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August 29, 1999

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Ms. Magalie Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D. C. 20554

RE: Low Power Service, **MM Docket No. 99-25 Reply Comments**

Dear Ms. Salas

I am attaching for filing my formal reply comments. I have provided 1 original and 9 copies. Also provided is disk copy of my reply comments stored as a word document for your ECFS if needed. As per the ECFS staff direction I have not included a copy of the audio CD attachment "A" for the ECFS because of the size of the files.

Thank you for your help. Should you have any questions concerning the documents provided please feel free to contact me. Thank you again have a great day.

Respectfully submitted,



Norman A. Scott

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Reply Comments

For MM Docket No. 99-25

By Norman A. Scott

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of  
  
Creation of a Low  
Power Radio Service

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MM Docket No. 99-25  
  
RM-9208  
RM-9242

**Reply Comments**

Norman A. Scott  
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**Summary of Comments**

The NAB comments in a nutshell as I understand it is there is no indication that independent voices have been eliminated. Never mind the fact that 71.2% of all commercial radio stations are now not standalone operations. They assert there is now more format diversity with consolidation but it has come at the expense of direct head to head competition between like formats. The NAB claims the Commission is going to shoehorn new low power stations into existing markets and create new interference yet the NAB still wants to add more translators. They believe that the Commission concluded that lower power stations are inefficient use of spectrum yet they want to protect 1 and 10 watt translators from being bumped by 1000 and 100-watt stations. They profess local stations will not be able to continue to offer quality local programming if the community has more choices by adding new low power stations. In the NAB comments they declare there will be millions of people who will receive interference from low power stations. Also the low power stations will not have a useful signal because full power stations will wipe out 41 % of their coverage due too interference. Oh by the way if the Commission goes ahead and creates this new service then they want their members have right to apply for them also. It seems a little strange to me if all of this were true who would want to apply for something so useless and troublesome.

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## **NAB Interference Claims Unsubstantiated**

Of great interest was what was not in their comments! After hundreds of pages of maps, charts and graphs the NAB offered no real world evidence of any on air testing to substantiate of their interference claims! It seems to me that it would be easy to take the next step and perform a field test for at least one city. They had already developed data and maps. Armed with that information and the test radios, it should be a simple matter to prove their claim with over the air tests using a low power station and measure the interference to both analog and IBOC stations. It makes me wonder if the tests were done and they didn't fit the conclusion so results were not shared! I hope the Commission will authorize or perform it's own over the air test and not take the NAB results at face value. With 120 day delay in this proceeding and we still have no hard evidence from the field is troublesome.

It seems that the foot dragging with one delay after another was to buy time while the NAB attempted to pull in some of it's markers from Congress to try and stop this public proceeding dead in its tracks. To me this speaks volumes about the character of the NAB. Yet in their comments they have the brass to point and wag their finger about teenagers playing radio and claim that the is Commission trying to promote Pirate Radio. I would be very careful of how high you raise the chinning bar for character. The NAB fears that low power stations will operate at higher power and modulation levels than authorized but I see the same violations listed on the FCC wed site for full power stations. The NAB claims that because the low power station hasn't spent millions on their station they will feel they have nothing to lose by operating it illegally. Well I don't know about you but 1 year in prison is pretty strong deterrent for someone who thinks they have nothing to lose. Yes character counts but it must be applied equally! Today it getting harder to know just who are the pirates!

## **Funding for the Enforcement Branch**

The NAB brought up the issue of enforcement. I feel it is a valid point and it needs to be addressed; however in the NAB comments they offered no solution other than it was a reason not to adopt a low power service. The broadcast industry is one of the major users of the services of the Commission's Enforcement Branch, yet it pays very little in terms what it takes in revenue. For years it points to it's

public service as payment full, however cable companies pay a fee for the use of the public right away to the cities where they operate. On an average cable companies pay a 5 % fee off the top for all revenue collected. If the Commission collected that kind of money from the broadcast industry for the use of the public airways it would be able to fund all of the needs of the Enforcement Branch. Small market stations that are having a hard time making it would not pay while the ones who are making a killing would pay their fair share.

That brings me to another point that is when stations are sold the buyer pays only a small fee to transfer the license to the new owner. As an example a FM station that sells for 20 million dollars it at best may have 1 million dollars in real assets. The other 19 million dollars is the value of the license and the people of this country don't see a dime! Sure is a sweet deal to be able to sell something that isn't yours and make a very handsome profit! This could and should be another source of funding for the Enforcement Branch.

### **Protection for Super FM Stations**

The NAB claims that the Commission should provide interference protection past the 1 MV contour because many listeners depend on the service as their only audio source. What they fail to consider is many of the communities would prefer to have their own station. What the NAB really wants is to protect the super FM stations. They are stations that are considered as existing stations under 47 CFR 73.211 (C). Back in the late 60's the licensee had a number of years to relocate their transmitters to higher locations before the Commission inaugurated HATT requirements for different classes of stations. I worked as the chief engineer for KRUZ in Santa Barbara California, one of these super stations. The transmitter site is located on the top of broadcast peak a 5,000 foot mountain. We were authorized to run 105,000 watts ERP. This station can put a noise free signal into San Diego some 216 miles to the south. Today KRUZ is listed in the FCC records as a class B station, yet this station and many other super FM stations far exceed what other newer stations would be authorized of the same class. They produce greater interference to many full power stations yet the NAB is willing to live with the problem because super FM stations are

highly valued assets to own by its members. I don't think the super FM stations are listed as short spaced stations in the FCC records but the fact is they produce just as much interference if not more. It would seem that the Commission may want to consider leveling the playing field by placing HATT and ERP requirements for all stations that were pervious were exempt. At the time the when the Commission exempted existing stations there were far fewer FM stations and most FM stations were having a hard time making ends meet. Now with many more FM stations and with the need to find more room for low power stations it seems that it would be a good time to revisit this issue.

### **NAB Interference Test/Analysis**

The receiver interference test performed by the NAB is flawed and is an attempt to mislead the Commission as to the true effects of 2<sup>nd</sup> and 3<sup>rd</sup> adjacent interference. There is a wide difference between the tests the Commission conducted and the NAB tests. Also the NAB Interference Analysis is done in a way to paint the worst possible picture. First it assumes that every person is trying to listen to the same station. In the San Diego market the highest rated FM station has a rating of 6.3 percent of the market. The NAB interference numbers for San Diego do not reflect this fact. If the Commission's receiver tests were used in place of the NAB test and the rating were also factored in the total interference would be very small indeed. The NAB results are not a surprise when you write the conclusion first and then need data to support it.

### **On Air Interference Test of XHKY**

I have always been a propionate of real world testing. What works in the lab may or may not work in the field. There is a way to put this interference matter to bed once and for all. As I stated in my comments there are three stations in Tijuana Mexico that have no 2<sup>nd</sup> adjacent protection between them. The first station is on channel 255B, XHMORE FM. It operates at 50KW ERP and has a HATT of 71 meters. The transmitter is located at N Lat 32 31 58, W Lon 117 03 55. The next station is on channel 257B1, XHKY FM. It operates at 25kW and has a HATT of 100 meters. The transmitter is located at N Lat 32 30 29, W Lon 117 02 17. The next station is on channel 259B1, XHBCN FM. It operates at 25KW ERP and has a HATT of 96 meters. The transmitter is located at N Lat 32 29 30, W Lon 116 57 55.

On the surface this may not seem to be very good proof, but just an example of poor engineering on the part of Mexican government. However the station in the middle, XHKY provides English programming for the 16<sup>th</sup> largest market San Diego, California. If we were to believe the results of the interference tests of the NAB we shouldn't even be able to hear this station without gross interference using a portable receiver. **This station has no 2<sup>nd</sup> adjacent channel protection above or below its assigned frequency.** In fact the station operating on the lower side is operating at twice the power.

On August 18, 1999 at 11:30 A.M. I performed my own real world interference test. Using a Sharp QT-20-CD boom box placed inside an automobile on the front passenger's seat XHKY Hot Country 99.3 was recorded using the Sharp's cassette recorder. The Sharp used it's own telescoping antenna. The Sharp portable radio/cassette/CD player cost \$79.95 in 1989. The recording started in direct line of site of all three Mexican transmitter sites at the US Mexican border on Interstate 5. I traveled North on Interstate 5 until I was well past XHKY predicted 1 mv contour some 32miles. The stereo cassette was transferred to a digital mono wave file and then placed on a CD ROM label "Attachment A" XHKY Interference Test. Track 1 is the distance I traveled from 0 to 4 miles. Track 2 is from 4 to 8 miles. Track 3 is from 8 to 12 miles. Track 4 is from 12 to 16 miles. Track 5 is from 16 to 20 miles. Track 6 is from 20 to 24 miles. Track 7 is from 24 miles to 28 miles. Track 8 is from 28 miles to 32 miles. Track 9 is the complete recording. Listen with your own ears. The results speak for themselves!

When you listen to the track 6 you can hear the receiver breakup and you can hear other radio stations. At that point I was passing within one-quarter mile of Mount Soledad. This is where most of San Diego's FM/TV transmitters are located. The station you can hear is KFMB, which operates at 100.7 MHz. The interference is due too blanketing or overloading the receiver. Still at no point do you ever hear the two adjacent Mexican stations. To claim that FM radios are worst now than they were 20 years ago is a complete falsehood!

Are there radios that will not perform as well as the Sharp? The answer is yes! However at what point do we draw the line? Should efficient spectrum management be held hostage to the \$9.95 radio as the NAB would have us do? That would be ludicrous! Each of us has purchased a product that appeared to be a great

buy only to find its performance was lacking. The \$9.95 radio should be no exception! This test shows the flaws of the conclusions reached in the NAB tests. My hope is that the Commission will use resources of the San Diego field office and look into this subject fully by performing its own tests on XHKY before it reaches its own conclusion in this matter.

The management of this country's broadcast spectrum is a technical matter. It should never be used as a tool to protect current licensees from competition. The market place should determine who is successful and who isn't! Docket 80-90 didn't force anyone to apply for the station licenses. To claim now, that the reason why broadcast corporations had to buy up more stations is because the Commission made them do it is ludicrous!

If the broadcasters want to place a limit on the number of stations serving a market due too economic considerations then petition the Commission for a rule change. Don't hide behind technical rules!

### **Standalone Stations**

In the NAB comments they claim that there are *still a considerable amount of radio station that are not part of local cluster of stations*. They point to the fact that nationally 28.8% of all commercial radio stations are standalone stations. They also claim *many stations are still owned independently or in small combinations, and thus could be acquired by new entrants*. First what is not clear of the 28.8% standalone stations what percent are FM Stations? What percent are AM stations and what percent of the AM stations are daytime only stations?

Next factor a new entrant must consider is the cost of purchasing a station. What is not mention in the NAB comments is the fact of what has happen to the price tag of the remaining standalone stations. The economics is such that the only real buyer for the remaining stations is one who already has consolidated stations in the same market. There is no way for the new entrant to pay the higher price tag for the station and then try and compete in the market were the remaining stations consist of consolidated stations. The pressure on standalone stations is increasing with every day that passes. The only options for the remaining standalone stations is to try and hold on for the best price or trade their station license for stock in a company that already owns consolidated stations in the same market.

A Low Power FM station with a construction cost of \$50,000 to \$ 100,000 can compete in markets where the rest of the stations are consolidated. The reason is because the consolidated stations new owners are burden with heavy debt load unlike the Low Power FM station. A Low Power FM station can charge less for a commercial and still stay in business.

### **Digital Radio**

Much has been made of the proposed In-Band-On-Channel Digital Audio Broadcasting. The public has been told that broadcasters need to make this change in order to stay competitive with other digital sources. Every AM/FM radio in this country will be junked after 13 years. The NAB thinks the public should wait until they have this all in place before you consider adopting a low power FM service.

The NAB and other broadcasters should take their own advice and use the Internet as the station's digital outlet. After all the audio is already digital. The people in this country wouldn't need to junk their radios and buy new ones! Radio stations could have as many program outlets as they want without the need for more spectrum. In the NAB comments they have listed all of the glowing advantages of the Internet. They also state that many broadcast stations already use the Internet today. No one today can predict just how far along the Internet will have come in another 13 years. If the Internet is good enough for adding new voices then why is it not good enough for Digital Audio Broadcasting?

### **Summary**

I must say this has been an eye opening experience for me. The out and out greed of the NAB and other broadcasters is discussing. As I have looked over some of the other comments I have noticed many commentators are asking that the new low power stations should be non-commercial. It is not a wonder that these people are fed up with the greed of commercial broadcasters. To those people I would say not everyone who owns or wants to own a commercial radio station is looking to make a killing. There is nothing wrong in serving the needs of your community and at the same time making a living. During this process we have even seen non-commercial broadcasters just as greedy. The one thing that was clear is the honesty of the comments from small market broadcasters who fear the competition and have said so in their

comments. The NAB is really no friend to the small market broadcaster but they are more than willing to put the concerns of small market stations or even the blind out in front when it suits the purposes of the big corporate owners as we have seen in this case.

The NAB comments were rich in criticism of the Commission. Much of it was not well founded but only playing to the ears of its friends in Congress. The art of double speak is rising to new levels. Increased competition means consolidation. Streamlining means no regulations. Serving the public interest is directly related to the station revenue. So far the only gross error the Commission has made is lifting the long-standing ownership rules without a fight. The people of this country fell asleep at the switch when the 1996 Telecommunications was past. That is not an issue for here but one we all need to take up with Congress. What is important is we not repeat the same mistakes. **One station for one local owner means more voices and better local radio.** There is nothing like having the main studio occupied by the person who holds the license of trust to the community where the station severs. Ask yourself has radio programming gotten better or worst sense 1996? Look at the comments. The only people who say it has gotten better are ones who are lining their pockets with benefits of consolidation or their hired guns!

The NAB has attempted to back each of the Commissioners into a corner by making sure they are on the record that they do not support increasing the interference level on the FM band and then submitting cooked up numbers to support their interference claims. All of this without any real world testing after they requested and were granted an extension in this proceeding.

Thankfully we have the Mexican FM radio station XHKY. If you have listened to the audio CD you know now that the NAB interference claims have no merit. If you know the Mexican people nothing goes to waste in their country including valuable radio spectrum. If you think that somehow I have doctored the audio tracks then I would suggest that you ask Jefferson Pilot Communications the owners of KSON the other country format station in San Diego. They are watching their rating being eaten away by a station according to the NAB you shouldn't be able to hear. It to me is a thing of beauty and a joy forever to see head to head competition between formats. KSON has been the only country station in San Diego for

years and now the battle is on and the real winners are going to be the fans of country music who live in San Diego and the advertisers. All of this from a 25 kW station that would never be allowed to operate in this country because outdated interference rules. This is what is missing in many markets. The San Diego radio market was raped after the passage of 1996 Telecommunication Bill and hopefully with the adoption of this new service there will be more of the same type of competition.

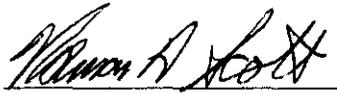
By now it is a well known fact that people want more choices and the broadcasters of this country have always been opposed anything that jeopardizes their ratings. When AM was king they were opposed to FM stations. FM broadcasters were opposed to satellite radio. Television broadcasters were opposed to cable TV and low power TV. Now here comes low power FM and it shouldn't be to anyone's surprise they are opposed to it as well. The important thing to keep in mind at each step the public interest was better served by expanding the number of choices.

Now I am not a lawyer or a politician, I am a broadcast engineer, however I hope I have been blessed with knowing what is just and fair. I think most of the commentaries have made it very clear of how they feel about who should own these new stations. If the Commission feels they have no other choice but to let full power broadcasters apply for the new stations under current law then I say it is not worth it! At that point I am willing to go to back to Congress and get the station ownership rules changed back to what they were before 1996. It shouldn't be a very hard sell. By that time most of the politicians will have already realized they were had as they look at what it is going to cost for radio time for their reelection campaign. For the politicians who are not worried about the new radio rates because they have taken money from the NAB or other broadcasters they will be looking for a new job! For the broadcaster who wants it all, even the crumbs on the table they are truly the one cutting off its nose to spite its face!

Thank you again for this opportunity to address this very important issue. You have shown great courage in voting to bring this matter before the people of this country in this proceeding. The Federal Communications Commission has served this country well by being the guardian of the public interest in communication matters. In recent years the Commission has made every effort to try and include the

general public in its decision process. This isn't the same FCC your Dad knew. Your web site is full of information that was only available in the past to the beltway bandits. Please thank your people for all of their hard work who have made this possible. This was very helpful! May God grant you the wisdom to you help make a fair and just decision in the public interest. Please vote to give access to a small portion what is really ours. Let us make sure that the owners of radio stations in this country are not just shareholders!

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Norman A. Scott", written over a horizontal line.

Norman A. Scott

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