

1-1-2008

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Published version. "Community Renegades: Micro-radio and the Unlicensed Radio Movement," in *Radio Cultures: The Sound Medium in American Life*. Eds. Michael C. Keith. New York: Peter Lang Publishing Group, 2008: 261-286. [Publisher Link](#). © 2008 Peter Lang Publishing Group. Used with permission.



15. Community Renegades: Micro-radio and the Unlicensed Radio Movement

LAWRENCE C. SOLEY

When police beat Dewayne Readus during a 1983 scuffle at the John Hay Homes housing project in Springfield, Illinois, they were no more aware that their actions would lead to a large-scale revolt than were the Los Angeles cops who beat Rodney King eight years later. Unlike the revolt in Los Angeles, the one that started in Springfield was nonviolent, invisible, and international. It triggered the micro-radio revolt of the 1990s—an explosion of unlicensed, low-power radio stations that originated in, and broadcast to, neighborhoods across the United States and across the globe.

Dewayne Readus grew up in the John Hay Homes public housing project, a 600-unit complex of low-rise apartments for low-income families a short distance from President Abraham Lincoln's historic home. In the 1980s, the project was home to approximately 3,000 people, the vast majority of whom were African American. No commercial broadcasting stations were directed to Springfield's 15,000 African Americans, most of whom lived within a one-and-a-half-mile radius of the John Hay project.

In 1983, Readus, partially blinded by glaucoma as a child, was like many young African American men—unable to find a full-time or even a part-time job. To earn money, Readus became a disc jockey at project parties, spinning R&B discs and getting drunk. One of these parties turned into a brawl and the police were called. Readus was so severely beaten by police during the ensuing turmoil that he was completely blinded. After that, he became depressed and drank heavily (M. Kantako, personal communication, July 8, 1996).

After shaking his depression, Readus became interested in social activism and police accountability rather than parties and booze. In 1985, he helped organize the Tenants Rights Association (TRA), which demanded that Hay Homes authorities be accountable to project residents, rather than the other way around.

To improve TRA's outreach, Mike Townsend, a family friend and professor at Sangamon State University, now called the University of Illinois at Springfield, suggested that Readus start a neighborhood newspaper. Readus, who later changed his name to Mbanna Kantako (or "resisting warrior"), replied, "I'm blind, let's do radio. I don't get off on print that much" (M. Townsend, personal communication, July 8, 1996).

In addition to Kantako's blindness, there were other reasons the TRA needed to use radio. Kantako explains, "Studies show that 40 percent of black men are illiterate. Newspapers can't get them any information ... Besides, given technology today, using print is like using the pony express instead of air freight delivery" (quoted in Shields & Ogles, 1995).

At the next meeting of the TRA, members discussed "the most effective way of getting our message to the people," Kantako says. The group discussed the legality of operating an FM station without a license from the Federal Communications Commission (FCC). The TRA members weighed the legality of operating a transmitter, and concluded that the benefits outweighed the risks. "We were not even concerned about the FCC regulations. Clearly they were designed before blacks were allowed to hold their heads up," Kantako said about the decision. "And, obviously, being designed at that period of time, there was no consideration of what we as people might want to do" (LeBlanc, 1990).

Despite being illegal, the TRA decided to put an FM station on the air using money from a Catholic Church Campaign for Human Development grant. "We got the equipment ... for about \$600 out of a catalog," says Kantako. They purchased a 1-watt Panaxis transmitter, assembled it themselves, adjusted it for 107.1 MHz so as not to interfere with existing stations, put up an antenna, and made their first broadcast on November 27, 1986, from the living room of Kantako's apartment.

The station was named for the association and given the call letters WTRA. At its inception, about a dozen Hay Homes residents worked on WTRA, whose signal was audible only within a mile-and-a-half of the transmitter. Nevertheless, the micro-power station reached most of Springfield's African American residents.

Initially, WTRA was on the air for just two nights per week, broadcasting live. In 1988, the station went to three nights per week, 12 hours per night (6 p.m. to 6 a.m.), carrying commentary, news reports, and music. The station also changed its name to Zoom Black Magic Liberation Radio to reflect its broader outlook, which was "to build community" and "raise the consciousness of the people" (M. Kantako, personal communication, July 8, 1996).

Around this time, Zoom Black Magic Liberation Radio started airing complaints about police brutality. The station also demanded that an independent police review board be established in Springfield. The predominantly white city council held a hearing on this issue and rejected the proposal.

The Springfield police chief contacted the FCC, claiming that he had received complaints about the station's use of profanity. Responding to the police chief's complaint, FCC agents visited the station on April 6, 1989, and determined that Kantako was operating without a license. He was ordered to stop broadcasting and slapped with a \$750 fine.

Kantako shut the station down that day, but started it up again on April 17 during a press conference in which he demanded that the police arrest him for operating the station. When the police refused, Kantako went to the federal building in Springfield, where he asked to be arrested by U.S. marshals, who also refused. Because of these confrontations, Kantako decided to put the station on 24 hours a day, 7 days a week, which is how it operated until 2000, when the FCC finally seized the station's transmitter. It later reappeared on the Internet at <http://www.humanrightsradio.net>.

In 1989, the station was renamed Black Liberation Radio (BLR) to reflect its political outlook. It has since been called African Liberation Radio and Human Rights Radio, reflecting the changing perspective of Kantako and his associates. "We're learning as we go," said Kantako about the changes. "We named our original organization the name that we thought was a solution to our problems—the Tenant's Rights Association. We thought if we got tenant's rights—boom—everything would fall into place. We learned that wasn't the case" (Personal communication, July 8, 1996).

In March 1990, a federal court ordered Kantako to shut down his transmitter. Kantako ignored the order but did contact the San Francisco-based National Lawyers Guild Committee on Democratic Communications, formed in 1987 to explore "the applicability of traditional First Amendment concepts in the face of the worldwide monopolization of communication resources by commercial interests."

"I got an e-mail from Mike Townsend," said attorney Peter Franck, then co-chair with Sally Harms of the National Lawyers League Committee, about his first contact with BLR (Personal communication, March 5, 1997). "We felt what they were doing was very important. The choice was to either reform the existing media or start your own," said Franck, who doubts that the existing, corporate-controlled media can be reformed.

After discussing the case, the committee decided to take on Kantako's case. "We debated whether we should go to court affirmatively to try and get the ban on low-power radio ruled unconstitutional," said Franck, but "Mbanna wasn't very anxious to go to court. He didn't have much faith in the courts. And our feeling was that going in affirmatively makes it tougher to win than if we are defending him against a criminal charge or action." The brief was never filed on Kantako's behalf because the FCC backed away from the confrontation. Although the brief was not filed, it was not wasted—it was later revised and submitted on behalf of Free Radio Berkeley, an unlicensed station that challenged FCC licensing policies in 1993.

The first station inspired by Kantako's example and the second micro-power station to take to the air was BLR of Decatur. Like Springfield, which is 40 miles west, Decatur is a predominantly white city that dilutes minority representation through at-large elections, ties to business, and a police force that does not hesitate to use force against political dissidents, minorities, and union workers, as demonstrated during the Caterpillar, Bridgestone, and Staley strikes (Franklin, 1994; *Chicago Sun Times*, 1994).

Started by Napoleon Williams and Mildred Jones on August 20, 1990, BLR broadcast from a studio in the couple's small west-side home using a less than 1-watt Panaxis transmitter tuned to 107.3 MHz FM, a vacant frequency in the Decatur-Springfield radio market. The station was created to give Decatur's African American community uncensored access to the airwaves. A leaflet distributed in the African American community to announce its sign-on reported that BLR would give "a voice to those who have no voice of their own through the mass media" (BLR Leaflet, n.d.).

"We want[ed] total community involvement, so anybody can be on the air," Williams said about the station's philosophy in 1996. "If you have a problem with the judicial system, you don't have to call Napoleon Williams and ask him, 'What can you do?' You can come on and present your case to the people. There may be someone out there that will hear you, who has had the same problem and knows what to do." In Williams's view, radio should operate like public access channels on cable television, where interested groups and individuals can produce and air programs (Personal communication, July 9, 1996).

The FCC also visited this station, ordered Williams to stop broadcasting, and slapped him with a \$17,500 fine. "I told them if I got \$17,500, come and get it ... Hell, if I had \$17,500, I'd have a better radio station than this," said Williams (Personal communication, July 9, 1996), who ignored the agency and continued to broadcast.

BLR never had a specific schedule during the week; only a few hours daily were devoted to scheduled programs. Most mornings, Williams did a show in which he discussed and reinterpreted news stories reported that day by the corporate press. "A lot of people don't buy the newspaper because they know Napoleon's going over it," said Jones about the show (M. Jones, personal communication, July 9, 1996).

After that, the station often played music, sometimes with Jones as disc jockey. On some nights, a live call-in show, *Hot Line*, was featured. Music programs by disc jockeys such as D.J. Ice also aired on weekdays. About the schedule, Williams said, "Throughout the day, you're going to find something you dislike and then, if you listen long enough, something you're going to like—that's guaranteed."

In May 1996, a commercial, album-oriented rock station in a nearby city signed onto 107.3 MHz, forcing BLR to change frequencies. Because he

needed to shut down the station to alter its frequency, Williams decided it might be a good idea to install a new, more powerful transmitter at that time.

To buy a new transmitter, Williams conducted a one-day fundraiser over the air, asking listeners to drop \$5 off on Saturday. Very late on Friday, Williams heard a knock on the door. When opened, there stood a local gang member who said, "I'm going to pay for 20 brothers right now," and handed Williams \$100. During the next 24 hours, Williams was given more than \$1,000, almost all of it in \$5 donations.

The money was enough to buy a 15-watt transmitter, a new antenna, and even a meter to check the transmitter's output. The new transmitter allowed BLR to broadcast on 107.7 MHz to most of Decatur, rather than just its east or west sides.

The new transmitter was not in operation long, however. On January 9, 1997, the home of Williams and Jones was raided by the police, who had a search warrant allowing them to seize electronic equipment that could be used for "evesdropping" (Macon County, 1997). The allegations were not contained in the search warrant, but Williams allegedly taped his conversations with public officials without getting their permission, which is a felony in Illinois. (In most states, this taping is legal.) Rather than seizing tapes and tape recorders, the police seized every piece of broadcasting equipment in the house, suggesting that the raid was an attempt to force BLR off the air.

After news about the raid got out, BLR received help getting back on the air from many sources. Money, tapes, and tape recorders were brought to the station by supporters, and Stephen Dunifer, founder of Free Radio Berkeley, sent Williams a new transmitter. With this help, BLR was back on the air in a few weeks.

The Rebellion Spreads

Williams's belief that radio stations should function like public access channels, rather than as producers of pabulum and profits, was also held by Tom Reveille, who in 1991 started Radio Free Venice, California's first micro-power station. "In my view, we have a media government. If you need information, you can only get it from the media....They have a stranglehold on information," Reveille said about the corporate media, which dominate the U.S. airwaves (Personal communication, December 27, 1996). "This is the only war in history, where one side gets all of its information from the other side."

Inspired by the example of Mbanna Kantako, Reveille decided to start an unlicensed station, where listeners could become program producers. "It was open to the community on an equal basis. It was quite a heterogeneous

mixture of people on the air," he said. The station was open about its location, provided its telephone number to listeners and, for a studio, Reveille used the enclosed porch on the house where he lived, so that passersby could see the studio, and come in and talk, if they so wished.

The FCC took advantage of the station's openness. On May 29, FCC agents, backed by Los Angeles cops, showed up at Reveille's door, and informed him that he was breaking the law. Reveille responded that they were violating the law because Congress gave the FCC jurisdiction over interstate and foreign communications, not micro-radio, where signals barely travel two miles. The police responded to Reveille's comments by grabbing and handcuffing him. He was released when they and the FCC agents left.

Despite the FCC visit, Radio Free Venice remained on the air. "What wasn't important was the station, but to challenge the FCC," Reveille said about his decision to continue broadcasting. The FCC responded to the challenge on November 13, when two agents and four federal marshals again visited and entered Reveille's residence with guns drawn. "They ransacked the rooms of people who had nothing to do with the station," Reveille says about the raid. "They didn't take the antenna, [but] they took cash, videotapes, 160 audiotapes, files—everything they damn well pleased." Reveille never got the equipment or his personal possessions back, and the station never returned to the air (Personal communication, December 27, 1996).

As the FCC was silencing Radio Free Venice, another free station calling itself KAPW signed on in Phoenix, Arizona. The station was operated by Bill Dougan on 88.9 MHz from his home. Unlike Tom Reveille, a politically dedicated libertarian, Dougan was not involved in political activities before getting involved in radio. He had written a few letters to the editor, but not much more. This changed in 1988 when commercial station KFYI-FM dropped talk show host Tom Leykis, to whom Dougan listened almost daily. To get Leykis back on the air, Dougan initiated a boycott of KFYI advertisers; the station responded by suing Dougan for interfering with their business. Faced with the expenses of defending himself from KFYI's suit, Dougan called off the boycott (Wagner, 1994).

The experience left Dougan disenchanted with commercial radio, so he decided to start a noncommercial station, which he dubbed "Arizona's Most Controversial Station." KAPW aired a variety of materials, including tapes of "controversial" speakers such as Madalyn Murray O'Hair, Native American music, and public affairs shows—but not for long. On March 12, 1992, FCC agents showed up at Dougan's door, asking to see the transmitter. He refused to allow the agents in—or so the FCC says—but he invited in representatives of the news media, who had gathered outside his home. The FCC responded by fining Dougan \$17,500 (FCC, 1996).

Dougan shut down his station, but appealed the fine in the U.S. Ninth Circuit Court of Appeals, where he argued that the FCC's restrictions on low-power broadcasting were unconstitutional. The National Lawyers Guild Committee on Democratic Communications filed a friend-of-the-court brief in that case, based largely on the research that they had done for Mbanna Kantako, but the court did not reach a decision, ruling instead that the proper jurisdiction for the case was Federal District Court (*Dougan v. FCC*, 1994).

Dougan returned to the air in 1994, after Radio Free Berkeley, defended by the Committee on Democratic Communications, beat back FCC attempts to silence that station. Dougan's new station, called KAFR or Arizona Free Radio, was created as "a refreshing change from far-right hate radio," carrying many of the same program types that appeared earlier on Free Radio Berkeley, such as a gay and lesbian show, women's programs, and punk rock music (Newberg, 1995).

Two other stations inspired by Kantako's example were Radio Free Detroit and Black Liberation Radio 2, which broadcast to Richmond, Virginia. Radio Free Detroit, although inspired by Zoom Black Magic Radio, differed from its inspiration in several ways. The station was secretive about its location and sponsorship, never recruited citizens to produce programs or otherwise participate in the station's operations, and never directly challenged the FCC, as Kantako, Williams, and Reveille had. Instead of opening the station to the public, all of the programming was produced by "the RFD collective." The station broadcast on 106.3 MHz, near the top of the FM band. The FCC apparently learned about the station from an article in *The Fifth Estate*, Detroit's alternative weekly newspaper. When the FCC showed up at the operators' door, accompanied by a few cops and a television crew trying to do a story on the station, Radio Free Detroit was silenced.

Black Liberation Radio 2 was on the air between December 29, 1994, and June 25, 1995. The station was started by Jahi Kubweza, who became "tired of being bombarded by lies." Kubweza said, "We took it upon ourselves to show the difference between the information being made available and the information withheld" (Personal communication, January 2, 1996).

Black Liberation Radio 2 featured programs on economics, government, health, and a host of other issues, along with poetry and rap, reggae, jazz, and instrumental music. It directly challenged the FCC by operating on 91.7 MHz, 24 hours per day, 7 days per week with 30 watts of power.

FCC agents paid the station a visit on June 25 and asked to see the transmitter. "I made a mistake," Kubweza says about his decision to allow the agents in. Once in, they seized the transmitter, the antenna, and all other electronic equipment that was visible—even equipment that had nothing to do with the station. Kubweza was prosecuted and eventually convicted for operating the station (FCC, 2001).

Although the FCC believed that it could stop the growing micro-power radio revolution by issuing fines and seizing transmitters, it was wrong.

The Case of Free Radio Berkeley

Berkeley and San Francisco, birthplaces of the free speech and countercultural movements of the 1960s, became the center of the micro-radio revolution around 1993. The free-radio revolution shifted to the California Bay Area, where the National Lawyers Guild Committee on Democratic Communications was based, and where Stephen Dunifer, a former broadcast engineer for commercial radio and television stations, lived. Dunifer started Free Radio Berkeley as a direct challenge to the FCC's ban on low-power broadcasting and as a laboratory for developing and distributing a low-cost, micro-power transmitter that could be used by community groups and citizen activists.

Before putting Free Radio Berkeley on the air, Dunifer designed and tested several homemade FM transmitters in his workshop-home above an electronics repair store in West Berkeley. Dunifer's residence consisted of two bedrooms, a living room, and a workshop larger than all the other rooms combined. In the workshop, he winnowed his prototype FM transmitters down to one that was small, portable, stable, and inexpensive.

In April 1993, Dunifer began broadcasting on Sunday nights between 9 p.m. and 10 p.m. from his workshop-home, announcing, "This is Free Radio Berkeley, 88.1 on your FM dial." Shortly after Free Radio Berkeley signed on, San Francisco-based FCC agents monitored the 15-watt broadcasts, which denounced the FCC for promoting corporate interests rather than the public interest, an issue that Dunifer hammered at consistently.¹ "We are attempting to redress a greater wrong that is essentially a theft of the people's airwaves by corporate interests that have hijacked the whole thing," Dunifer said about his motivations for starting the unlicensed station (Personal communication, March 4, 1996).

Agents with the FCC's compliance bureau in San Francisco visited Berkeley on April 23, 1993, where the unlicensed station's "signals were isolated by the agent to the vicinity of 6th Street and Alliston Way" (FCC, 1995). A week later, several agents returned to Berkeley, where they parked and waited for the station to return to the air. At 9 p.m. as usual, Free Radio Berkeley signed on. When the transmissions began, the agents turned on their "close-in direction finding equipment" and locked onto the transmissions originating from Dunifer's workshop-home, which they identified as the source of the unlicensed messages.

At 9:55 p.m., one of the agents knocked on Dunifer's door and asked whether he could inspect the station's transmitter. Dunifer refused to open

his door, so the agent went back to his car, where he and his cohorts waited to see what would happen next. A short time later, the agents noticed a longhaired, bearded fellow wearing wire-rimmed glasses leave the premises that they had staked out. One of the agents accosted the fellow, who refused to identify himself. The agents later identified him as Stephen Paul Dunifer, a Berkeley anarchist and radical activist.

Dunifer says that he expected the visit from the FCC. One reason for going on the air was to challenge the FCC rules prohibiting micro-power broadcasting, but before the rules could be challenged in court, he had to be cited by the FCC. "The first broadcasts were made from a fixed location to get the attention of the FCC," Dunifer says. The broadcasts were "an absolute attempt to challenge directly the FCC's regulatory structure and policies. Based on the work of the National Lawyer Guild Committee on Democratic Communications [in the Kantako case], I felt sure we had a very solid legal basis to proceed on if we could find a proper venue," he said (Personal communication, March 4, 1996).

However, once the FCC identified Dunifer's workshop-home as the source of the broadcasts, the "station went mobile," operating that way for a year and a half—until the end of 1994. "The transmitters were put into backpacks along with other portable studio equipment and were all hiked up into the hills of Berkeley," Dunifer explained. A battery was lugged along to provide electrical power for the transmitter, which went on the air Sundays from 9 p.m. to midnight, airing tapes made by community groups, local bands, and even interviews.

Because the station continued to broadcast, the FCC served a Notice of Apparent Liability for \$20,000 on Dunifer on June 1, telling him that Free Radio Berkeley had been monitored broadcasting from his residence on April 25 and May 2. Louis ("Luke") Hiken, a San Francisco attorney and member of the National Lawyers Guild Committee on Democratic Communications, drafted Dunifer's response to the notice. The response noted that the FCC's fine was "grossly disproportionate to the alleged violations ... and exceeds the maximum set by statute." Moreover, the response laid out the arguments that would later be raised in U.S. District Court, where the FCC tried to get an injunction to stop Dunifer from broadcasting. It noted that FCC policies were developed "before the advent of FM broadcasting" and "failed to keep pace with ... technological advances" such as highly stable low-power FM transmitters, which provide poor people, rather than just large corporations, with access to the broadcasting spectrum (Hiken, 1993).

The FCC officials, of course, rejected all of these arguments in their brief, filed on November 8, 1993, explaining that they had the sole power to determine the public interest. In response, Hiken filed an appeal called an Application for Review in Washington, DC, on December 2, 1993.

In addition to getting the National Lawyers Guild to represent him, Dunifer did several things that the FCC did not expect. He took his case public, began showing others how they could start their own radio stations, and continued to broadcast. To publicize his case, Dunifer sent press releases to alternative, local, and national media and made himself available for interviews. The first stories about Dunifer appeared in Bay Area newspapers, such as the *San Francisco Chronicle*, which reported that Dunifer and his colleagues were "encouraging other people" to start up stations. "They offer free workshops on how to build miniature radio stations for less than \$200," an article reported (Herscher, 1993). Stories about Free Radio Berkeley also appeared on CNN and in *The New York Times*, but what garnered publicity for the station was the FBI's attempt to link Bay Area radicals to the Unabomber. According to the FBI, an anonymous tipster identified Dunifer as the Unabomber, and an FBI agent decided to pay Dunifer a visit. Because of the FBI visit, Dunifer's fight with the FCC was reported in the *Washington Post*, *Los Angeles Times*, and other large daily newspapers (Noble, 1995; Achenbach, 1995; Jacobs, 1995).

Soon thereafter, another Bay Area micro-power FM station, San Francisco Liberation Radio (SFLR), appeared on 93.7 MHz. Started by activists Jo Swanson and Richard Edmondson, the station followed in the footsteps of Radio Free Berkeley, becoming mobile. During its initial months of operation, the station broadcast from different locations, hoping to avoid being tracked and silenced by the FCC. Rather than broadcasting just one night a week as Free Radio Berkeley did, SFLR was on two nights, Wednesdays and Saturdays, from 8 p.m. to 10 p.m.

After learning that Edmondson operated SFLR, the FCC issued him a Notice of Liability containing a \$10,000 fine. Edmondson, like Dunifer, turned to Luke Hiken for legal assistance and then kept on broadcasting (Nessie, 1997).

The FCC's Inaction

Rather than quickly denying Dunifer's Application for Review, which would have allowed Hiken to appeal the denial in court, the FCC took a different approach. The agency let the Application for Review languish in Washington, DC, for 10 months and then filed in U.S. District Court in California for an injunction ordering Dunifer to stop broadcasting. The FCC reasoned that if it received the injunction, Dunifer could be cited for violating the court order when broadcasting, rather than for violating FCC regulations, thus avoiding a potential constitutional challenge to its rules.

However, this strategy backfired. When the FCC filed in Federal District Court for the permanent injunction, it also asked for an

immediate preliminary injunction, claiming that Free Radio Berkeley's continued operation produced "immediate and irreparable harm." To this argument, Hiken responded that the station had been on for 18 months, but the FCC was only now seeking an injunction. "Why did they wait for over 18 months to bring it to this court's attention?" Hiken asked. During the 18 months, the FCC had repeatedly monitored the station, he pointed out, and had only discovered two instances where the station's signal interfered with other broadcast signals, and in one of the instances the interference was actually caused by the FCC (Hiken, 1995). Hiken also noted that other low-power stations were on the air, such as BLR in Springfield, Illinois, but that the FCC had not sought injunctions to shut them down. "If there is an emergency, why is it they haven't done anything about that [station]? There's no emergency in this case," he said (Black Hat, 1995).

Hiken also observed that the FCC in Washington had been sitting on Dunifer's appeal for a year and had not yet ruled on it. If the FCC believed that Free Radio Berkeley presented such a threat to the public interest, it should have acted on the appeal, he reasoned.

The FCC's failure to act on Dunifer's Application for Review gave him time to build more transmitters, which were eagerly grabbed by activists around the country. In San Francisco's Mission District, Radio Libre signed on during the summer of 1994 using a Dunifer-built transmitter. Started by a group of Latino street boys and white anarchists on 103.3 MHz, the station broadcast music, political commentary, and Latino community news and information (Ferris, 1995).

In Phoenix, Bill Dougan, emboldened by Dunifer's continued operation, put Arizona Free Radio back on to the air, saying, "I do want to make a federal case out of it, literally. This is a potential Supreme Court case" (Wagner, 1994). In December 1994, Black Liberation 2 took to the airwaves in Virginia. Four months later, Free Radio Santa Cruz went on the air, broadcasting from another Dunifer-built transmitter. Commenting on the sudden growth of free radio stations, Luke Hiken said, "I think this is going to get beyond the ability of the FCC to control, judging from the snowballing of people interested in setting up stations."

The FCC at a Loss

Federal District Court judge Claudia Wilken stunned the FCC on January 20, 1995, when she ruled that its request "for a temporary injunction is hereby denied." The FCC's hope that it could avoid addressing the constitutionality of its ban on low-power broadcasting was further dashed when Judge Wilken

ruled that “the FCC is arguably violating its statutory mandate as well as the First Amendment by refusing” to reconsider its rules on micro-radio. On the basis of the evidence, she also concluded, “the record does not support the ... assertion” that “because Defendant’s equipment is not FCC-approved, it must be considered likely to emit spurious signals without a warning” (Wilken, 1995). Wilken’s ruling eventually forced the FCC to reconsider its ban on micro-radio.

The decision so stunned FCC attorney David Silberman that he insultingly informed Judge Wilken:

Your Honor, this opens up such a can of worms. You don’t realize. I mean it. Your Honor, what would happen would be that you’ve given carte blanche to this group of people who think they can operate a radio station without a license ... This is turning it on its head, Your Honor ... But it opens up such hazards to the public interest that I want you to realize what you’re doing. ♪

Judge Wilken replied, “I didn’t find such egregious hazards on the records. I mean, if there is some further showing that you would want to make at some point, I can’t prevent you from doing that” (Wilken, 1995).

The decision provided Dunifer and his associates with the opportunity to increase the station’s power and hours of operation. Within weeks of the decision, the station became a full-fledged 24-hour-a-day, 7-day-a-week operation, broadcasting on 104.1 FM with 30 watts of power. “It was pretty loose at that point. People signed up on a chalk board in time slots and we started having meetings,” Dunifer says about the operation (Personal communication, March 4, 1996). The station attracted an eclectic band of volunteers, including ecologists, punk rock anarchists, street activists, apolitical musicians, and Latino and African American street youths. Chris Thompson, a deejay at the station, concluded “as the months went by, two separate impulses emerged among the deejays. While Dunifer and the [activists] saw the station as a means to rally the leftist troops and politicize the listeners, the punk rock crowd and others mostly wanted to spin tunes for their friends” (Personal communication, March 4, 1996). The difference in views and lack of organization invariably led to conflicts.

Because of the conflicts, Dunifer moved the station to a north Berkeley office, where operations were overseen by a collective. The station broadcast from there between July 1996 and March 1997, after which it moved to a larger space in a low-income neighborhood, where it could be closer to its roots.

Nine months after Judge Wilken refused to issue a preliminary injunction stopping Free Radio Berkeley from broadcasting, the FCC issued its decision on Dunifer’s appeal. As expected, the FCC rejected “Dunifer’s argument that the Commission’s rules abridge an asserted First Amendment right of

free speech." The FCC added, "Mr. Dunifer's constitutional arguments directly challenge the 60-plus-year statutory approach to licensing broadcast transmissions," but failed to mention that for 60-years the FCC had defined "public interest" synonymously with commercial broadcasting (FCC, 1995).

The FCC decision contained a number of misleading assertions. For example, the FCC suggested that it might have issued Dunifer a license had he applied for one, claiming that "if Mr. Dunifer believes it would be unconstitutional for the FCC to deny him a license, he should have ... asked for a license, along with a request for a waiver of the relevant rules limiting low power FM service." However, the FCC's suggestion that it might have waived the ban on low-power station operation had the commission's procedures been followed was untrue, according to John Reed of the FCC's engineering and technology department in Washington, DC. "I've never heard of [the FCC] giving permission like that," Reed said. "There's never been a case of our approving this" (Personal communication, May 9, 1997).

To bolster its claim that it is willing to license low-power stations, the FCC wrote, "Contrary to Mr. Dunifer's argument, the Commission's rules do not prohibit all low power services. For example, the Commission's rules provide for FM translator stations and booster stations which transmit at power well below the 100 watt minimum" (FCC, 1995). In this discussion, the FCC failed to mention that translator and booster stations merely retransmit the signals of already licensed, large-power stations—and that nearly all translator and booster frequencies have been assigned to corporate broadcasters.

According to the FCC, all it needed to do to win a summary judgment was to show that the facts were undisputed (i.e., Free Radio Berkeley was on the air) and that the law was on its side (i.e., Free Radio Berkeley did not have a license to broadcast). In its request for summary judgment, the FCC argued that the Federal District Court had jurisdiction to decide the constitutionality of laws, not rules such as those developed by the FCC, and therefore must not address any of the constitutional issues raised by Dunifer.

The FCC then filed an additional brief asking the court to issue permanent injunctions against the Free Radio Berkeley collective, not just Dunifer, as well as Free Radio Santa Cruz and other stations, which the FCC asserted were operated by Dunifer. The commission requested the broad injunction so that it could avoid having to take individual free stations to court, where the constitutionality of its rules could be challenged each time.

The FCC was hoping for a speedy judgment in District Court, which it failed to get. A court decision was expected in spring 1997, but by summer the court had not acted. Because of the court's inaction, micro-power stations took to the air in almost every other major city and region of the United States. In the south, Radio Free Memphis, Free Radio The Bayou in Louisiana, and Radio Free Hiram in Georgia appeared. In the Northeast,

there was Steal This Radio (New York City), Radio Mutiny (Philadelphia), and JAM-FM (Syracuse). In the Northwest, there was Seattle Liberation Radio, Radio Free Portland, and Radio Free Eugene. In the Ohio Valley region, there was Free Radio Pittsburgh, Free Radio Indianapolis, and WIBL (Hamilton, OH). In the Midwest, there was KAW-FM (Lawrence, KS), WNBK (Northbrook, IL), and KCMG-FM (Kansas City). In each instance, the stations provided services that were unavailable from commercial radio stations.

For example, Free Radio Memphis (94.7 FM) had a labor show called *Solidarity Forever*, hosted by a member of the Industrial Workers of the World. Guests on the show discussed the difficulties and needs of the labor movement. "They're not getting on there and expressing something they think someone's going to want to buy. They're getting on there and expressing things that are very important to them in an everyday sort of way," said the show's host, contrasting his guests with those appearing on commercial stations (Hanas, 1997).

Radio Free Memphis also had a feminist show, *Grrrl Power Hour*, an indie hip-hop show, and a community news program that covered stories ignored by commercial media. For example, the station aired interviews of activists attending peace demonstrations when other media ignored these activists.

Because of the defeats it suffered in Judge Wilken's courtroom, the FCC was reluctant to take direct action against free radio broadcasters, despite complaints from commercial broadcasters and lobbying by the National Association of Broadcasters (NAB). Instead the commission merely issued statements reaffirming its opposition to unlicensed radio operations (FCC Audio Services Division, 1996).

As complaints from commercial broadcasters mounted, the FCC eventually targeted for closure a few unlicensed stations in the South and Midwest—far from Judge Wilken's court. In addition to their geographic locations, the targeted unlicensed stations had several things in common: they were operated by individuals without community participation, and their programs often differed from those of most micro-radio broadcasters, which usually spoke for disenfranchised communities.

The strategy that the FCC pursued in each case was the same. FCC agents accompanied by law enforcement officials seized the stations' transmitters, rather than seeking an injunction against them, as the commission had done with Free Radio Berkeley. By seizing the transmitters, the FCC immediately put the free radio broadcasters off the air and on the defensive, requiring them to go to court to get their transmitters back, where they would be required to show that they had a legal right to operate the transmitters. Proving this in court would be impossible.

The first station the FCC targeted was Lutz Community Radio near Tampa, Florida, operated by Lonnie Kobres, a member of the "constitutional movement," which was incorrectly identified with the far-right militia

movement. The FCC was aware for many months that Kobres's station was on the air, having first monitored its broadcasts on October 31, 1995. After the monitoring, the FCC sent Kobres letters informing him that the broadcasts were illegal.

On March 8, 1996, less than a year after the bombing of the Alfred P. Murrah federal building in Oklahoma City, which spawned a frenzy of media reports that equated "constitutionalists" such as Kobres with the Oklahoma City bombers, federal agents with search warrants raided the Lutz radio station and seized its transmitter. The widespread public antipathy to the far-right movement that resulted from the Oklahoma City bombing and the media's coverage of it made Kobres an easy target, although the FCC denied that Kobres was targeted because of his political views (Sommer, 1996).

In June 1996, the FCC raided Black Liberation 2 in Richmond, Virginia, which had been on the air for less than six months. The station was operated by Jahi Kubweza and his family, rather than a community group, and patterned after the Illinois-based free station of the same name. As with Lutz Community Radio, FCC agents visited Kubweza's home, demanded to see the transmitter, and then seized it (Kubweza, 1996).

The FCC used a similar approach to silence *The Beat*, a station operated by Alan Freed in Minneapolis that carried dance music. The 20-watt station, based in Freed's apartment, signed on July 21, 1996, and soon attracted an audience in Minneapolis's hip Uptown neighborhood. The station also attracted the enmity of commercial broadcasting corporations and the Minnesota Broadcasters Association, which almost immediately filed complaints with the FCC (Groebner, 1996).

In August, the FCC responded to the complaints, sending Freed a letter warning him that he could be fined and imprisoned for operating a radio station without a license. Freed responded with a letter challenging the constitutionality of the FCC's rules banning low-power radio stations. He continued broadcasting, despite the warning letter (Lambert, 1996). In October, the FCC went before a federal magistrate and asked for an arrest warrant directing the U.S. marshal to seize Freed's transmitter. The court issued the warrant and in November, the transmitter was seized.

A month later, on December 11, 1996, FCC agents from Tampa traveled to Orlando to investigate a complaint filed by local broadcasters against an unlicensed station broadcasting on 106.5 FM. Like *The Beat*, the Orlando station broadcast music rather than community affairs programs. As they did in Lutz, Richmond, and Minneapolis, the agents confiscated this station's transmitting equipment, thereby silencing the station (FCC Compliance and Information Bureau, 1996).

Kobres and Freed responded to the seizures by filing claims in federal court, requesting the FCC to return their equipment because the seizures

were unlawful. Both challenged the constitutionality of FCC rules governing low-power broadcasting in their filings. Kobres also acquired another transmitter and put Lutz Community Radio back on the air, something neither Kubweza nor Freed attempted.

It took the U.S. District Courts in Florida and Minnesota about a year to rule on Kobres's and Freed's claims. On August 24, 1997, the court in Florida upheld the government's seizure of Kobres's transmitter. On September 5, 1997, the court in Minnesota also decided in the FCC's favor. The Minnesota court also ruled that the U.S. Court of Appeals, not District Courts, have jurisdiction over the constitutionality of FCC rules, as the FCC had argued. The Minnesota decision handed the FCC a decision that it had failed to get in Judge Wilken's court and a green light to move against free radio broadcasters in districts outside of the San Francisco Bay area.

The FCC's Offensive

It did not take long after the Florida and Minnesota decisions for the FCC to start an offensive against unlicensed broadcasters. Within weeks, the FCC was notifying unlicensed stations to close down and dispatching agents to seize the "stuff." On September 4, 1997, FCC agents and U.S. marshals raided a pirate station in Howell, New Jersey, that called itself Oldies 104.7 FM. This station differed from most micro-power stations in that it carried commercials, promoted itself on billboards, and was a member of the local chamber of commerce. The station's operator, Salvatore DeRogatis, was apparently stunned by the raid. "I thought they would never shut me down because of what had happened in California," said DeRogatis, alluding to Judge Wilken's decision, but apparently unaware that the decision applied only to that court district (*Broadcasting*, 1997; Ryan, 1997).

Two weeks later, FCC agents, backed by 12 federal marshals and 6 sheriff's deputies, seized the equipment of Community Power Radio, an unlicensed station that broadcast to African Americans in the Oak Park neighborhood of Sacramento, California (Larson, 1997).

In October 1997, the FCC also shut down several stations, including 105.5 FM in Miami, 106.5 FM in West Palm Beach, KCMG-FM in Kansas City, and Radio Free Allston, a high-profile community station in Boston (*Florida Times-Union*, 1997; Perrin, 1997). The high profile of Radio Free Alston was the result of its being operated openly with widespread public participation.

In November 1997, the FCC continued its attempts to silence unlicensed stations. FCC agents in Tampa, Florida, simultaneously raided Temple Terrace Community Radio (a.k.a. Tampa's Party Pirate), Radio Free Tampa Bay (a.k.a. 87X), and Lutz Community Radio on November 19. The

raids, although consistent with what the FCC was doing in other parts of the United States, were due in part to Temple Terrace Community Radio founder Doug Brewer's increasingly brazen attitude toward the FCC. Brewer had increased the station's power to 125 watts, making it audible throughout much of Tampa, and it started carrying commercials for small businesses, including used record stores and strip joints. Brewer printed up bumper stickers promoting the station as "Tampa's Party Pirate—102.1 FM" and T-shirts reading, "License? We don't need no stinking license."

Brewer's activities were such that they were covered in a front-page story in the *Wall Street Journal*, in which Brewer challenged the FCC to take action. "It's going, it's visible, and it just plain rocks," said Brewer about the Party Pirate. Ralph Barlow, the district director of the FCC's Tampa field office, responded that Brewer's taunts were "not good" for FCC employee morale. "This guy is going off the deep end," Barlow said. "Sooner or later I'll nail him" (Orwall, 1997).

Barlow acted sooner rather than later, ostensibly on a complaint filed by commercial station WHPT-FM. At 6:30 a.m. on November 19, 1997, gun-toting police, FCC agents, and federal marshals pounded on the door of Brewer's home. Brewer awakened, thinking he had heard thunder. When he finally opened the door, Brewer was handcuffed. During the next 12 hours, FCC agents disassembled the studio of the unlicensed station, which was located in Brewer's garage, and seized everything that resembled broadcasting equipment (Cockburn, 1997; Danielson, 1997a,b).

A few miles away, FCC agents and U.S. marshals simultaneously raided the homes of Kelly Kombat and Lonnie Kobres, seizing the transmitters of 87X and Lutz Community Radio. Of the three unlicensed broadcasters arrested in Tampa that morning, only Kobres was charged with felonies for broadcasting without a license. He was charged because he continued to broadcast after the previous raid, not because of his political viewpoints, federal officials contended (Solov, 1997a). "Ninety illegal broadcasters have been shut down in the past year with no more action than sending letters or visiting them and delivering warnings," an FCC official explained about the felony charges. "Still, we do want to get across to the public that this is a serious matter, and what the consequences there are to public safety and to the broadcasters themselves" (Curtius, 1998).

The Micro-power Response

News of the FCC raids in Tampa were distributed nationwide almost immediately over the Internet to other micro-radio broadcasters, who encouraged Brewer, Kombat, and Kobres to organize a local movement protesting the FCC's actions. A national committee was established to raise money for Kobres's defense, which used the Internet to solicit funds.

In Tampa, supporters of the unlicensed stations swamped the FCC and WHPT-FM with protest calls. The calls were so frequent that the FCC and WHPT stopped answering their phones, and WHPT general manager Drew Rashbaum refused to comment about his station's complaint because of the harassment it had received from "obnoxious listeners" of the unlicensed station, as Rashbaum referred to them.

Protest demonstrations against the FCC raids were organized in Tampa. On Tuesday, November 25, more than 100 supporters of the unlicensed stations gathered in front of the FCC's Tampa office. "They're not going to get rid of us," declared Party Pirate deejay Matthew Adelman, one of the many dozens of protesters who assembled at the federal office with placards reading, "Federal Censorship Commission" and "What Good is Free Speech if You Can't Hear Us?" (Solov, 1997b).

Despite these actions, the FCC continued its assault on micro-power radio. On December 9, 1997, FCC agents visited the Old Firehouse Cafe in Anchorage, Alaska, from where Free Radio Spenard broadcast. The agents said they would return and confiscate the equipment, if the station were not silenced. "We turned it off Tuesday night after having a meeting," said a Free Radio Spenard volunteer (Dunham, 1997).

Over the Internet, the micro-power movement organized a letter writing and e-mail campaign directed at FCC Chairman William Kennard, pressuring him to change FCC policies. In addition, newspaper reports about the FCC's campaign against unlicensed broadcasters continued to be published, often carrying quotes from unlicensed broadcasters that were embarrassing to the FCC. For example, the *Florida Times-Union* of Jacksonville published a story about the FCC's crackdown on unlicensed stations that quoted Doug Brewer, who described his arrest. "It was a surprise attack. They came in with a real vengeance," he reported. "If I were a drug dealer or a murderer, that would be different story. All I had was a radio transmitter. I wasn't hurting anybody" (*Florida Times-Union*, 1997).

The pressure and continuing publicity caused the FCC in February 1998 to dust off a petition to establish a micro-radio broadcasting system that had been sitting in its files for six months. The petition that the FCC initially put on the table was as conservative as possible: It proposed that micro-broadcasters be assigned just one frequency in each broadcasting band and that, high schools and universities, not community groups, be given priority in the licensing process. The proposal also limited low-power stations to one watt. Moreover, the proposal suggested that micro-stations might also be commercial, providing access for "entrepreneurs" who are "motivated by the prospect of genuine wealth." Thus, the petition never addressed any of the inequities against which the micro-radio movement was rebelling.

Despite the conservatism of this micro-radio station proposal, the NAB, the trade, and lobby organization for commercial broadcasting industry,

quickly announced its opposition to all low-power radio broadcasting. NAB President Edward Fritts said, "At a time when spectrum used for radio stations is overly congested, it would be folly to authorize hundreds of additional low-power stations that would surely cause additional interference" (McConnell, 1998). Other representatives of commercial broadcasting also spoke out against micro-radio broadcasting, confirming what had been believed by most micro-radio broadcasters all along—that commercial broadcasters were opposed to micro-radio stations not because they operated without licenses but because the stations represented competition. These stations had attracted listeners who were disenchanted with commercial radio programming. Thus, micro-radio stations, regardless of whether they were legal or illegal, threatened the very *raison d'être* of the U.S. system of corporate broadcasting.

Although commercial broadcasters opposed the licensing of low-power stations, most responses to the FCC's initial proposal favored low-power radio, and asked the FCC to expand rather than limit the service. About one year later, on January 28, 1999, the FCC issued a Notice of Proposed Rulemaking seeking comments on the creation of a low-power service for stations broadcasting with substantially greater power than it first proposed—between 10 and 1,000 watts, instead of just 1 watt. The FCC announced that it would accept comments on the rulemaking notice until August 2, and would accept reply comments until September 1 (FCC, 1999).

During the seven-month comment period, the FCC received more than 3,000 comments, far more than it received on other proposed rulemakings. The vast majority supported a low-power radio service; opposition was primarily from already-licensed broadcasters, including National Public Radio and its affiliates, and broadcast trade associations, such as the NAB. The FCC was apparently surprised by the number and diversity of comments it received, observing that comments came "from churches or other religious organizations, students, labor unions, community organizations and activists, musicians and other citizens [that] reflect a broad interest in service from highly local radio stations grounded in their communities" (FCC, 2000, 3).

Because of the widespread support for low-power radio—and the criticism that the FCC suffered in the courts and through the press—the agency announced in January 2000 that it was establishing a low-power radio service and a process to apply for low-power FM licenses. In its Report and Order, the FCC addressed technical, ownership, and operating issues (FCC, 2000). In terms of technical standards, the FCC determined that low-power stations could operate on third adjacent channels without creating "significant new interference to the service of existing FM stations," even though the NAB and other broadcasters asserted that interference would occur (FCC, 2000, 42). As for ownership, the FCC decided to grant low-power licenses to non-profit organizations, not individuals, and required the organizations to be

community based (i.e., to have a local chapter or branch within 10 miles of the station they operate). Each organization could operate no more than one station in each market, a policy that the NAB asserted violated the Telecommunication Act of 1996. Lastly, the FCC decided that two classes of low-power stations would be established—10 watt and 100 watt. This policy was supported in the comments of most citizens, activists, and community organizations, which opposed establishing a new 1000-watt service that, like existing commercial stations, would not serve local communities.

Almost immediately, the NAB and other broadcast lobbyists asked Congress to overturn the FCC's Report and Order. Three members of Congress who acted at the behest of the broadcasting industry were Sen. Rod Gramms (R-MN), Rep. Michael Oxley (R-OH), and Rep. Billy Tauzin (R-LA). Gramms and Oxley sponsored nearly identical bills, which in amended form became known as the Radio Broadcasting Preservation Act of 2000, which rolled back the FCC's Report and Order. Tauzin, as Commerce Committee chair, held hearings on low-power FM that rested on two assumptions: one, the FCC had exceeded its power by creating a low-power radio service, and, two, the service would interfere with existing stations. Rep. Heather Wilson (R-NM) summarized these sentiments in a statement about the amended Radio Broadcasting Preservation Act before the House, saying, "The FCC was moving too quickly and I believe compromising the quality of the radio reception that we get in our communities" (Wilson, 2000, H2305).

The Radio Broadcasting Preservation Act of 2000 was passed by the House, and Gramm's bill (S. 3020) was inserted as a rider into the District of Columbia Appropriations Act, which was passed, and signed into law by President Clinton. This effectively derailed the FCC's policy for creating a low-power service. The bill did not eliminate low-power FM; instead, it required the FCC to "prescribe minimum distance separations to third adjacent channels," thereby barring the stations from operating on third adjacent channels, as the FCC had approved. The law essentially eliminated 100-watt stations from operating in all but the smallest markets, and restricted licensing of 10-watt stations to medium-sized and small markets with less frequency congestion and wider channel separation. The largest cities, such as San Francisco, New York, Philadelphia, Milwaukee, and Tampa, where the free radio movement found its voice, were deprived of low-power stations by the legislation.

Low-power FM stations have taken to the air in small and medium-sized markets, but the majority do not sound like, or in any way resemble, the unlicensed stations that broadcast during the late 1990s. Most of the applicants for low-power stations have been religious congregations, rather than community groups. The stations of these congregations feature biblical readings and discussions, sermons, and religious music, which were already available on FM dial.

Notes

1. FCC agent Philip Kane told the *Express* newspaper (August 13, 1993, 14) that he received complaints about Free Radio Berkeley from "several" licensed stations, which caused him to monitor and track the station. After the National Lawyers Guild newspaper, *Conspiracy*, filed a Freedom of Information Act request for copies of the complaints, Kane and the agency claimed that the "complaints or inquiries were made in person or by telephone and that no documents or other records were compiled ... and that the individuals ... had expressly requested confidentiality." See "Memorandum and Order," 10 FCC Rcd 2155 (January 13, 1995). A separate examination of a complaint about Free Radio Berkeley that the FCC claims to have received from KFOG, a commercial station in San Francisco, "appears to have been prompted by FCC prodding." The FCC received the "complaint" from the station's corporate vice president in New York, who wrote the FCC after hearing about the station at a National Association of Broadcasters (NAB) convention in Las Vegas, in which FCC officials spoke. The NAB is the trade association and lobbying group for commercial broadcasters. See Walker (1995).

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