

Free Radio Broadcasting

Paper-work Package

to accompany

Video

WABJ / Q-95

1490 KHZ * 95.3 MHZ
"BETTER THAN EVER" "Q-COUNTRY"

April 5, 1989

R. D. Strawcutter, Paster
Adrian Christian Complex
P.O. Box 892
Adrian, MI 49221

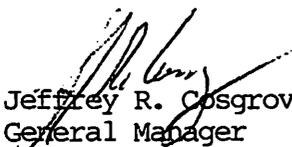
Dear Rev. Strawcutter:

Your letter of March 10, 1989 is appreciated and I have waited to respond due to the completion of some study given your proposal.

After discussions with our programming people it appears the program you propose would not fit well with either our AM or FM format. Perhaps in the future we can review the idea.

Again, your proposal and interest is appreciated.

Very truly yours,


Jeffrey R. Cosgrove
General Manager

bd

This letter was sent to me in response to my request to start a local talk program in 1989.

As you can see - This kind of response (which is typical of local radio stations) is the reason why there is an explosion of so-called "pirate broadcasters" in Amerika today. How else are we going to be heard?

REGION

NEWS SECTION 2

TUESDAY, NOVEMBER 19, 1996

Newspapers had a hey day with this activity

Admitted pirate of radio waves may walk plank

BY KELLY LECKER
BLADE STAFF WRITER

ADRIAN — The human billboards that began appearing around Adrian two weeks ago give a bold command to morning drivers: Tune to 97.7-FM now.

Those who turn to the new, conservative talk radio station might hear a little-known singer named Carl Klang croon about the evils of the Internal Revenue Service. Or they might hear local or national radio hosts rail against government corruption or oppression of free speech.

The source of the broadcast is a small room inside the Church of the Lord Jesus Christ in Adrian Township. The station's creator: the Rev. Rick Strawcutter.

The man who has preached to his congregation for 20 years now spends the lunch hour talking to anybody tuned in to Radio Free Lenawee, his 95-watt, pirate sta-

The station operates without a license, which the Federal Communications Commission says is illegal.

tion "dedicated to religious and political speech."

The station operates without a license, which the Federal Communications Commission says is illegal.

John Winston, assistant bureau chief for the FCC's complaints and compliance office, said anybody operating a radio station without a license is violating the law and could face confiscation of his equipment and a \$10,000 fine.



BLADE PHOTO BY GREG HORVATH

The Rev. Rick Strawcutter broadcasts his show from a room inside the Church of the Lord Jesus Christ in Adrian Township.

"Whether they're going four blocks or six miles, they need a license," he said.

Pastor Strawcutter's broadcast can be heard within a 10 to 15-mile radius of the church, although he said some people can hear the broadcast from as far away as 20 miles.

He said he's not interfering with any other stations, and he's ready to defend his decision to the FCC.

"Honestly, I thought they'd be

here the first day," he said. "I don't think the FCC wants 1,000 stations like this in the country."

The man who started as a ham radio operator at age 14 said he once tried to start a 3,000-watt radio station but was told there were no frequencies available and that the FCC wouldn't approve it. So he gave up the idea.

Then he heard about Stephen

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Radio

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Dunifer.

The FCC filed for a preliminary injunction in U.S. District Court in northern California to stop Mr. Dunifer from operating his low-watt radio station, Radio Free Berkeley.

The FCC has banned radio stations under 100 watts because they interfere with other stations, according to Pat Edwards, Mr. Strawcutter's attorney.

Mr. Dunifer argued that restriction was unconstitutional and was not the least restrictive means of regulation. New technology has made it possible for low-power stations to operate without interfering with other radio stations, court documents stated.

The court denied the injunction.

Pastor Strawcutter heard of the case and decided to start a similar station at 95 watts. He hired a radio engineering firm from Peoria, Ill., to find a frequency that wouldn't interfere with other stations.

"I know there is room for thousands of stations to do what we're doing," he said.

Mr. Edwards said he anticipates complaints to the FCC from other radio stations in the area but said the pastor has a right to operate

the station.

Bruce Goldsen, vice president and general manager of WABJ, a talk radio station, and WQTE in Adrian, said he has not filed a written complaint with the FCC. But he said he is concerned because the station is unlicensed.

Pastor Strawcutter says the station is providing a place to air ideas not heard in the mainstream media.

"We're just a little voice in the world that says, 'Hey, folks, tune in to us. We'll tell you what's really important,'" he said.

Two volunteers run a morning show from 6 to 9 a.m., and the pastor takes over at noon. At other times, talk shows are broadcast via satellite.

People walking around Adrian with signs announcing the new station have provided the only advertising for the new broadcast. Pastor Strawcutter encourages anybody with an opinion to call in to his program.

He said Nov. 4 — the first day on the air — there were 250 calls, mostly concerning the next day's elections. Over a noon broadcast last week, the hour passed without a call.

Listeners likely will hear a tape of Carl Klang sing a song or two during the noon broadcast. One of his tunes criticizes the media, referring to some media outlets as swine.

"It's not exactly our theme song,

... but we like it," Pastor Strawcutter told his listeners.

The pastor discusses articles in local and national papers and plays parts of newscasts for his listeners.

Mr. Strawcutter tells his listeners the program is about "free speech with no sacred cows," yet he acknowledged he recently stopped a broadcast when the hostess advocated accepting homosexuality.

He said he believes homosexuality is wrong and the woman wasn't telling the truth. He didn't want young, impressionable listeners to hear that, he said.

A caller asked him if he was contradicting his goal of free speech by not allowing the woman's views on the air. Pastor Strawcutter said the caller had a point but made no apologies for stopping the show.

Pastor Strawcutter insists on videotaping all conversations he has with visitors to the new station. He says he wants to document everything until he is sure the FCC is not going to interfere with operations.

Pastor Strawcutter calls himself a radical — someone who initiates change — but does not consider himself an extremist.

"No, I'm normal. What's extreme is what's going on out there," he said.

He thinks the Founding Fathers would have liked him.

FCC pays visit to Strawcutter

By LISA MARTINO
Daily Telegram Staff Writer

ADRIAN — "What's the problem?" is a question the Rev. Rick Strawcutter has been asking since his radio station hit the airwaves on Nov. 4.

The 95-watt station, at 97.7 FM, is run from his Church of the Lord Jesus Christ on Bent Oak Highway where Strawcutter received a visit from the Federal Communications Commission (FCC) Friday afternoon asking him to turn off his transmitter. The FCC says if the station is not licensed, it has to go.

But the reverend said he won't budge from the airwaves. He said his equipment meets and exceeds FCC standards; and he is not interfering with any other station's frequency, so there is no constitutional reason why he should cease operation.

"We rely on the fact that God created the air, not the federal government," he told listeners Friday afternoon.

Strawcutter said FCC officials Friday asked him to turn off his transmitter and wanted permission to inspect the station. He then called his attorneys and asked the FCC

officials to show legal authority for the request. Strawcutter said they declined.

"Since I've declined (to turn off the transmitter), I think we will move on into court," said Strawcutter.

His attorney, Patrick Edwards, said the FCC's visit was a procedural step to warn Strawcutter of his economic and criminal liability if he proceeds with the broadcasts.

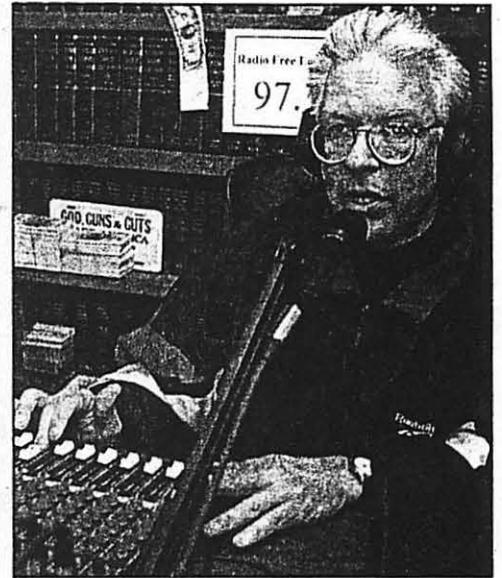
Edwards said the FCC officials insinuated that the station was interfering with another station's frequency, although they did not refer to any specific complaints. He also said there is no chance at this point that the FCC will be able to seize any equipment from the church.

Officials can, however, file an injunction against the operator to collect fines not exceeding \$75,000 for the total time in operation.

Strawcutter said if it is proven that "Radio Free Lenawee" interferes with another station's frequency, he will choose a different location on the airwaves.

FCC officials are releasing very little information at the moment, other than to say the case is under investigation.

"All applicable laws are kicking in as we



Daily Telegram/John F. Elbers II

STRAWCUTTER: Still broadcasting

try to adjudicate the case," said John Winston, assistant bureau chief for the FCC complaints and compliance office.

DAILY TELEGRAM

ADRIAN, LENAWEE COUNTY, MICHIGAN

TUESDAY, NOVEMBER 5, 1996

50 CENTS

Strawcutter set to take on FCC

By LISA MARTINO
Daily Telegram Staff Writer

ADRIAN — Pastor Rick Strawcutter is leading with his chin in a fight for his new radio station against the Federal Communications Commission.

Strawcutter's "Radio Free Lenawee," took to the airwaves Monday morning and continued for most of the day despite his failure to gain Federal Communications Commission approval before going on the air.

FCC officials say they are reviewing the case after receiving a complaint about the broadcasts, and they don't think "Radio Free Lenawee" complies with federal broadcasting laws. Strawcutter says his low-wattage station was specifically designed to slip through a loophole in FCC rules.

"I've done everything electronically right and technically right ... without having a license," he said.

Strawcutter is basing his defense on a 1995 District Court ruling in California that called for a fine against a radio operator for engaging in two unlicensed low-power broadcasts. The station operator fought the decision, saying the FCC was restricting his First Amendment rights and that modern technology allowed for such stations, among other arguments.

The case is still under appeal, but FCC officials said the injunction is still pending and the fines still applicable.

"We believe we have a constitutional right to do this ... soon, they'll not only have that one (case) pending, they'll also have ours pending," said Strawcutter, who said he hopes the FCC approaches him soon. He added that he is not interested in causing a state of rebellion, but to uphold his constitutional rights.

Jim Bridgewater, district director at the FCC's Detroit office, said a formal complaint against Strawcutter was received Monday morning. He said the complaint is under review.



Daily Telegram/John F. Elbers II

The Rev. Rick Strawcutter emphasizes a point in this image taken from a television screen as he speaks on "Radio Free Lenawee" Monday.

Bridgewater said action will be taken based on the "severity of the problem," and whether or not the broadcast causes interference to any other licensed stations.

"Radio Free Lenawee," does not interfere with any locally-based stations, but there is a

station occupying the 97.9 frequency.

In Strawcutter's founding resolution establishing "Radio Free Lenawee," he states that he is "compelled by the higher authority of his

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Radio

Continued from page A1

God, who is the Lord Jesus Christ, to proceed with his radio outreach ministry without the blessing of the Federal Communications Commission."

Bruce Goldsen, general manager at Q-95 FM, said Strawcutter is not exempt from rules that apply to local radio stations, regardless of low-wattage operation.

"If he chooses to operate a business that is not in compliance with the rules set up by the FCC, he's going to have to deal with the consequences," Goldsen said.

Although Q-95 FM is not directly affected by "Radio Free Lenawee's," frequency, consideration for FCC rules and regulations is important, said Goldsen, because "everything you do in this business affects somebody else."

According to Magalie Salas, FCC

chief of compliance in Washington, the FCC has a number of options for handling the situation after determining the is occupying unlicensed radio frequencies. The FCC can either seize equipment, file an injunction against the operator or fine the operator up to \$10,000 a day.

Fines may be issued in conjunction with, or independent of, any disciplinary action, said Salas.

However, if an operator wants to broadcast without a license, there are alternatives, she said.

"The operator can ask the FCC for a waiver," she said, "But the proponent would have to make a showing that the waiver is in the public interest."

Strawcutter said he received an "overwhelming" response his first day on the air, estimating 200 phone calls from the Lenawee community.

The allegedly illegal status of the show has not deterred at least four political candidates from shying away. So far, the show has hosted political candidates Travis Ballard, Bart Tinder, Steve Nystrom and Rep. Tim Walberg, R-Tipton. Strawcutter hopes "Radio Free Lenawee" will provide an open forum for the people at large, "with no sacred cows" when it comes to political and religious issues.

Two political candidates who have not been on the show are Harvey Koselka and Richard Germond. Both candidates were the subject of on-air scrutiny by their opponents, and have said they have no intention of calling in or making an appearance on the show.

"It's just foolish to get involved in that type of show - especially on an illegal radio station," said Germond.

Politics hits the airwaves

Strawcutter fires up 'Radio Free Lenawee' to get out his message

BY MATT CROSSMAN
Daily Telegram Staff Writer

ADRIAN - Declaring itself a voice for the voiceless, "Radio Free Lenawee" hit the airwaves full-time this morning.

Broadcasting at 97.7 on the FM dial, the station promises to air "the truth ... about what's really going on in this country."

Run entirely by volunteers, the station has no budget, said Rev. Rick Strawcutter, who ran the 6 to 9 a.m. morning drive-time show with Diana Fountain and Mike Simpson.

The station, whose studio is at Strawcutter's Church of the Lord Jesus Christ on Bent Oak Highway, is transmitting with 95 watts. Strawcutter says the station is legal without FCC approval under a 1995 United States District Court ruling in California.

MONDAY, NOVEMBER 4, 1996

An FCC spokesman contacted this morning said the station is subject to standard licensing procedures and cannot operate without permission.

Strawcutter said his lawyers already drafted a legal packet ready for the FCC to review. He provided copies of the court ruling and a declaration and founding resolution for the station.

"They'll certainly try to crucify us" in the media, Strawcutter said of the FCC. "We just hope they don't set fire to the building like they did in Waco." On the air Strawcutter said everyone but the FCC is welcome to stop in.

"Radio Free Lenawee" will produce local shows for morning and afternoon drive-time and run shows through a satellite network during the rest of the day.

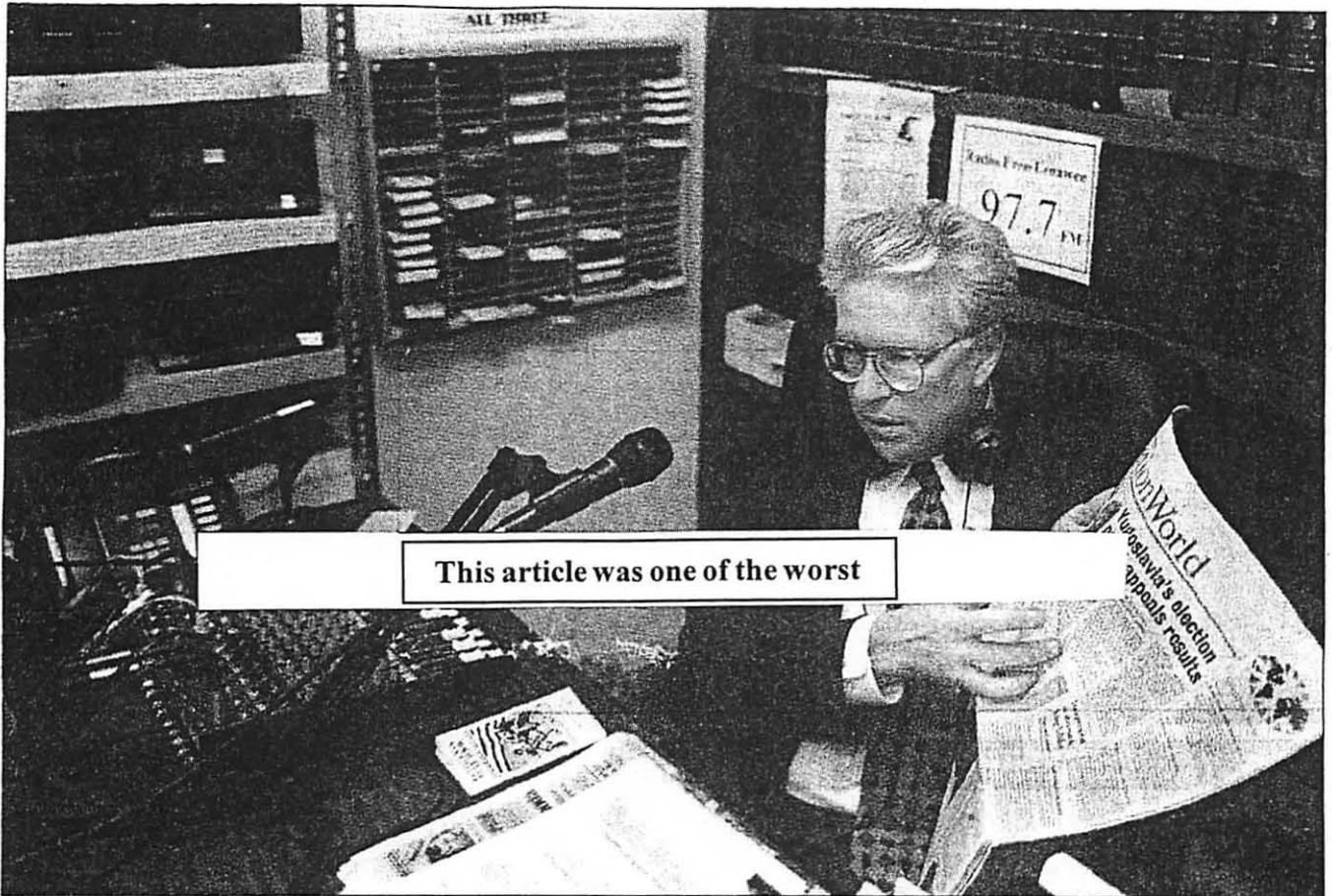
Strawcutter said the station can be picked up well for an eight-mile radius from the church. A faint signal can be picked up as far as the Ford plant in Saline.

The focus of the programming will be religious and political, Strawcutter said.

Endorsements of state issues and local candidates were aired this morning, and Strawcutter expects to address issues ignored and poorly covered by the mainstream media.

Mainstream media have not provided adequate information about the Oklahoma City bombing, Gulf War illness and Ruby Ridge, to name a few, Strawcutter said.

"We are going to practice free speech with no sacred cows," he said.



This article was one of the worst

Photos by Joe DeVera / The Detroit News

"The fact that the FCC won't approve it won't stop me," said Rick Strawcutter. "This is the Rosa Parks of radio."

Rebel preacher makes waves

Operator of pirate radio station thumbs nose at FCC with messages of government conspiracy theories.

By Ron French
The Detroit News

ADRIAN — The cameras pick you up as you pull into the driveway and roll past the "Church Property — No Trespassing" sign. They follow you through the door and into the church foyer, where a motion detector switches on a light shining on the baptismal pool.

Down the hall, in a makeshift broadcast booth, radio show guests discuss the New World Order; a media conspiracy to miscount votes in the presidential election; and an impending holocaust from biological warfare covered up by the government.

Welcome to Radio Free Lenawee, a pirate radio station where conspiracy is king and taunting the government is the daily bread — at least until the government decides to do something about it.

For a month, the station has thumbed its nose at the Federal Communications Commission, which requires licensing of all broadcasts.

"The fact that the FCC won't approve it won't stop me," said the Rev. Rick Strawcutter, of the Church of the Lord Jesus Christ. "This is the Rosa Parks of radio."

Twenty-four hours a day, a 100-foot tower behind the white, Colonial church beams messages of paranoia and conspiracy to part of Lenawee County. The low power limits the radio waves to a 10-to-15-mile radius, but the ripples reach from Washington, D.C., to California. The station is one of hundreds of radio signals springing up illegally around the country. Radio Free Lenawee is one of the biggest at 95 watts, and one of the

Please see WAVES, Page 2C

Radio Free Lenawee

97.7 fm

**GOD, GUNS & GUTS
MADE AMERICA
LET'S KEEP
— ALL THREE —**

Radio Free Lenawee shuns topics of the mainstream media. Instead, you'll find talk of militia movements and a New World Order.

WAVES

Continued from Page 1C

most noticeable because of Strawcutter's try-and-stop-me attitude toward the FCC.

"Is there free speech in America?" taunted Strawcutter. "Are we back in the old Soviet Union? Let's find out."

He may soon. Two FCC investigators visited the church Nov. 22, telling Strawcutter he risked losing his equipment and a \$10,000 fine if he keeps broadcasting. Strawcutter sent them packing, with only a folder prepared by his attorney.

He expects them to be back, and to be more forceful next time.

He compared his fight with the federal government to that of David Koresh and the Branch Davidians — a fight that ended in the deaths of four U.S. agents and 86 sect members.

"That's one of the reasons we're doing this," Strawcutter said. "If David Koresh had a station like we have, with a power generator so he could have broadcast what was really happening, do you think they would have pulled that stunt?"

Strawcutter's 250-member, nondenominational church is religiously, socially and politically conservative. It has a generator to produce its own power if electricity is cut off. Strawcutter also admits having a gun in the broadcast booth recently, calling the 22-caliber rifle a "squirrel gun."

The church has high-tech security, with cameras in every room and in front of and behind the church. While Strawcutter talked to a reporter, a church-goer videotaped the conversation.

"I don't think it's paranoia," said Strawcutter, 46. "I think it's common sense."

Born in Grand Ledge, Strawcutter was named after the All-American Ricky Nelson on *Ozzie and Harriet*. But by 18, Strawcutter was smoking pot, dropping acid and trying to avoid the draft.

From drugs, he turned to Amway. "I did nothing but eat, drink, sleep and push soap for 1½ years," Strawcutter said.

At 21, he gave up soap for God. He studied to become a minister, and at 26, the congregation of what was then the United Pentecostal Church of Adrian chose him as its new pastor. Since then, Strawcutter has overseen several church name changes, the construction of a new complex, and a slew of controversies.

He first made headlines in 1979 when his church held a book-burning. In 1988, he was jailed for refusing to obtain a building permit for an

addition, saying he couldn't apply for a permit because "this property is owned by Jesus Christ."

Strawcutter had been fascinated by radio since he was a teen-age ham radio operator. He once tried to start a 3,000-watt station, but the FCC told him no frequencies were available. Later, he hosted a call-in show on a local radio station called *The Last Straw*.

Then he heard about Stephen Dunifer. In 1995, the California man operated a 95-watt radio station without FCC approval, called Radio Free Berkeley. Since 1980, the FCC has refused to license stations under 100 watts.

A federal court stopped the FCC from shutting down Dunifer's station. The case now is being appealed. Now, Dunifer distributes information on setting up "micro-radio stations," and sells the needed equipment. For about \$500, anyone could be on the air waves.

No one knows how many underground stations exist. Some broadcast only a few blocks. Many hide from the FCC, switching frequencies and camouflaging antennas in trees. Strawcutter had a different idea. On his first day of broadcast, Strawcutter invited the FCC to try to shut him down.

He rigged equipment in a church store room and went on the air Nov. 4. Parishioners wore signs on the sidewalks of Adrian, telling residents to "Tune to 97.7 Now."

Strawcutter tries to distinguish between the church and the radio station. But he leases the room and broadcast equipment from the church, and the station is staffed by church volunteers.

The minister claims the FCC knew of his station within an hour of going on the air. John Winston, FCC assistant bureau chief, said the agency knows of the station and an investigation is under way.

Meanwhile, Strawcutter claims to be building a loyal following. The station broadcasts around the clock, filling most of the time with talk shows from the American Freedom Network, with hosts such as Bo Gritz. The station has a local drive-time show from 6 to 9 a.m., and Strawcutter hosts a daily program from noon to 1 p.m.

Strawcutter said there is room for at least 500 unlicensed, renegade radio stations in the country. It's a view that makes him unpopular at the FCC.

The FCC views the issue as one of control; he expects his station will face a long battle in court.

"The mainstream media overlooks a lot of stories that are important," Strawcutter said. "A lot of people to the right feel their views are not being reported."

Low-powered radio stations popping up around country

DECATUR, Ill. (AP) — Their broadcasts don't go far, sometimes only a few blocks. But operators of low-power, renegade radio stations are giving authorities headaches just the same.

Since 1978, the Federal Communications Commission has banned AM and FM transmitters under 100 watts, saying they interfere with aviation, police and emergency communications, as well as licensed stations.

But the FCC's ban has done little to deter hundreds of defiant, unlicensed operators from programming their stations.

"My guess is there are 300 to 400 stations, minimum, now in this country," said San Francisco attorney Luke Hiken, who has defended micro-broadcasters against the government's attempt to pull the plug.

"This is real people's radio, not radio filtered through some corporate parent or commercial salesman," Hiken said. "This is people speaking to themselves in their own communities."

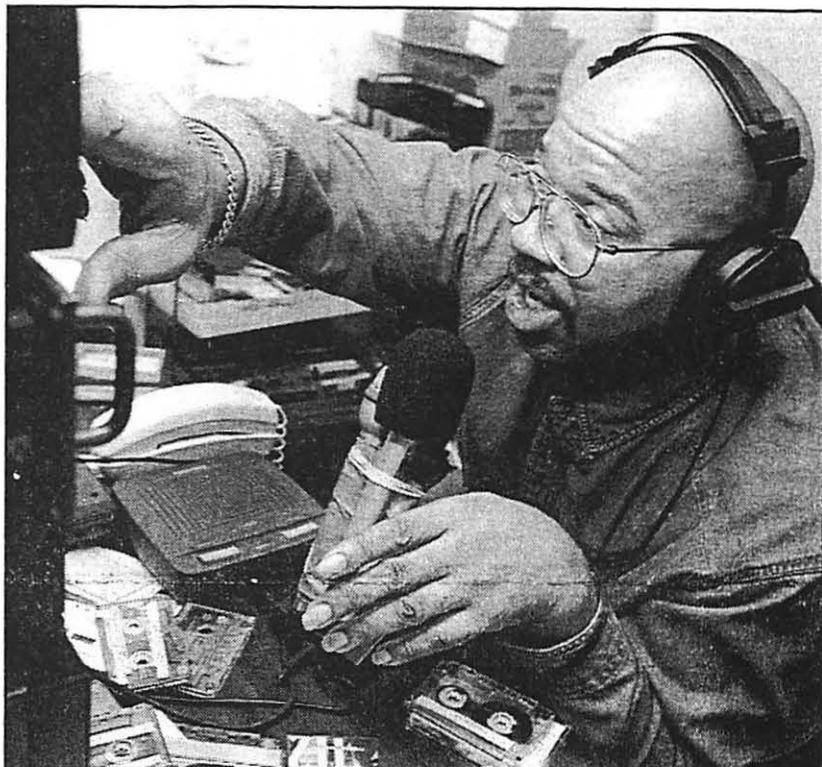
Lenawee County has its own "pirate radio" broadcaster, Rev. Rick Strawcutter, whose Radio Free Lenawee airs at 97.7 on the dial. His broadcast from Strawcutter's church on Bent Oak Highway in Adrian sometimes reaches as far as Tecumseh.

FCC officials are currently studying Strawcutter's operations and many other low-powered radio stations around the country. Take the case of Napoleon Williams of Decatur.

Since 1990, he's been airing his opinions and even personal vendettas on his low-power, high-intensity Black Liberation Radio station.

Last month, agents from the Illinois attorney general's office and the Decatur police knocked on his door. When they left, they took with them his broadcasting equipment, tapes, compact discs — even a half-dozen Decatur Public Library books. They were hardly out the door when Williams put out a distress call on the Internet to his fellow pirates.

He was back on the air within a



Associated Press

Napoleon Williams broadcasts on his unlicensed FM station in Decatur, Ill. His station has been raided by police and threatened with closure by federal officials.

week, taking shots at his foes and playing rhythm and blues, books of tape and speeches by Nation of Islam leader Louis Farrakhan. His new, more powerful equipment was donated by sympathetic fellow operators who are sharing information, technology and even recorded programming on the Internet.

"I think my enemies thought I would go to court and try to fight them, but I'm not interested in going to court," Williams said. "I'm interested in being on the air."

He continues to broadcast despite federal fines and two such raids on his equipment.

Down the road in Springfield, M'banna Kantako's one-watt station reaches only a couple of miles, but is heard by an estimated 70 percent of Springfield's black population. He's had long-running battles with the FCC over his broadcasts, which include personal accounts of police

brutality and even live communications from police scanners.

"He inspired me to start Free Radio Berkeley, and he has inspired a lot of us in terms of standing up for his constitutional rights," said Steven Dunifer of San Francisco.

Over the years, the FCC has silenced low-power stations broadcasting from a boat off Long Island, and from Miami, Venice, Calif., Richmond, Va., and others around the country.

Williams, who ignored a \$17,500 FCC fine in 1993, believes the airwaves belong to everyone. He blames a range of legal problems — including a 1994 prison term for kicking a police officer and the loss of his children to foster care — on government retaliation for his broadcasts.

"I know they want to silence me," he said. "It's because I am putting too much truth out there."

Free Radio Broadcasting is not limited by race. Napoleon Williams has been a guest on Radio Free Lenawee on several occasions.

'Peanut Powered' And Making Waves

by Sharon Rae

ADRIAN, Mich. This sleepy Lenawee County town has come alive with controversy over a new unlicensed low-power radio station that's up and running in the county seat. Pastor Rick Strawcutter has preached to his congregation at the Church of the Lord Jesus Christ for two decades, and now he has taken his message to the airwaves.

Strawcutter calls Radio Free Lenawee "free speech with no sacred cows" and the "Rosa Parks of radio." He addresses a broad range of topics, from what's on the front page of USA Today to the latest CNN news stories, all with a religious bent. The pastor broadcasts his programming from the church offices, which he leases.

"We apply our Christian viewpoint to everything that's going on in the world ... whatever is newsworthy," he said.

Strawcutter's message deals with anti-government themes, the New World Order and government conspiracy theories. His station's conservative outlook is getting attention locally and has been the subject of a prominent article in the Detroit News.

The very existence of the 95 W station has caught the attention of the Federal Communications Commission.

Shutting out the FCC

Eighteen days after the station came on, the FCC paid a visit to the station in hopes of inspecting the studios. Their representatives were handed a paperwork package put together by Strawcutter's attorneys, Constitutional Litigation Associates of Detroit, and turned away by Strawcutter, who said the representatives were unable to cite their authority for coming to inspect the facilities.

"They don't have the authority to inspect an unlicensed station," he said.

John Winston, an FCC spokesman, said the case of Radio Free Lenawee remains under investigation and will be thoroughly investigated.

"Operating a radio station without a license, obtained through proper procedures required by the FCC can result in a fine of up to \$10,000 and confiscation of all equipment being used to broadcast," Winston said. He refused to discuss the case further.

Pastor Strawcutter said he's not a pirate.

"A 'pirate' infers you are doing something wrong," said Strawcutter, who maintained that what he is doing is

"absolutely constitutional and lawful," and also said some of his legal basis is from a California federal court case involving Stephen Duniter, a broadcast engineer who runs a low-power station called Free Radio Berkeley (RW, Aug. 21, 1996).

"The court essentially ruled that the FCC's current ban on low-power broadcasting — that is anything below 100 W — is not the least restrictive means," said Strawcutter.

"When any bureaucracy is charged with regulating a constitutionally protected right, such as speech, they must do it in the least restrictive means in order to balance the people's right to be able to do something, against other people's rights not to have something interfered with."

Strawcutter claimed that the FCC's refusal to even consider licensing anything under the 100 W level is too restrictive and not constitutional.

Strawcutter said he doesn't have a major bone to pick with the FCC as a regulator.

"We need a smooth transition of traffic in the airwaves," said Strawcutter. "But as with so many bureaucracies, we're getting more and more regulated and controlled in our society. The problem arises when someone wants to get access to the airwaves. They're generally faced with all sorts of bureaucratic haggling and hoops to jump through."

Coincidentally, FCC Chairman Reed Hundt has declared "a procompetitive, deregulatory national policy framework" to be the mantra of the commission for the coming year. Whether that deregulatory trend would benefit a low-power broadcaster like Strawcutter is far from clear.

What's the frequency, Lenawee?

Radio Free Lenawee is on the air 24 hours a day at 97.7 MHz. Volunteers run the morning show from 6-9 a.m., followed by an hour segment with Strawcutter and then more live programming again at noon. Satellite programs such as The American Freedom Network fill the remaining slots.

A sign in the studio states: "Radio Free Lenawee, 97.7 FM. GOD, GUNS AND GUTS MADE AMERICA. LET'S KEEP ALL THREE." The Detroit News quoted Strawcutter comparing his fight with the federal government to that of David Koresh and the Branch Davidians.

"That's one of the reasons we're doing this," he was quoted. "If David Koresh



Pastor Rick Strawcutter at Radio Free Lenawee

had a station like we have, with a power generator so he could have broadcast what was really happening, do you think they would have pulled that stunt?"

Asked about those comments by RW, Strawcutter said the writer at the Detroit News was the first to bring up Waco. But he said, "One of the reasons low-power stations such as this keep popping up all over the place are because of stunts our own federal government have pulled such as Waco. When the government fears the people, you have liberty. But when the people fear the government, you have tyranny. Today the average person lives in fear of their government, not of God, therefore the government is God."

The 95 W signal broadcasts solid coverage for six miles, and even "up to 15 or 20 miles, depending on how good your radio is," said Strawcutter, who maintains that the signal doesn't interfere with any other licensed station.

He contracted an engineer to determine the frequency, and went to "tremendous expense" to get a type-accepted transmitter and antenna system.

"I could have used transmission line for 50 cents a foot, but I paid \$3 a foot for high-quality transmission line. I've got a QEI 695 exciter, the amplifier is a Bext PF250 and the antenna is a Celwave."

All this, claimed Strawcutter, is by way of narrowing the controversial issues to one question: Does he or doesn't he have the right to broadcast?

Strawcutter claimed that he seized the southern lower Michigan county in one stroke when on-air operations kicked off Nov. 4.

'Peanut-powered'

"We had 15 volunteers at all the main intersections of town with signs that said 'Tune to 97.7 Now' ... The first day we estimate probably 15 to 20 thousand tuned us in. We had 250 phone calls live on the air. The next day the same thing. People listen to us."

Strawcutter said he's not fazed in the least by the FCC's threats to shut him

down. He said he's not standing in defense of everybody who broadcasts at low power, because "some of these transmitters are causing harmonics and spurious radiation and do cause interference." Still, he said he knows he's right.

"They know that I'm right, and they should step aside," he said of the FCC. "This is the '90s! The Internet! You can sit down at a computer and virtually communicate with the world! So what's the big deal about a peanut-powered radio station communicating with a few thousand people?"

Strawcutter predicted that within a year, 500 to 1,000 new low-power radio stations may pop up around the country. He claimed to have put his station on the air for \$10,000, but said he could have done it for \$5,000.

Strawcutter's attorney, Pat Edwards, said First Amendment rights are at stake. "The FCC may argue that there's some compelling reason that they have to restrict less than 100 W, but right now, they haven't come up with that argument," he said.

The next step rests with the FCC, said Edwards, who predicted a long and drawn-out process to come.

This article appeared in a commercial radio trade publication called Radio World. It was actually a very well done and factual article. Unfortunately the only copy I have is this Fax copy.

The next page is an absolute must.

You do not necessarily need to follow my format word for word, but I strongly recommend that you have an affirmative defense already prepared ahead of the time that the FCC calls.

When you have this statement, (or one like it) to give to the FCC agent, it puts them on the defensive and forces them to be in the position of having to defeat your affirmative statements as to why you claim you *have a right to do what you do*, rather than you having to prove somehow that *you are not wrong*.

There is a difference. Believe me.

Declaration and Founding Resolution
establishing
Radio Free Lenawee

1 Whereas Pastor Rick Strawcutter is under a calling and command of the Lord Jesus Christ to Preach the Gospel to every creature (Mark 16:15, the Holy Bible) and that to effectively do this he believes he must utilize all the God-given methodology of the modern world around him including the God created medium of radio communications and,

2. Whereas, in Pastor Rick Strawcutter's desire to reach mankind in Lenawee County for the Lord Jesus Christ and to fully exercise his God-given rights to free speech, he has on three previous occasions made attempts to establish either a radio station and/or a low power UHF television station through the auspices of the Federal Communications Commission. However, at every attempt he found those efforts to be bureaucratically impossible even though he employed the help of engineers experienced with FCC applications and who specialized in starting new radio and television stations.

3. In addition to the many bureaucratic gimmicks, red tape and frustrations that the general population finds in dealing with big government; FCC rules currently ban the licensing of any commercial or non-commercial FM broadcast stations which desire to run power levels of less than 100 Watts, even though literally hundreds if not thousands of those low power transmitters could easily operate without causing disruption within the frequency spectrum.

4. Given the present state of civil government which in many recent instances appears to disregard individual God-given, Constitutionally guaranteed rights; Pastor Rick Strawcutter feels that a full exercising of his God-given rights guaranteed by the Bill the Rights may place him at peril with the Federal Communication Commission. This is a dilemma which Pastor Rick Strawcutter finds distressing when he considers the recklessness of the government's invasion of private religious groups like the Branch Davidians in Waco Texas et al.

5. While Pastor Strawcutter desires to be at peace with all men (Hebrews 12:14 The Holy Bible) he is compelled by the higher authority and calling of his God, who is the Lord Jesus Christ, to proceed with his radio outreach ministry without the blessing of the Federal Communications Commission and is by necessity forced to proceed pursuant to the common law even though it is evidently possible that the present anti-Christian federal government may (as it has in the past) go so far as to attempt killing him in order to interfere with, or otherwise attempt to abrogate his exercise of his God-given rights.

6. After diligent research, Pastor Rick Strawcutter has come to a sincerely held conclusion that the Federal Communications Commission in reality has no Constitutional regulatory power over FM stations which run a power level less than 100 watts. This lack of Constitutionality is due in part to FCC's total ban on low power

broadcasting failing to meet the "least restrictive means test" established in *FCC v League of Women Voters* 468 U.S. 364 et al. Pastor Strawcutter's conclusion was arrived at as a result of reading the opinion rendered by U. S. District Judge Claudia Wilken in the case of *U.S. vs Stephen Paul Dunnifer* in the Northern District of California # C 94 - 03542 CW. (See attachment #1).

7. Additionally, the various briefs submitted by the counsel for Stephen Dunnifer (cited above) are in general conformity with Pastor Rick Strawcutter's sincerely held beliefs and state of mind regarding the Federal Communications Commission's lack of Constitutional regulatory authority over FM transmissions with a power level below 100 watts and possibly at all power levels. (See attachment #2).

8. Accordingly, Pastor Strawcutter has proceeded to exercise his God-given first amendment right in a manner which would be consistent with the common law in the following manner.

A. After contracting the professional assistance of the radio engineering firm of Don Markley and Associates of Peoria, Illinois the frequency of 97.7 MHz was determined to be the optimum choice for use by Pastor Strawcutter, given the transmitter aeronautical map location, antenna height of 100 feet and an effective radiated power level not exceeding 100 watts.

B. Engineer Don Markley assured Pastor Strawcutter that if FCC regulations allowed for low power licenses that his specified operation on the above cited frequency would;

1. not cause interference to any other station already operating on that or any adjacent frequency,
2. nor would any other existing stations cause interference to Pastor Strawcutter's transmissions.

C. Pastor Strawcutter has obtained and made operational a QEI model 695 FM broadcast exciter, a Bext PJ 250 solid state amplifier, Cablewave FLC 12-50 transmission line and a Celwave ECFM-2 two bay antenna which has been technician tuned. All the aforementioned items meet or exceed broadcast standards as set by FCC and the station as a whole manifests the latest in modern available technology, assuring frequency stability, and suppression of unwanted RF emissions.

D. Test transmissions have shown that VSWR measurements are 1.1 to 1 and spurious emissions, TVI, and harmonics are virtually non-existent. Additionally after a check with the nearest neighbors no complaints of any kind of interference to television or radio or any other kind of electronic devices were found.

Therefore be it Resolved that there is as of this date a newly established, Common law, Constitutionally Lawful radio station which is and shall be known as Radio Free Lenawee operating at a frequency of 97.7 megahertz FM transmitting at a power level less than 100 watts, dedicated to religious and political speech. At this writing the transmitter site is located within space and property leased by Pastor Strawcutter from the Church of the Lord Jesus Christ commonly located at 2903 Bent Oak Hwy. Adrian, Michigan.

All persons which have questions of a legal nature regarding Radio Free Lenawee are hereby directed to contact Attorneys Mr. Patrick Edwards or Mr. Hugh Davis of the Constitutional Litigation Associates, P.C. One Kennedy Square 719 Griswold, Suite 1630 Detroit, Michigan. 313-961-2255.

Pastor Rick Strawcutter
P.O. Box 892
Adrian, Michigan
1-517-265-5285

October 1, 1996

Pastor Rick Strawcutter personally known to me appeared and signed the above document before me a NOTARY PUBLIC this October 1, 1996

Ila May VanSteenkiste

My commission expires August 20, 1998

The next page is a copy of the NO TRESPASSING sign we have posted our building with.

This will help block undesirables from taking the liberty of just "barging in on you unexpectedly."

What follows are the Attachments which are referenced within the "Declaration."

The opinion of Judge Wilkins is MUST READING for anyone serious about free radio broadcasting.

The Brief by Luke Hiken is equally good and will form the basis for your "reliance" upon which your legal defense lies.

Quite simply, you must have an intent to do something forbidden by law in order to be found guilty of any crime. Your declaratory statement sets forth the factual basis for your actions (in broadcasting without a license) and the judge's opinion and the lawyers brief together form a resonable and believable foundation for those sincerely held beliefs.

CHURCH PROPERTY

1. YOU HAVE ENTERED PROPERTY WHICH IS AN EMBASSY OF THE KINGDOM OF GOD. IT IS NOT OF THIS WORLD - JOHN 18:36. PLEASE BE ADVISED AND NOTICED THAT YOU ARE NOW SUBJECT TO THE LAWS OF THE KINGDOM AND THE JURISDICTION OF THE WORD OF GOD.

2. THIS EMBASSY AND ALL ITS PROPERTY BELONG TO GOD AND ARE HELD IN TRUST FOR HIM BY HIS LOCAL CHURCH. THE CHURCH IS PRIVATE NOT PUBLIC. IT IS NOT INCORPORATED, NOR IN ANY SENSE A CREATURE OF THE STATE. IT CLAIMS ALL OF ITS RIGHT OF EXISTENCE FROM THE WORD OF GOD. THE HEAD AND FOUNDER OF THE CHURCH IS THE LORD JESUS CHRIST.

3. ALL THOSE WHO ENTER TO WORSHIP THE LORD AND SEEK CHRISTIAN FELLOWSHIP ARE WELCOME.

4. HOWEVER ANY PERSON(S) WHO ENTER THIS PRIVATE PROPERTY WITH AN INTENT WHICH IS OTHER THAN THAT ARTICULATED IN PARAGRAPH 3. ABOVE, MUST FIRST CALL _____ AND REACH THE APPROPRIATE PERSON FOR AN APPOINTMENT BEFORE ENTERING. NO EXCEPTIONS.

NO TRESPASSING

FILED

JAN 30 1995

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEPHEN PAUL DUNIFER,

Defendant.

No. C 94-03542 CW

MEMORANDUM AND ORDER
DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION AND STAYING
THIS ACTION

BACKGROUND

Defendant is the operator of "Free Radio Berkeley," which broadcasts at low FM frequencies without a license from various locations in the Berkeley Hills and Albany. Defendant cannot obtain a license to broadcast because the FCC's regulatory scheme does not allow for licensing of "micro radio broadcasting" (ten watts or lower). On his broadcasts and in interviews with the press, Defendant criticizes the FCC's refusal to license micro radio.

The United States seeks declaratory and injunctive relief against Defendant for operating a radio station without a license

1 in violation of 47 U.S.C. § 301. This Court has jurisdiction
2 under 47 U.S.C. § 401(a).

3 After establishing that Defendant had broadcast Free Radio
4 Berkeley without a license on two specific dates, the FCC first
5 imposed a monetary forfeiture against him in November 1993.
6 Defendant filed two documents with the FCC in connection with
7 this fine: a response to the notification of the impending
8 forfeiture order, and an application for review of the forfeiture
9 order after it was issued. See Def.'s Exhs. A & B. In both
10 documents Defendant argued that the existing regulations, which
11 preclude the possibility of licensing micro radio broadcasting,
12 are unconstitutional.¹ The FCC has taken no further action on
13 the forfeiture. Meanwhile, the D.C. Circuit struck down the fine
14 structure on which Defendant's \$20,000 forfeiture amount was
15 based, on grounds that it violates the Administrative Procedure
16 Act. United States Telephone Assoc. v. FCC, 28 F.3d 1232, 1236
17 (D.C.Cir. 1994).

18 Rather than addressing Defendant's arguments regarding the
19 validity of the FCC regulations at issue by pursuing the
20 forfeiture, the FCC seeks to stop Free Radio Berkeley's
21 broadcasts in the present action for injunctive relief.

24 ¹As currently structured, FCC regulations prevent
25 licensing of any commercial FM stations below 100 watts, and
26 provide that no further licenses for non-commercial educational
27 stations below 100 watts may be issued. 47 C.F.R.
28 §§ 73.211(a), 73.511(a), 15.239(a). While the regulations
permit certain unlicensed broadcasts, the maximum field
strength permitted for such broadcasts precludes reception
beyond a 2-block radius. 47 C.F.R. § 15.239(b).

1 **LEGAL STANDARD**

2 The moving party is entitled to preliminary injunction if it
3 establishes either:

- 4 (1) a combination of probable success on the merits and the possibility of irreparable harm, or
- 5 (2) that there exist serious questions regarding the merits and the balance of hardships tips sharply in its favor.

6
7 Rodeo Collection, Ltd. v. West Seventh, 812 F.2d 1215, 1217 (9th
8 Cir. 1987); California Cooler v. Loretto Winery, 774 F.2d 1451,
9 1455 (9th Cir. 1985); see also Wm. Inglis & Sons Baking Co. v.
10 ITT Continental Baking Co., 526 F.2d 86, 88 (9th Cir. 1975);
11 County Alameda v. Weinberger, 520 F.2d 344, 349 (9th Cir.
12 1975).

13 The test is a "continuum in which the required showing of
14 harm varies inversely with the required showing of
15 meritoriousness." Rodeo Collection, 812 F.2d at 1217 (quoting
16 San Diego Comm. Against Registration and the Draft v. Governing
17 Board of Grossmont Union High School Dist., 790 F.2d 1471, 1473
18 n.3 (9th Cir. 1986)). To overcome a weak showing of merit, a
19 plaintiff seeking a preliminary injunction must make a very
20 strong showing that the balance of hardships is in her favor.
21 Rodeo Collection, 812 F.2d at 1217.

22 **DISCUSSION**

23 **Probability of success on the merits**

24 The government has shown probable success on the merits on
25 the narrow issue that Defendant has violated the existing statute
26 prohibiting radio broadcasting without a license. However, the
27 government has failed to show a probability of success on the
28 central issue raised by Defendant, i.e., whether the FCC's

1 complete prohibition of micro radio is constitutional.

2 Defendant argues that by completely prohibiting micro radio
3 broadcasts, the current FCC regulatory scheme deprives the
4 prospective broadcasters and their listeners of access to the
5 public airwaves in violation of the First Amendment. When First
6 Amendment free speech rights are impacted by government
7 regulation, the government must establish that the contested
8 regulations are the least restrictive means available to further
9 a compelling state interest. See FCC v. League of Women Voters
10 of California, 468 U.S. 364, 380-81 (1984). Traditionally, FCC
11 regulation of the airwaves has been justified because the radio-
12 spectrum cannot accommodate an unlimited number of users. See
13 Turner Broadcasting System, Inc. v. FCC, 114 S.Ct. 2445, 2456
14 (1994). Defendant argues that the regulations prohibiting
15 radio broadcasting, and the FCC's justifications for them, are
16 based on out-of-date assumptions about technological
17 capabilities. Contrary to the FCC's assertions in support of its
18 ban on micro radio, Defendant argues that micro radio
19 broadcasting can be permitted without risk of signal interference
20 to high-power broadcasters. Defendant cites Canadian law, which
21 licenses low-power FM radio broadcasters, and an FCC report which
22 cited Canadian law, in support of this contention. See Ex. B
23 7-8. Thus, Defendant argues that the FCC's assertion that micro
24 radio broadcasting may interfere with the broadcasts of licensed,
25 high-powered commercial radio stations does not meet the
26 constitutional test of imposing the least restrictive means
27 available to further a compelling government interest, and thus,

1 violates First Amendment free speech rights.

2 Moreover, Defendant argues that by prohibiting micro radio
3 broadcasting, the FCC effectively eliminates opportunities for
4 low-cost broadcasting on community issues as an alternative to
5 mainstream perspectives, and thereby violates its mandate to
6 regulate in the interests of the whole public, not just the
7 economically powerful. See Metro Broadcasting, Inc. v. FCC, 110
8 S.Ct. 2997, 3010 (1990) (people as a whole have First Amendment
9 rights in radio, including the right to balanced presentation of
10 information on issues of public importance, which is sufficient
11 constitutional basis for FCC's minority ownership policies).
12 Finally, Defendant asserts that the FCC prohibits micro radio
13 broadcasting generally, and selectively seeks to enjoin Defendant
14 specifically, because of the political content of their speech.

15 The government has responded with argument and citations to
16 Supreme Court cases which affirm the statutory authority of the
17 FCC to regulate and license radio broadcasters, and which affirm
18 the scarcity doctrine as a valid grounds for such regulation. As
19 Plaintiff and Amici point out, this is not the issue. Defendant
20 does not challenge the FCC's authority to regulate micro-power
21 broadcasts. Rather, Defendant challenges the constitutionality
22 of the present regulations, which impose a complete ban on
23 licensing FM broadcasts of less than 100 watts. None of the
24 cases cited by the government involved these specific
25 regulations. Accordingly, they do not establish as a matter of
26 law that the regulations at issue are constitutional. The fact
27 that the statute is constitutional does not compel the conclusion
28

1 that regulations promulgated under it are also constitutional.
2 Such a conclusion would be untenable; it would render meaningless
3 the very inquiries undertaken by the Supreme Court in the cases
4 cited by the government, i.e., whether certain restrictions
5 imposed by the FCC met the First Amendment constitutional test of
6 the least restrictive means available to further a compelling
7 state interest, as well as the statutory mandate. See, e.g., 47
8 U.S.C. § 303(r) (providing FCC with authority to regulate in the
9 public interest, convenience or necessity.); NBC v. United
10 States, 319 U.S. 190 (1943) (upholding regulations re: multiple
11 ownership of AM stations under statutory mandate); Red Lion
12 Broadcasting Co. v. FCC, 393 U.S. 367 (1969) (establishing the
13 scarcity doctrine and finding FCC rules creating the fairness
14 doctrine constitutional); FCC v. Nat'l Citizens Comm. for
15 Broadcasting, 436 U.S. 775 (1978) (upholding regulations barring
16 common ownership of newspaper and broadcasting stations under
17 statutory mandate and First Amendment).

18 The government also argues that the FCC has met its
19 statutory mandate by undertaking an extensive study of the
20 feasibility of allowing micro radio broadcasts before deciding to
21 prohibit them. See 47 U.S.C. § 303(g) (FCC required to "study
22 new uses for radio, provide for experimental uses of frequencies,
23 and generally encourage the larger and more effective use of
24 radio in the public interest"). The problem with this argument
25 is that the FCC study was done in 1978. The crux of Defendant's
26 challenge is that technology has changed since then, and the
27 feasibility of micro-power broadcasting has changed with it. As
28

1 Defendant points out, in 1993 Canada modified its rules to permit
2 micro-power broadcasting in urban areas (Canada had allowed
3 micro-power broadcasting "in remote communities" since 1978). This
4 supports Defendant's argument that determinations based on 1978
5 technology are obsolete. Accordingly, the FCC is arguably
6 violating its statutory mandate as well as the First Amendment by
7 refusing to revisit the issue. See 47 U.S.C. § 157(a) ("It shall
8 be the policy of the United States to encourage the provision of
9 new technologies and services to the public"); *id.* § 324 ("In all
10 circumstances, except in the case of radio communications or
11 signals relating to vessels in distress, all radio stations,
12 including those owned and operated by the United States, shall
13 use the minimum amount of power necessary to carry out the
14 communication desired").

15 If the FCC's current regulations, which prevent Defendant
16 from complying with the statute's licensing requirement, violate
17 the agency's statutory mandate and the First Amendment,
18 Defendant's violation of the statute cannot form the basis for
19 granting the declaratory and injunctive relief the government
20 seeks. For the reasons discussed above, the government has
21 failed to establish a probability of success on its contention
22 that the current regulatory ban on micro broadcasting is
23 constitutional. At most, the government has raised serious
24 questions as to the constitutionality of these regulations.
25 Irreparable harm/balance of hardships

26 Citing United States v. Nutri-Cology, 982 F.2d 394 (9th Cir.
27 1992), the government argues that there is a presumption of
28

1 irreparable injury in this case because the government has
2 established a likelihood of success on its assertion that
3 Defendant is violating the applicable statute by broadcasting
4 without a license. In Nutri-Cology, the court held that "where
5 the government has met the 'probability of success' prong of the
6 preliminary injunction test, we presume it has met the
7 'possibility of irreparable injury' prong because the passage of
8 the statute is itself an implied finding by Congress that
9 violations will harm the public." Id. at 398. However, as
10 Defendant argues, the Ninth Circuit in that case was careful to
11 establish that the presumption applies only where the violation
12 of a statute is not adequately disputed. Id. Where, as here,
13 the constitutionality of the implementing regulations, and their
14 validity under the statutory mandate, is at issue, the resulting
15 violation of the statute is also at issue, and the government
16 must show a likelihood of success regarding the constitutional
17 challenges before the Court can presume that violations of the
18 statute amount to irreparable injury as a matter of law. In
19 cases challenging the constitutionality of regulations
20 promulgated under a statute, it cannot be presumed that
21 violations of the statutory/regulatory scheme amount to public
22 harm. Indeed, the opposite is asserted by the constitutional
23 challenge.

24 The government also attempts to establish irreparable harm
25 by asserting that Defendant's broadcasting may interfere with
26 legitimate licensed broadcasting. The government argues that it
27 has documented two occasions of such interference, and further,
28

1 that because Defendant's equipment is not FCC-approved, it must
2 be considered likely to emit spurious signals without warning,
3 thus causing harmful interference to air navigation and
4 communications operations. However, the record does not support
5 the latter assertion. Although a declarant for the government
6 asserts he has witnessed such interference from other home-made
7 radio equipment, he does not clearly state that micro radio
8 broadcasts specifically can cause it. See Kane Decl. ¶ 29. *The*
9 government has not shown that Defendant's equipment is defective
10 and Defendant asserts that it is not.

11 Defendant also asserts that on one of the two occasions of
12 documented interference with licensed broadcasting, the
13 government agent had to drive right up to Defendant's transmitter
14 to provoke interference. Defendant states that he immediately
15 discontinued broadcasting on those two occasions when his signal
16 wavered, and no other instances have been documented over an
17 month period. Finally, and most troubling, Defendant asserts
18 that the FCC has not sought injunctions against several other
19 micro broadcasters known to the FCC, who have also been subjected
20 to forfeiture proceedings by the FCC, and that in some cases,
21 such micro broadcasters have continued their broadcasting for
22 several years. Under these circumstances, the government's
23 contention that Defendant's broadcasts present a threat of
24 irreparable harm is unpersuasive.

25 At most, the government's allegations of two instances of
26 brief interference present an issue for balancing of hardships.
27 The Court finds that the harm to the First Amendment rights of
28

1 Defendant and the public at large which may result from enforcing
2 the current regulations outweighs the slight showing of
3 interference proffered by the government.

4 CONCLUSION

5 The government has so far failed to address the
6 constitutional issues in the FCC forfeiture action and has
7 inadequately addressed them in arguments before this Court.
8 Under the doctrine of primary jurisdiction, this Court should not
9 rule on the constitutionality of the regulations at issue until
10 the FCC has itself adequately addressed the issue. See Far East
11 Conference v. United States, 342 U.S. 570, 574-75 (1952); United
12 States v. Western Pacific R. Co., 352 U.S. 59, 63-64 (1956);
13 Writer's Guild of America v. American Broadcasting, 609 F.2d 355,
14 366 (9th Cir. 1979), cert. denied, 449 U.S. 824 (1980). This
15 Court defers in the first instance to the FCC to provide guidance
16 on the factual and technical issues related to the
17 constitutionality of the regulatory scheme. That is, in light of
18 current technology, is a total ban on new licensing of micro
19 radio broadcasting the least restrictive means available to
20 protect against chaos in the airwaves? The FCC could provide
21 this guidance in the context of addressing Defendant's arguments
22 in the pending forfeiture proceeding, or in the context of its
23 rule-making powers.

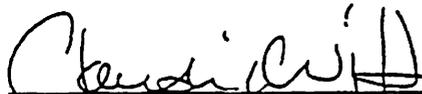
24 On the present record, this Court does not find a
25 probability that Plaintiff will succeed on the merits,
26 particularly in the absence of guidance from the FCC on
27 Defendant's constitutional challenge to the regulations at issue.
28

1 While there may be a serious question as to the merits, on the
2 present record the Court does not find that the balance of harm
3 tips sharply in favor of the FCC.

4 Accordingly, Defendant's motion for a preliminary injunction
5 is hereby DENIED, and the present action is STAYED, to allow the
6 FCC to address the constitutional issues in the appropriate
7 forum.

8
9 IT IS SO ORDERED.

10
11 Dated: JAN 30 1995


12 CLAUDIA WILKEN
13 UNITED STATES DISTRICT JUDGE

14 Copies mailed to counsel
15 noted on attached sheet
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Attorney at Law
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San Francisco, California 94104
Tel: (415)705-6460 Fax: (415)
705-6444

Attachment #2

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

United States of America,

Plaintiff,

v.

Stephen Paul Dunifer,

Defendant

No. C 94-3542 CW

DEFENDANT'S MOTION IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION

Date: December 2, 1994
Time: 10:30 a.m.
Place: Courtroom 2
1301 Clay Street,
Oakland

Introduction

There is no emergency in this case. The plaintiffs, themselves, argue that Steven Dunifer has been broadcasting for at least one and 1/2 years with low power wattage. The FCC has had pending before it for that entire period of time pleadings which challenge their regulatory scheme. Rather than responding to those pleadings, and the issues raised therein, the FCC now comes to this court seeking an injunction.

The declarations filed by the plaintiffs indicate that they are scrupulously monitoring the broadcasts of Radio Free Berkeley, and know precisely when and how often it broadcasts. If there were truly any immediate threat of injury or harm to anybody, why did they wait for over 18 months to bring it to

this court's attention?

The obvious answer is that there is no immediate harm posed by Radio Free Berkeley's broadcasts. There are micro-radio broadcasters all over the country challenging the FCC's authority to limit the issuance of radio licenses to only wealthy commercial broadcasters. The questions posed by this lawsuit should be resolved through thorough litigation on the merits of the issues. An injunction at this point would only reinforce the arbitrary and discriminatory regulatory scheme enacted by the FCC. It would deny what little non-commercial democratic voice exists over the airwaves and it would protect no interests that require immediate protection.

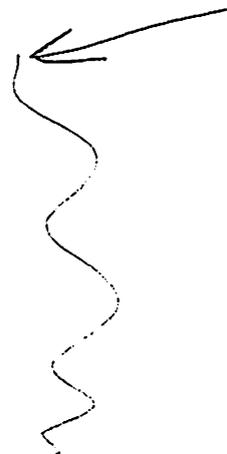
Argument

On June 1, 1993, the F.C.C. issued a Notice of Apparent Liability (N.A.L.) against defendant Stephen Dunifer, in which the F.C.C. sought to impose a forfeiture of \$20,000 against defendant for allegedly engaging in two unlicensed low power FM broadcasts. On June 28, 1993, defendant filed his Response to the N.A.L. A copy of that Response is attached hereto as exhibit A. We excerpt from that Response:

"The Federal Communications Commission (F.C.C.) policies with regard to micro radio broadcasting have failed to keep pace with the rapid proliferation of technological advances in the field of communication. The F.C.C.'s current regulatory scheme completely prohibits micro radio broadcasters and their listeners from accessing the public airwaves. To enforce this absolute prohibition, the F.C.C. is relying upon regulations, and case law applying the regulations, which were intended solely for application to large-scale, commercial broadcasters, and which were promulgated long before the advent of the technology that makes possible micro radio; indeed, even before the advent of FM broadcasting. The F.C.C.'s application of these regulations violates the First Amendment rights of individuals seeking to exercise those rights via methods and mediums that were technologically impossible when the regulations were created.

The cost of owning and operating a radio station has skyrocketed into the hundreds of thousands and even million dollar range, and participation in the broadcast media has thereby become limited only to large corporations. The individual seeking to communicate and listen to others over the airwaves in his or her local community is completely left out of the licensing scheme if he or she cannot afford the expenses entailed in purchasing, obtaining a license for and operating a commercial broadcast station with at least 100 watts of power.

Micro radio provides a format by which ordinary people can communicate with one another over the airwaves without interfering with the rights of large-scale, F.C.C. licensed commercial stations or their listeners. The F.C.C., however, has not provided a means by which persons wishing to avail themselves of this new technological opportunity can legally do so. The problem is not that micro radio broadcasters are refusing to comply with F.C.C.



licensing procedures. Rather, the fundamental problem is that the F.C.C. has not provided procedures by which micro radio broadcasters can become licensed or authorized. Instead, the F.C.C. is applying severe administrative and criminal sanctions, intended for application to large-scale, commercial operators, to micro radio broadcasters with the goal of completely precluding all such broadcasts. The very notion of assessing a \$20,000 forfeiture against Mr. Dunifer, an individual with no prior F.C.C. violations, accused of transmitting two low-power, non-commercial broadcasts of approximately 1 hour duration, is ludicrous.

It is the obligation of the F.C.C. to construct and enforce its regulatory framework in such a way as to safeguard the First Amendment right of free speech for all persons, regardless of their economic power. By totally prohibiting low-power micro radio, the F.C.C. has failed to comply with its congressional mandate to regulate the airwaves in the public interest, has exceeded the limits of the power conferred upon it by Congress, and is violating the constitutional rights of micro radio broadcasters and their listeners." Response to N.A.L., N.A.L./Acct. No. 315SF0050, SF-93-13555, at pp. 1-2. [Footnote omitted, emphasis in original].

After the F.C.C. denied defendant's June 28, 1993 request for relief, defendant, pursuant to 47 C.F.R. §1.115, filed with the F.C.C. an Application for Review of Action Taken Pursuant To Delegated Authority. That Application set forth, in detail, the constitutional and procedural arguments as to why the F.C.C.'s N.A.L in defendant's case, as well as the absolute ban of all low-power FM broadcasting, is illegal.

A copy of that document is attached hereto as exhibit B and incorporated herein by reference. As of the date of this filing, the F.C.C. has not acted upon that Application for Review. At footnote 21 of the Application, defendant asks the F.C.C. to provide defendant with any rules or authority that would permit him to seek and obtain F.C.C. authorization to engage in low-power FM broadcasts. The F.C.C. has not responded to that request for the simple reason that no regulations exist by which defendant or any other citizen can apply for or be granted F.C.C. authorization to engage in low power FM broadcasts.

Defendant's formal application for F.C.C. review has been pending for nearly a year and a half with absolutely no response or action by the F.C.C. In July of this year, the Court of Appeals for the D.C. Circuit struck down the entire administrative fine structure upon which the F.C.C. relied to levy its \$20,000 fine against plaintiff. Now, plaintiff comes to this Court seeking the extraordinary relief of a Temporary Injunction, claiming imminent and irreparable harm.

In his Answer to the plaintiff's Complaint, Defendant will set forth in detail the constitutional and procedural reasons why the F.C.C.'s regulatory scheme must be rejected by this Court. At this juncture, however, there are several compelling reasons why this Court should reject plaintiff's request for injunctive relief:

1) The F.C.C., itself, has pending before it documents which seek to permit Mr. Dunifer to broadcast with low-power transmissions. They have been sitting on those documents for

over a year without acting on them. They should be compelled to respond to those arguments, even if their response is to be in the negative, before seeking the assistance of this court.

2) Evidence to be presented at hearing will demonstrate that Mr. Dunifer, if authorized to broadcast at a low-power frequency by the F.C.C. can insure that agency that his transmissions will not interfere with emergency channels, or with other licensed broadcasters. The transmitters he has created possess the same ability to insure filtering and frequency accuracy as any officially approved by the F.C.C. Because of the F.C.C.'s current licensing scheme which completely prohibits all low power FM broadcasting, there are no means by which Mr. Dunifer can get formal approval to broadcast with these transmitters. At trial, expert evidence will be presented to demonstrate the adequacy of these devices to broadcast without interference.

On the rare occasions in the past when Free Radio Berkeley broadcasts did possibly interfere with another channel, it immediately went off the air, corrected any problem that caused the interference or moved to a frequency where such interference would not occur.

The Communications Act of 1934, section 324, requires that broadcasters use the "minimum amount of power necessary to carry out the communications desired" for their broadcasts. Instead of authorizing micro-broadcasting, the F.C.C. licenses stations with tens of thousands of watts. These high-power stations (some of which are as powerful as 100 kilowatts) result in frequent reception difficulties due to the overloading of the FM receivers possessed by many individuals, thereby preventing the reception of nearby F.C.C. licensed broadcast signals of a lesser power. This problem results in a much greater degree of interference than anything that could be accomplished by a micro-broadcaster.

At trial, defendant will offer expert testimony to support his representation that his transmitters meet all technical requirements which are constitutionally imposed by the F.C.C.

3) Mr. Dunifer is currently accused of broadcasting for a 3-hour period once a week from the Berkeley Hills. In an 18 month period, the F.C.C. has cited to only two possible occasions when they believe Mr. Dunifer interfered with another station. Evidence at trial will demonstrate that many stations actually licensed by the F.C.C. regularly interfere with other potential broadcasters more frequently than any interference alleged to have been caused by Mr. Dunifer, and with more harmful results.

4) Plaintiffs cite to this Court the Ninth Circuit's decision in U.S. v. Nutri-Cology, 982 F.2d 394 (1992) for the proposition that the government has met their burden of showing the "irreparable injury" required before this Court can grant the Temporary Injunction. As that decision clearly states, however, the fact that a statutory violation is alleged does not relieve the government of its obligation to make a showing of irreparable injury. 982 F.2d 394,398. Indeed, in Nutri-Cology, both the district court and the Ninth Circuit found the government had failed to make an adequate showing of irreparable injury, and both courts denied the government's request for injunctive relief. A primary factor in the Court's decision was that the statutory violation alleged was "substantially disputed, and has been disputed since 1982." 982 F.2d 394,398. Also of importance to the Court

was the considerable delay in the government's seeking relief. 982 F.2d 394, 396. Immediately following the passage quoted by plaintiffs in their Points and Authorities Memorandum (p.6), the Court stated:

"However, in statutory enforcement cases where the government can make only a "colorable evidentiary showing" of a violation, the court must consider the possibility of irreparable injury." 982 F.2d 394,398.

In the present case, as in Nutri-Cology, the alleged statutory violation is disputed, and has been consistently disputed from the inception of the still-pending administrative proceedings. Furthermore, the only injury alleged by the government here consists of the two minor incidents in which Free Radio Berkeley has been said to have interfered with the licensed broadcasts of a high school radio station late on a Sunday night. As defendant has repeatedly pointed out to the F.C.C. (see exhibits A and B), the agency's allegations of potential interference with aircraft navigational broadcasts have never been documented, and are spurious.

If there is irreparable harm to be found in this case, it is the on-going policy of the F.C.C. to license only the rich, and a handful of educational institutions, that creates such harm. Technology currently exists to allow thousands of Americans to have access to the airwaves in ways that could assure their democratic use and a meaningful voice in the democratic process. Instead, the F.C.C. has created a system whereby the public listens, and the elite broadcast.

Allowing Steven Dunifer to continue broadcasting within a 5 - 30 watt limit on a frequency that is not being used by other licensed broadcasters poses a threat to no one. Mr. Dunifer is willing to inform the F.C.C. as to what frequency he will be broadcasting from, and what the wattage will be, if the F.C.C. will permit him the opportunity to continue broadcasting during the pendency of these proceedings. This court has the power and discretion to seek such a compromise from the F.C.C. during these proceedings. Such would provide an excellent test case regarding the opposing assertions made by the parties herein. The F.C.C. has refused to acknowledge that there could be safe, non-interfering micro-power broadcasts, and have made no provisions for authorizing them.

The myriad of constitutional violations set forth in exhibits A and B, which arise as a result of the F.C.C.'s decision to preclude the poor from having any access to the airwaves, must not be sanctioned by this court. There are numerous less restrictive alternatives to the current licensing scheme enforced by the F.C.C. that would provide the American people with use of the airwaves.

For the reasons set forth in the Response and Application currently pending before the F.C.C., their request for a Temporary Injunction should be denied. The F.C.C.'s current regulations result in the prior restraint of speech, the suppression of diverse ideas, and the unavailability of the airwaves for democratic communications in this country. Those are the rights which defendant seeks to vindicate in this proceeding, and he should not be cut short at this stage by the unfounded accusations of the plaintiffs.

DATED: _____ , at San Francisco, California.

Respectfully submitted,

LOUIS N. HIKEN, SBN 45337
Attorney for Defendant

United States Telephone Association v. F.C.C., No. 92-1321, No. 93-1526,
1994 U.S. App. Lexis 17002.

Had defendant, rather than plaintiff, come to this Court seeking injunctive or declaratory relief, the F.C.C. would be vehemently urging denial of review pending exhaustion of administrative remedies. In fact, in a very similar case, *Dougan v. F.C.C.*, 94 C.D.O.S. 2735, No. 92-70734 (9th Cir. 1994) the F.C.C. argued to the Ninth Circuit that the only avenue for judicial review in these cases is appeal to the District Court after the F.C.C. has initiated formal enforcement proceedings to seize the forfeiture amount.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

United States of America,

Plaintiff,

v.

Stephen Paul Dunifer,
Defendant

No. C 94-3542 CW
DEFENDANT'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF HIS ANSWER TO
PLAINTIFF'S COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

United States of America,

Plaintiff,

v.

Stephen Paul Dunifer,
Defendant

No. C 94-3542 CW

DEFENDANT'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF HIS ANSWER TO
PLAINTIFF'S COMPLAINT FOR

DECLARATORY AND INJUNCTIVE
RELIEF

Introduction

Micro radio represents a technological advancement comparable to the invention of the printing press. For the first time in history, the technology exists whereby an individual without corporate or government backing, or independent wealth can, for less than one hundred dollars, obtain equipment by which she can broadcast to her neighborhood, making possible truly community oriented, originated, and controlled radio. Micro radio is the leaflet of the 1990's, permitting citizens to communicate with their neighbors by a method heretofore reserved for huge radio stations promoting commercial interests from distant locations.

The central issue in this case is the F.C.C.'s prohibition of micro radio broadcasting. Despite plaintiff's protestations to the contrary, the F.C.C. is indeed enforcing a complete and absolute ban of all micro radio broadcasts--that is, all original FM broadcasts of less than 100 watts capable of reaching a listening audience. Federal law prohibits anyone from broadcasting without a license, and the F.C.C. refuses to grant anyone a license unless they are capable of broadcasting with a minimum of 100 watts. While 47 C.F.R. part 15 permits certain unlicensed "broadcasts," this exception to the 100 watt minimum applies only if the field strength of the broadcast is less than 250 microvolts/meter at three meters. As plaintiff is well aware, a broadcast in compliance with the parameters of 47 C.F.R. part 15 could not be received by anyone farther than a house or two away from the source. Plaintiff's denial that their rules completely prohibit micro radio is deceptive, and begs the question before this court.

Plaintiff has stated to this court that, "The same public interest considerations that require licensing of other radio devices apply equally to low-power stations: namely to prevent the 'cacophony of sounds' and chaos on the limited radio spectrum." Assuming, arguendo, that this is true, plaintiff has never proffered an explanation as to why, if "the same public interest considerations" apply, the government has refused to establish any procedure by which defendant or anyone else can engage in licensed, regulated micro radio broadcasting. Plaintiff's regulations apply to broadcasters in rural areas with virtually no spectrum competition just as they do to areas with a concentrated number of stations.

Plaintiff has argued to this court that the "logical extension" of defendant's argument is that "anyone proclaiming that he will not cause interference can set up a radio station without F.C.C. oversight." Defendant, however, does not challenge the F.C.C.'s authority to regulate micro-power broadcasts. Rather, defendant herein challenges the constitutionality of the F.C.C.'s complete ban of all FM broadcasts of less than 100 watts.

The F.C.C. is statutorily required to regulate the airwaves in the public interest, and to "study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest." 47 U.S.C. § 303(g). 47

U.S.C. §157(a) provides that, "It shall be the policy of the United States to encourage the provision of new technologies and services to the public." 47 U.S.C. §324 provides that, "In all circumstances, except in case of radio communications or signals relating to vessels in distress, all radio stations, including those owned and operated by the United States, shall use the minimum amount of power necessary to carry out the communication desired." Micro radio provides a perfect opportunity for the F.C.C. to fulfill these statutory mandates. Instead, the F.C.C. is enforcing an irrational ban of micro radio. The government asserts repeatedly its interest in "regulating the airwaves," but nowhere explains to this Court how this ban serves the public interest, or why it has chosen to prohibit micro radio altogether. 

The constitutionality of the F.C.C.'s prohibition of micro radio is a matter of first impression. The cases cited by plaintiff regarding the district court authority to enjoin unlicensed broadcasts involved full power broadcasts; activities for which the enjoined parties could have been licensed, had they gone through the appropriate procedures. The ban of micro radio at issue here is distinguishable from cases in which the F.C.C. has denied a broadcast license to an individual applicant. Here, a whole class of broadcasters is denied even the opportunity to apply for a license, based upon the F.C.C.'s unreasonable decision to impose the 100 watt minimum. Defendant herein could never be licensed to conduct micro radio broadcasts under the current regulatory framework, because of the 100 watt minimum.

The fact that this case presents a matter of first impression does not leave the court without applicable standards. Several Supreme Court cases, including four cases cited but not discussed by plaintiff, *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969), *FCC v. League Of Women Voters of California* 468 U.S. 364 (1984), *National Broadcasting Co. v. United States* 319 U.S. 190 (1943), and *Federal Communications Commission v. National Citizens Committee For Broadcasting et al.* 436 U.S. 775 (1978), provide the constitutional and statutory standards with which the government's regulation of the airwaves must comply.

These cases make clear that while the F.C.C. is granted wide latitude in its regulation of the airwaves, its discretion is far from absolute. The Commission's regulations governing the licensing of broadcasters must serve the public interest, convenience, or necessity. This mandate includes the requirement that the airwaves must be regulated in a manner which protects and furthers the public's First Amendment rights to have access to a broad and diverse range of opinions and perspectives, and to receive a balanced presentation of views on diverse matters of public concern.

Furthermore, while the doctrine of "spectrum scarcity" results in a modified First Amendment analysis for the broadcast media, even this modified analysis has permitted government restrictions of broadcasters' First Amendment rights only when such restrictions were narrowly tailored to further a substantial government interest.

Plaintiffs have chosen to ignore the central issue in these proceedings (the constitutionality of their

prohibition of micro radio), and in so doing mis-characterize the question before this court as a simple matter of deciding whether or not the F.C.C. has the authority to regulate the airwaves, and whether or not defendant has broadcast without an F.C.C. license. Defendant does not herein challenge the F.C.C.'s authority to regulate the airwaves, nor does defendant deny that he has broadcast without an F.C.C. license. Defendant does not have an F.C.C. license to engage in micro radio broadcasting because the F.C.C. simply does not provide any mechanism or procedure whatsoever by which such a license can possibly be obtained, by defendant or by anyone else. This prohibition of micro radio broadcasting is unreasonable, does not serve the public interest, and violates the First Amendment. If the regulations as currently enforced by the F.C.C. violate the agency's statutory mandate and are unconstitutional, defendant's violation thereof cannot form the basis for granting the declaratory and injunctive relief sought by plaintiff.

I. THE F.C.C. SHOULD BE REQUIRED TO COMPLETE ITS PENDING ADMINISTRATIVE REVIEW OF THESE ISSUES BEFORE SEEKING RELIEF FROM THIS COURT.

On June 1, 1993, the F.C.C. issued a Notice of Apparent Liability (N.A.L.) against defendant Stephen Dunifer, in which the F.C.C. sought to impose a forfeiture of \$20,000 against defendant for allegedly engaging in two unlicensed low power FM broadcasts. On June 28, 1993, defendant filed his Response to the N.A.L., and, on December 2, 1993, pursuant to 47 C.F.R. §1.115, filed with the F.C.C. an Application for Review of Action Taken Pursuant To Delegated Authority. That Application set forth the constitutional and procedural arguments as to why the F.C.C.'s N.A.L. in defendant's case, as well as the ban of all micro radio broadcasting, is illegal.

More than a year and a half has passed since defendant first filed his request for relief challenging the F.C.C.'s ban of micro radio. The F.C.C. has not responded to that request. The F.C.C. should be required to complete its own internal review of these issues before seeking this Court's intervention.

Plaintiff cites United States v. McIntire, 365 F.Supp 618 and 370 F.Supp 1301 (D.N.J. 1974) in this regard, but McIntire is distinguishable from the present case. In McIntire, the defendant lost his F.C.C. license, and then engaged in full-power broadcasts from a boat offshore. There was no currently-pending administrative review action, as there is here, initiated by the F.C.C. and raising the precise issues as those before the federal court.

It is ironic that the F.C.C. claims that defendant herein has failed to pursue discretionary administrative relief, such as a rule-change or waiver request, and yet has itself refused to respond to defendant's administrative appeal which has been before it for more than eighteen months.

There are factual and legal questions to which the F.C.C. itself should be required to respond; this will provide guidance useful to the Court in its evaluation of the pending issues. This Court should exercise its discretion to retain jurisdiction over this case, and

require the F.C.C. to complete its internal administrative review of defendant's claim.

II. THE PROHIBITION OF MICRO RADIO VIOLATES THE F.C.C.'S STATUTORY MANDATE TO REGULATE THE AIRWAVES IN THE PUBLIC INTEREST, TO ENCOURAGE THE LARGER AND MORE EFFECTIVE USE OF RADIO IN THE PUBLIC INTEREST, TO ENCOURAGE THE PROVISION OF NEW TECHNOLOGIES AND SERVICES TO THE PUBLIC, AND TO PROMOTE DIVERSIFICATION OF THE MASS MEDIA AS A WHOLE.

The authority for the F.C.C.'s regulatory power is derived from the Communications Act. 47 U. S. C. §303(r) provides that "the Commission from time to time, as public convenience, interest, or necessity requires, shall . . .

[make] such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of [the Act]." 47 U. S. C. §154(i) provides that, "The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions."

The Communications Act also provides that, "...[t]he Commission from time to time, as public convenience, interest, or necessity requires, shall...[s]tudy new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest." 47 U.S.C. §303(g).

The Supreme Court analyzed these statutory bases of the F.C.C.'s regulating authority in *National Broadcasting Co. v. United States*, 319 U.S. 190 (1943) (hereinafter "NBC"). In NBC, the Court upheld challenged F.C.C. regulations prohibiting multiple ownership of AM radio stations. The Court, after reviewing the statutory framework, found that, "[the] avowed aim of the Communications Act of 1934 was to secure the maximum benefits of radio to all the people of the United States," and that "[t]he criterion governing the exercise of the Commission's licensing power is the 'public interest, convenience, or necessity.'" 319 U.S. at 215, 217. The Court acknowledged that because "[t]he facilities of radio are not large enough to accommodate all who wish to use them," Congress had committed to the F.C.C. the task of allocating the available spectrum space, but then stated:

" The Commission was, however, not left at large in performing this duty. The touchstone provided by Congress was the public interest, convenience, or necessity, a criterion which is as concrete as the complicated factors for judgment in such a field of delegated authority permit. This criterion is not to be interpreted as setting up a standard so indefinite as to confer an unlimited power. The requirement is to be interpreted by its context, by the nature of radio transmission and reception, by the scope, character and quality of services.

The public interest to be served under the Communications Act is thus the interest of the listening public in 'the larger and more effective use of radio.' [citing 47 U.S.C. § 303 (g)]. The facilities of radio are limited and therefore precious; they cannot be left to wasteful use

without detriment to the public interest." NBC, supra, 319 U.S. at 216, internal quotations and citations omitted.

The Supreme Court again reviewed the F.C.C.'s regulatory authority, and the "public interest, convenience and necessity" standard, in *Federal Communications Commission v. National Citizens Committee For Broadcasting et al.* 436 U.S. 775 (1978) (hereinafter NCC). In NCC, the Court upheld F.C.C. regulations prospectively barring the initial licensing or the transfer of newspaper-broadcast combinations where there is common ownership of a radio or television broadcast station and a daily newspaper located in the same community. The Court discussed at length the relationship between the doctrine of spectrum scarcity, the First Amendment, and the F.C.C.'s obligation to regulate in the public interest:

"As we have discussed on several occasions [citing NBC and Red Lion], the physical scarcity of broadcast frequencies, as well as problems of interference between broadcast signals, led Congress to delegate broad authority to the Commission to allocate broadcast licenses in the public interest. And the avowed aim of the Communications Act of 1934 was to secure the maximum benefits of radio to all the people of the United States. It was not inconsistent with the statutory scheme, therefore, for the Commission to conclude that the maximum benefit to the public interest would follow from allocation of broadcast licenses so as to promote diversification of the mass media as a whole.

Our past decisions have recognized, moreover, that the First Amendment . . . values underlying the Commission's diversification policy may properly be considered by the Commission in determining where the public interest lies. The public interest standard necessarily invites reference to First Amendment principles and, in particular, to the First Amendment goal of achieving the widest possible dissemination of information from diverse and antagonistic sources." NCC, supra, 436 U.S. at 795, internal quotations and citations omitted.

47 U.S.C. 307 (a) directs that "the Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefor a station license provided for by this Act." In making initial licensing decisions between competing applicants, the F.C.C. has long given primary significance to diversification of control of the media of mass communications. *Federal Communications Commission v. National Citizens Committee For Broadcasting et al.* 436 U.S. 775, 794 (1978). Yet under the F.C.C.'s current policy, no one is even permitted to apply for, much less be granted a license to engage in micro radio broadcasting. Micro radio represents a significant opportunity to further the important public interest and First Amendment goal of diversification of control of the mass media. Instead of fulfilling their statutory and

constitutional mandate to regulate the airwaves in the public interest, and in a manner designed to achieve "the widest possible dissemination of information from diverse and antagonistic sources," the F.C.C. is relegating the airwaves to the exclusive control of megawatt stations serving corporate and commercial interests.

III. THE F.C.C. REGULATIONS PROHIBITING MICRO RADIO VIOLATE THE FIRST AMENDMENT.

A. THE SPECTRUM SCARCITY DOCTRINE NEITHER REQUIRES NOR JUSTIFIES THE REGULATIONS.

The government seems to be asserting that the doctrine of spectrum scarcity provides to F.C.C. regulations absolute immunity from First Amendment challenge. This interpretation of the Supreme Court's First Amendment analysis in this area is incorrect.

As the cases cited in the above section make clear, the F.C.C.'s regulations must meet the "public interest, convenience and necessity" standard. "This criterion is not to be interpreted as setting up a standard so indefinite as to confer an unlimited power," and the "public interest to be served under the Communications Act is . . . the interest of the listening public in the larger and more effective use of radio." *NBC, supra*, 319 U.S. at 216.

"[The] public interest standard necessarily invites reference to First Amendment principles, and, in particular, to the First Amendment goal of achieving the widest possible dissemination of information from diverse and antagonistic sources." *NCC, supra*, 436 U.S. 775, 795. See also *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 122 (1973); *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

While the decisions cited by the F.C.C. indicate that the broadcast spectrum is subject to a different First Amendment standard than other media, the Supreme Court in these cases repeatedly emphasized its concern with broadening and diversifying the sources of information available to the public. None of these decisions permitted the type of across-the-board prohibition of a new means of community-based communication that is at issue in the present case.

In *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969), the Supreme Court upheld the F.C.C.'s "fairness doctrine" against a First Amendment challenge brought by broadcasters. The *Red Lion* decision enunciated the classic formulation of the "scarcity doctrine," establishing that the finite number of frequencies available in the broadcast spectrum mandated a modified First Amendment analysis for determining the constitutionality of government regulations of the broadcast medium. The Court, however, repeatedly emphasized that the paramount First Amendment concern underlying their decision was the right of the public to have access to perspectives, opinions, and ideas as wide and varied as possible on matters of public concern. The public's First Amendment rights were held by the Court to outweigh those of broadcasters forced by the fairness doctrine to air views and opinions at odds with their own:

"This is not to say that the First Amendment is irrelevant to public broadcasting. On the

contrary, it has a major role to play as the Congress itself recognized in [forbidding] FCC interference with the right of free speech by means of radio communication. Because of the scarcity of radio frequencies, the Government is permitted to put restraints on licensees in favor of others whose views should be expressed on this unique medium. But the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee...It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC." Red Lion Broadcasting Co. v. FCC, supra, 395 U.S. at 389-390, internal quotations and citations omitted.

The public has a First Amendment right to receive the broad variety of view-points, perspectives, and programming formats which micro radio offers. The advent of micro radio not only gives radio listeners a non-governmental, non-commercial alternative to the perspectives presented on mainstream commercial or "public" radio; this new technology allows individual citizens to broadcast themselves, and present their own personal and local community interests directly and effectively, making the public airwaves truly public for the first time. Unlike commercially controlled interests involving huge financial investments, micro radio broadcasters will not shy away from controversial or wide-ranging topics of discussion to please the largest possible audience.

The government's assertion that the doctrine of spectrum scarcity requires or permits their ban of micro radio is unsupported by the case law to which they cite the Court. In FCC v. League Of Women Voters of California 468 U.S. 364 (1984), the Supreme Court struck down a federal statute prohibiting public broadcasters from endorsing political candidates or editorializing. The Court plainly stated that the restrictions placed upon the broadcast media under the spectrum scarcity rationale are permitted because the overall impact is to further and protect the public's First Amendment rights of access to broad and diverse perspectives. Furthermore, the Court pointed out, never had restrictions based on spectrum scarcity been permitted absent a showing that they were narrowly tailored to further a substantial government interest:

"...[A]lthough the broadcasting industry plainly operates under restraints not imposed upon other media, the thrust of these restrictions has generally been to secure the public's First Amendment interest in receiving a balanced

presentation of views on diverse matters of public concern...But, as our cases attest, these restrictions have been upheld only when we were satisfied that the restriction is narrowly tailored to further a substantial governmental interest, such as ensuring adequate and balanced coverage of public issues." FCC v. League Of Women Voters of California, supra, 468 U.S. at 380-381, emphasis added, citations omitted.

Applying this standard, the Court held that the statute before them violated the First Amendment because not all of the interests asserted by the government were deemed "substantial," and the statute was not narrowly tailored to further those interests that were so deemed. 468 U.S. at 398-402.

B. THE REGULATIONS AS APPLIED IN THIS CASE ARE CONTENT BASED RESTRICTIONS OF SPEECH, AND ARE NOT NARROWLY TAILORED TO FURTHER A SUBSTANTIAL GOVERNMENT INTEREST.

The F.C.C.'s decision to seek injunctive relief against defendant in this case is based upon the nature and the content of his broadcasts, and statements he has made in other print and broadcast media. Defendant herein is one of many micro radio broadcasters nationwide. Yet the government has sought to enjoin only defendant, the most prominent and outspoken critic of the F.C.C. and their regulatory authority.

The government asserts that unless enjoined by this Court, defendant will cause irreparable injury to the public. Yet after months of intensive monitoring of Free Radio Berkeley (hereinafter "F.R.B."), the F.C.C. can point to only two instances of "interference." In both instances, the only interference to which the government refers was reported by F.C.C. agents themselves, and in at least one of these instances, only in the immediate proximity of the F.R.B. transmitter.

In its October 14, 1994 response to a FOIA request filed by the newsletter of the National Lawyers Guild, the F.C.C. admitted that it had received no complaints regarding interference from the F.R.B. signal. Rather, as the F.C.C. response makes clear, the F.C.C. received a handful of complaints regarding the fact that defendant was broadcasting at all. Some of these complainants apparently never even heard an F.R.B. broadcast, but had seen flyers or otherwise heard about F.R.B.'s challenge to the F.C.C.'s regulations. Defendant's public criticism of the F.C.C., rather than actual interference with licensed broadcasts, is the reason he has been targeted by the F.C.C. in this federal court action.

Under the holding of FCC v. League Of Women Voters of California, supra, and the cases cited therein, content-based restrictions of speech, even in the broadcast media, are permissible only if narrowly tailored to further a substantial government interest. 468 U.S. at 380-381.

The F.C.C. asserts that the government interest served by the prohibition of micro radio is the prevention of "chaos" and a "cacaphony of sound." The prohibition of micro radio broadcasting effected by the current regulatory scheme, however, is far from narrowly tailored to achieve this goal; there are clearly less restrictive means of

regulation available which would not unduly burden the government. All of the government's asserted concerns can be addressed by the regulation of micro radio broadcasting; the creation of a similar system of licensing broadcasters, assigning frequencies and monitoring the technical specifications of broadcasting equipment as that which exists for full-power broadcasts.

The government need look no further than to Canada for examples of much less restrictive means of addressing micro radio. Since 1978, Canada has licensed low power FM radio broadcasters in remote communities with a simple three-page application form. The Canadian Radio-Television and Telecommunications Commission (CRTC) has recently modified its rules to permit such broadcasts even in urban areas, where frequency space is much more scarce. Indeed, in a report on low power television, the F.C.C. itself attached as an appendix a copy of Canadian recommendations regarding the regulation of low power FM broadcasting. These recommendations included the suggestion that application forms and required information be simple enough to allow for easy application by potential low power licensees. Review of this F.C.C. report and the attachments thereto reveals that the licensing and administrative requirements necessary to oversee operation of micro radio stations is not overly burdensome. Indeed, these licensing forms reveal that micro radio can be easily regulated so as to prevent any risk of signal interference.

Further evidence of the less restrictive alternatives available to the Commission in this regard is available in the F.C.C.'s own history. Until relatively recently, Non-Commercial Educational FM broadcast stations could be licensed by the F.C.C. to broadcast with up to 10 watts of power.

Finally, the F.C.C.'s own regulations pertaining to FM translators provide an example of how the F.C.C. could regulate micro radio. The F.C.C. permits translators to re-broadcast, on frequencies within the normal commercial and noncommercial FM radio band, signals that originate from huge radio stations located far from the community in which the translator is placed.

Current F.C.C. regulations permit low power transmitters to operate with less than 100 watts if they are transmitting a signal originating from a full-power radio station, but prohibit local broadcasters from using a transmitter with identical wattage to broadcast any program originating in the listener's community. The F.C.C. has promulgated translator regulations to address issues such as frequency assignment, interference, licensing requirements, power limitations, antenna location, transmitters and equipment, frequency tolerance, frequency monitors and measurements, and time of operation. Many of these regulations could be just as easily applied, almost verbatim, to micro radio broadcasts originating in the communities to which they are being broadcast.

IV. PLAINTIFF'S SUGGESTION THAT DEFENDANT HAS NOT PURSUED "AVAILABLE" MEANS OF OBTAINING F.C.C. AUTHORIZATION TO ENGAGE IN MICRO RADIO BROADCASTING IS FATUOUS.

Plaintiff suggests that defendant has not availed himself of possible avenues by which F.C.C. permission

might be sought and obtained. This suggestion is disingenuous. Defendant, in his Application for Review currently pending before the F.C.C., responded to a similar contention raised by the F.C.C. in those proceedings. In their argument to this Court, the government has dropped some of the F.C.C.'s more transparent "suggestions" as to how defendant could supposedly have sought F.C.C. approval for micro radio broadcasting. Still remaining, however, are the F.C.C.'s assertions that, 1) defendant could legally broadcast without a license under the provisions of 47 C.F.R. § 15.239(b); and 2) defendant could have "asked the agency to establish rules that would permit him to operate...[by presenting] a rulemaking petition pursuant to the [A.P.A.], or a request for waiver." The first "option" is meaningless, since the field strength permitted by §15.239(b) is so low as to preclude any micro radio broadcast capable of being received beyond approximately one block away from the transmitter. The activity for which defendant is seeking F.C.C. permission consists of communicating with his neighbors and his community via the new technology which for the first time in history makes low power FM broadcasting economically feasible for individual citizens. The government's suggestion that a micro radio broadcast could comply with the field strength limitations imposed by §15.239(b) is misleading, at best.

The second option suggested by the government, petitioning the Commission for a rule change or waiver, again begs the question before this Court. Defendant is challenging the F.C.C.'s regulatory framework, as currently formulated and enforced, because they violate the F.C.C.'s statutory mandate and the First Amendment. Plaintiffs seek to avoid addressing the constitutional infirmity of the current rules by suggesting that defendant should have asked the F.C.C. to change or waive their rules. Citizens have no responsibility whatsoever to petition the F.C.C. to change unconstitutional regulations--rather, the F.C.C. is required to structure its regulatory framework so as to comply with the relevant statutory standards and the First Amendment.

Similarly evasive is the government's suggestion that there is no complete ban of micro radio because defendant could initiate a formal rule-change procedure under the A.P.A. Neither defendant, nor any other individual citizen of modest means, could conceivably afford the monetary expense involved in initiating and participating in such a process; nor could defendant hope to meaningfully compete with the commercial interests and their lobbyists that would inevitably become involved in and eventually control such a process. The historical significance of micro radio lies precisely in the fact that average citizens can now have access to the airwaves to communicate with their neighbors. Requiring defendant to initiate a formal rule-making procedure under the A.P.A. would serve the same function as the 100 watt minimum: it would place the ability to engage in this new form of communication out of the reach of all but the very wealthy.

V. THE PROHIBITION OF INTRASTATE MICRO RADIO BROADCASTS EXCEEDS THE FEDERAL GOVERNMENT'S REGULATORY AUTHORITY UNDER THE COMMERCE CLAUSE.

The Communications Act of 1934 was originally enacted



to maintain the control of the United States over all the channels of interstate and foreign radio transmissions. This power is arguably in accord with Art. I Sect. 2 of the U.S. constitution, which permits Congress to regulate interstate commerce. While the language of 47 U.S.C. § 301(d) states that the F.C.C. has the authority to regulate even purely intrastate transmissions, the statute must be interpreted and applied in a manner consistent with the constitutional limitations of Congress's power to regulate interstate commerce. Thus, F.C.C. regulation of intrastate transmissions which interfere with, and perhaps those which are capable of interfering with, interstate commerce may be constitutional. However, where, as here, there is absolutely no showing that any of the F.R.B. transmissions has in any way interfered, or could possibly interfere, with interstate signals, the F.C.C. is venturing beyond its regulatory authority. An application or interpretation of 47 U.S.C. §301 which permits such excessive regulation is unconstitutional under the commerce clause. 

VI. THE F.C.C.'S PROHIBITION OF MICRO RADIO BROADCASTING VIOLATES MICRO RADIO BROADCASTERS' AND THEIR LISTENERS' RIGHT TO COMMUNICATE UNDER THE U.N. DECLARATION OF HUMAN RIGHTS, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, AND THE AMERICAN CONVENTION ON HUMAN RIGHTS.

More than at any time in the world's history, communication amongst the world's people plays a pivotal role. Events in places such as Bhopal, Chiapas, or Chernobyl can and do profoundly impact societies and communities halfway around the world. As a result, each nation's communications policies take on an importance unparalleled in many other fields of law. Given the international scope of events that the world's peoples must learn about, it is more important than ever for the Court to incorporate into its evaluation of the issue pending before it those treaties and international principles that shed light on this subject. These treaties are made part of the law of our nation through Article VI of the U.S. Constitution, and are highly relevant to consideration of the issues argued herein.

Article 19 of the U.N. Declaration Of Human Rights and the parallel Article 19 of the International Covenant On Civil And Political Rights state:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information through any media and regardless of frontiers."

These international treaties promote recognition of the right to expression and information as a universal human right guaranteed by international law. The treaties expressly forbid undue restraints on freedom of expression, and require the government to establish, and substantiate if necessary, its justification for restrictions placed upon its citizens' right of free expression. Similarly, Article 13(2) of the American Convention on Human Rights requires that any governmental "restrictions imposed. . . on freedom of expression depend upon a showing that the restrictions are required by a compelling state interest," and that if there exist "various options to achieve this

objective, that which least restricts the right protected must be selected."

As signatory to these international treaties, the United States government has a responsibility to conform its regulation of the electronic broadcast media to the treaties' requirements. The F.C.C.'s ban of micro radio broadcasting is a blatant violation of this most fundamental of internationally recognized human rights.
Conclusion

For the reasons stated above, defendant respectfully requests that the Court deny the relief sought by defendants, and declare the F.C.C. prohibition of micro radio unconstitutional and in violation of the F.C.C.'s statutory mandate to regulate the airwaves in the public interest.

DATED: _____, at San Francisco, California.

Respectfully submitted,

LOUIS N. HIKEN, SBN 45337
Attorney for Defendant

The term "Micro radio" refers to low-power FM broadcasting, ranging from 1 watt or less to about 30 watts, as contrasted with the thousands, or even hundreds of thousands, of watts generated by most commercial and public broadcasting radio stations.

See PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION at p.11.

47 U.S.C. 301 (1994)

47 C.F.R. §73.211(a) provides that FM stations must operate with a minimum effective radiated power (ERP) of 0.1kW, or 100 watts. 47 C.F.R. §73.506 provides that noncommercial educational FM stations may broadcast with less than 100 watts, but in 1985 the F.C.C. promulgated 47 C.F.R. 73.511(a), which provides that "No new noncommercial educational station will be authorized with less power than minimum power requirements for commercial Class A facilities [100 watts]."

See 47 C.F.R. §15.1 et. seq.

47 C.F.R. §15.239(a)

IBID.

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION at p. 6.

United States v. Medina, 718 F.Supp 928 (S.D.Fla. 1989); United States v. McIntire, 365 F.Supp 618 (D.N.J. 1973); United States v. McIntire, 370 F.Supp 1301 (D.N.J. 1974).

The Response to the N.A.L. and the Application for Review were submitted to this Court with Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction, as, respectively, Exhibits A and B thereto.

Federal Communications Commission v. National Citizens Committee For Broadcasting et al. 436 U.S. 775, 795 (1978)

The fairness doctrine imposed on radio and television broadcasters the requirement that discussion of public issues be presented on broadcast stations, and that each side of those issues be given fair coverage. Red Lion, supra, 395 U.S. at 369. The doctrine included components, codified as formal rules promulgated by the F.C.C., which required broadcasters to allow equal time for response by any identified person or group "personally attacked" on the air, and equal time for candidates opposing any candidate endorsed editorially by the broadcasters. Id. at 373; see also 32 Fed. Reg. 10303, twice amended,

Section 399 of The Public Broadcasting Act of 1967.

The F.C.C. has filed N.A.L.s against numerous micro radio broadcasters who have continued their unlicensed broadcasts. The F.C.C. has not sought injunctive relief against any of these other broadcasters in spite of the fact that their broadcasts are more frequent and regular than those of defendant.

See, e.g., the newspaper and magazine articles attached as Exhibits A and B to PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION.

See the declarations submitted with PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION; Hartshorn Declaration and Zears Declaration. In one of these instances, the alleged interference was encountered only after the F.C.C. agent drove literally right up to the transmitter. See Zears Declaration at 7-10. The broadcast discussed therein was intended for and capable of reception by only the participants in the Anti-Nuclear Rally in immediate vicinity of the transmitter.

Copies of the FOIA request and the F.C.C. response are attached hereto and marked as Exhibit A.

To the extent that the F.C.C. justifies its ban of micro radio based upon the possibility that some micro radio broadcasters might cause interference to other licensed broadcasters, the ban constitutes an impermissible prior restraint of speech. *New York Times Co. v. United States* 403 U.S. 713 (1971); *Near v. Minnesota* 283 U.S. 697 (1931).

Sample form attached hereto and marked as Exhibit B.

Public Notice CRTC 1993-95, CRTC (1993), attached hereto and marked as Exhibit C.

Report and Recommendations in the Low Power Television Inquiry, Appendix 1 (BC Docket No. 78-253).

47 C.F.R. §73.511(a).

See *Radio World*, August 10, 1994, p. 9, "Radio Translators Fill in Coverage Gaps", attached hereto and marked as Exhibit D.

47 C.F.R. §74.1201 et. seq., copy attached hereto and marked as Exhibit E. §74.1202(b), which provides the frequencies on which translators may broadcast, refers to the frequencies as "channels." 47 C.F.R. §73.201 explains that the frequencies available for FM broadcasting are given numerical designations, or channel numbers. §73.201 also contains a table that provides the channel numbers designated for each available frequency. For the Court's easy reference, a copy of §73.201 is attached hereto and marked as Exhibit F.

See 47 C.F.R. §74.1202.

See 47 C.F.R. §74.1203.

See 47 C.F.R. §74.1232.

See 47 C.F.R. §12.1235.

See 47 C.F.R. §12.1237.

See 47 C.F.R. §74.1250.

See 47 C.F.R. §74.1261.

See 47 C.F.R. §74.1262.

See 47 C.F.R. §74.1263.

See PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION at p.8, n.3

See Defendant's APPLICATION FOR REVIEW OF ACTION TAKEN PURSUANT TO DELEGATED AUTHORITY at pp. 4-6, submitted to the F.C.C. on December 2, 1993, in response to the F.C.C.'s FORFEITURE ORDER dated November 8, 1993. The APPLICATION FOR REVIEW is attached as exhibit B to DEFENDANT'S MOTION IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION, filed with this Court on November 14, 1994.

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION at p. 10,

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION at p.8, n.3.

Furthermore, defendant has requested that, "To the extent that any standards or procedures do exist pertaining to the Commission's suggestion that we request a rule change or waiver, or that persons should apply for a license despite the fact that they know they do not meet the regulatory requirements, we would request at this time that the Commission provide such standards or procedures to us, to guide us in attempting to comply with the Commission's suggestions." See Defendant's APPLICATION FOR REVIEW OF ACTION TAKEN PURSUANT TO DELEGATED AUTHORITY at p.5, n.18, submitted to the F.C.C. on December 2, 1993, in response to the F.C.C.'s FORFEITURE ORDER dated November 8, 1993. The APPLICATION FOR REVIEW is attached as exhibit B to DEFENDANT'S MOTION IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION, filed with this Court on November 14, 1994. The F.C.C. has not responded to this request.

For the definitive discussion of why it is a cruel hoax to suggest that an individual such as defendant might obtain relief through this process, see Telecommunications, Mass Media, and Democracy; The Battle for the Control of U.S. Broadcasting, 1928-1935, by Robert W. McChesney, Oxford University Press, 1993.

U.N. Human Rights Committee, Communication No. 11/1977, paragraph 17.

Advisory Opinion of the Inter-American Court, 13 November 1985, 8 EHRR 165.

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The following are a series of communications between my attorney and the FCC.

When the newspapers and television made it public that the FCC was aware of our activity and was "investigating." My attorney thought it prudent to extend an advisory contact with them. It was his opinion that this would not interfere with any future arguments about FCC lacking jurisdiction. I went with his advice and the letter he sent them is on the next page.

The FCC's letter, hand delivered by agent on day number eighteen of broadcasting is next.

My attorney's response follows, then the FCC's etc.

Law Offices

CONSTITUTIONAL LITIGATION ASSOCIATES, P.C.

ONE KENNEDY SQUARE
719 GRISWOLD, SUITE 1630
DETROIT, MICHIGAN 48226(313) 961-2255
TELECOPIER (313) 961-5999HUGH M. DAVIS, JR.
CYNTHIA HEENANOf Counsel
KEVIN ERNST
(313) 965-4822
TIMOTHY M. HOLLOWAY
(313) 963-7523
MICHAEL D. ELKINS
PATRICK M. EDWARDS

November 18, 1996

Facsimile Transmittal
(810) 471-~~5263~~6131James Bridgewater
Federal Communications Commission
24897 Hathaway Street
Farmington Hills, MI 48335-1552

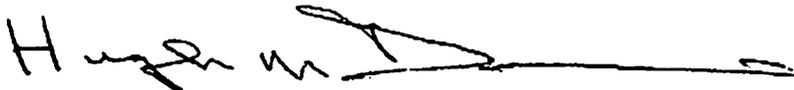
Dear Mr. Bridgewater:

I am contacting you on behalf of our client, Radio Free Lenawee, an unlicensed frequency broadcaster with 90 watts of power in operation in Adrian, Michigan, frequency 97.7 F.M. We have been retained to handle any legal issues which might arise. We believe that the operation is legal and need not be licensed so long as the power and range of the broadcast are limited and do not interfere with the broadcast of any licensed station. The legal position is based on the case of U.S. v. Stephen P. Dunnifer, C 94-03542 CW (N.D. Cal. 1995).

We anticipate that licensed broadcasters in the area will file complaints with the FCC and that you will undertake some sort of administrative review. This is to inform you that we should be given all appropriate notices and wish to participate in the process, either formally or informally, as much as possible in order to either clarify issues or resolve differences.

Please be in touch once you have had an opportunity to review this matter.

Sincerely,



Hugh M. Davis, Jr.

HMD:mjg

96-086



Federal Communications Commission
Compliance and Information Bureau
24897 Hathaway Street
Farmington Hills, MI 48335-1552

HAND DELIVERED

November 22, 1996

Pastor Rick Strawcutter
d/b/a Radio Free Lenawee
2903 Bent Oak Highway
Adrian, Michigan 49221

Refer To File: 97-DT-0052

Dear Pastor Strawcutter:

Agents from this office have observed radio transmissions on 97.7 MHz, emanating from 2903 Bent Oak Highway, Adrian, MI. Their observations on November 22, 1996, indicate the emission limitations of Section 15.209 are also being exceeded. In addition, a report of interference being caused by your radio operation has been reported to this office.

You are hereby cautioned that operation of an unlicensed transmitter constitutes a violation of Section 301 of the Communications Act of 1934, as amended. Unlicensed operation may subject the operator to penalties provided for in Section 501 of the Communications Act, including for a first offense, a maximum fine of \$100,000, or one year imprisonment, or both. Therefore, operation of the unlicensed radio station should be ceased immediately. The importance of complying strictly with the legal requirements mentioned above is emphasized.

In view of the foregoing, you are requested to submit a written statement to this office within ten (10) days of receipt of this letter concerning the circumstances leading to this violation and the steps you have taken to prevent a recurrence thereof.

You are further cautioned that willful false statements constitutes a violation of the U.S. Criminal Code, Title 18, Section 1001, for which severe penalties are provided. Your full cooperation in this matter is encouraged.

Sincerely,

A handwritten signature in cursive script that reads "James A. Bridgewater".

James A. Bridgewater
District Director

JAB:sms

Law Offices

CONSTITUTIONAL LITIGATION ASSOCIATES, P.C.

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719 GRISWOLD, SUITE 1630
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HUGH M. DAVIS, JR.
CYNTHIA HEENAN

ERNST
965-4822
M. HOLLOWAY
963-7523
D. ELKINS
K. M. EDWARDS

November 22, 1996

Post-It [®] Fax Note	7671	Date	11/25	# of pages	2
To	Rick Strawcutta	From	Hugh Davis		
Co./Dept.		Co.			
Phone #		Phone #	313/961-2255		
Fax #	517/765-9733	Fax #			

A. Bridgewater
Act Director
Federal Communications Commiss.
24827 Hathaway Street
Farmington Hills, MI 48335-1552

RE: Radio Free Lenawee
FCC No. 97-DT-0052

Dear Mr. Bridgewater:

I have received a copy of your letter, hand-delivered to Radio Free Lenawee on November 22, 1996. I have one question about your file number - should it have a "97" designation? Regardless, your agents wished to inspect the radio station and we declined pending some provision by you of your authority to inspect an unlicensed station without notice and/or proper notice.

We further declined based on the contents of your letter, which indicate that you believe that there is an on-going criminal violation. Under such circumstances, we believe that you are required to obtain a warrant to collect information for possible prosecution.

This is not to say that we are unwilling to cooperatively arrange an inspection under appropriate circumstances. We have previously notified you that this office represents Radio Free Lenawee and, inasmuch as there are potential penal consequences, request that you direct your communications to this office, particularly to Patrick Edwards, Esq.

Next, your letter indicates that we should submit within ten days a "letter concerning the circumstances leading to this

violation and the steps you have taken to prevent a recurrence thereof." Please consider this to be that response. Radio Free Lenawee provided your officers with a packet of the materials on which we rely. We do not believe that there has been a violation and therefore do not believe that there are steps to be taken to prevent a recurrence.

You mentioned that the emissions limitations of §15.209 are being exceeded. We deny that. Please state the basis on which you make the claim and, if founded, we are prepared to undertake appropriate action to stay within the limitation.

Further, you indicate that you have had a report of interference. We believe this report to be untrue. If, however, you will provide us with the basis for the claim, we will investigate it and, if founded, undertake appropriate action.

Finally, I appreciate your reference to 18 USC 1001 concerning false statements. That is one of the reasons that I wish for communications to flow through my office. I do not wish there to be any inadvertent communication which might be retrospectively viewed to be "false" within the meaning of the statute. Regarding cooperation, we have been as open and forthcoming as possible. We will continue to be so. We believe that the question presented is an interesting one and hope to have it dealt with in the most thoughtful way.

Sincerely,



Hugh M. Davis, Jr.

HMD:mjg

CERTIFIED MAIL NO: P066191935
RETURN RECEIPT REQUESTED

December 6, 1996

Mr. Hugh M. Davis, Jr., Esq.
Patrick Edwards, Esq.
Constitutional Litigation Assoc., P.C.
One Kennedy Square
719 Griswold St., Suite 1630
Detroit, Michigan 48226

FCC No. 97-DT-0052

Dear Mr. Davis and Mr. Edwards:

We have received your letter dated November 22, 1996, in which you respond to the Notice of Violation that was hand delivered to your client, Mr. Rick Strawcutter. In particular, you asked us for information regarding our authority to inspect, without advance notice, the radio station operated by your client as "Radio Free Lenawee." Please be advised that under 47 U.S.C. Section 303(n), the Commission has authority "to inspect all radio installations associated with stations required to be licensed by any Act...or which are subject to the provisions of any Act, treaty, or convention binding on the United States...." See Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 388 (1969). We do not make appointments for inspections. Our rules specify that radio installations are subject to inspection upon reasonable request by an agent of the FCC. See 47 C.F.R. § 15.29; see also Norfolk Southern Railway Company, KFR862, 11 FCC Rcd 519 (1996). An agent of the FCC will again request to inspect your client's radio installation in the near future.

Sincerely,



James A. Bridgewater
District Director
Detroit Field Office

Law Offices

CONSTITUTIONAL LITIGATION ASSOCIATES, P.C.

ONE KENNEDY SQUARE
719 GRISWOLD, SUITE 1630
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Of Counsel
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TIMOTHY M. HOLLOWAY
(313) 963-7523
MICHAEL D. ELKINS
PATRICK M. EDWARDS

December 9, 1996

James A. Bridgewater
District Director
Federal Communications Commission
24897 Hathaway Street
Farmington Hills, MI 48335-1552

RE: Radio Free Lenawee

Post-It™ Fax Note	7671	Date	12/11/96	# of Pages	1
To	Rick Strawcutter	From	Hugh M. Davis		
Co./Dept.		Co.			
Phone #		Phone #	(313) 961-2259		
Fax #	(517) 265-9733	Fax #	(313) 961-5999		

Dear Mr. Bridgewater:

This is to acknowledge receipt of your letter of December 6, 1996 and the cooperative way in which we are approaching this problem. We have reviewed 47 USC 303(n). Obviously, the question of whether or not Radio Free Lenawee is "required to be licensed by any act" is the precise matter under dispute here. Consequently, based on that, we will advise our client to decline your request for an inspection.

I concede that under 303(n), you might have a right to inspect based on the claim that Radio Free Lenawee is "subject to the provision of some act, treaty, or convention binding on the United States". I request that you identify the specific provision.

A review of Red Lion Broadcasting v FCC indicates that it could be argued in our favor on the First Amendment question. I believe that technical advances in broadcasting since Red Lion make portions of the opinion outdated.

Thank you for your attention in this matter.

Sincerely,

Hugh M. Davis, Jr.

HMD:mjg

cc: Radio Free Lenawee

This Section deals with an entirely

Different Action

involving FCC

In the Fall of 1990 an issue involving a protest against so-called gay rights found our church at the center of the battle.

We employed the use of a 10 watt portable transmitter on a frequency of 89.5 FM. The story that unfolds in the succeeding pages details what the press had to say and what our response was at that time.

Note especially:

#1 The blatant lie that was published in the national magazine POPULAR COMMUNICATIONS. This station was never shut down.

#2. And the Mattausch's never paid a penny to the FCC.

Pictured in the succeeding pages in order are:

The cover from a video tape later produced and distributed about the lie of gay rights.
NOTE ESPECIALLY THE GIRL HOLDING THE 89.5 SIGN.

Newspaper article fueled by FCC lies and inuendo designed to intimidate and embarrass.

Additional news articles which mislead.

Letter to inform Mattausch of "apparent liability."

Three certified letters ordering Mattausch to pay fine or risk civil suit.

The civil complaint

The response (prepared by Pastor Rick Strawcutter) filed by Joe and Connie Mattausch.

Affidavit by Connie. (prepared by Pastor Rick Strawcutter)

Written Interrogatories (which the FCC failed to answer, for obvious reasons)

ORDER OF DISMISSAL - FCC QUILTS - BUT NO HEADLINES ANNOUNCED IT!

PIRATES DEN

BY EDWARD TEACH

FOCUS ON FREE RADIO BROADCASTING

The comments I'm getting indicate that many of you look upon pirate QSO's as not being real broadcasts. Some readers even find them annoying. Said one: "If this chat keeps up I'm going to spend my Friday and Saturday nights listening to repeats of Vasily's Weekend and start writing to Moscow Mailbag on a full-time basis." I agree. It takes no program talent or even planning to get on the air and chat with one or more other pirates; it's not a whole lot different than what the hams and CB'ers do. You don't even need a turntable or cart, cassette, CD or tape player. Because of this, and our space limitations, reports on pirate QSO's have been moved to the bottom of the priority list here in *The Pirate's Den*.

Action Radio tells Tim Johnson of Illinois that its announcers are Radio Animal (formerly of WKND) and A.J. Michaels. The regular transmitter is a Johnson Viking II.

H.V. Short of **Radio Free Massachusetts** tells Chris Meloche in Canada that RFM will be keeping a low profile for awhile since he's discovered he's not the only pirate in his area and doesn't want to "aggravate the powers that be and get shut down."

Voice of Free Radio in America was found by Mark Henning of New York at 0145 with tests and a claim that it had \$10 thousand worth of equipment. **Fourth of July** came up on the same frequency causing QRM.

WORK, Working Man's Radio, was on at 0245 on 7415 with commercials and contest spoofs, labor jokes and mention of the Wellsville, NY mail drop, reports Henning. Jim Kalach in Connecticut had them from 0324 and a couple of days later on 7395 at 0053, playing Rush's "Working Man." John Wilkes of Kentucky had them on 7414 at 0404 with game and talk show parodies and humor relating to work and labor. In Michigan, Randy Kaeding found them at 0251 on 7418 and at 0110 on 7394.

Hope Radio International continues to be quite active. Kaeding had them at 0205 to 0244 on 7394 with host Phil Muzak from KNBS sitting in. Floyd Cureton in Maine had them on 7395 at 0200-0245 with a pirate news segment by John Arthur. William Hassig of Illinois found them on 7394 at 0209 to 0245 sign off. The address on this one announced as PO Box 109, Blue Ridge Summit, PA 19274. Hope Radio was also heard by Joshua Wilkes in Kentucky at 0353 to 0400 on 7394 with rock and a commercial by Ray Camoke of Tube Radio. Tim Johnson had the station on 7394 at 0148 with pirate news and a humorous commercial for "Dr. Drive Thru"—a drive through medical practice.

Thank you for your report on the reception of

ACTION RADIO

This confirms your report of our

DATE: July 4, 1990 (July 5-UTC)

TIME 0315.....UTC

FREQ. 7480 kHz.....

POWER 25 watts.....

ANTENNA ALPHA-DELTA DX-A.....

MODE AM-4 meters.....

BROADCAST

ACTION RADIO
REQUEST LINE
412-551-7392

QSL
**ACTION
RADIO**



"Pirate Radio From The City of Three Rivers"

Tim Johnson got this nice QSL card from Action Radio.

WRFH—Radio Free Harlem, was logged on 7396 at 0428 by Scott R. Wilson of Indiana. The frequency was announced as "3868 kilocycles" and the station boasted it was using an input power of 15 thousand watts. Program was 60's music, comedy recordings and requests for money to be sent to the station at New York. WRFH signed off with a march number at 0518.

Jim Smith in Missouri heard XERK on 7435 at 0436. "Johnny" was the DJ and "Scott" answered phone calls. The station claims to have its studios in Texas and transmitter just over the border in Mexico. QSL's come from PO Box 25302, Pittsburgh, PA 15432.

Radio Wolf International/Radio Animal was snared by Don Snider in Maryland between 0100-0200 on approximately 7.400. The station gave the same address as that for XERK.

Samurai Radio was logged by Jim Kalach on 7415 at 0106-0138. Tim Johnson had them at 0059 with a piano interval signal and rock music. The signal was weak at Tim's Illinois location.

Joshua Wilkes reports what sounded like IDs for the **Voice of Bob** on 7415 at 0420-0430, though he indicates he could be wrong about the ID. I wonder if this might

have been the Voice of Bono, Josh.

Tim Johnson had **One Voice Radio** on 7380LSB at 0000 with talks and music. Chris Meloche in Ontario had them on 7415 at 2345, though this was via the Canadian pirate CFBN, according to several announcements made by "Joe," the One Voice Radio announcer.

Chris had CFBN on 7430 at 0143 with heavy QRM and then had them again at 0228 on 7417.8. Randy Kaeding found them on 7419 at 0215 with such songs as "My Mother Chose My Husband" and "Tired Little Teddy Bear." They use PO Box 452, Wellsville, NY 14895. Robert Ross of Ontario had the station on 7419 at 0156 sign on to 0219 close with its loon interval signal and ID as "CFBN, fly by night radio, Canada's worst."

Ross also logged **Radio USA** on 7415 at 2305 sign on with a taped syndicated program of hard rock, "Radio USA" ID and mention that it was a test broadcast.

That will do it for this month. Please keep those pirate logs coming this way, along with originals or good copies of pirate QSL's (not returnable). As always, I am interested in receiving news direct from your station operators, too!

See you next month!

PC

WARNING ! ! !

THIS TAPE CONTAINS SHOCKING
SCENES WHICH ARE VILE AND
OFFENSIVE!!!!

THE TRUTH ABOUT -

**"GAY" RIGHTS
EXPOSED!!!**



For more information about ADRIAN CHRISTIAN COMPLEX, or a list of video tapes available, call or write:

ADRIAN CHRISTIAN COMPLEX
2903 Bent Oak St.
Adrian, MI 49221
1-517-265-5285

Services are Wednesday 7:00 pm, Sunday 10:00 am, and 6:00 pm.

Visitors are always welcome.

The Daily Telegram

SERVING LENAWE COUNTY FOR 97 YEARS

35

Adrian couple can appeal FCC charge

By JAN BELLAMY—GENEE
Daily Telegram Staff Writer

ADRIAN — An Adrian couple can choose to pay a \$1,000 penalty for allegedly operating an illegal radio station or they can pursue administrative review and appeals all the way to the Federal Communications Commission.

Detroit FCC engineer-in-charge, Troy Tallant, says most people confess their guilt, readily, and pay the

\$1,000 within 30 days of notice. Others, however, may ignore the notice of liability and penalty until the U.S. Attorney takes action, sometimes resulting in a default judgment and lien placed against their real property.

By letter dated Oct. 5, Joseph P. and Connie Mattausch, 626 Finch St., Adrian, were notified by the FCC of "apparent liability and imposed forfeiture of \$1,000" following

the tracking of an illegal broadcasting signal to their home on Sept. 22. They have 30 days from that date to pay the fine or respond with a request for an administrative review.

While Connie Mattausch said Tuesday she was "giving no comments whatsoever" when contacted at home, she did deny there was a radio station previously operating in her house.

While investigators were not al-

lowed entry to the home when the signal was traced on Sept. 22, a babysitter was informed of the illegality of the operation and the station went off the air.

According to Tallant, at the time the broadcast on 89.5 MHz was cut short, it was broadcasting a continuous loop tape. Tallant said the message was notifying listeners of "two major events" and public demonstrations, inviting them to "drive by the

judicial building" and support the solidarity of counter-demonstrators wearing red armbands in opposition to a planned gay rights rally.

Four FCC employees were involved in the investigation following the first report of the violation on Aug. 13. Tallant said he had no idea how long the station may have been broadcasting without a proper license.

Please see FCC, Page 5

Wednesday

October 24, 1990

Couple can ask review of FCC's \$1,000 fine

FCC, from Page 1

Two FCC investigators were sent to Adrian to track the illegal signal Sept. 22, following a tip it would be broadcasting prior to a planned gay rights demonstration that afternoon.

The FCC engineer, located the broadcast signal at about 11:07 a.m. that Saturday morning. The illegal station reportedly had been broadcasting since 10:35 a.m.

Tallant said the nature of the broadcast activities were alleged to involve a religious group though none was named.

Tallant said the Mattauschs have several options. They can pay the penalty of \$1,000, pursue administrative review and appeal through the FCC's Washington, D.C. attorneys and the Federal Communications Commission, or ignore the notice of apparent liability and find themselves the subjects of a civil lawsuit filed by the office of the U.S. Attorney.

If the broadcasts were to continue, Tallant says the offenders might be subject to criminal charges.

Tallant says the Adrian incident is not an isolated incident. His office investigates between five and six such reports annually.

U.S. attorney may get case involving county couple

By GREG FREEMAN
Daily Telegram Staff Writer

ADRIAN — The case involving a local couple accused this fall of operating an illegal radio station will be turned over to the U.S. attorney's office shortly, a Federal Communications Commission representative said Monday.

Detroit FCC engineer-in-charge Irby Tallant said that his office had sent its final notice to Joseph and Connie Mattausch within the last two weeks. The FCC is demanding that the couple pay a \$1,000 fine.

"Once the U.S. attorney gets the case, he'll tell them to pay up or face a civil action and go to court," Tallant said.

The FCC alleges that the Mattauschs, of 626 Finch Street in Adrian, illegally broadcast taped messages from their home earlier this year on an FM frequency. According to Tallant, the messages commented on the

arrests and subsequent demonstrations in support of men charged with homosexual activity at Island Park last spring.

The Mattauschs have consistently denied having operated any sort of radio transmitter. Joseph Mattausch said Monday that he would not comment on the case.

Tallant said he was sure that his agency was correct in locating the source of the illegal transmissions at the Mattausch residence.

"We do this sort of thing every day," Tallant said. "We have tapes of what they broadcast and we have radio direction-finding evidence."

"The taped broadcast that we recorded for this case referred to the 'expert police work' that went on in the Island Park case. But when expert police work is used to get their illegal radio station, then for some reason the shoe is on the other foot."

Bazaar

Churches spo

Tuesday

October 23, 1990

Cool

Forecast on Page 2

In brief

Correction

LENAWEE — District court judge candidate Graham Teague has four children and is past president of the Lenawee County Bar Association. The Sunday edition of *The Daily Telegram* incorrectly reported he is currently president of the bar association and has two sons.

FCC rules county broadcast illegal

ADRIAN — The Federal Communications Commission has closed down an unlicensed radio broadcasting effort following a month-long investigation.

A Detroit FCC investigator said a notice to stop broadcasts, reportedly associated with a religious group, was issued on Sept. 22 to Joseph P. and Connie Mattausch, residents at 626 Finch St., when an engineer tracked the signal on 89.5 MHz to their home.

At the time, the station was allegedly broadcasting a message on a continuous loop tape, inviting people to attend an anti-gay rights counter-demonstration at the judicial building that day, the FCC said.

Connie Mattausch denied Tuesday that such a radio station existed.

The Mattauschs have been told to pay \$1,000 for violating FCC rules.

March 8, 1991

FCC seeks suit to collect

Adrian couple had been fined \$1,000

By DENNIS PELHAM
Daily Telegram Staff Writer

DETROIT — The U.S. Attorney's office is being asked to file suit in federal court to collect a \$1,000 penalty levied in an attempt to shut down unlicensed "Radio Free Lenawee" broadcasts.

The penalty was assessed against Joseph and Connie Mattausch in October. Federal Communication Commission (FCC) officials say a Sept. 22 broadcast was tracked to their home on Finch Street in Adrian.

The Mattausches dispute the FCC charges.

Radio Free Lenawee was broadcasting a taped message by the Rev. Rick Strawcutter on Sept. 22, said Irby Tallant of the FCC office in Detroit. On the tape, Strawcutter was urging people to attend a counter-demonstration to a gay rights rally at the Lenawee judicial building that day.

Tallant said Thursday that the Mattausches have not paid the \$1,000 penalty ordered by the FCC.

"We're in the process of referring it to the U.S. Attorney for collection," he said. The case should be turned over to that office within a week or two, he said.

The U.S. Attorney's office could file a civil action in U.S. District Court to collect the money if it determines the case is worth pursuing, Tallant said.

Radio Free Lenawee broadcasts were traced to the Finch Street address only one time, Tallant noted. Since that Sept. 22 incident, he said, the unlicensed station has been heard only a few times. The last broadcasts heard were shortly before the November election, he said, and came from a portable transmitter in a vehicle in the Blissfield area and the Clinton area. Those broadcasts were urging people to vote for or against certain political candidates, Tallant said.

Adrian couple hasn't paid FCC fine

By GREG FREEMAN
Daily Telegram Staff Writer

ADRIAN — An Adrian couple accused by the Federal Communications Commission of operating an illegal radio transmitter has told the agency they have done nothing wrong and should not have to pay an administrative forfeiture imposed by the agency.

"It is really bizarre that we can be accused like this." — Connie Mattausch.

"It is really bizarre that we can be accused like this," said Connie Mattausch. "How can we pay a fine for something we didn't do?"

According to FCC officials, Connie and Joseph Mattausch, of 626 Finch St., Adrian, were operating the transmitter from their home last month on an FM frequency. The taped broadcast "was about the moral values of people in Lenawee County," said Irby Tallant, Detroit FCC engineer-in-charge Irby Tallant.

The FCC sent the Mattauschs a letter notifying them of "apparent liability" in the matter and requested from them a reason why they should not pay a \$1,000 administrative forfeiture, Tallant said.

The couple's response was deemed inadequate and the agency considered the forfeiture still in effect, Tallant said.

Asked whether she had any radio transmitting equipment in her home, Mattausch said, "What do you think? No."

Mattausch said that reports about the matter have been "bold-faced lies."



FEDERAL COMMUNICATIONS COMMISSION
FIELD OPERATIONS BUREAU

CERTIFIED MAIL NO: P632705214
RETURN RECEIPT REQUESTED

24897 Hathaway Street
Farmington Hills, MI 48335-1552

October 5, 1990

Joe & Connie Mattausch, dba
Citizens Emergency Broadcasting Service
626 Finch Street
Adrian, Michigan 49221

Refer To File: 90-DT-1436
3153302-91001

Dear Joe & Connie:

You are apparently liable for a forfeiture of \$1,000 due to your willful violation of Section 301 of the Communications Act of 1934, as amended. An FM broadcast radio station was operated from your residence at 626 Finch Street in Adrian, Michigan, on a frequency of 89.5 megaHertz between the hours of 10:35 A.M. and 11:08 A.M. on September 22, 1990. You do not possess a license authorizing this operation. The radio signal was traced to your residence by using Radio Direction Finding techniques, and field strength measurements were made to ascertain that the station was not operating under the provisions of FCC Rules and Regulations Part 15, for which no license is required. The term "willful" in this context does not imply that you intended to violate the statute, but merely that the situation which led to the violation was not created accidentally.

Pursuant to Section 503(b) of the Communications Act of 1934, as amended, you are granted 30 days from the date of this notice to pay the forfeiture or give reasons why it should be reduced or not imposed. We will at that time consider all facts before us in making our determination. Your payment and add correspondence with us should be sent to the address in the letterhead and identified with the number given. Payment should be made by check or similar instrument made payable to the Federal Communications Commission.

We trust that you will correct the situation which led to the violation and that it will not recur.

Sincerely,


Irby C. Tallant, Jr.
Engineer in Charge

Enclosures

ICT:sms



NEWS

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554

News media information 202 / 254-7674
Recorded listing of releases and texts
202 / 632-0002

10241

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1975).

October 19, 1990

PIRATE RADIO STATION SHUT DOWN IN ADRIAN, MICHIGAN

The FCC's Detroit Office recently shut down an unlicensed FM radio station operating on 89.5 MHz in Adrian, Michigan. An FCC engineer using mobile direction-finding equipment located the station at 626 Finch Street which is the residence of Joe and Connie Mattausch. The station used the identifier of Citizens Emergency Broadcasting Service. The Mattausches were fined \$1,000 for unlicensed operation.

Unlicensed radio operation is a violation of Section 301 of the Communications Act of 1934, as amended. Sanctions may include administrative fines of up to \$10,000 and/or criminal penalties of up to \$100,000 and/or imprisonment for up to one year. Misuse of radio frequencies is a serious offense because of its potential for interfering with safety-of-life services such as aviation, law enforcement and marine.

For further information contact Irby C. Tallant, Engineer-in-Charge, or Constance D. Rogers, Public Affairs Specialist at (313) 226-6078.

-FCC-

FEDERAL COMMUNICATIONS COMMISSION
FIELD OPERATIONS BUREAU



CERTIFIED MAIL NO: P558878994
RETURN RECEIPT REQUESTED

24897 Hathaway Street
Farmington Hills, MI 48335-1552

October 29, 1990

Joe & Connie Mattausch, dba
Citizens Emergency Broadcasting Service
626 Finch Street
Adrian, MI 49221

RE: Notice of Apparent Liability
dated October 5, 1990

90-DT-1436
3153302-91001

Dear Mr. and Mrs. Mattausch:

You are hereby ordered to pay of forfeiture of \$1,000. This is in full payment of the apparent liability brought to your attention by written notice dated October 5, 1990, and incurred by you as a result of the operation of an FM broadcast radio station on 89.5 MHz from your residence at 626 Finch Street in Adrain on September 22, 1990, between the hours of 10:35 AM and 11:08 AM; there is no license for this operation. We received your undated response to our Notice of Apparent Liability on October 22, 1990, and found no basis to cancel or reduce the amount of the apparent liability. The payment must be made within 30 days of the date of this notice. Payment should be by check or similar instrument payable to the Federal Communications Commission at the address in the letterhead. Please include the reference number on your check to insure proper credit.

Our Notice of Apparent Liability did not allege; it stated the fact that an unlicensed FM broadcast radio station was operated from your residence in violation of the United States communications law, Title 47 United States Code Section 301 -- not "some type of violation of FCC code".

Our notice to you should not have been astonishing to you; a handout distributed by the organization mentioned in the taped message being broadcast at the time of our investigation acknowledged FCC jurisdiction over radio broadcasting by stating "FCC severely limits the power level of such broadcasts, ...". We attempted to inspect the radio station at your residence, but were denied access; had we been able to confront the operator at the time, your accomplice in the illegal activity, we would have explained the illegality and the possible penalties for that activity.

There is no error on FCC's part. Using sophisticated electronic equipment and close-in radio direction finding techniques we traced the source of the radio transmissions on 89.5 MHz to your residence and we eliminated all other possible sources for the origination of the radio signals. The Commission holds that radio direction finding equipment is a very effective means of pinpointing the source of radio transmissions. Ernest M. Petter, 57 FCC 2nd, pg 716, 717-19 [Rev. Bd., 1976]. On a mast parallel to and adjacent to your television antenna mast was a dipole antenna suitable for radiating FM broadcast radio signals. As the FCC investigators stood on

NOTICE OF FORFEITURE
JOE & CONNIE MATTAUSCH

OCTOBER 29, 1990

your steps speaking to the unidentified "babysitter", the source of the programming being transmitted could be heard through the open doorway to your house; when the investigators requested to inspect the radio station, the "babysitter" went inside the house, ostensibly to consult with someone regarding our request to inspect, and the radio transmitter was apparently turned off, for the radio signal went away.

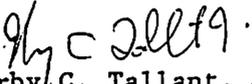
Ownership of the radio transmitting equipment is not at issue in this matter; the operation of the transmitting equipment is the observed violation. Likewise, you or your wife's presence during the operation is not at issue; the radio transmitter could have been automatically controlled or an accomplice could have been controlling it.

You state that you "... find it very irritating that the FCC would make such serious allegations with little or no investigation". Our investigation was thorough enough to obtain valid evidence of unlicensed radio transmissions emanating from your residence; we routinely trace and locate the sources of radio transmissions and go to court with our evidence when necessary. I find it very ironic that a group who espouses law and order and punishment of persons caught by good police work over an illegal radio station becomes defensive when good police work locates that illegal radio station.

I agree with you that "Letters sent to individuals demanding fines for fabricated crimes is extortion and fraud, ..."; letters sent to violators of law assessing forfeitures authorized by law are neither extortion nor fraud.

Forfeitures imposed by this Commission which are not paid are referred to the United States Attorney for collection under the provisions of Section 504 of the Communications Act of 1934, as amended (Title 47 United States Code Section 504).

Sincerely,


Irby C. Tallant, Jr.
Engineer in Charge

ICT:sms



FEDERAL COMMUNICATIONS COMMISSION
FIELD OPERATIONS BUREAU

CERTIFIED MAIL NO: P558879128
RETURN RECEIPT REQUESTED

24897 Hathaway Street
Farmington Hills, MI 48335-1552

December 10, 1990

Joe & Connie Mattausch, dba
Citizens Emergency Broadcasting Service
626 Finch Street
Adrian, Michigan 49221

RE: Forfeiture order dated
October 29, 1990

90-DT-1436
3153302-91001

Dear Mr. and Mrs. Mattausch:

We have not received payment of the forfeiture of \$1,000 which you were ordered to pay by letter dated October 29, 1990. The payment is past due and should be made immediately. It should be made by check or similar instrument payable to the Federal Communications Commission at the address given in the letterhead. Please place the reference number on the remittance to ensure proper credit.

Sincerely,


Irby C. Tallant, Jr.
Engineer in Charge

ICT:sms



FEDERAL COMMUNICATIONS COMMISSION
FIELD OPERATIONS BUREAU

CERTIFIED MAIL NO: P558879193
RETURN RECEIPT REQUESTED

24897 Hathaway Street
Farmington Hills, MI 48335-1552

January 15, 1991

Joe & Connie Mattausch, dba
Citizens Emergency Broadcasting Service
626 Finch Street
Adrian, Michigan 49221

RE: Forfeiture Order Dated
October 29, 1990

90-DT-1436
3153302-91001

Dear Mr. and Mrs. Mattausch:

We have not received payment of the forfeiture of \$1,000 which you were ordered to pay by letter dated October 29, 1990. The payment is past due. If it is not paid immediately, you leave us no alternative but to refer the matter to the Department of Justice for prosecution. Payment should be made by check or similar instrument payable to the Federal Communications Commission at the address in the letterhead. Please place the reference number on the remittance to ensure proper credit.

Sincerely,

Irby C. Tallant, Jr.
Irby C. Tallant, Jr.
Engineer in Charge

ICT:sms

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

JOE MATTAUSCH and
CONNIE MATTAUSCH, Jointly and Severally,

Defendants.

CIVIL ACTION NO. 93-75317

HONORABLE

COMPLAINT

Plaintiff, United States of America, by its attorneys, Alan M. Gershel, United States Attorney, and Dawn Chute, Special Assistant United States Attorney, both for the Eastern District of Michigan, for its complaint against Joe Mattausch and Connie Mattausch, jointly and severally, states as follows:

1. Jurisdiction in this matter is established by 28 United States Code, Sections 1345 and 1355, as the United States of America is the complaining party.

2. This action, brought by the United States of America, arises under Section 504 of the Communications Act of 1934, as amended, 47 U.S.C. Section 504, for recovery of a forfeiture as provided in Section 503 (b) (1) (B) of the Act.

3. Defendants Joe Mattausch and Connie Mattausch, are residents of the City of Adrian, which is located within the jurisdiction of the U. S. District Court for the Eastern District of Michigan.

4. The Federal Communications Commission (the "Commission")

was, at all times relevant to this action, an agency of the United States of America with the duty of enforcing and executing the provisions of the FCC Rules and Regulations.

5. On September 22, 1990, an FM broadcast radio station was operated from Defendants' residence at 626 Finch Street, Adrian, Michigan, on a frequency of 89.5 MHz between 10:35 and 11:08 a.m. without possession of a license from the Commission in violation of 47 U.S.C. Section 301.

6. On October 5, 1990, the Commission issued Defendants a Notice of Apparent Liability in the amount of \$1,000.00 for willful violation of Section 301 of the Communications Act for operating a radio station on the frequencies of 89.5 MHz without possessing a radio station license for this operation.

7. The Commission issued Defendants a Notice of Forfeiture on October 29, 1990, in the amount of \$1,000.00 and demanding payment. Defendants have not responded.

8. Defendants have failed to pay the government's claim despite repeated demands.

9. Pursuant to 31 U. S. C. §3711, 4 C.F.R. §102.13 and 41 C.F.R. §1-5-55.004, the United States is entitled to assess interest, administrative charges and penalty charges on unpaid obligations to the United States Government.

WHEREFORE, Plaintiff United States of America seeks judgment against the Defendants Joe Mattausch and Connie Mattausch, jointly and severally, in the amount of \$1000.00, plus a ten per cent surcharge per 28 U.S.C. 3011, a filing fee of \$120.00 per 28 U.S.C. 2412(a)(2), a processing and handling charge of \$140.00 per 31

U.S.C. 3717(e)(1), post-judgment interest as allowed by law, and any other relief deemed appropriate by the Court.

Respectfully submitted,

ALAN M. GERSHEL
UNITED STATES ATTORNEY

Dawn Chute

Dawn Chute (P45287)
Special Assistant U.S. Attorney
817 Federal Building
231 W. Lafayette
Detroit, Michigan 48226

Dated: 12/21/93

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
Federal Building and United States Courthouse
231 W. Lafayette, Eighth Floor
Detroit, MI 48226

UNITED STATES OF AMERICA
Plaintiff

Alan M. Gershel, U.S. Atty
Dawn Chute (P45287)
817 Federal Building
231 W. Lafayette
Detroit, MI 48226

Civil Action 93cv75317

JUDGE Barbara Hackett

VS

JOE MATTAUSCH and
CONNIE MATTAUSCH
Defendants
7870 Wisner
Tipton MI 49287

JURY TRIAL DEMANDED

DEFENDANTS ANSWER TO COMPLAINT

DEFENDANTS in the above captioned action are husband and wife non-attorneys acting in their own proper persons demanding all of their rights at law and waiving none of their rights at any time for any reason.

As to the allegations recited in the above cited civil complaint, Defendants respond as follows:

1. DENIED
2. DENIED
3. DENIED
4. Defendants are without knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph (4) of plaintiff's Complaint and therefore denies the same.

page (2)

5. Defendants are without knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph (5) of plaintiff's Complaint and therefore denies the same.

6. Defendants are without knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph (6) and therefore denies the same.

7. Defendants are without knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph (7). and therefore denies the same.

8. ADMITTED IN PART. DENIED IN PART. Defendants have not paid any claims made by the government relative to this instant case. However Defendants deny that they ""have "Failed" to pay the government's claim despite repeated demands. "" (SIC)

9. Defendants are without knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph (8), and therefore denies the same.

FIRST AFFIRMATIVE DEFENSE

10. This court is without personal jurisdiction as there is no way the plaintiff can connect defendants to the alleged infraction on the day, time and location it is alleged to have occurred. (see attached affidavits)

SECOND AFFIRMATIVE DEFENSE

11. The house at 626 Finch St. in Adrian Michigan has never been in the exclusive possession, dominion, or control of defendant.

THIRD AFFIRMATIVE DEFENSE

12. The government's complaint is without an affidavit to support the factual allegations contained therein contrary to FRCP and therefore fails on due process grounds.

page (3)

WHEREFORE Defendants respectfully request that this honorable court dismiss Plaintiffs Complaint and award judgment on behalf of Defendants Joe and Connie Mattausch.

RESPECTFULLY SUBMITTED,

JOEMATTAUSCH

CONNIE MATTAUSCH

7870 Wisner Hwy.
Tipton, MI 49287

Date February 1, 1994

United States District Court
Eastern District of Michigan
Southern Division

UNITED STATES OF AMERICA

Plaintiff

CIVIL ACTION 93CV75317
Judge Barbara Hackett

-vs-

JOE AND CONNIE
MATTAUSCH

Defendants.

AFFIDAVIT OF CONNIE MATTAUSCH

STATE OF MICHIGAN

} SS

COUNTY OF LENAWEE

Connie Mattausch , being duly sworn according to law, deposes and says as follows that:

1. She is not a resident of Adrian Michigan.
2. When she did reside at 626 Finch St. in Adrian, Michigan she did not have exclusive dominion and control of the house and other buildings at that address.
3. On September 22, 1990 she was actively engaged in a picket line with over fifty other witnesses continuously from the hours of 9:00 am to 2:00 PM. in front of the Rex B. Martin Judicial building located on North Main St. in Adrian, Michigan.

4. The statement of paragraph three may be verified by video tape and the testimony of any one of fifty different people who were at the above mentioned picket.

5. She has not at any time in her life ever owned, possessed, operated, or in any other way had contact with a radio transmitter of any description. Furthermore she would not know a radio transmitter if she saw one.

Further Affiant says not.

Connie Mattausch
7870 Wisner Hwy.
Tipton, MI 49287
1-517-431-2792

Sworn to and subscribed before me this _____ day of
_____ 1994.

Notary Public

My Commission Expires _____

Joe and Connie Mattausch
7870 Wisner
Tipton, MI 49278
517 431 2792

Alan M. Gershel
US Attorney's Office
817 Federal building
231 Lafayette
Detroit, MI 48226

RE: US of A vs Joe and Connie Mattausch
93 CV75317

Dear Mr. Gershel,

Enclosed herewith is a copy of Defendant's Interrogatories to Plaintiff, the original of which was filed with the Court today via first class mail.

Very truly Yours,

Joe Mattausch

Connie Mattausch

February 22, 1994

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA
Plaintiff

Alan M. Gershel
Dawn Chute
U.S. Attorneys of Record

CIVIL ACTION 93CV75317

vs

JUDGE HACKETT

JOE MATTAUSCH
CONNIE MATTAUSCH

DEFENDANT'S INTERROGATORIES TO PLAINTIFF

Defendants, who are non-attorneys acting in their own proper persons, request that the Plaintiff in the above captioned action, answer the following interrogatories under oath and in writing pursuant to Rule 33 of the Federal Rules of Civil Procedure and that the answers be served upon the Defendants within thirty (30) days after service of these interrogatories.

DEFINITIONS

The terms set forth below are defined as follows:

A. "Document" - any written, recorded, or graphic matter however produced or reproduced, including but not limited to correspondence, telegrams, other written communications, notes, memoranda, analysis, studies, work papers, diaries, calendars, lists, photographs, graphs, video tapes, audio tapes, transcriptions, notes from meetings.

B. "Identify" or "Identity" - when used in reference to an individual person means to state his or her full name, home address, telephone number, and the name of such person's present employer,

place of employment, and job title, if any; When used in reference to a document means to state the date and author, type of document (e.g. , letter, memorandum, chart, etc.) or some other means of identifying it, and its present location or custodian.

INSTRUCTIONS

C Each interrogatory shall be answered separately and as completely as possible. The fact that investigation is continuing or that discovery is not complete is not an excuse for failure to answer each interrogatory as fully as possible. If you are unable to answer an interrogatory after you have attempted to obtain the information, answer to the extent possible.

D A question that seeks information contained in or information about or identification of any documents may be answered by providing a copy of such document for inspection and copying or by furnishing a copy of such document without a request for production.

INTERROGATORIES

1. Please state the following for the plaintiff:

a) The home address, mailing address, home phone numbers and work phone numbers for Mr. Irby Tallent, Jr.

b) The names and identities and home and work addresses including home and work telephone numbers for all agents of the United States Justice Department, the Federal Communications Commission, and any other Federal or State Government agencies who have come to be involved with the above captioned action since its earliest beginning, particularly the identities of the individuals who purportedly were at the residence at 626 Finch St. and allegedly had contact with the "baby-sitter" September 22, 1990. as referred to in Exhibit attached to Plaintiff's Complaint.

2. Please state with specificity how many, and what type of official communications have been sent to, or served upon defendants to this date, and include copies of the same, together with copies of proof of service and where applicable, copies of return receipts or their equivalents.

Page 3

3. Please provide copies of the relevant and applicable laws which are alleged to have been violated by defendants, including but not limited to Section 301 of the Communications Act, 47 U.S.C. Section 504, and Section 503, 31 U.S.C. Sec 3711, 4C.F.R. Sec 102.13 and 41 C.F.R. Sec 1-5-55.004, 28 I/S/C/ 3011, 28 U.S.C. 2412 (a)(2), 31 U.S.C. 3717 (e) (1).

4. What is the name, last known address, and present whereabouts, if known, of each person, whom you or anyone acting in the behalf of any of the plaintiff parties who is known to have any relevant knowledge of the events alleged in Plaintiffs Complaint .

5. State whether any photographs or video tape recordings were taken in or around the city of Adrian by Federal agents , or anyone associated with them who would have been concurrently or subsequently associated with this instant action, on or around the date of September 22, 1990. If yes, state:

- a) The subject matter of said photographs and/or videos.
- b) The date and time of day or night said photographs or videos were taken.
- c) The name , address, and job classification of the person taking same, and the name and address of his employer.
- d) The name, address, and job classification of the person having custody of the photographs and or videos.

5. State whether plaintiffs or agents associated with plaintiffs have interviewed or contacted any persons relevant to the above captioned action. If Yes state:

- a) The place or places where said interviews or contacts occurred.
- b) The names, residential addresses, telephone numbers and job classifications of persons interviewing or contacting, and their respective employers
- c) The dates and time of day or night thereof;
- d) Whether any recording or memorandum were made and, in the event of the latter, the date or dates thereof;
- e) Whether a signed statement was obtained; and
- f) The name, address and job classification of the person having custody of the recording or memoranda.

Page 4

6. State whether the defendants were ever personally interviewed by plaintiffs or their agents relative to the alleged events of September 22, 1990.
7. State whether the defendants were ever personally sighted at the residence at 626 Finch St. Adrian Michigan on September 22, 1990 or at any other time before or after that date, by plaintiffs or any one associated with plaintiffs.
8. State the identity of the alleged "baby-sitter" contacted at 626 Finch St. Adrian Michigan on September 22, 1990 referred to in plaintiff's exhibit attached to plaintiff's complaint.
9. State the identity of the alleged operator of the alleged FM broadcast radio station referred to in Plaintiff's complaint in paragraph (5).
10. State with specificity the identity and type of transmitter, including specific physical description of the same alleged to have been used and referred to in plaintiffs complaint and plaintiff's attached exhibit, please also include with specificity the exact location within the house at 626 Finch St. where the alleged transmitter was "visually observed."
11. State with specificity the identity and observed activities of the operator of the alleged transmitter at 626 Finch St. on the date of September 22, 1990. Please also include the identity of the agent of plaintiff who did such observation of any alleged operation of a transmitter or "FM broadcast station" on the above date and location.
12. State with specificity the identity of the person who allegedly "turned off" the radio transmitter as referred to in page 2 of plaintiff's exhibit attached to complaint.
13. State with specificity the identity of all persons who used "sophisticated electronic equipment....." to trace and otherwise "eliminate all other possible sources for the origination of the radio signals," referred to in Plaintiff's exhibit attached to complaint.

Page 5

14. Please provide the lawful definition of "operation " of transmitting equipment as referred to in Plaintiff's exhibit attached to Plaintiff's complaint and provide relevant case law cites, or copies of the cases which support that legal definition.

The above INTERROGATORIES are respectfully
Submitted by,

Joe Mattausch

Connie Mattausch
Husband and Wife
7870 Wiser Hwy.
Tipton, MI 49287
1 517 431 2792

DATED

FEBRUARY 22, 1994

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Interrogatories on the office of Mr. Alan M. Gershel, attorney for the Plaintiff, and the Clerk of the United States District Court for the Eastern District of Michigan, by certified return receipt first class mail on the date below.

DATE _____

Joe Mattausch

Connie Mattausch

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CIVIL NO 93CV75317

-v-

HON. BARBARA K. HACKETT

JOE MATTAUSCH and
CONNIE MATTAUSCH, Jointly and Severally,

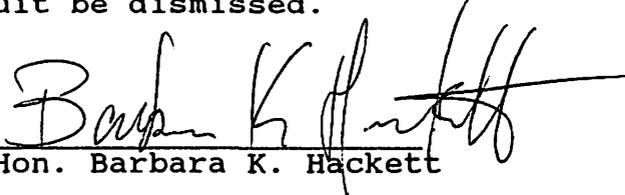
Defendants.

ORDER FOR DISMISSAL

The Court, having reviewed the stipulation herein below, and
having been otherwise advised in the matter,

HEREBY ORDERS that the instant lawsuit be dismissed.

Dated:


Hon. Barbara K. Hackett

STIPULATION

Plaintiff and Defendants Joe Mattausch and Connie Mattausch
hereby agree and stipulate that the terms contained in the above
order are acceptable to both parties and may be entered by the
Court.

Dated: 4/12/94


Joe Mattausch, in pro per
7870 Wisser Hwy, Tipton, MI 49287

Dated: 4/12/94


Connie Mattausch, in pro per
7870 Wisser Hwy, Tipton, MI 49287

Dated:


Dawn Chute (P45287)
Special Assistant U. S. Attorney
231 W. Lafayette, Detroit, MI 48226

To: MICRO-BROADCASTERS.

From: R. SCOTT COMMUNICATIONS LTD, Sooke B.C. Canada.

Subject: OUR BEST SELLER!

WOULD YOU LIKE A PROFESSIONAL SOUNDING, STABLE, AFFORDABLE, FULLY ASSEMBLED AND TESTED "1-18 WATT MONO OR STEREO FM RADIO STATION". THEN THIS FOLKS, IS THE UNIT FOR YOU! OVER 3000 IN USE WORLD WIDE. BE ON THE AIR FOR MILES IN MINUTES!

*****Spec's are.*****

- *Adjustable output power: 1-18 Watts.
- *Phillips: BL88 X 1, plus a 3"x4"x1" heat sink.
- *Precise tuneable on air stable: 88-108MHz.
- *Uses: 5 RF stages.
- *Drift: +/- 25KHz, not noticeable to listeners.
- *Power: 12 volts DC, 3 amps.
- *Spurious output: -60dB.
- *Output impedance: 50 Ohms.
- *Audio input: line level.
- *Coax connector: SO-239.
- *Audio input jack: Phono.
- *Size: 4"WX8"LX2.5"H.
- *This unit can also drive upto a 100 watt R.F. Amp.
- *For TRUE Stereo (not BA-1404), we ad the S.G. Stereo Generator.
- *Range average: 1-18 Watts = 1-15 plus miles.
- *Assembled/Tested, Ready to Broadcast.

FM
BROADCASTING

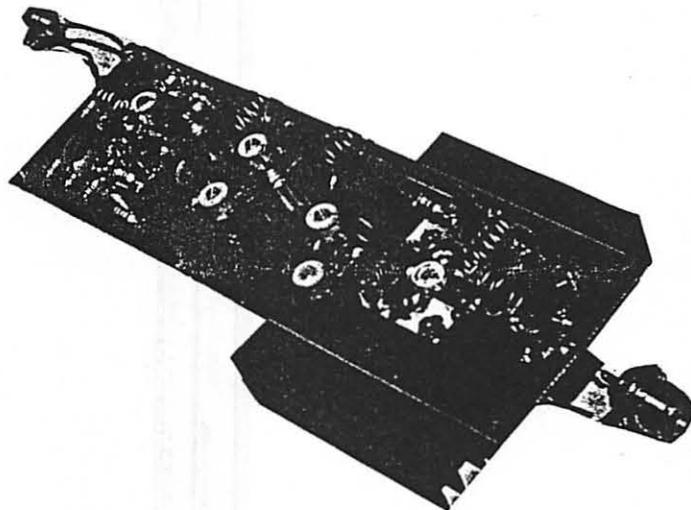


PRICE:

FOR MONO: \$195.00 U.S. plus \$20.00 Shipping Air Mail Insured.

FOR STEREO: \$360.00 U.S. plus \$20.00 Shipping Air Mail Insured.

Unbeatable performance at a unbeatable price!



To: MICRO-BROADCASTERS.

From: R. SCOTT COMMUNICATIONS LTD, Sooke B.C. Canada.

Subject: LOW POWER FM TRANSMITTER PRODUCTS, 88-108MHz.

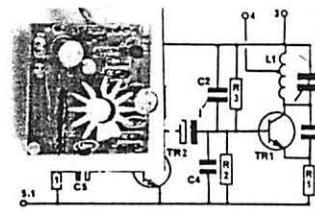
**FM
BROADCASTING**



Welcome to R. Scott Communications Ltd 1996 FM Micro-Broadcasting Catalogue! R. Scott Communications is a registered Company in British Columbia, Canada. We sell and ship low power FM Broadcast Transmitters from Canada to the world. We sell in both kit form or fully assembled and tested. R. Scott Communications is the "only" Company to sell fully assembled and tested, FM Broadcast Transmitters over 1/2 watt to customers in the USA. We guarantee our transmitters on parts and labour (90 days), also a money back guarantee (10 days). We also offer free technical support and advice to all our customers, 6 days a week. We use only high quality parts and professional PC-boards in all our products. Turn around time on Paid Orders is about 2-4 weeks(CALL). Shipping to the customer takes about one week. We ship world wide, by Air Mail, Insured. With all fully assembled and tested orders we include a free 1/2 wave Dipole antenna (6 feet long). We run ads in Popular Communications and the Monitoring Times magazines, also on the Internet. If you enjoy quality products, fairly priced and full customer service, you have come to the right place!
All SALES ARE 100% CONFIDENTIAL!

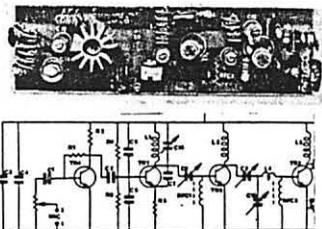
(A) "1-2 WATT" FM MONO TRANSMITTER, (88-108MHz).****

Small but powerfull little transmitter, can be used for broadcasting or as a 1 WATT "bug". The kids love this one. Price: Kit \$49 U.S. plus \$8 shipping.



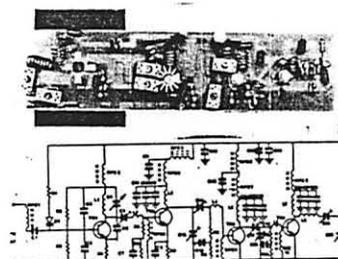
(B) "4-WATT" FM MONO TRANSMITTER, (88-108MHz).****

This transmitter has excellent audio for music and voice, plus a output power of 4 FULL WATTS. Range of this unit is 3-5 miles average. It runs on 12 volts dc at 1/2 amp. It is easily tuned by a little screw to any frequency you wish to broadcast on between 88 and 108MHz (the fm radio band). A well designed oscillator section gives excellent frequency stability It can be connected to a mixer, cd, tape player, mic, stereo or radio, what ever you need to broadcast with. 3 R.F. stages. This is a great starter transmitter for the newbie. Price: Kit \$90 U.S. plus \$8 shipping.



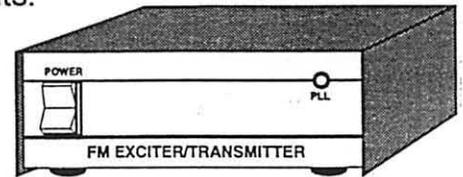
(C) "1-18 WATT" FM MONO or STEREO TRANSMITTER, ASSEMBLED (88-108MHz).****

This transmitter comes "Fully Assembled and Tested" with a Wopping output power of 18 FULL WATTS! Range of this unit is 1-18Watts=1-15 plus miles average. She has excellent FM audio for music and voice. It can be connected to a mixer, cd, tape player, stereo or radio, what ever you need to broadcast with. Precise tuning anywhere between 88 and 108MHz gives this unit excellent frequency stability (no on air drifting). Comes with a free 1/2 wave dipole antenna. It runs on 12 volts dc at 3 amps. This transmitter is also great if you cant put up a antenna outside. Be on the air for miles in minutes. Line Level audio input. Fully Assembled and Tested, with heat sink



phono and SO-239 connectors. Price: MONO \$195.00 U.S. plus \$20 shipping. STEREO \$360.00 U.S. plus \$20 Shipping. "THIS IS OUR BEST SELLER"! No kits.

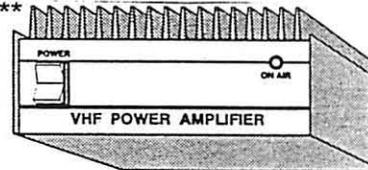
(D) "PLL TRANSMITTER", MONO or STEREO 2-15 WATTS (88-108MHz).****
 If you want the BEST under \$2000 on the market, here it is! Rock solid PLL (Phase Locked Loop) tuning, set and forget re-tuning the frequency! Range with 15 watts is 8-15 plus miles average. This PLL meets all FCC broadcast specifications (but is not type approved). We sell this Great unit in Mono or Stereo (free dipole antenna). For FM STEREO we add the Stereo Generator to our PLL, see "H" below for stereo spec's. This transmitter is also Broadband (NO TUNING EVER) The PLL 2-15 WATT SPEC'S are: PLL tuning, set your frequency by dip switches, audio response 20-90Khz, audio input impedance 600 Ohms, audio level 10 dBm, distortion .5% Max, noise -65 dBm, drift +/-200Hz, output impedance 50 ohms, output power variable from 2-15 watts, spurious output -60dB, power 12 volts DC at 4 amps, size in aluminum enclosure 7"D.X14"W.X3-1/2"H., antenna connector SO-239, audio jacks-Phono. Fully Assembled and Tested, Plug and Play, Ready to Broadcast! NO Kits.



"PLL Prices":
 MONO: \$655 U.S. plus \$25 Shipping/Insured.
 STEREO: \$775 U.S. plus \$25 Shipping/Insured.
 70-100 Watts PLL, CALL FOR INFO/PRICE.
 Please see "H" below for the Stereo Spec's.

(E)"PANAXIS PRODUCTS". **** The Great "FME" FM Transmitter, Mono/Stereo 5-15 Watts Assembled, ALSO The Panaxis 2M10 R.F. AMPLIFIER 5-15 WATTS: PLEASE CALL FOR INFO/PRICES.

(F) "2-15 WATT BROADBAND R.F. AMPLIFIER" (Progressive model 220).****
 This is a great unit to up the power of a Flea Power FM Transmitter (Ramsey FM-25, Panaxis FME 500, Any 100 milliwatt "1/10th of a Watt" FM Transmitter). 50-150 Milliwatts in gives you 2-15 Watts Output Power (Full 15 Watts at 100 Milliwatts in). Also its "Broadband" NO TUNING 88-108MHz, PLUG and PLAY! Spec's are: Broadband 88-108MHz, Variable output power from 2 to 15 Watts, Input drive power 50-150 milliwatts, In/output impedance 50 ohms, Spurious output -60dB (CLEAN), Power 12 volts dc @ 4 amps, Use's a BGY-133, R.F. Connectors are SO-239, Large heat sink. Unit comes Fully Assembled and Tested in a 6"x7"x3" aluminum enclosure with heat sink, on/off switch, power on light, output power up or down control, and R.F. Connectors. Price: \$329.95 U.S. plus \$20 Shipping/Insured. "Turns your tiny station into a Real Broadcaster!"



("NOTE") All our transmitters/amps are R.F. CLEAN. None of our tuneable transmitters "need" to be in a metal enclosure to transmit perfectly and get you on the air. We do recommend (but not needed) you invest in a SWR/POWER Meter for 88-108MHz, and a good ANTENNA for your Station. For this please call in the USA, Panaxis at (916)534-0417,

Progressive at (708)736-9822, Bozak at (518)373-8069, R.F. Consulting at (503)740-8132 or Martronics at (805)239-1932.

(G) "FM LOW PASS FILTER", SAY GOOD BY TO TVI. ****

Over 90% of stations donot need a filter, if you do CALL--(708)736-9822, \$59.95 U.S.

(H) FM STEREO GENERATOR", S.G. ****

Do you own a Mono FM transmitter but would like to have stereo. Then here is the best unit to upgrade your Mono to Stereo. Excellent Full FM Stereo Audio. Works with most transmitters, any power. This is REAL Stereo, NOT the BA-1404 junk. "S.G." SPEC'S are: Audio responce 20-20kHz, distortion .5% dBm, seperation 40 dB, left/right balance .5 dB, pilot 19kHz, input impedance 600 Ohms, input level 10dBm, output impedance 600 ohms, output level(Max) +10 dBm, Power 12 Volts DC, size 4"X4.2" . Works Great with our Mono's, PLL or Tuneables. Price: Assembled \$165 U.S. Shipped.

*****"ANTENNAS". ****

(1) 1/2 wave dipole antenna 88-108MHz, works great with all transmitters 1/10 to 200 watts of power. Easy to mount anywhere, in or out doors. Fully assembled: \$22 U.S. shipped.(2) A list of where to buy great FM Broadcast Antennas, Mobile/Base, 1/4 wave, 1/2 wave, 5/8 wave-3 dB of gain, Yagi's-6 dB of gain. All Professionally constructed, ready to use! All very good in high winds, \$50-\$115. Complete list is included with all orders. To buy a list send us \$5 U.S. The Comet 5/8's wave is great.

(J) "HOW TO ORDER OUR PRODUCTS". **** "CANADA, ABOVE 1 WATT IS EXPORT ONLY".

Send full payment plus shipping, by Check or Money Order in U.S. funds. We also take MASTERCARD: Please call, mail, e-mail or fax, "Name, number, expiration date".

"Send Order To":

R. SCOTT COMMUNICATIONS LTD.

6974 Larkspur Road, RR-3

Sooke, B.C.

Canada, VOS-1NO.



To speak with a Rep for MORE INFO or MasterCard

Orders Please Call (604)642-2859 or fax (604)642-7742 or e-mail

kscott@pinc.com All sales are 100% confidential!

Sorry the Canadian Postal Service will not do C.O.D.'s. Please print the product you want and your shipping address clearly and include a Name and phone number. If a permit is required to operate our products in your Country, that is the sole responsibility of the user, and not R. Scott Communications!