enter into the publishing and television markets, while staying in the state where we've had success."

Hansen emphasized that the sale will not change day-to-day operations of the three entities, rather it will bring the support and financial strength of the vast Simmons group to the Park City Media Group.

The Park City Media Group was the brainchild of publisher

Rick Shapiro, who began publishing *This Week in Park City* in 1993. In 1997 Shapiro, along with Steve Marriott and Peterson Ventures (a capital venture group) began expanding the Park City Media Group by introducing *The Journal* newspaper and purchasing the local television station, Park City Television.

Park City Media Group had been approached with purchase offers during the past year from several other companies. However, according to Shapiro, "We were impressed by the solid organizational strength of the Simmons Group and felt they could take our company to the next level."

"We are excited by the additional wealth of expertise and resources that Simmons brings to the Park City Media Group. It will allow us to further accomplish the goals we had originally set for the group," said Shapiro.

According to Hansen, "Park City Media Group will continue to do what they do best. We have no plans to change that."

The Simmons Radio Group was established by Roy Simmons, former president of Zions Bancorporation, in 1978 as the Simmons Family Inc.

FREE

TAKING HIGH ALTITUDE ALTERNATIVE

MOUNTAIN WEEKLY TIMES

JULY 30, 1998 • VOL. 1, ISSUE 7

JOURNAL NEGOTIATING DEAL

Back at the beginning of July, this directive came down from the big-wigs at Zions Bank: buy *The Kimball Junction Journal*.

The deal was sealed recently for an undisclosed sum and now the Simmons Media Group holds a controlling interest in *The Journal*, Park City Television, and *This Week in Park City*.

"Money always talks, of course," says *Journal* Editor and Publisher Rick Shapiro, who courted other offers before inking the deal with Simmons. Shapiro says his paper will remain editorially independent and benefit from its new owner's deep pockets.



**Carlos Santana to
play The Canyons**

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**\$50,000,000
Revolving Credit Facilities**

Arranger:
BNY Capital Markets, Inc.

Administrative Agent:
The Bank of New York

Documentation Agent:
NationsBank, N.A.

**THE
BANK OF
NEW
YORK**

May 1998

Michael R. Ferrigno
6171 N. Fairview Dr.
PO Box 682511
Park City, UT 84068
435-649-2025

June 24, 1998

Mr. William Kennard, Chairman
Federal Communications Commission
Office of the Secretary
Room 222
1919 M St., NW
Washington, DC 20554

**RE: Chairman Kennard's invitation to respond to his speech at the
Chairman's Breakfast last April as published in the NAB98 Daily News,
April 8, 1998.**

Dear Chairman Kennard:

I readily accept your invitation to respond to your statement quoted in the above referenced event, as: "Be realistic: there are fewer entry-level opportunities in broadcasting... We have to find ways to create more opportunity for those who want to use the airwaves to speak to their communities - church groups, small businesses, minority groups, community groups." I couldn't agree more and wish to take this opportunity to express to you and your colleagues some potential hardships the proposed legislation will cause local radio broadcasting.

Please take a few minutes to read the following account of my experience in trying to secure an entry into this field during the past 2½ years. It is my hope that I can help you and your colleagues at the FCC realize how the currently proposed rules greatly reduce the possibility of present and future entry level opportunities in radio broadcasting to entrepreneurs such as myself.

I live in the small but rapidly growing ski community of Park City, UT, located approximately 30 miles outside the Salt Lake City area in Summit County. Through the years I have been civilly involved in one way or another, including serving as a volunteer DJ on a local non-profit FM radio station. With this position, I have been able to hear several years worth of listeners' inquiries and comments about the station's format, and it has become apparent that the needs and wants of a significant portion of the community are not currently being met. Even though we are within theoretical listening range of most of the Salt Lake stations, the local topography of the Wasatch Mountains and their 11,000 foot peaks prevent the Salt Lake Valley radio signals from reaching our area, resulting in virtually silent airwaves.

In response to this need and opportunity, I have made significant personal and monetary investments in pursuing a station to serve the East side of the Wasatch Range. In spite of others' testimony that no channels were available to serve the area, I found that an opportunity did exist. As a result of my work, I was able to have a new channel allocated (Channel 268C1 at 101.5 MHz) to serve the area and subsequently applied for a Construction Permit (#971119MB) for this channel in response to the publicly noticed filing window.

There are two specific issues which I would like to address:

1. The FCC's currently proposed rules as stated in the Implementation of Section 309(j) are arbitrary and capricious with regards to certain applicants in that new standards are to be applied to existing FCC 301 applications on file, and thereby quite possibly may circumvent first-come applicants from prevailing, and
2. The "auctioning" of the Construction Permit will further alienate qualified applicants due to lack of cash.

There are a host of other issues and potential solutions regarding Section 309(j) which I have already submitted to the FCC in my "Response to the NOTICE OF PROPOSED RULEMAKING". For your convenience, I have included a duplicate copy of my response for your review.

With regard to my first objection to these proposed rules, should they be implemented, pertains to applicants who have adhered to the FCC 301 application process and now find their position severely compromised due to no fault of their own. My currently pending application referenced above was filed in a timely fashion in response to a filing window that closed on November 20, 1997. Subsequent to my filing, the FCC has not only proposed new rules, but has determined that these rules will be in effect for applications filed after July 1, 1997. The arbitrary setting of that date results in a situation where the affected parties will be forced to adhere to a set of rules which will be retroactively applied. *How can one be expected to operate under a set of fixed rules or standards*

when they don't yet exist? It is unreasonable to expect people to uphold certain standards prior to those standards being established and published.

Should my current application be "thrown out" I will be caused great hardship in that 2 ½ years' worth of preliminary work and numerous expenses incurred throughout the process up to and including the filing of FCC 301 will be rendered virtually worthless. If I should be required to re-apply at whichever time the FCC might reconsider applications for this station, the proprietary data that I have gathered is now on public record, and I will be all too easily eliminated from entry into the radio broadcasting field due to the more extensive financial resources of my conglomerate competitors. Many if not all of these competitors are in a position where they can bid an excessive amount for a Construction Permit and then operate the station at a loss if necessary in order to secure their place in the future advertising market. To convey this more fully, I have included a copy of an article from Utah Business Magazine, May 1998 to help illustrate this phenomenon which is apparently occurring throughout the United States, and quite possibly is what you were referring to in your breakfast speech last April.

My second objection to the FCC's proposed rulings is with regard to the "auction" of the Construction Permit without regard to technical or mechanical merit of the application. "Maximum diffusion of control of the media of mass communications." will essentially never be achieved by "auctioning" to the highest bidder the Construction Permit for new stations, nor will it achieve the "integration of ownership and management" because the players who have the sufficient capital to prevail at such an auction are not interested in radio programming per se, as much as they are in dominating and monopolizing evolving markets. It is becoming more and more evident that the Telecommunications Act of 1996 greatly facilitated the conversion of "locally owned and operated" radio stations to more homogeneous conglomerates. Moreover, these conglomerates have the resources to utilize technology to "automate" news and programming, ultimately distancing themselves from the community they are supposed to serve while at the same time significantly increasing revenues and profits.

The auction procedure does not afford equal opportunity to all for proper diffusion and diversification of media control; rather it favors the more affluent major conglomerates, which are currently exercising increased domination of the airwaves, as mentioned previously. If an applicant can secure a Construction Permit with a good location, power, and frequency, the station will have immediate market value *before it even exists*. My 2 ½ years' worth of research and development created this market value; however, the FCC's arbitrary and capricious nature in proposing these rulings becomes fully apparent because it will allow another entity to essentially steal this value from me with no compensation whatsoever. The awarding of the Construction Permit to another applicant other than myself based solely on their ability to bid higher represents a gross miscarriage of justice as it will enable them to directly profit from my groundbreaking work. All the while with the with the FCC's blessing.

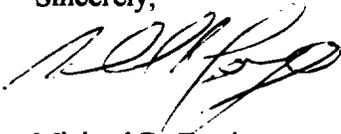
Due to the "public record" of all of the competing applications, I have reviewed my competitors applications and find that most if not all of these applications appear to be flawed. The instructions for FCC 301 implied that errors in the application phase could result in the disqualification of the application. It is my belief that my application is the most sound, viable and technically accurate as I discovered the site, thoroughly researched the technical and mechanical merits, "dropped in" the channel and thus "created" the station itself. This alone should indicate I would be the one who would value the station the most as opposed to a conglomerate competitor who has more money than knowledge about what the local community's interests are.

My intention in pursuing this endeavor has been the result of two primary objectives. Primarily, the community expressed to the only local radio station that their wants and needs were not adequately being met, and there was frustration in the belief that having another local radio station "dropped-in" was not a possibility. My research has proven their beliefs to be incorrect, and my efforts further substantiate my ability and commitment to build and operate this new station. Secondly, the work and risks undertaken to get to this point were done in the hopes of being able to better provide for the future of my family. My current career path does not afford me the opportunities that the broadcasting field might. I have always believed America to be a land of opportunity. I sincerely hope and pray that a policy that might be adopted by the U.S. Government does not cost me the opportunity that I have worked so hard to create.

In closing, I respectfully request that you respond to my concerns in a timely manner as I continue to invest time and money on this newly "created" radio station. Providing me with specifics on the FCC's position and timing of implementing 309(j) would be most appreciated.

Allow me to thank you in advance for your time and attention, Chairman Kennard. I hope that you and your colleagues find my response informative, and you see the potential implications of the proposed rulings on the communities you are mandated to serve.

Sincerely,



Michael R. Ferrigno

Enclosures

RADIO

.... A booming market. Bigger local players. More choices for listeners. More profit for executives and shareholders. A positive economic forecast as far as the eye can see. These days Salt Lake City's radio business is sounding good at any frequency.

BY SHAN FOWLER PHOTO BY DEREK SMITH

There are touches of nostalgia and sadness in Jim Facer's voice when he talks about the current state of the radio business along the Wasatch Front. But there's also a touch of acceptance, even optimism.

"It's not the same business," Facer says. "Radio has just changed so much in the past six years. A guy can't own a radio station today because the price of admission has gone up so much. Now it's all big companies."

In February 1992, Facer founded KXRK 96.3 FM (X-96) and acted as manager for all six years he was with the station. In the years since, X-96 has enjoyed great success, maintaining a top 15 Arbitron rating for almost its entire existence.

But despite his hands-on management of the station Facer was only half owner. When his partner, Jim MacNeil of United Concerts, decided he wanted to sell the station, MacNeil exercised a clause in his and Facer's ownership agreement which required one partner to either buy or sell his half to the other if he, she wanted out. Facer made an offer to MacNeil; MacNeil declined and then made an offer to Facer that Facer was obliged to accept. Shortly thereafter the station was sold to Utah-based Simmons Radio Group.

"If it had been up to me alone, I never would have sold the station," Facer says. "I don't care how much money you throw at me."

Simmons was throwing a whole lot of money at X-96. The deal, which is awaiting Federal Communications Commission (FCC) approval, is worth almost \$11 million—22 times Facer and MacNeil's initial investment

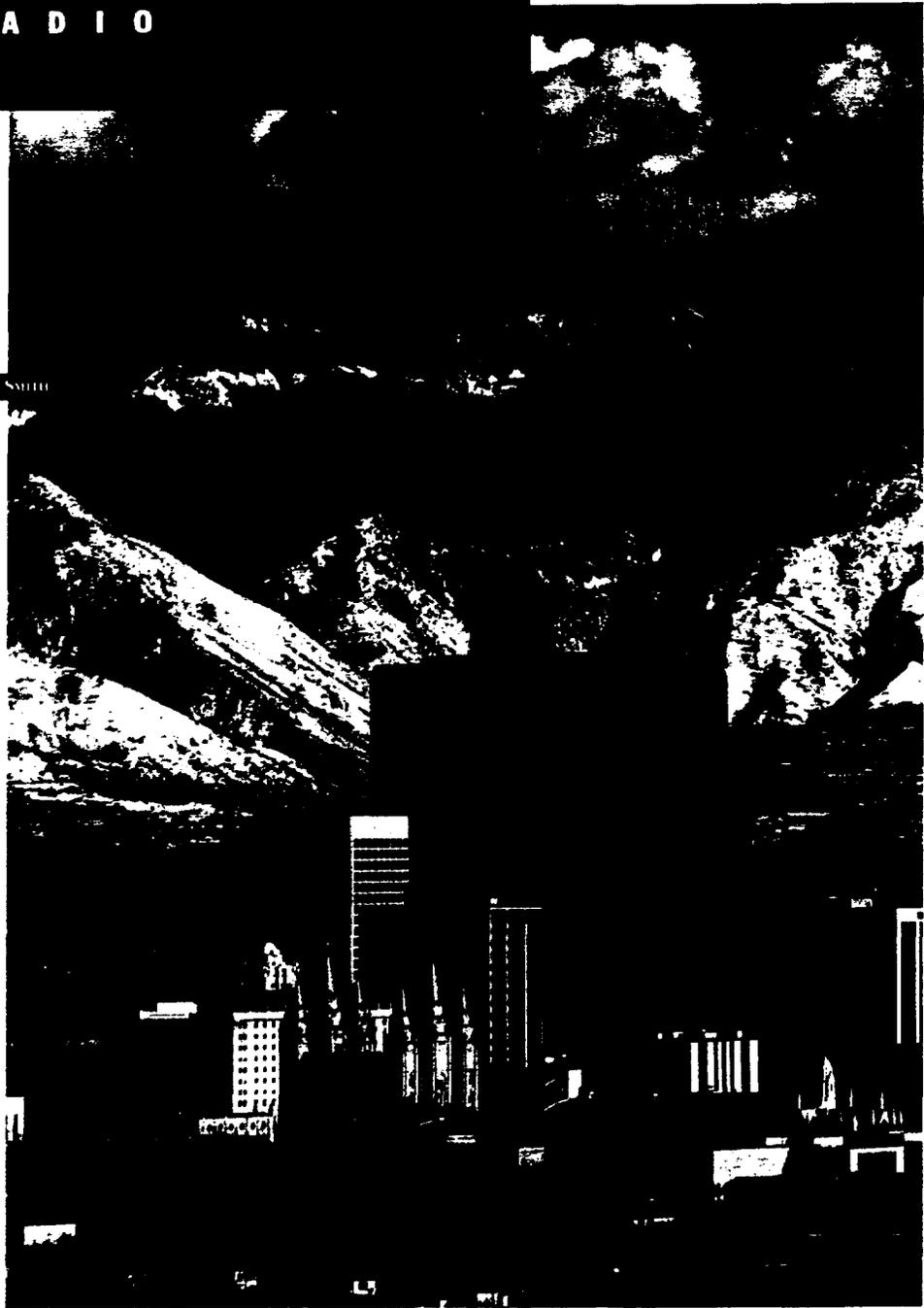
of roughly \$500,000. Facer, the unwilling seller, may have come out of the deal minus the radio station he poured his heart into, but at least he came out a substantially richer man.

Market Goes Boom!

Such is life in the booming radio business along the Wasatch Front. What used to be an industry where independently

owned stations ruled the roost is quickly being turned over to a handful of corporate giants with deep pockets and visions of market dominance.

It seems odd that a market like the Salt Lake metro market (Ogden, Davis, Salt Lake, Tooele and Utah counties), which hovers around 35 in audience size and 33 in profitability of all markets nationwide, would be one of the most crowded radio



T H A T D I A L !

markets in the United States, as well as garner enough attention to convince the nation's second and fifth largest radio conglomerates (Jacor and Citadel, respectively) that Utah is a worthy market for setting up camp. Yet, for the past five years, Salt Lake City's radio market has grown financially at an average of 17 percent per year (22% in '94, 19% in '95, 16% in '96, 13.3% in '97)—almost twice the national average. In 1993, total revenue in the market was \$31 million. By 1997 that number had virtually doubled to over \$60 million.

In the first month of 1998, the market saw a 13.3 percent growth rate, which bodes well for the future of what in the '90s has been consistently among the top 10 growth markets in the nation, according to Miller Kaplan, a Los Angeles-based research group which tracks the radio industry in over 100 markets nationwide.

"The last two times a U.S. city has hosted the Olympic games [Los Angeles in 1984 and Atlanta in 1996], the growth rate has been double for the host city in the years leading up to the games," says George Nadel Rivin of Miller Kaplan. That means more growth ahead.

"There is almost no question in my mind that this will be a \$100 million market by the time the Olympics arrive," concurs Pat Reedy, vice president and general manager of Trumper Communications, which owns, operates and leases four stations in the Salt Lake market (KISN 97 FM, KUMT 105.7 FM, KSNU 107.9 FM and KOSY 106.5 FM). Reedy is also current president of the Salt Lake Radio Broadcasters Association. Reedy's prediction is bold, but it's one with which other members of SLRBA unanimously agree.

"It's a great time to be in the radio business in Utah," says Craig Hanson, chairman of Simmons Radio Group, which, once the X-96 deal is approved, will own six stations in the Salt Lake City market (X-96, KSFI Lite 100 FM, KRSP Arrow 103.5 FM,

KQMB Star 102.7 FM, KMJR 92.1 FM and KDYL 1280 AM).

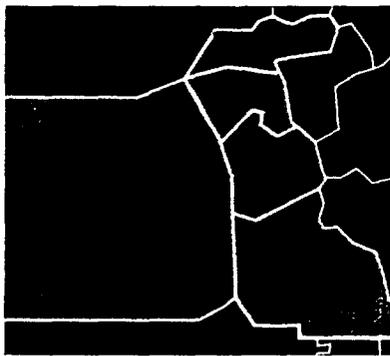
With all this money floating around and numerous other station transactions completed or awaiting completion, a two-part question arises: Why all the activity, and where is the money coming from?

Reform & Revolution

The answer to the first part of the question is the Telecommunications Act of 1996, a sweeping reform of telecommunications regulation and FCC rulings which affects everything from AM radio stations to high definition television. The overhaul was the first major evaluation of telecommunication law since 1934, when radio was an infant and television was just a dream.

"I would say the Telcom Act is the single biggest thing that has ever happened to our industry," says Pete Benedetti of Citadel Communications, which owns six stations in the Utah market (KBEE 98.7 FM, KUBL 93.3 FM, KBER 101.1 FM, KENZ 107.5 FM, KFNZ 1320 AM and KCNR 860 AM). "It's given companies the opportunity to operate more profitably."

METRO COUNTIES



Total 1,581,100

Section 202 of the 1996 amendments loosened restrictions on how many radio stations could be owned in any given market. Prior to passage, the maximum was four total FM and AM stations. Now the maximum is eight, which partially answers the second part of the above question: Part of the money being poured into the Utah market—money which allows a station like X-96 to sell for over 2000 percent its initial value six short years ago—more or less came out of thin air.

"I would say stations probably doubled, if not tripled, in value the minute the Telcom was signed into law," Facer says.

It's simple economics. Before 1996, even companies that wanted to expand could only expand to four stations in each market. After the bill was signed, the supply of stations stayed the same, but the demand for stations exploded as companies vied to increase their audience base through station acquisition.

Obviously deregulation isn't the only factor in the Salt Lake market's boom. Reedy notes that the radio industry's growth almost mirrors growth in other segments of Utah business. He also notes that, for better or worse, the construction boom has increased the time the average Utahn spends in their car per day, increasing the amount of time they listen to the radio. Despite these residual factors, increased ownership can't be ignored as the major factor behind Utah's seemingly overactive radio market.

Station Domination

Jacor, which moved into the Salt Lake City market in January 1997, quickly established itself by buying six stations and actively working to acquire the two more stations allowed by the new limits. Citadel, which already owned several stations, also acted fast in its acquisition efforts. Both companies say their goal is station (and audience) maximization in every market they enter.

"Our strategy is to be as dominant as possible," Benedetti says. "You reach more people, and that's more and more valuable. If you own six stations and you're looking to purchase two more, the value of those two stations is greater as part of the eight than on their own."

Cutting costs through economies of scale is perhaps the biggest advantage of the new ownership rules. Jacor is building a 40,000 sq. foot state-of-the-art radio facility in the Decker Lake business park which is designed to house eight stations. It's the first facility of its kind in the nation, and will become a blueprint for facilities in other Jacor markets.

"It shows that we're committed to the Salt Lake market," says Rick Porter, vice president and general manager for half of the local Jacor stations (KALL 910 AM, KODJ 94.1 FM and K-NEWS 570 AM); the other three Jacor stations are KZHT 94.9 FM, KURR 99.5 FM and KKAT 102.9 FM). "Salt Lake is a great place to live, and it's a great place for radio."

In its two-year buying spree, Jacor has committed itself to over 50 markets nationwide, jumping from about 30 stations before the Telecom Act to nearly 200 today. In the process, Jacor has gained a reputa-

tion as an aggressive and almost overly persistent buyer, fitting of the company's logo and slogan: a crying baby and the words, "Jacor: the noise you can't ignore."

Getting with the Program

Part of Jacor's cost-cutting and revenue-building strategy is not only purchasing healthy stations, but stocking those stations with Jacor-owned programming. The company owns the rights to Rush Limbaugh and Dr. Laura Schlessinger, the nation's top two rated radio programs, as well as Dr. Dean Edell, another highly rated radio host.

"By purchasing programming as well as stations, we've been able to cut costs while improving programming," Porter says.

Another method that has been highly successful for Jacor has been purchasing "stick" properties (underdeveloped and or poorly rated stations) and turning them into profitable stations. From 1995 to 1996, Jacor increased the incoming revenue of its "stick" properties nationwide by 185 percent, from \$3.4 million to \$9.7 million. Jacor is attempting to do the same locally with K-NEWS 570 AM.

"We're starting from scratch there," Porter says. "There really wasn't anything on the property when we bought it."

By moving Rush Limbaugh and Dr. Laura from successful Jacor station KALL 910 and hiring a full news staff—including top personalities from other local stations—Jacor is hoping K-NEWS will become a cash cow, perhaps even its flagship station locally, while KALL 910 maintains its popularity thanks to local personalities such as Tom Barberi and Chris Tunis. Preliminary numbers aren't in, but Porter remains optimistic about Jacor's plans for growth in the local market.

Bigger isn't better for everyone, however. Both Simmons and Trumper say that maximization of quality is more important in the race to the top than sheer numbers. "Our objective is to maximize our market opportunities," Hanson says. "How many stations that means is relative to the stations we own."

Reaching for Revenue

It can also be relative to how well your staff can generate revenue from sources other than radio advertisements—sources the industry refers to as non-spot revenue. Perhaps the biggest success story of non-spot revenue efforts locally is the *Marketeer*, a magazine started by Citadel and Cox TFI (a subsidiary of Cox Communications, which owns newspapers and cable distributors nationwide) two years ago to reach a more targeted demographic.

"Typically, with radio stations you're talking to the masses," Benedetti says. "*Marketeer* is a vehicle for business-to-business marketing. Some of our best success stories have come from a combination of radio and *Marketeer* ads."

The publication, which sells editorial space in exchange for ad purchases, is supposed to reach every business along the Wasatch Front with two or more employees, which would put its circulation at roughly 27,000.

Other similar efforts include *Grid*, a music magazine marketed in conjunction with X-96. The magazine hung in there about two years, but was finally discontinued last December because it wasn't pulling in more revenue than it was taking. Facer says the magazine was simply "too nichey" to fit X-96's overall marketing strategy. He does note, however, that other non-spoeforts by X-96 have been highly successful, including the X-Mart store and regular concert sponsorships.

"Most people in radio are inherently creative," Facer says, referring to the ideas generated for non-spot revenue purposes.

SALT LAKE CITY PLAYERS

| January 1997 | |
|--------------|----------|
| 1. KSL | 1. KSL |
| 2. KJZZ | 2. KJZZ |
| 3. KJZZ | 3. KJZZ |
| 4. KJZZ | 4. KJZZ |
| 5. KJZZ | 5. KJZZ |
| 6. KJZZ | 6. KJZZ |
| 7. KJZZ | 7. KJZZ |
| 8. KJZZ | 8. KJZZ |
| 9. KJZZ | 9. KJZZ |
| 10. KJZZ | 10. KJZZ |
| 11. KSL | 11. KSL |

Source: Investing in Radio 1998, 1st Edition, BIA Research

TOP 5 RADIO STATIONS

Ranked By Audience Share 12+ (A)

| Rank | Station | Address | Audience Share | Format |
|------|-----------------|---|----------------|-----------------------------|
| 2 | KISN-FM 97.1 | 4001 S 700 E, Suite 8800 SLC 84107 ph 524-2800 fax 521-9228 | 5.5 | 23-44 Adult Contemporary |
| 4 | KZHT-FM 94.9 | 1200 W 2100 S SLC 84119 ph 972-6043 fax 974-0888 | 5.4 | 25-34 Rhythmic-CHR |

For a listing of the Top 25 Radio Stations in the State, see page 82

"There are tons of things that we haven't even scratched the surface on."

More of the Same?

Despite such a positive outlook on the radio business, it's tough to ignore the standing criticism that increased conglomeration and corporatization leads to homogenization. Facer, the guy who was forced out by a conglomerate, is the first to deny that claim.

"I couldn't disagree with that argument

more," Facer says. "The Telcom act has brought on more deep-pocketed, sophisticated people who want to be successful, which means more niche marketing."

The niche marketing he's referring to is the proliferation of diversely formatted stations. Reedy offers Trumper's Sunny 107.9 FM, a "timeless classics" station, as an example. "A station like this could not survive on its own," he says. "But as part of Trumper, the costs can be spread out and the station can live."

Even the seeming volatility of the market, which in the past two years has seen many DJs play musical chairs between stations, doesn't worry Facer.

"Right now there's lots of jockeying for position, lots of realigning, thinking, focusing and trying to figure out this big Telcom mess," he says. "Once people start figuring it out, the movement will slow down."

Shan Fowler is the editor of The Event, a local biweekly publication.

A HIGHER ROAD

Public and Community Radio

Talk to any industry insider and they'll tell you that the future of radio is niche marketing. Conglomeration feeds diversity because with more stations under your belt you can branch out, according to Stu Facer, former co-owner of KXRR 96.3 FM.

But there's a niche often overlooked when speaking of the brave new radio world. It's a niche that's been around a while—one that has completely different dynamics than the X-96's, KALL 910's and K-Bull's of the world, it's public and community radio.

"The single major difference between us and them is that in commercial radio the broadcasters are bringing listeners to advertisers," says John Green, station manager for KUER 90.1 FM at the University of Utah. "We're delivering a public service to listeners and asking them to contribute to that. People have to value what they're hearing to be listeners."

That poses a constant challenge for public

radio stations, which operate entirely on non-advertising revenue. KUER's yearly operating costs of \$1.5 million are 60 percent paid by locally raised funds through under-

writing and membership dues. The other 40 percent comes from state funding (since KUER is considered the "B" radio station) and grants from the Corporation for Public Broadcasting. Though profit isn't the bottom line, Green says that public radio stations are still forced to keep up with the commercial Joneses.

"A little-known fact is that our listeners spend most of their time listening to commercial radio," Green says. "They're big radio consumers. They spend 70 percent of their time listening to commercial radio, which poses a constant challenge for us."

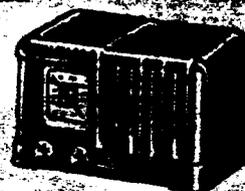
But, he says, the news and public information offered on KUER, as well as other NPR affiliates like KCPW 88.3 FM, is a niche not being filled by the conglomerates. "Our bread and butter is news and information, and the new formats haven't touched that yet because it's really expensive."

With KRCL 90.9 FM, the niche is harder to pin down because KRCL's niche is really every-

thing but for the community radio station's broadcasting differs from NPR affiliates because its programming is 90 percent local, says station manager John Bortel. The station, which focuses largely on music, has also had won both the Peabody Award and the Governor's Award for service to the local arts community, receives 52 percent of its funding directly from individual members.

"We want to provide programming and resources for people who aren't represented in the established commercial media," Bortel says. "Native American and Asian American programs on KRCL that probably wouldn't run on any commercial station." It's also important to note that public radio provides diversity and stability.

In a radio climate focused on market shares and advertising revenues, public radio doesn't often get attention. But, says Green, if these stations were to disappear, people would surely notice a void in news, information and entertainment.



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Federal Communications Commission
Office of the Secretary
Room 222
1919 M St., N.W.
Washington, D.C. 20554

Dear Ladies and Gentlemen of the Federal Communications Commission:

This has been prepared in response to a Notice of Proposed Rulemaking in the matter of the implementation of Section 309 (j) of the Communications Act; MM Docket No. 97-234 and the announced period for the acceptance of public comment on this issue. I have gone through the task of preparing this by myself in my own defense in the hopes of providing some insight as to why some of these pending rules have the potential to cause great hardship to some individuals. I happen to be at least one of those who may be adversely affected by these proposed rules, and, although my case may be the exception rather than the rule, I would like to make you aware of some extenuating circumstances which do exist in my case and may or may not reappear in future cases.

I currently have a pending FCC Form 301 for a construction permit for a new FM broadcast station at Oakley, UT, (# 971119MB) at 101.5 MHz. This application was filed in timely fashion in response to a filing window that closed on 20 November, 1997. The issuance of this set of proposed rules significantly compromises my position in these proceedings for reasons which I hope to make clear to you through the course of this response.

In order for me to make my situation a little more clearly understood, it is important for a brief synopsis of the circumstances that will help explain how I found myself in this position.

I live in the small but rapidly growing ski community of Park City, UT, located approximately 30 miles outside the Salt Lake City area. Through the years I have been civically involved in one way or another. After moving to Park City in July, 1991, I became involved with the Parks, Recreation and Beautification Board and a local non-profit FM radio station as a volunteer DJ. After several years of listeners' inquiries as to why the station's format was what it was, it became apparent that the needs and wants of a significant portion of the listeners was not being met. Unfortunately for many this was the only local service they could receive on their radio. Even though we are within theoretical listening range of several of the Salt Lake stations, the local geography prevents those signals from reaching the area which results in virtually silent airwaves. I

heard from several locals regarding the fact that for the past 15 years everything had been tried and it was not possible to bring any other local radio to the area. After doing some preliminary work, I found I wanted to do a serious inquiry regarding the issue.

In January, 1996, I contacted Lawrence L. Morton Associates, a consulting telecommunications engineering firm and the law firm of Leventhal, Senter and Lerman in Washington, D.C., and began the necessary investigations. After doing several searches we found that although there was no suitable area in Park City to "drop-in" a frequency, there was a small neighboring community that met all the requirements necessary for the "drop-in" and also cover a more significant portion of the unserved adjacent area. Thus we began the process of having a frequency allocated to the community of Oakley, UT. Finally, with a release date of 5 September, 1997, was the FCC Report and Order that granted the allocation to Oakley, UT on channel 268C1. (In the matter of amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations; MM Docket No. 96-230, RM-8911, RM-9049)

As a result of the granting of the allocation, I was aware that FCC procedure was that it would do a public notice to announce a filing window to allow any interested parties to file an application for the construction permit for the station for which I had just spent 18 months' time and work to create. The risk of competing applications was one I was willing to take as I was told the strongest application should be awarded the Construction Permit. With Line-of Sight being one of the primary requirements for the transmitter's location, I made especially sure of the requirement being met by twice chartering a helicopter to verify that line-of-sight did, in fact, exist. Due to the very mountainous terrain of the area, I can attest that there is only one small area with this requirement met. As I had all the necessary research and engineering work done well ahead of time, I felt I would be in a good position to challenge any other competing applications, and with the same representation as the allocation proceedings, filed with and followed all instructions of FCC Form 301 for the C.P. .

After explicitly following all steps and requirements of the currently valid form, FCC 301, the last line I read prior to signing was: " I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith". Prior to signing, I had assumed that statements made on the application form by the FCC were also made in good faith and it is here that the proposed rules fly in the face of what was supposed to be the criteria used when filing with the proper FCC Form 301. As per paragraph F of the general instructions for FCC 301: " Replies to questions in this form and the applicant's statements constitute representations on which the FCC will rely in considering this application. Thus, time and care should be devoted to all replies, which should reflect accurately the applicant's responsible consideration of the questions asked. ...Defective or incomplete applications will be returned without consideration. ...". It is upon this paragraph that I based my whole strategy of being able to fight off any competition and the proposed rules signify a very serious deviation from the previous implications of methods with which I might be able to prevail in this case.

With this background in mind, I would like to offer comment on some of the pending proposals, how they might affect me and/or others and, when possible, offer a different point of view. Please be aware that my area of exposure has been that of the FM band and that most comments will be made from that aspect. Thank you in advance for taking the time to consider these comments.

PP 1: The use of competitive bidding to resolve mutually exclusive applications would function more fairly if it were used only as a last resort in the settlement in those cases in which the award of the construction permit could not be decided upon by a series of challenges amongst the mutually exclusive applicants on the merits of the various sections of FCC301. If, as part of a comparative hearing, merits of any part of the entire application form can be sited as faulty by any of the other mutually exclusive applicants and survive a challenge as to its being faulty, it should result in the disqualification of that applicant. FCC 301 has several sections that, if weighted equally, could advance to the point where any qualitative credits claimed in Section IV-B-Integration Statement Part 2 would be moot and the award of the construction permit would be to the one with the soundest application that survived any and all challenges by the other mutually exclusive applicants.

PP 2: If one of the primary objectives of the FCC is to insure "maximum diffusion of control of the media of mass communications", the switch to an auction-based method of awarding construction permits will ultimately result in the elimination of the small entity in the mass media field.

PP 3: Comparative hearings can be cumbersome and the selection process has been allowed to turn on minimal distinctions, but if policy as stated in Paragraph F of General Instructions for FCC 301, "defective or incomplete applications will be returned without consideration" were enforced, any error on the form would result in a disqualification. If, as part of the proceedings toward the award of the C.P., I was able to challenge any one part of the other mutually exclusive applications, I would be able to eliminate all of the other applications. These challenges could be based on such requirements as line-of-sight, which in mountainous terrain cannot be assumed; acquisition of site from owner where in cases like mine there is only one owner on whose land the line-of-sight requirement can be met; technical inaccuracies in the engineering data submitted as part of FCC 301; satisfactory completion of all public notice requirements; ability to meet financial obligations necessary to complete the project; timely submission of an application in response to a filing window.

PP 6: "The commission must grant the license or permit to a qualified applicant through a system of competitive bidding." If being a qualified applicant meant that the application had survived all challenges from any or all of the other mutually exclusive applicants, there would be a significant reduction in the number of cases with which the FCC would have to deal. Allow a line by line challenge of an application by any of the other mutually

exclusive applicants. If any aspect of an application is not able to survive a challenge, it should disqualify that application.

PP 7: The date of July 1, 1997 has the potential to create great hardship in that it does not address what happens to those whose cases arose between that date and the date on which the proposed set of rules is finally adopted. If this Notice of Proposed Rulemaking was only released on November 26, 1997, how was one who applied prior to this notice able to know that he was bound to operate under a set of rules that was not even proposed at that point? The proper form to file for a C.P. when I filed was FCC 301 and I expected that I would be bound to the instructions and qualifications of that form as the instructions implied that the merits of the application would be the judging factors. The terms and conditions of these proposed rules should only affect those who have filed after their official adoption by the FCC.

PP 14: Comparative hearings should be used routinely until this set or an amended set of rules is officially adopted by the FCC. If any aspect of an application can be deemed faulty by any of the other mutually exclusive applicants, it should disqualify that applicant from being considered as a potential applicant for the auction. If after all challenges there is more than one applicant remaining, an auction might be an appropriate means to resolve the conflict. To be able to apply new procedures and rules to previously pending applicants seems most unfair. If applicants performed in good faith as they certified in FCC 301, it is a reasonable expectation that the governmental agencies which specified FCC 301 as the proper form and procedure, would also in good faith adhere to the terms and conditions as specified within.

PP 15: Using auctions as routine procedure has potential to cause a significant hardship to some pending applicants. I filed my application with the understanding that there might be an auction to resolve mutually exclusive applications, but I also thought I would be able to defend my application prior to its being sent to auction. With the auction being the first step in the process, it might eliminate what could be the "best" applicant for the station only because that applicant might lack the depth of funds to survive an auction. Having to come out the successful bidder was not something I expected to have to do as I expected that the merits of my application would cause it to prevail. An additional and as yet unknown bid amount was not among the other legitimately expected and planned-for expenses. I relied on good faith that integrating preferences were not the only selecting criteria and that I would be able to provide evidence of having the strongest application.

PP 17: An auction might be the quickest way to get through the first phase of the process, but it still does not eliminate the fact that the winner has to be a sound entity. Just because an applicant has sufficient means to "buy" the C.P. does not mean that that applicant will be able to see the project through to its completion. A more complete and extensive set of criteria must be used to select who is awarded the C.P.

PP 18: To assume that someone who is able to prevail at an auction would be the one who ultimately valued it the most might not be quite accurate. Another applicant might

value it the most for a series of reasons, but that applicant might not have the fiscal means to survive the additional monetary challenge of an auction. Undertaking the task of allocating the frequency to create the "drop-in" in light of others' testimony that it could not be done, should provide some indication of how much I valued the project.

PP 19: To eliminate delays, costs and uncertainties associated with comparative hearings, rely more on the technical merits of each application as a means to eliminate what would otherwise be considered as a qualified applicant.

PP 21: Comparative hearing should be used for all cases which were accepted for filing prior to the date that this set of rules is officially adopted. If all the merits of FCC301 were given equal weight and any one inconsistency found on the application was grounds for dismissal, it would result in better and more efficient service in that any inferior application would be dismissed before it got a chance to bog down the system.

PP 22: I have expended a significant amount of resources to get to this point among which were the legal and engineering work necessary to complete the allocation requirements and the additional legal and engineering work necessary to insure an application that would meet all challenges. To propose a procedure which would render this work basically worthless without any means of compensation is unjust.

A comparative hearing should encompass all phases of the application form and their satisfactory completion at least among which should be: Timely filing in response to an announced filing window; Satisfaction of the line-of-sight requirement; Proper site acquisition from property owner whose site meets that line-of-sight requirement; Precision of technical data; Satisfaction of public notice requirements; Ability to meet financial obligations.

PP 23: In the event the Commission uses auctions, the date for the only persons eligible to be qualified bidders should be changed to reflect the official adoption date of this document. Without knowing what the criteria was that one was supposed to adhere to during the formulation and pendency of this NPRM, at least provide the privilege to all those who have endured the full brunt of FCC 301 and its requirements to be the only ones eligible to participate in the auction. The date of July 1, 1997 seems to have been set arbitrarily throughout this document and should, in all cases, be changed to reflect the date of adoption of this set of rules in order to minimize the potential hardship cases.

PP 30 & 31: Several basic qualifications of the applicants should be reviewed prior to the auction as a set of pre-qualifying criteria. All applicants should be qualified based on correctness and strength of information contained as part of FCC 301 and survival of any challenges from any of the mutually exclusive applicants. If FCC 301 and its instructions are followed completely, it affords several opportunities to help eliminate competing applications. I have also seen instances where an applicant, in disclosing other pending actions with the FCC, has listed other applications that have been filed on an almost semi-weekly basis. This applicant can have no real expectation of acquiring all these pending C.P.'s, and seems only to be able to muddy the waters in the hopes of some kind of settlement to withdraw his application. Perhaps if a limit on the number of pending

applications any one principal applicant may be allowed were imposed, or additionally, to have applicant demonstrate ability to be able to execute financially on the total combined construction costs of all currently pending applications, other frivolous applications could be avoided.

If more detailed work were required prior to, and as part of submission requirements, it could help eliminate some potential applicants. If, upon more detailed study of the various requirements for a given site, the applicant was forced to recognize all of the potential problems at the outset of the project, that applicant might be more inclined to withdraw or not file at all. In my case, I am forced to use a site with no power and has only helicopter access in order to comply with line-of-sight requirements for the transmitter. Knowledge of information such as this would likely help deter some applicants' interest.

If FCC 301 is honestly and thoroughly done, there should be no need for any modifications to the form. If the applicant were forced to fully execute based solely on the merits of the application and full knowledge of what those merits might entail, there would be a lot fewer applicants.

PP 36, 37 & 38: To allow someone to bid on the construction permit for any form of media-transmitting station without questioning any of that applicant's qualifications is ludicrous. There must be form of preliminary qualifying criteria to be met by each applicant in order to help guarantee that applicant has sufficient technical and financial capabilities as well as use of the site for the transmitter under consideration. Satisfaction of these criteria will help insure that there will be a more smooth completion of the project.

Under proposed policy, the only necessary criteria is cash. If the FCC was originally created as a regulatory board, this switch to a board whose main concern is that of revenue generation, is a most disturbing realignment of functions. Using a financial statement as the primary criteria will not help diversify media control as is a primary Commission objective, but will ultimately result in the total elimination of the "little guy". There is now the real possibility that an auction winner had no real intention of constructing the facility, but instead intends to sell the C.P. or as a worse case, secure the permit as a means of eliminating potential competition in a market. Purchasing a C.P. with no intention of its execution might be the least expensive means of eliminating competition and monopolizing the market.

Consider the chaos if the legal and medical professions sold their licenses as the first step and that those whom these professionals were supposed to serve were forced to first consider their qualifications to provide service. The lack of qualifying criteria will do nothing but encourage unqualified applicants to participate in the process. The original intent seemed to require an informed applicant, not a wealthy one as it now seems. What is the incentive for an applicant to be fully informed prior to participating in the auction? If all the necessary preliminary work has been completed, there should be no need to allow any amendment to the application. This proposed process also introduces the possibility that a deliberately incorrect application can be first submitted and then amended to meet requirements.

If all the mutually exclusive applicants were able to challenge the merits of each of the competing applications and file motions to deny based on any inaccuracy found within that

application prior to being considered a qualified participant in the auction, many competing applications could be eliminated due to their lack of a sound framework. Follow and enforce FCC 301 and all its required testimony and assign equal weight for all the various aspects of the application. Eliminate comparative criteria or at least make its significance more proportional to the task of the entire application. Bidding credits, if used, will only be derived from some form of comparative criteria and will most likely result in a whole new round of legal challenges. Allow only those applications with sufficient technical merit and have been able to demonstrate that merit by survival of all challenges to be eligible for the auction. An uninformed auction winner will be more likely to default on the project because that business plan did not allow for a lot of the necessary contingencies. A different, more cumbersome process of dealing with partially completed, bankrupt or a technically unfeasible project must now be contemplated by the FCC. This problem also has the potential to reoccur on the same project, resulting in an endless cycle of unqualified applicants but successful bidders.

PP 42: If all pending applications were correctly filed in response to a filing window, that at the time of filing was the currently proper procedure, they should not have to endure the added hardship of additional competition. They followed proper procedure and should not be penalized for that. The potential for additional unqualified bidders to participate will only further cloud the resolution of the issues at hand. Once again, the cutoff date on which these proposed rules will take effect should, in fairness, be changed to reflect the date of the adoption of this proposed document.

PP 43 & 44: To be required to submit a short form application would not constitute a burden, but those who followed established filing procedures at the time were forced to endure a burden to properly complete the required application-FCC 301. Anyone who filed a long form in response to a filing window should not have to endure the further burden of additional applicants if another filing window were opened. Allow no further applications, rather only qualified long form applicants whose FCC 301 forms are of equal technical merit.

PP 45: Any settlement that can be arrived at prior to the use of the Commission's auction procedure should be allowed. If, after any technical challenges, a settlement can be worked out among the remaining applicants, it will only help to alleviate the current backlog of those waiting for action, as well as qualifying and potentially eliminating some pieces of the puzzle.

PP 52 & 53: The idea of those who value the project the most being able to be the ones who are also able to bid the most will not always be the case. Those who have demonstrated increased commitment to the project throughout the course of the procedure are obviously the ones who value the project the most, they just might not have as extensive a set of resources as someone who can outbid them. This is a procedure that does not afford equal opportunity to all for proper diffusion and diversification of media control, rather favors the more affluent major conglomerates which are currently exercising increased domination of the airwaves.

It seems the focus of the FCC has changed from trying to resolve competing applications to revenue generation. An auction should be held only as a last, desperate measure not as a routine operating procedure. Only hold an auction if mutually exclusive applications still exist after any and all challenges by other applicants and no other settlement arrangements can be worked out among the remaining mutually exclusive applicants within a given timeframe. A study is required among those other than legal representatives of existing licensees to be certain whether the auction procedure has resulted in any hardship eliminations for those who were ultimately unsuccessful in the auction.

PP 54: Perhaps here is where FM with its special circumstances and requirements is most arguably a category whose applicants deserve a different approach to determine mutual exclusivity. Technical and other merits are required to be able to execute the process. If a form of combinatorial bidding were used, a method must be provided to insure a single participant who is bidding on a single C.P. cannot lose his position in the process to a combination bid.

PP 56 & 57: Determining and setting an up front payment and minimum bid amount for an auction would be most contrary to the public interest in that it would favor larger corporations and their larger budgets and could effectively eliminate newcomers from entering the field. Are these expenses in addition to the application fee and necessary preliminary work and under what circumstances are they refundable? What about those who have already paid the \$2470.00 fee for FCC 301? This policy also puts the FCC in the appraisal business. What happens in an area where there are no real comps?

PP 60: As stated, none of the existing filing procedures was designed to work in conjunction with the auction of mutually exclusive applications because an auction was not considered as a viable method to resolve the problems. No applications should be accepted unless they are submitted in response to a definite filing period. If a filing window passes with no applicants, allow it to remain dark for a period of time and then renote. Allowing time for market changes in any given area might be the only catalyst needed.

This proposed procedure will only increase the number of mutually exclusive applications for any given filing window and thus result in greater numbers participating in the auction. This will result in a higher winning bid amount and further elimination of the small entity which is necessary in order to achieve maximum diversity of the airwaves.

PP 61: The FCC saw the need to impose a temporary freeze on further applications which is effective upon the release of this NPRM. If a freeze for future applicants is necessary based on the release of this NPRM it is only logical that those who were already in the process should not be bound to any of the conditions of this NPRM, only to those procedures which were in effect at the time of filing.

PP 62: Any resources expended as part of the long form process are not unnecessary and wasteful, but should be construed as only a small part of a complete business plan and expected start-up expenses. Undertaking this task at the beginning will only better enable

potential applicants to more realistically and accurately understand what will be required to complete the project and to prepare for potential problems. The expenses encountered in the filing of FCC 301 have the potential to be relatively insignificant compared to what some of the auction amounts might be.

The FCC has expressed concern about the cost of filing a long form application during the pendency of this rulemaking but does not address the issue of those who filed prior to the release date of this NPRM (11/26/97) and after the July 1, 1997 date. Certain applicants are expected to adhere to a set of rules which was not even in existence at that time they filed. Those who have already incurred the burden of filing the long form are entitled to compensation and should not be expected to adhere to the conditions of this NPRM as they completed FCC 301 in good faith with what were represented to be the existing operating procedures at the time.

The term "auction window" is used only here. Is this in addition to, or instead of, a filing window? If it is indeed instead of an auction window, it further helps illustrate the direction away from that of a regulatory board.

PP 68, 69 & 70: Pre-auction processing needs to be able to better qualify applicants and their realistic impressions of the work ahead. In addition to FCC 175, the technical information necessary to effect completion should be prepared ahead. This would not constitute any form of burden and might actually prevent burden if a bid winner does his post-auction engineering work and then finds his proposal to be unfeasible.

A pre-auction engineering review is certainly needed in the case of FM. Any deficiencies found in this part of the review of the application should result in its disqualification. Among but not limited to the qualification criteria could be: Timely filing in response to a filing window, Satisfaction of line-of-sight requirement, Ability to acquire that site, Precision of technical data, Satisfaction of public notice requirements. The proposed procedure not to review applications except to decide mutual exclusivity could result the auction winner not having the technical merits to fully execute the project resulting in the possibility for repeated auctions for the same C.P.

As part of the pre-auction review, allow all mutually exclusive applicants file petitions to deny a competing application if sufficient deficiencies of technical merit or other required aspects are found within that application. Throughout the process of the allocation and now the application for the C.P., I was informed that I was expected to meet the requirements of FCC 301 to the letter of the law and that lack of satisfaction of any requirement could result in the ultimate dismissal of my application. Yet I find myself in a position where all of the other mutually exclusive applications have a flaw of one kind or another, a flaw that I was under the impression could result in my disqualification if I were to make the error. The rules and instructions on an official U.S. Government document (FCC 301) will be rendered as being useless during the time that it was the supposed to be the proper document, if the proposed set of rules is allowed to be adopted as it is now stands.

PP 73: The removal of competing applications should be encouraged at any time throughout the process. Being able to reach a settlement agreement between competing applicants will only help to free up the Commission's affairs and prevent a backlog of

cases. To hold an auction in the case where a settlement could otherwise be arrived at, is only a means of generating revenue and not in the best public interest.

PP 76, 77 & 78: A period of 30 days is more than sufficient to prepare a long form, especially if all required engineering work is done ahead. What is the vehicle by which other non-winners will be informed as to the validity of the bid-winner's application and be given the opportunity to file a petition to deny? The requirements of the auction and the lack of the need for engineering work to be done in advance by all applicants, will result in a lesser ability of other applicants to question the merits of FCC 301 of the bid winner and therefore be unable to file what may be a valid petition to deny. The ability to compare engineering data would serve as a system of checks and balances regarding the design standards of any applicant.

A five day notice is insufficient in order to prepare and file a petition to deny. If engineering work is not done in advance, it does not afford any of those who might wish to challenge technical data enough time to do the necessary research.

If FCC 301 instructions were explicitly followed and enforced and design criteria required, there should be no questions relating to a technical proposal and therefore no changes necessary. Once the form is submitted, no significant changes should be allowed or it would result in its disqualification. Fictitious, inaccurate (deliberate or not) data could be submitted up to this point with no means for other mutually exclusive applicants to effectively challenge the data.

PP 81: Ability of the applicant to secure a reasonable assurance of the use of a site may be the most important aspect leading to the completion of the project. Throughout the rules and regulations, it seems that flat terrain is assumed. In mountainous terrain, as long as line-of-sight is still a required criteria, inability to secure the site could pose real problems. In my situation, I have secured the only site which meets the line-of-sight requirement. In this case, the terrain prohibits multiple sites from satisfying the line-of-sight requirement. In such instances, lack of advance permission from the sole property owner whose land can satisfy this requirement could result in the bid-winner's inability to perform. Reasonable assurance of the use of a valid site could be one of the most important criteria for the completion of construction and lack of it could result in the total failure of the project.

PP 92: The potential for large group owners to prevail over newcomers to the field is very real, thus resulting in lack of diversification of ownership. The use of bidding credits or any other form of preferential treatment will only be challenged in the courts and should not be relied on as a means to settle the issue. Refine, strengthen and adhere to the existing criteria and enforce them as a routine part of determining a valid application.

Respectfully submitted,


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24 Feb 78