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August 6, 2007

Our File No. 20778-0500-63

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

FILED/ACCEPTED

AUG - 6 2007

Federal Communications Commission
Office of the Secretary

RE: **MB Docket No. 07-137**

Request By State Broadcasters Associations For Declaratory Ruling
Concerning Application Of The Commission's Political Programming
Regulations To Three Internet "Airtime Sales Programs"

Dear Ms. Dortch:

On behalf of Interep National Radio Sales, Inc., I transmit herewith the original and nine copies of its comments in the above-referenced matter, in response to the Commission's July 5, 2007, Public Notice, DA 07-2985.

Kindly communicate any questions directly to this office.

Respectfully submitted

John Wells King

Enclosures
JWK:yg

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Before The
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In The Matter Of Request Of)
)
STATE BROADCASTERS ASSOCIATIONS) MB Docket No. 07-137
)
For Declaratory Ruling Concerning)
Application of the Commission's)
Political Programming Regulations To)
Three Internet "Airtime Sales Programs")

TO: Chief, Media Bureau

COMMENTS OF INTEREP NATIONAL RADIO SALES, INC.

Interrep National Radio Sales, Inc. ("Interrep"), by its attorneys, herewith submits its comments in response to the Commission's Public Notice¹ regarding the June 19, 2007, request by broadcasters associations representing 41 States and the District of Columbia,² for a declaratory ruling whether the sale price of airtime sold through any of three named internet sales programs must be considered in determining a broadcast station's lowest unit charge to a legally qualified candidate for public office.³

Introduction and Background

Interrep is the largest independent national spot radio sales representative, or "rep" firm, in the United States. Headquartered in New York City, Interrep maintains seventeen

¹ Public Notice, "Media Bureau Action," DA 07-2985, July 5, 2007.

² By letter of June 22, 2007, the request was supplemented with expression of support from broadcast associations in six additional states and Puerto Rico.

³ See 47 U.S.C. § 315(b), 47 C.F.R. § 73.1942.

offices from coast to coast. It serves as the national rep for many of the nation's most prestigious broadcast groups, including ABC/Disney, Emmis Communications, Entercom, CBS Radio Sales, Lincoln Financial Media, Inner City Broadcasting, and Spanish Broadcasting System.

Interrep is also the parent company of Interrep Interactive, its internet representation and web publishing division, which specializes in the sales and marketing of on-line advertising. Interrep Interactive includes Interactive Video Network, Gamma Ray Media, and Winstar Interactive.

Interrep is an early adopter. It has always embraced technology as a means of increasing efficiency and improving service to its broadcast clients and to advertisers.⁴ One prominent example of Interrep's commitment to technology solutions is its RadioExchange[®], an internet-based, electronic invoicing system for national spot radio.

Origin of The Unwired Network

Interrep's predecessor, McGavren-Guild Radio, invented the unwired network concept more than thirty-five years ago, as a way to increase the flow of network

⁴ Indeed, Interrep named its own interoffice computer network the "Internet" before there was an internet, so to speak. INTERNET has been a registered trademark of Interrep's since 1985.

advertising dollars to local stations.⁵ Unwired network sales involved:

. . . negotiating with a prospective advertiser or its agency the purchase of broadcast time on a number of stations at one time, based upon the grouping of stations according to market size, audience size and other factors. . . . The rep network concept is essentially the linking by a time sales rep of a number of stations in order to present to a prospective advertiser or agency an aggregate of audience and market characteristics against which the advertiser's advertising objectives may be measured, and by which the process of purchasing time on many individual stations throughout the country may be simplified.⁶

In 1975, Broadcast Marketing System, a McGavren-Guild division, sought a declaratory ruling from the Commission whether the lowest unit charge provision applies to unwired networks. The Commission staff issued a letter ruling in which it concluded that the lowest unit charge provision did not apply.⁷

One key element that formed the basis for the staff ruling was that the rep did not sell time on individual stations. Rather, the rep sold the entire ad hoc group, offering an aggregate of audience and market characteristics, and negotiating a rate for the group based on those variables. This essential aspect of the exemption of unwired network rates

⁵ The national radio sales rep industry needed a booster shot. Commission policies severely constricted a rep's ability to expand its business, see *Combination Advertising Rates*, 45 FCC 581 (1963), and *Golden West Broadcasters*, 16 FCC2d 918 (1969). Through consolidation and the shift of traditional advertising dollars from radio to television, the number of national radio sales reps was shrinking, from 58 in 1974 to 32 in 1981, cited in *Representation of Stations by Representatives Owned by Competing Stations in the Same Area*, 87 FCC2d 668, 671-2 (1981). Today there are essentially two national radio sales reps. Katz Radio Group, which is a subsidiary of Clear Channel Communications, is Interep's principal competitor.

⁶ Comments of McGavren-Guild-PGW Radio, Inc., quoted in *Combination Advertising Rates and Other Joint Sales Practices*, 51 FCC2d 679, 693 (1975).

⁷ *Michael H. Bader*, 56 FCC2d 840 (1975). See also, *Request For Declaratory Ruling Concerning Lowest Unit Of Charge*, 61 FCC2d 694-5 (1976).

from the lowest unit charge computation is present in the internet sales programs which are the subject of the request for declaratory ruling.

Internet Sales Programs

The Public Notice identifies three internet sales programs: Bid4Spots, Inc., SoftWave Media Exchange (“SWMX”), and dMarc Broadcasting, Inc. (“Google”). Each of these, in different ways, aggregates audience and market characteristics for potential advertisers.⁸

All of the internet sales programs have one common characteristic: they uniquely form an ad hoc “network” of stations for any given advertising campaign. In the hyper-dynamism of the internet, the characteristics and composition of the network can change in a theoretically infinite number of ways -- instantly, and constantly. The size of the marketplace, involving thousands of stations and advertisers, virtually guarantees that no two unwired network buys will be duplicated, and that each station’s participation in a buy is the unique result of that aggregated transaction.⁹

⁸ Bid4Spots says it is a reverse auction, in which the network for the advertiser’s campaign is constructed based upon factors that include the lowest rate a station is willing to offer the advertiser to be part of the “buy.” http://www.bid4spots.com/AD_Prof_main.aspx. SWMX describes itself as a Bid Accept marketplace, in which advertisers present campaigns to broadcasters according to their campaign criteria, including rates. Bids that are rejected may be modified (such as by increasing the rate) and resubmitted. <http://www.swmx.com/>. Google appears to be an auction in which advertisers compete against other advertisers for similar ad spots on the same or similar stations, in similar markets and times of day. <https://adwords.google.com/support/bin/answer.py?answer=53987&topic=11991>.

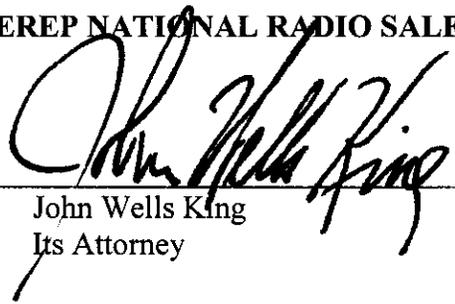
⁹ SWMX likens its service to the trading floor of a securities exchange, with added functionality for ad campaign planning and inventory management.

Internet sales programs are a far cry from the one-on-one sales practices upon which commercial broadcasting was founded more than 80 years ago, as far as the Dreamliner is from the Wright Flyer. The internet, and indeed, the personal computer, were beyond the popular imagination when Congress adopted the lowest unit charge provision in 1971.¹⁰

Interep urges the Commission to examine and to appreciate the extent of the impact of technological change in the contemporary broadcast advertising sales marketplace, and on the basis of its review and analysis, to conclude that the internet sales programs which are the subject of review need not be considered in determining a broadcast station's lowest unit charge to a legally qualified candidate for public office.

Respectfully submitted,

INTEREP NATIONAL RADIO SALES, INC.

By: 

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August 6, 2007

¹⁰ Federal Election Campaign Act (FECA) of 1971, Pub.L. No. 92-225, § 103(a)(1), 86 Stat. 3, 4 (1972), codified as amended at 47 U.S.C. § 315(b)(1).