

The Honorable Kevin Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

January 9, 2007

Dear Chairman Martin:

These are my collected thoughts prompted by reading filings in opposition to petitions for reconsideration by Indiana University and the Indiana Community Radio Corporation to seek reconsideration by the FCC of a decision in MB Docket No. 06-77 to reassign the frequency of WXIU-FM, a low-power FM station operated by students at Indiana University. Cox Radio, Inc; Newberry Broadcasting, Inc; Elizabethtown CBC, Inc; and Cumulus Licensing LLC seek to affirm WXIU's reassignment. I am sharing these thoughts also with the other FCC Commissioners.

I must admit to some unease upon recently receiving and reading the filings of opponents to the above-referenced oppositions to petitions for reconsideration.

I am simply an outside observer to this FCC process. I am most assuredly not conversant in the thicket of rules, regulations, proceedings and procedures that apparently accompany all matters, large and small, brought before The FCC as a regulatory/adjudicatory body.

I do, however, grasp the essence of this particular matter. I understand the conflicting objectives of the parties. That's all pretty straight forward.

What causes me to grind my teeth, however, are the devices evidently well-trained, highly-specialized lawyers employ to conduct a winner-take-all battle. These devices *seem* to emanate from some underlying logical construct, but that logic is not readily apparent to an untrained but observant person.

A litany of apparently important terms virtually flies off the pages of these oppositional filings (e.g. "timely filing", "defective proposal", "expeditiously dismiss", "procedural and technical rules", "technical and legal defects", "cure defects", "counterproposal", "rule making petitions", "factual or technical showing", "untimely and unsupported by evidence", "public notice", "merits of claim", "short-spaced", "after rounding", "secondary services", "integrity of the FM service", "first local service".)

But none of these terms appears to really pertain to the heart of the matter. Instead, these terms, these devices, appear to be subterfuge serving more to obscure than enlighten relevant issues.

How, may I ask, do these terms constitute genuine logic? Aren't they some ersatz form of logic --i.e. an inferior imitation-- substituting for the application of fundamental logic to the issue at hand? This ersatz logic seems principally to hide the underlying fundamentals. What justifies this?

Date: 1/9/07

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What I find most objectionable in reading these filings is the assuredness with which the opponents employ --indeed hide behind-- the phrase "so that the public can realize the benefit of [our] proposal."

I'm no fool. Having worked previously in a competitive legislative and policy-making environment, I think I have a good grasp of the concepts of public benefit and public interest. But I've never considered the public interest to be fixed and immutable.

More specifically in reference to this matter, what I don't understand is how, without relevant and robust evidence, any private party can broadly assert that their proposal advances some purported public interest. Yet that is a central claim of the opponents. The bevy of procedural and technical arguments employed in their filings are subordinate to, not supportive of, this principal assertion.

Somehow, a central assertion is *presumed*. Not supported, just presumed. As an observer, I find this very curious.

I can only surmise that the Commission, in the seventy-plus years since it was formed to exercise authority and jurisdiction over a wondrous corner of our physical world, has built up a body of rulings and standards which, in its totality, now *defines* "public interest" -- and does so *unrebuttably*.

While this body of rulings and standards may have helped the Commission to simplify its job (and that of attorneys representing their clients), it apparently has brought an unfortunate side-effect: removing from the Commission any requirement to continuously deliberate and define the public interest. Hence rulings in matters like the present are relegated simply to dry procedural argument.

Thus, new arguments and petitioners fall to past presumptions and institutionalized prejudices. Isn't this the tail wagging the dog? Is the public interest no longer a level playing field?

(I'm not faulting the present Commission nor attorneys practicing before the Commission. They merely inherited this barnacle-laden ship. I am, instead, stating a puzzlement that the determination of public interest and benefit in all matters relevant to the Commission's jurisdiction seem governed simply by reference to the ship's log, i.e. where it's been, not where it's going. Such a restriction works to rule out the possibility of new destinations, new ports and new trade. I fail to see how this outcome genuinely represents a public interest and benefit.)

Perhaps I am unusual in my viewpoint, but I can't accept a notion that the public interest merely 'builds up' over time like barnacles on a ship's hull. Nor can I accept that such an accumulation by itself *constitutes* the public interest.

I find it especially remarkable today --in view of a veritable explosion in wireless media employing modulation, compression, coding and transmission techniques unimaginable when the basic task of regulating radio interference and nurturing the development of a nascent industry was handed to the FCC-- that the permitted use of a swath of spectrum enjoying very desirable propagation characteristics is so bottled up by "ancient texts" whose principles have become no longer subject to interpretation or fair-minded application, but which now function mostly to vest an unalienable property right in people and organizations demonstrating little, if any, propensity to innovate so to better serving the public (nor,

in the present case, any sensitivity to or inclination toward allowing expression of a broader public interest.)

So assured are they in their "property right", they need only *assert* it is consistent with the public interest. No proof, evidence or logical argument is necessary. Such attitude reminds me of the 1970's era bumper sticker mocking Ma Bell, "We Don't Care - We Don't Have To."

Frankly, it doesn't bode well for the industry in its present form. And that's why I've written.

I urge the Commission to contemplate sclerotic adherence to its barnacle-encrusted "ancient texts" may yield the utility (and markets) of the radio broadcast industry to newer, more capable forms of transport located elsewhere in the spectrum.

I have to believe that if they were permitted or encouraged to do so, college radio stations like WXIU-FM could emerge as a test-bed for a whole host of valuable wireless applications well-suited to the characteristics of signals in the FM spectrum. What better way to ensure "the integrity of the FM service" -- both now and in the future?

With this and other like-cases, the FCC could begin to peel away these barnacles and unleash this swath of spectrum to real competition and innovation. That said, I nonetheless realize I may simply be whistling past the graveyard. Perhaps the industry protections erected over the years has already doomed the radio industry to the ash heap of history.

Sincerely,



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