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Sailing the spectrum from pirates to micro broadcasters : a case study of micro broadcasting in the San Francisco Bay Area

Ted M. Coopman
San Jose State University

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**SAILING THE SPECTRUM FROM
PIRATES TO MICRO BROADCASTERS:
A CASE STUDY OF MICRO BROADCASTING IN THE
SAN FRANCISCO BAY AREA**

A Thesis

Presented to

**The Faculty of the School of Journalism and Mass Communications
San José State University**

**In Partial Fulfillment
of the Requirements for the Degree
Master of Science**

By

Ted M. Coopman

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APPROVED FOR THE SCHOOL OF
JOURNALISM AND MASS COMMUNICATIONS

Dr. David Grey

Professor Michael Adams (Theatre Arts)

Professor Robert Rucker

APPROVED FOR THE UNIVERSITY

ABSTRACT

SAILING THE SPECTRUM FROM PIRATES TO MICRO BROADCASTERS: A CASE STUDY OF MICRO BROADCASTING IN THE SAN FRANCISCO BAY AREA

by Ted M. Coopman

This thesis examined the San Francisco Bay Area micro broadcasting movement in general and the United States v. Dunifer case in particular and their interaction with the Federal Communications Commission (FCC). Employing qualitative methods, this study provided both a historical analysis of the movement and identified the FCC's regulatory and enforcement difficulties associated with micro radio activities. Results indicate the existence of a growing political and social movement using micro radio as a springboard to gain access to mass communication technologies. Further, results suggest that the FCC's efforts to restrict access to micro broadcasting technology have been stymied by the grassroots proliferation of micro radio stations. One implication of this study is that micro radio is an indicator technology both technologically and philosophically. In addition, the findings suggest the conflicts between micro broadcasters and FCC representatives are due to fundamental differences in defining the substantive issues associated with micro radio.

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CHAPTER 1

Introduction

After months of planning and testing, Free Radio Berkeley, an unlicensed 10-watt radio station, began broadcasting in 1993 at 104.1 FM. Operating below the minimum power required by the Federal Communications Commission (FCC), Free Radio Berkeley was not the first “micro broadcasting” station to go on the air. Unlicensed broadcasters, or “pirates” as they are often known, have existed since the advent of intensive radio regulation in the 1920s. What made Free Radio Berkeley different from previous unlicensed broadcasters was the organization’s direct challenge to governmental regulations that made such stations illegal.

Stephen Dunifer, the founder of Free Radio Berkeley, set out to challenge the FCC’s rules through what he termed “electronic civil disobedience.” Dunifer was not alone in his defiance of FCC regulations. By 1995, at least eight unlicensed FM stations were in operation in the Greater San Francisco Bay Area. Moreover, the transmitter kits produced by Dunifer were shipped both domestically and abroad. This suggested that the micro broadcasting movement was not restricted to California or the United States (Fine, 1994).

The purpose of this study was to examine the development of the micro radio movement in the San Francisco Bay Area. Accomplishing this goal involved pursuing three interrelated avenues of research: (1) The history of Free Radio Berkeley and its founder Stephen Dunifer; (2) Dunifer’s legal interaction with the Federal Communications Commission; and (3) an examination of other micro radio operations in the Greater Bay Area with a focus on Free Radio Santa Cruz.

Unlicensed radio broadcasting in general has received little scholarly attention (Phipps, 1990). This is also true of the micro radio movement, a modern incarnation of

unlicensed broadcasting. One reason for the lack of research in this area of mass communication is micro radio's relatively recent appearance on the broadcasting scene. Another reason is grounded in the complex nature of unlicensed broadcasting and micro radio. Any investigation into micro broadcasting must address federal regulation, legal analysis, Constitutional issues of free speech, the technical requirements of broadcasting, and social issues of access to media.

Unlicensed broadcasting is defined as broadcasting without the benefit of a license issued by the Federal Communications Commission (Communications Act, 1934). The vast majority of these broadcasters intentionally operate their stations without a license (Jones, 1988). Those who broadcast in this manner historically have been termed "pirates" (Yoder, 1990). Micro radio refers to a specific class of unlicensed broadcaster that appeared in the late 1980s. Such radio stations broadcast under the minimum 100 watts of power mandated for a licensed radio station (69 FCC 2d 240, 1978). Further, these stations are typically non-commercial, broadcast on the FM band, and of a politically-activist nature (Fine, 1994; Milner, 1993; Shields & Ogles, 1992).

The next section of this thesis, Chapter 2, is a review of the literature relevant to micro broadcasting. To gain a better understanding of micro radio's development in the San Francisco Bay Area, the forces and history behind the larger phenomenon of unlicensed broadcasting are examined in this chapter. Reviewing this literature provides the historical context from which the current micro radio movement emerged and illustrates the important differences between past pirate activity and modern micro radio. Chapter 2 also examines unlicensed broadcasters' motivations, short-wave pirates, off-shore radio piracy, clandestine radio, the legal and Constitutional considerations of unlicensed broadcasting, FCC regulation and enforcement, and the current status of micro broadcasting. The chapter ends with a list of the research questions which structured the development of this thesis.

Chapter 3 provides a detailed account of the methods used to explore the research questions posed in Chapter 2. Interview schedule design, observation procedures, document analysis, and data gathering strategies are discussed in the third chapter of the thesis.

Chapter 4 presents the results of the study, a discussion of those findings, and the researcher's interpretations of the data gathered. This chapter traces the San Francisco Bay Area micro broadcasting movement from its origins to current status. In addition, the perspectives of major "players" in the micro broadcasting movement are described, with a specific focus on those involved with Stephen Dunifer's legal entanglements with the FCC. As of this writing, Dunifer's case, United States of America v. Dunifer, (referred to after this as United States v. Dunifer, or U.S. v. Dunifer) is in its early stages. Therefore, the final outcome is uncertain. Analysis is based on preliminary arguments and data that are available at this time. The FCC's enforcement difficulties associated with micro broadcasting are also discussed.

Finally, Chapter 5 provides a summary of the study and presents conclusions and implications of the project as well as suggestions for future research. Radio is discussed as an indicator technology with parallels drawn to other mass communication technologies. Further, it is posited that the micro radio movement is one part of a larger effort to bring democratic principles to electronic media.

CHAPTER 2

Literature Review

The purpose of this study was to examine the micro radio movement in the San Francisco Bay Area. Clearly, this movement did not develop in a vacuum. In fact, unlicensed radio activity is linked to broader historical forces and the application of technology as it has become available. The issues, regulations, and conflicts associated with micro radio are also related to other forms of unlicensed broadcasting, such as short-wave pirates, off-shore broadcasting, and clandestine radio. Thus, this literature review describes the historical context in which the micro radio movement is embedded.

First this chapter describes the general historical background of the development of unlicensed broadcasting. Starting with the Radio Act of 1927 and moving forward to the advent of modern unlicensed broadcasting in the 1980s, these developments are examined through a legal and regulatory lens. Second, the motivations of past unlicensed broadcasters are discussed to provide a comparison to current micro broadcasters' motivations. Third, literature concerned with short-wave pirates, off-shore broadcasters, and clandestines is reviewed. Examining these other forms of unlicensed broadcasting and the FCC's response to them demonstrates the rationale underlying the FCC's present posture towards micro radio. Fourth, the specific legal and Constitutional issues concerning the federal government's right to regulate the airwaves are presented as these issues form the basis for the FCC's current regulatory stance toward micro broadcasters. Fifth, specific examples of FCC enforcement policies and regulations and how they are applied to different types of unlicensed broadcasting are described. This literature review concludes with an overview of the current status of micro broadcasting in the United States. Finally, research questions are posed based on the review of the literature.

History

The primary document regulating the airwaves is the Communications Act of 1934. A review of the literature revealed that the most common citation given for any action against an illegal broadcast was Section 301 of the Communications Act which detailed the ultimate right of the federal government “to maintain the control of the U.S. over all channels of interstate and foreign radio transmission” (p. 1,081). As McChesney (1993) explained, the Communications Act of 1934 flowed from the Radio Act of 1927. The Communications Act of 1934 is constantly under revision as Congress passes new laws and new communications technologies are developed. Congress also granted the Federal Communications Commission power to alter the Act’s regulatory structure (Franklin & Anderson, 1990). Thus, references in this thesis to the Communications Act of 1934 refer to that version of the Act applicable during the particular time-frame under discussion.

It was just before the Radio Act of 1927 that pirate radio was first discussed by broadcasting historians. All earlier legislation was unable to deal with the incredible proliferation of broadcasters and receivers flooding the United States in the middle to late 1920s. After the courts determined that regulations established in the early 1920s were unenforceable, broadcasting entered what was called the “break down of the law” period (Barnouw, 1966). In the first six months of 1927, the number of stations in the United States increased by 200, and the total wattage almost doubled. During this chaotic period, the first instances of “wave piracy” occurred. Because of the technology in use at the time, certain frequencies were superior to others. During this time, stations would invade a frequency that they considered superior without regard as to who happened to be using it at that moment. This led to electromagnetic mayhem and made much of the spectrum static and gibberish (Barnouw, 1966).

The Federal Radio Commission (FRC), which was established as part of the Radio Act of 1927, immediately set about clearing up the airwaves. A technical-solution model was used: Those stations with superior equipment and power were given the best frequencies. This meant that commercial stations, especially chain or network broadcasting stations, came to dominate radio. At that time, a station's possession of a frequency could be challenged at a license renewal hearing every three months. This led to a variation of piracy, with the powerful stations preying on the weaker stations by constantly challenging them for their licenses (McChesney, 1993). These constant challenges depleted the weaker stations' resources and left many of them unable to adequately defend themselves. Most often these were the vulnerable educational broadcasters, who could not afford the legal assistance or the technology to upgrade their systems to compete for their channels (McChesney, 1993).

The right of the FRC to regulate and grant licenses was confirmed by the courts in 1929 in the case of United States v. American Bond and Mortgage (31 F2d 448), in which A B & M threatened to broadcast after losing its license at a renewal hearing. The first real challenge of the right of the FRC to regulate the airwaves was tried in 1930 as United States v. Fellows. Phipps (1991) explained that George W. Fellows was a British national living in the St. Louis area and operating an unlicensed transmitter. Fellows was charged and found guilty of this as well as interfering with other stations and illegally re-broadcasting programming from other stations without permission. All of this was in violation of the Radio Act of 1927. Fellows contended that the government could not own the airwaves and therefore had no right to regulate them. His court-appointed attorney attempted to use technical information to prove that the airwaves could not be regulated or controlled, but the court refused to let this information be admitted.

Because this was the FRC's first challenge, the government apparently decided to make an example of Fellows. He was convicted and sentenced to a year in a federal

penitentiary (Phipps, 1991). He vowed to appeal. However, Fellows had an outstanding judgment against him from the Department of Immigration. It was decided that if Fellows submitted to deportation, his sentence would be commuted. He agreed and eventually left the United States for England. Fellows was the only radio pirate who has ever been sentenced to jail for violation of federal communications law. According to Phipps (1991), although this case was tried in the U.S. District Court for the Eastern District of Missouri at St. Louis, no official record of it remains. A search by this researcher confirmed the lack of court documentation related to this case. Phipps (1991) discovered the Fellows case through a review of newspaper articles. After Fellows, only fines have been used to punish and dissuade unlicensed broadcasters.

McChesney (1993) noted that the Radio Act of 1927 was strengthened and confirmed by the Communications Act of 1934. At that time the FRC was replaced by the Federal Communications Commission (FCC). From 1934 to the onset of World War II, the only recorded instances of radio piracy consisted of stations that either had not bothered to apply for a license, or those that considered themselves too small or too part-time to need a license (Jones, 1988). Often there was the belief that if a station's signal did not cross state lines it was not subject to federal regulation. Stations in violation of the law were easy for the FCC to locate because most of them operated in the open and freely announced their locations over the air. By 1937, unlicensed broadcasting had virtually disappeared from the spectrum. With the coming of the war, the subsequent loss of individuals to the war effort, equipment scarcity, and war-time restrictions, unlicensed broadcasting activities in the United States for the most part ceased to exist (Yoder, 1990).

After the Second World War, the nature of unlicensed broadcasting appeared to change. With the occasional exception of someone broadcasting in ignorance of the law (as illustrated by Steve Jones [1988]), most of the activity switched to short-wave

frequencies. Much of the information on pirate radio, especially short-wave pirates, comes from the research done by radio enthusiast Andrew Yoder. His book, Pirate Radio Stations (1990), is considered definitive and cited in most research on the subject. The research done by Yoder for this book was completed prior to his being issued a Notice of Apparent Liability (NAL) for unlicensed short-wave operations in June of 1992. The FCC had suspected him of unlicensed broadcasting starting in 1991 (FCC, 1992d). Data taken from the Yoder (1990) text primarily deals with historical information concerning unlicensed radio. Generally, radio hobbyists are the sole audience for these pirates. Many short-wave pirates went on to broadcast on the normal band.

The FCC does not take into consideration mode or potential audience when enforcing communications law. As indicated by FCC news releases (1990a-e), these pirates were considered more dangerous because the short-wave part of the spectrum was used for international communications, navigation systems, military traffic, and a host of other operations. Short-wave pirates dominated unlicensed broadcasting up until the 1980s. The presence of normal band pirate broadcasters began to be felt in the late 1960s and early 1970s as a result of the political turmoil of the times (Yoder, 1990).

An example of normal band piracy in the late 1960s and early 1970s was the Falling Star Network (Yoder, 1990). Based in Yonkers, NY, it consisted of two AM and two FM stations. Started as a response to the lack of representation of youth culture on commercial radio, the Falling Star Network commenced operating in 1970. The operators felt that Yonkers needed its own community radio station, so they built one. The network operated for more than a year before repeated FCC warnings forced the station to shut down. At its height, this network had 50 volunteers and operated 24 hours a day, 7 days a week (Yoder, 1990). The "owners," J. P. Ferraro and Alan Weiner, 22 and 16 years old, respectively, would later go on to participate in one of the most notable

off-shore pirate operations in United States' history, that of "Radio Sarah" (Bender, 1988). (Radio Sarah is discussed in detail on pp. 13-14 of this thesis.)

It was in the early 1980s that broadcast piracy entered its current phase. This phenomenon will be examined in several specific areas of this chapter: short-wave, off-shore broadcasting, and clandestine radio; legal, regulatory, and Constitutional considerations; and the current status of the micro broadcasting movement. However, before describing the current phase of broadcast piracy, the apparent motivations of these unlicensed broadcasters are discussed.

Motivations

Different unlicensed broadcasters have different reasons for violating the law. Jones (1988) content analyzed short-wave pirate radio stations' graphic postcards (QSLs) which contain station information and signal reception confirmation. He found most pirates' broadcast fare similar to commercial rock stations. "So why risk the fine? 'We believe that the airwaves belong to the people and we should have the right to transmit our own shows,'" stated Jack Beane, owner and main operator of WENJ, a well known unlicensed broadcaster (Yoder, 1990, p. 64). The pirates wanted to be creative and not at the mercy of some corporate program director. The perception of the FCC was that the pirates were simply frustrated disc jockeys who were too lazy or unreliable to work in professional radio (Yoder, 1990). Mbanna Kantako, founder of Black Liberation Radio in Springfield, IL and the micro radio movement, described his mission as a political one, fighting the lack of representation of the poor and minorities: "Pirates come on the air and won't tell you where they are. They have no purpose. They are people who just want to hear themselves talk or hear some particular type of music . . . We're [Black Liberation Radio] in it for psychological survival and ultimate liberation" (LeBlanc, cited in Shields & Ogles, 1992, p. 14). Whatever the specific reasons, many unlicensed

broadcasters feel that the air cannot be owned and that some access should be available to everyone.

Other Related Forms of Unlicensed Broadcasting

Short-wave Pirates

The short-wave portion of the electromagnetic spectrum is located above the AM portion of the normal broadcast band. As noted briefly in the history section of this chapter (pp. 7-9), short-wave pirates constituted a majority of unlicensed broadcast activity (Yoder, 1990). Considering the role that short-wave pirates have played in the evolution of unlicensed radio stations, their impact cannot be ignored in any treatment of the unlicensed radio phenomenon. However, despite their generally superior range in reception and transmission, a majority of short-wave devices in the United States are owned by radio hobbyists. These hobbyists constitute a very small percentage of the overall population in the U.S. Despite their numerical domination in terms of documented unlicensed broadcasting, short-wave pirates were not considered to be socially significant in the context of this study. Further, short-wave piracy has already been discussed in detail in the previously mentioned book by Yoder (1990).

Off-shore Broadcasting

Off-shore broadcasting has had a significant impact on the evolution of unlicensed broadcasting because of its high profile. Such broadcasting is usually associated with the exploits of European pirates such as Radio Caroline (Jones, 1988; Phipps, 1990). The use of sea vessels as platforms for unlicensed radio magnifies the pirate mystique and captures the imagination of both the press and the FCC. As noted in this section, the reaction of the courts to such cases has solidified the position of the FCC regarding airwave regulation and control.

There have been three cases of unlicensed off-shore broadcasting in the United States. The earliest, most successful, and by far most obscure pirate station, plied the

coast of Southern California in 1933. This pirate station was known as RKXR and was described by both Kneitel (1983) and Yoder (1990). RKXR operated from the *S.S. City of Panama*, a Panamanian registered ship that was supposed to be a floating advertisement for that nation's tourism and industry. The station itself was licensed as an experimental, non-commercial broadcaster of 500 to 1000 watts by the Panamanian government. However, in practice the *City of Panama* was a floating speak-easy and casino. The station actually produced 5,000 watts of commercials and popular music (Kneitel, 1983). Many Southern California businesses flocked to the station because of the lack of West Coast stations and its high wattage. Despite government protests lodged even before the station went on the air, RKXR began broadcasting in May 1933. The Panamanian government saw the United States' request to revoke the station's license as an insult and refused to act. RKXR was so powerful that its signal forced many other legal stations off the air. When the FRC was slow to act, those stations asked RKXR directly to change frequencies. Those requests were met by demands for money — literally thousands of dollars (Kneitel, 1983). Actions like these led the U.S. State Department to finally convince Panama of the station's true identity. Panama formally canceled the station's license and registration of the vessel in June 1933. However, due to red tape the station remained on the air until August 1933 when the ship was finally towed into Los Angeles harbor by the Coast Guard. This incident set a precedent concerning off-shore pirate radio that would eventually lead to international laws concerning its prohibition (Kneitel, 1983).

Up until the early 1970s there was no record of any attempt to broadcast illegally off the coast of the United States. The reason for this is noted by Boyd (1983) as well as Jones (1988): Off-shore broadcasting is technically difficult and very expensive. The European off-shore pirates sold advertising and were commercial alternatives to state-run

broadcasting, whereas in the United States a person with enough money to go off-shore could easily afford a land-based operation.

Jones (1988), Boyd (1983), and Phipps (1990) discussed how, in 1973, America had its first modern pirate. The Reverend Carl McIntire was a fundamentalist preacher who was particularly vocal in his attacks on Communism and the United States' "no-win" policy in Vietnam. Soon after McIntire legally acquired a pair of radio stations in 1965 (WXUR AM/FM), the FCC moved to reject his license renewal (Boyd, 1983). The FCC cited misrepresentation by McIntire in the renewal process and Fairness Doctrine violations for its action. It took until 1973 for McIntire's appeals to run out and his stations to go off the air. McIntire then openly defied the right of the government to take him off the air. He leased an old minesweeper called the *Columbus*, renamed it the *Oceanic*, and installed a 10-kilowatt RCA transmitter (Boyd, 1983).

One of McIntire's goals was to attract the attention of the government, press, and public, so he made no secret of his intentions. The *Oceanic* was towed to a location off New Jersey, and began transmitting on September 19, 1973 (Boyd, 1983). The vessel was positioned just outside the three-mile limit. The area inside this zone is under U.S. jurisdiction; outside the zone is considered international waters (Bender, 1988). McIntire had made his point. Because of interference with licensed stations he broadcast only that one day. A restraining order was issued by the courts to enjoin further broadcasts. McIntire argued that the government had no jurisdiction over him because he was in international waters (Boyd, 1983). However, Section 301e of the Communications Act (1934) indicated that a United States' registered vessel, such as the *Oceanic*, came under FCC jurisdiction. Moreover, his broadcasts violated the 1959 Geneva Telecommunications Convention, which outlawed pirate broadcasting from international waters (Boyd, 1983). Further appeals were filed under the doctrine of "un-clean hands."¹ The defense lawyers implied that the United States government had itself violated the

treaty by its “Radio Free Europe” broadcasts that violated the airspace of nations, over those nations’ objections. The judge rejected this argument and, with McIntire’s appeals and money exhausted, his case passed into history (Phipps, 1990).

The most recent and widely know case of off-shore broadcasting was that of Radio New York International (RNI), also known as “Radio Sarah.” This case was covered by Jones (1988) and Phipps (1990) from a mass communication perspective, Bender (1988) from a regulatory legal angle, and in numerous newspaper articles and magazine features, the most detailed by Kuipers (1989).

With the understanding that the FCC did not have jurisdiction over a foreign registered ship operating a broadcasting station in international waters, and an investment of several months and \$200,000, RNI went on the air on July 23, 1987. Organized by former pirate Alan Weiner (see p. 8 of this thesis), RNI was billed as an alternative to commercial rock stations (Kuipers, 1989). Although it played many of the same artists as commercial stations, its selections, in terms of songs and albums, differed from commercial stations’ selections. After two days of broadcasting outside the territorial limit near Long Beach, NY, the *Sarah*, a Honduran-registered ship that carried the transmitter, was approached by the FCC and the Coast Guard. The *Sarah’s* crew members were informed that they were in apparent violation of national and international law and were ordered to cease broadcasting; they refused. After five days, and with permission from the Honduran government, the FCC and the Coast Guard boarded the *Sarah* with guns drawn. They arrested the staff and dismantled the studio equipment (Kuipers, 1989). Not only were Weiner and disc jockey Ivan Rothstein charged with operating an off-shore pirate station, they also were charged with impeding an FCC investigation. In addition, the FCC charged that they were in violation of Article 30, section 1(1) of the International Telecommunications Convention of 1982 (ITC). This section prohibits the operation of a radio broadcast transmitter in international waters.

Because this had been entered into United States law, it was considered a civil violation and a criminal act, and therefore justified the arrest of Weiner and Rothstein. As in most FCC actions, all criminal charges were dropped after the defendants promised to desist from future broadcasts. In this instance, the monetary forfeiture was waived as well. The FCC had made its point and the prosecuting attorney felt that it was doubtful the defendants knew they were breaking the law (Bender, 1988; Yoder, 1990).

However, the case did not end there. After re-registering the *Sarah* to a tiny self-proclaimed principality called Sealand, located off the coast of Great Britain, and selling the station to a British company, RNI went back on the air on the short-wave band on September 10, 1988 (Kuipers, 1989). However, the international community did not recognize the sovereignty of Sealand and the vessel was seized again. This time the court made a far-reaching decision: The United States had jurisdiction over any signal that could be received in the United States, despite its origin (Bender, 1988). Although this would seem to indicate that the United States had the right to enter another country to shut down an international signal, the court qualified its ruling to “what is reasonable.” After this decision, the FCC again dropped all charges, even though it could have fined the defendants up to \$250,000 and imposed up to a five-year prison term. Because the charges were dropped, many important questions were left unanswered. These include the application of Constitutional free speech and access issues, the fact that Article 30 of the ITC had never been enforced by any nation in such a manner, and the question of how the United States would impose its new “jurisdiction” over international broadcasts (Bender, 1988).

These off-shore pirates, RKXR, Radio Free America, and RNI, were in search of ways to circumvent the FCC’s authority by finding loopholes in the regulatory structure. RKXR and RNI were commercial ventures with, in RNI’s case, a veneer of the concept of open and free airwaves. Overtly a political protest, Radio Free America was more

McIntire's retribution for the FCC canceling his station licenses. While these stations were high profile, their significance in terms of airwave access and free speech remained minimal. Yet, the impact of these stations was important in defining the scope of spectrum regulation.

Clandestines

Clandestine radio is a title sometimes used by unlicensed broadcasters, especially short-wave pirates (Trummel, 1994a). However, Nichols and Soley (1987) define "clandestines" as politically-motivated radical stations, often fomenting revolution and advocating violence or the overthrow of a government. Few short-wave pirates fit this description. Yoder (1990) and Trummel (1994b) also adhered to the Nichols and Soley (1987) definition. In fact, Trummel's column in The Association of Clandestine Enthusiasts magazine (ACE), discussed these political stations separately from other pirate radio stations (e.g., Trummel, 1994a, 1994b). As discussed later in this chapter, many of the micro radio stations examined in this study are politically motivated. However, there was no evidence that they enter into the extreme area occupied by clandestine broadcasters.

Clandestine broadcasting was almost exclusively a foreign phenomenon. In an exhaustive study by Nichols and Soley (1987), no mention was made of clandestine radio in the United States. However, they did confirm that the United States government, under the auspices of the CIA, transmitted signals to Cuba and other nations to the south in violation of their airspace. These messages could be classified as coming under the clandestine definition. Nichols and Soley also document the CIA's involvement in similar operations around the globe. The only mention of a true clandestine broadcaster was found in Yoder (1990). This was the Voice of Tomorrow, which broadcast on the short-wave band and the high end of the AM band. According to Yoder (1990), its format was described as highly professional by ACE magazine. The Voice of Tomorrow

has broadcast consistently since 1980. Its format had a Ku Klux Klan/Neo-Nazi slant, with shows on white supremacy and the inflammatory rhetoric identified with these groups. It had a possible location in Virginia, although the FCC could not track the station down because its location kept changing (Yoder, 1990).

Legal and Constitutional Considerations

The legal and Constitutional issues that have developed over the years concerning the manner and legality of federal communications regulation have created the climate under which micro radio must operate. Therefore, an examination of these aspects was essential to understanding the micro radio movement.

The basis for the control and regulation of the broadcast spectrum is the Communications Act of 1934; specifically Section 301(a-f). This act encompasses broadcasting under language from the Radio Act of 1927, which in turn, is taken from public utility regulation (Franklin & Anderson, 1990). Thus, broadcasters are to operate “in the public interest, convenience and necessity” (Communications Act of 1934, 47 U.S.C.A. 303). The need for the Communications Act stemmed from the technical limitations of the medium. Spitzer (1989) discussed what he considered to be the primary points for the regulatory rationale of the Communications Act of 1934. Spitzer’s article focused on treating broadcasting differently from other Constitutionally-protected media such as print. Essentially, government justifications for broadcast licensing focused on economic and psychological differences between print and broadcast media. Specifically, these differences were limited spectrum space, industry structure, accessibility, and the perceived superiority of print over electronic communication. An additional justification was the “government property” rationale (Spitzer, 1989, p. 991), the claim that the government (which keeps the spectrum in “trust” for the public) has the jurisdiction to regulate the spectrum as it sees fit.

Especially important to the issue of government control was the notion of the spectrum scarcity rationale. As noted previously, a lack of space on the broadcast band was a major factor in the content of both the Radio Act of 1927 and the Communications Act of 1934. “Scarcity rationales have provided the basis for much of the Supreme Court’s jurisprudence in the area of broadcast regulation” (Spitzer, 1989, p. 1,007). In National Broadcasting Company v. U.S. (319 US 190, 227, 1943), it was noted that “owning to its physical characteristics, radio, unlike other methods of conveying information, must be regulated and rationed by the government” (Spitzer, 1989, pp. 1,007–1,008). In Red Lion Broadcasting v. FCC (395 US 367, 388, 1969), 26 years later, the court unanimously defended the scarcity rationale despite arguments that new technology allowed for more efficient use of the spectrum. The court reasoned that demand had increased as well, still allowing for the scarcity rationale. However, in Metro Broadcasting Inc. v. FCC (497 U.S. 547, 1990) and the following Syracuse Peace Council v. FCC (110 ScT 717, 1990; a.k.a. Merideth Corporation v. FCC, 809 F. 2d 863 and 867 F. 2d 654, 1989) certiorari denied, the FCC downplayed the scarcity rationale, seeming to question the constitutionality of much of the broadcast regulation, especially in the differentiation between traditional print and broadcast media.² Spitzer (1989) concluded that, in terms of the government property rationale, the government cannot simply regulate as it sees fit. Thus, Spitzer (1989) argued, “If the government property is a public forum, any regulation of speech is subjected to intense scrutiny” (p. 1,030).

In some related cases concerning off-shore broadcasting, the FCC invoked several international treaties that it stated had precluded the existence of such operations. The Communications Act of 1934 (Section 301) did not give the FCC jurisdiction over foreign vessels, nor did it require transmitters on such vessels to obtain a license to broadcast (Communications Act, Section 303t). Thus, the FCC argued that the International Telecommunications Convention (ITC) of 1982 gave the agency

jurisdiction over United States citizens broadcasting from foreign-registered vessels. Bender (1988), in his study of international law with regard to the case of “Radio Sarah,” suggested that because the case was dismissed after a permanent injunction was obtained, no real test of the applicability of the ITC was proven. Further, Bender (1988) argued that Article 30 of the ITC, which was used as the justification for the seizure of the *Sarah*, did not explicitly authorize the FCC’s actions.

Another international treaty that has bearing on this is the High Seas Convention (HSC) of 1958, which dealt with the “contiguous zone” beyond territorial waters, usually five miles (Bender, 1988). This was where the *Sarah* was located. The convention provided the exercise of control over another nation’s vessel within this zone under certain circumstances, such as to “prevent infringement of its customs, fiscal, immigration or sanitary regulations” (Bender, 1988, p. 75). There was no evidence, either in this case or in similar European cases, that pirate broadcasting harmed a nation in any of these areas. Although other nations have enacted specific laws to deal with such occurrences, United States’ jurisdiction may not pass a concerted challenge. However, Bender (1988) observed that such a challenge would be unlikely, as most governments have a vested interest in maintaining control over their spectrum space. Bender (1988) further noted that governments were not above manipulating regulations or making broad interpretations to maintain this control, as illustrated by the RNI case.

Both Bender (1988) and Spitzer (1989) pointed to the need for a drastic overhaul of United States communications law. The following section discusses these laws as they are related to FCC regulation and enforcement of unlicensed broadcasting.

Regulation and Enforcement

Many of the FCC regulations and their enforcement have been discussed earlier in this chapter in relationship to the Communications Act of 1934, the prosecution of G. W. Fellows, and the handling of off-shore pirates. Various authors have observed that FCC

enforcement against pirates is selective (Jones, 1988; Phipps, 1991; Yoder, 1990). With only 13 monitoring sites, 35 field offices, and 1,700 employees across the United States, the FCC could not keep track of every illegal broadcaster in the country (FCC, 1992b, 1993; Sakolsky, 1992). Typically, the FCC acted on complaints of interference with licensed broadcasters. However, high-profile unlicensed broadcasters also attracted much FCC attention. This was illustrated by the Kantako case (Shields & Ogles, 1992), as well as several cases now occurring as of this writing in the Bay Area, San Francisco Liberation Radio (SFLR) (Fine, 1994) and Free Radio Berkeley (FRB) (Milner, 1993), which are discussed later in this chapter. The cases of RNI (Phipps, 1990) and Radio Free America (Boyd, 1983) also fall into this category. Virtually all actions against pirates have been either warnings or fines. Fines can be as much as \$10,000 (Communications Act, 1934), with additional criminal penalty fines of up to \$100,000 (FCC, 1991d; Phipps, 1990). The usual fine ranges from \$750 to \$1,000 (FCC, 1989, 1990a-e, 1991a-c). However, high-profile pirates such as author Andrew Yoder, Stephen Dunifer of Free Radio Berkeley, and Richard Edmonson of San Francisco Liberation Radio, were fined from \$17,500 to \$20,000 each (Dinkelspiel, 1993; FCC, 1992d, 1994b; Fine, 1994).

The case of BASS-FM in Miami, FL, a low-power pirate located in the poor, violence-prone portion of that city, illustrated the uneven enforcement of the FCC. During the trial of a police officer accused of shooting two black youths who allegedly tried to run him down with a motorcycle, the threat of violence was great. BASS-FM sent a positive message to the community and was considered a calming force by the local authorities (Booth, 1993). Despite BASS-FM's publicity in newspapers such as the Washington Post and the Miami Herald, the FCC did not take action against the station. This is in contrast to previous instances of high-profile unlicensed broadcasting in which the FCC responded with warnings or fines (Booth, 1993; Pugh, 1993).

It is unclear why the FCC abandoned cases once permanent injunctions were established. Those pirates involved believed that once a pirate was taken off the air and the territorial imperative of the FCC had been validated, the FCC did not wish to test the actions in court (Ladd, 1987; Phipps, 1990). In fact, permanent injunctions have served the FCC well. Once the injunction is in place, any further violation puts the broadcaster in contempt of court (Bender, 1988; Boyd, 1983).

Despite the increasing challenges to FCC authority, the agency had been moving towards obtaining more enforcement powers. A Federal Registry Order by the FCC (47 U.S.C. 115) dated November 11, 1993, stated that the FCC had given itself subpoena power in the case of violations of Section 301 of the Communications Act of 1934 concerning “the production of books, papers, correspondence, memoranda, and other records” (p.1).

When the FCC has levied fines, it has issued a “Notice of Apparent Liability” to those it believes to have engaged in illegal broadcasting. Interestingly, for the FCC to issue a fine, it did not need to have more than basic technical evidence of an infraction, in the form of radio detection finding (FCC, 1992d; correspondence by Andrew Yoder to FCC, 1992). The person accused had to state why he or she should not be fined; a simple denial was not enough. Further, because it was a civil action, the government was not required to appoint counsel to those accused if they could not defend themselves (National Lawyers Guild, 1992).

Current Status of Micro Broadcasting

The current or modern phase of unlicensed broadcasting began in the 1980s. This phase was dominated by the micro broadcaster. Like the short-wave pirate or the off-shore broadcaster, micro radio broadcasters were a distinct form of unlicensed broadcasting.

Based on information from the Committee for Democratic Communication (National Lawyers Guild, 1992) and Shields and Ogles (1992), the modern micro broadcasting movement began on November 25, 1986 in a public housing development in Springfield, IL. The one-watt station broadcast openly on 107.1 FM as Black Liberation Radio and was put on the air for about \$600. The operator, Mbanna Kantako, a legally blind African-American in his mid-thirties, started the station because he felt that the African-American community in Springfield was not being served by the local media. Kantako felt that because the African-American community had a high illiteracy rate, radio would be the best way to reach this community. He stated: “Given technology today, using print is like using the pony express instead of air freight” (Shields & Ogles, 1992, p. 6). His station reached about 1,000 residents in his housing project and had a total range of approximately a mile and a half. Despite police harassment, a raid by the FCC, and a \$750 fine, the station stayed on the air (Shields & Ogles, 1992). Coining the term micro broadcasting, Kantako considered it his mission to bring his community together and to empower them (National Lawyers Guild, 1992). With no apparent assets to seize, the FCC has not pursued this case, although the fine is still outstanding. Kantako walked out of the hearing when the FCC refused to provide legal representation.

The CDC, part of the National Lawyers Guild, took up Kantako’s case and pursued the FCC in the courts on several grounds concerning United States communication. This challenge became increasingly important as the micro broadcasting movement spread across the country. Kantako and Mike Townsend, a social work professor at Sangamond State University in Springfield, IL, put together a videotape on how to construct a micro station, which they distributed widely (Shields & Ogles, 1992). Several other micro broadcasters followed Kantako and Townsend’s lead, including Stephen Dunifer in Berkeley, CA and Walter Dunn, Jr., the “Black Rose,” in Fresno, CA. Both Dunifer (McHenry, 1995) and Dunn (Graham, 1990) produced videotapes and other

materials concerning micro radio station construction and operation. While Dunn had a much more powerful transmitter, 125 watts, like Kantako, Dunn started small (Milner, 1993). These micro broadcasters are discussed in greater detail on the following pages.

The common goal of these micro broadcasters was to flood the United States with micro radio stations. This would overload the FCC and force a decision on micro broadcaster's right to operate (Dunifer, 1994). A similar instance occurred with the introduction and mass distribution of citizen band or CB radios. When CB radios first entered the market in the early 1970s, the FCC sought to license them for each unit sold. So many units were sold, and so few people took the time to apply for a license, that the FCC eventually gave up on the licensing idea all together (National Lawyers Guild, 1992).

As summarized by the CDC report: "Micro radio practitioners and members of their communities un-served by the present commercially based broadcast system have standing to challenge the FCC policy" (National Lawyers Guild, p. 116). The report sought to confirm this statement by citing Red Lion Broadcasting v. FCC (395 US 367, 390, 1969), in which the court confirmed that the rights of the listeners, not those of the speakers, are paramount. Also noted was the contention that, according to Red Lion, the First Amendment does not differentiate between those with licenses and those without.

Walter Dunn, Jr., the "Black Rose" in Fresno, CA, was one of the first micro broadcaster to come to the media's attention, starting in 1987. Reports of Dunn's activities eventually moved beyond the local press (Speizer, 1987), to the wire services ("Bootleg Fresno," 1989), and The Nation magazine (Rodriguez, 1991). Dunn actually began broadcasting in 1985 (Speizer, 1987). He started with a 1/10-watt transmitter, but with public support quickly rose to 125 watts. Like Kantako, Dunn believed that the African-American community was not being served by the local media and did something about it. The FCC had been aware of the broadcasts, but with the closest field

office in San Francisco, it had held off acting. This ended in 1987 when Dunn switched to 108 FM. The high end of the FM band is reserved for aircraft use, and the FCC was concerned about interference (“Bootleg Fresno,” 1989; Speizer, 1987). The FCC then moved to interdict (“forbid” or “prohibit” [Flexner, 1987, p. 993]) Dunn’s broadcasting. Dunn was not hard to find because he had a large radio mast in his backyard. Despite the 1987 raid and a fine, Dunn went back on the air and broadcast a full schedule until 1989 when he was again shut down by the FCC, fined \$2,000, and had all his equipment seized (Rodriguez, 1991). With his equipment gone, Dunn started traveling the country to show others how to start their own stations. However, Graham (1990) reported that Dunn was seeking the return of his equipment and was looking into starting a micro television station.

Stephen Dunifer, a long-time activist in Berkeley, CA, is the primary organizer behind Free Radio Berkeley (FRB). This station’s programming consists of music and political commentary (Ewell, 1995). As reported in the press (Dinkelspiel, 1993; Milner, 1993), Dunifer has been broadcasting in the evening on 88.1 FM since the early 1990s. Dunifer’s background in electronics led him to research broadcasting technology and work out designs for micro transmitters. His operation was 10 watts, usually broadcast out-of-doors or from his 1964 Volvo station wagon. Although he had never been caught in the act of unlicensed broadcasting, the FCC fined him twice for a total of \$20,000 (Dunifer, 1994). Dunifer also published a newsletter, Reclaiming the Airwaves. In addition, he sold micro transmitter kits for about \$100 and held workshops on assembling these kits. As described by Dunifer (1994), a micro radio station can be constructed for several hundred dollars, depending on the wattage. Dunifer’s newsletter also described other micro broadcasters around the world.

As an activist, Dunifer has been involved in various local and national causes (Ewell, 1995). These include the Berkeley Free Speech Movement and opposition to the

Gulf War. The latter was his primary motivation to start Free Radio Berkeley (Milner, 1993). Dunifer's outspoken views concerning government and corporate control, combined with his technical expertise, have brought him to the Federal Bureau of Investigation's (FBI) attention. During the summer of 1995, an FBI agent visited Dunifer as part of the the government's investigation of the Unabomber. The Unabomber was an individual of technical expertise and strong political views who mailed bombs to a variety of people over the course of several years, resulting in a number of fatalities. Consistent with Dunifer's anarchist philosophies, he declared his innocence, and sent the agent on his way (Ewell, 1995; Noble, 1995).

The April 22, 1994 front page of the San Jose Mercury News "Eye" featured another micro broadcaster, Richard Edmonson. Broadcasting at 93.7 FM Wednesdays and Saturdays from 8 p.m. to 10 p.m., San Francisco Liberation Radio (SFLR) programming consisted of music and political commentary (Fine, 1994). Edmonson, like Dunifer, usually broadcast from his vehicle, in this case a Volkswagen van. SFLR received a Notice of Apparent Liability in 1993 for \$10,000 from the FCC. Despite these legal troubles Edmonson has continued to broadcast (Fine, 1994).

Both Dunifer and Edmonson are being represented by the CDC in San Francisco. According to Edmonson, there were over 200 micro broadcasters operating in the United States (Fine, 1994). Kate Henton, FCC public relations officer in San Francisco, stated, "We have very good reasons for requiring a license. . . . It's very common for these so called pirate broadcasters to use equipment that is frequency-unstable . . . that can potentially be very dangerous" (Fine, 1994, p. 38). Usually the FCC had the right to inspect any station at any time to ensure that its equipment was functioning properly (FCC, 1992a). But, because broadcasting licenses were issued only to stations of 100 watts or more (69 FCC 2d 240) and micro broadcasters were well below that, the opportunity for inspection did not exist.

Summary

As has been illustrated in the literature review, unlicensed broadcasting has taken on several forms since the advent of radio as a popular communication medium. Whether for profit or ideological reasons, individuals have attempted to bypass or simply ignore federal communications regulations, with similar results. The courts have upheld the regulatory structure for the most part since the late 1920s. Until recently, most of the participants in broadcasting have been corporations, professionals, or radio hobbyists. In the past, the technical demands of broadcasting have excluded a majority of individuals from participating in radio as producers of content. This left most people with the role of consumer as their only option.

This started to change over the past 25 years as individuals began to explore the possibilities of broadcasting their own signals. However, it was not until the 1980s that a variety of factors came into play that set the stage for the emergence of micro radio. A combination of an improvement in technology, the public's increased familiarity with that technology, and a growing perception by a certain section of the population that they were being excluded from electronic discourse have led to the recent increase in micro broadcasting activities (Ewell, 1995).

Research Questions

Starting with Mbanna Kantako, Black Liberation Radio in Illinois, and Walter Dunn, Jr., the "Black Rose" in California, the concept of giving voice to traditionally under-represented communities spread, and was taken up by professional activists, such as Dunifer of Free Radio Berkeley (FRB). It was at this point that this study began, focusing on three major aspects of micro broadcasting: (1) the micro radio movement in the Greater Bay Area, concentrating on Dunifer and FRB, (2) the FCC's response to Dunifer, and (3) for a wider perspective, the overall scope of unlicensed radio activity in the U.S. Based on these areas of concern, the following research questions were posed:

- RQ 1: a) How did micro broadcasting get started in the San Francisco Bay Area?
b) What is the scope of micro broadcasting in the Greater Bay Area?
- RQ 2: a) What motivates micro broadcasters to go on the air?
b) What do they hope to accomplish?
c) How do they attempt to accomplish their goals?
- RQ 3: How has the FCC responded to the micro broadcasting movement?
- RQ 4: What is the scope of unlicensed broadcasting in the U.S.?

Thus, the present study sought to explore the state of micro broadcasting in the San Francisco Bay Area and provide an overview of unlicensed broadcasting activities in the U.S. To address this mission and the research questions listed above, specific qualitative research methods were used. These methods are discussed in the next chapter.

CHAPTER 3

Methods

The purpose of this study was to examine the development of the micro radio movement in the Greater San Francisco Bay Area with a concentration on the Stephen Dunifer case, the motivations of the micro broadcasters, the FCC's response to this challenge, and to ascertain the overall scope of unlicensed radio broadcasting in the U.S. Because of the interpretive nature of this project, qualitative methods were used to address the research questions outlined in the previous chapter.

Three primary qualitative methods were employed in this study: observations, interviews, and document analysis. Although these three methods will be discussed separately, they were implemented in an integrated fashion as the research process unfolded.

This chapter is divided into six sections. First is a discussion of qualitative methods and their application to this study. Second, interviewee preparation and briefing procedures are outlined. Third, the process of interview question design is explained. Fourth, the reasoning behind observation procedures and criteria is examined. Fifth is a discussion of documentation selection and analysis. Last is a chronological account of the data gathering strategies used during the research process.

Qualitative Methods

Qualitative methods were employed in this study for several reasons. As noted in Chapter 2, the issues embedded in the micro broadcasting movement are complex, especially in terms of perceived economic and Constitutional rights concerns. Quantitative methods would not provide the multidimensional data necessary to gain an understanding of the dynamics of the micro broadcasting movement. As an exploratory investigation of this phenomenon, this project is by definition a case study of the micro

broadcasting movement in the Bay Area. Case studies come under the general heading of qualitative research (Lindlof, 1995).

As Lindlof (1995) notes, “The qualitative researcher usually begins a study out of a personal and scholarly fascination with a phenomenon, and continues to respect its integrity while carrying out field activities. The researcher turns his or her attention to the forms and functions of the phenomenon as it operates in natural context. Yet a qualitative approach depends critically on the investigator’s interacting with the subjects under study” (p. 22).

Interviewing, document analysis, and observation were the qualitative methods employed in this study. Because of the complexity of the micro broadcasting movement, multiple methods of data generation were essential. As Lindlof (1995) argues, multiple methods are particularly useful for examining communicative events from different perspectives. Further, using multiple methods as a form of triangulation increases the validity and reliability of the study (Marshall & Rossman, 1989).

Interviews were the primary source of data in this study. “In qualitative research, one interviews people to understand their perspectives on the scene, to retrieve experiences from the past, to gain expert insight or information, to obtain descriptions of events or scenes that are normally unavailable for observation” (Lindlof, 1995, p. 5). Clearly interviews were essential for this study in that this was the only method to get a better understanding of the various participants’ perspectives. For example, the only way to discover micro broadcasters’ and FCC agents’ motivations was to go to the sources and ask.

Document analysis is an important indicator of events and processes, as well as a source of basic information. This method is particularly useful when researching the law, court proceedings, or governmental agencies. “Documents indicate, among other things, what an organization produces and how it certifies certain kinds of activities . . .

categorizes events or people . . . codifies procedures or policies . . . explains past or future actions, and tracks its own activities” (Lindlof, 1995, p. 208). In this study, document analysis was critical in understanding the legal arguments and positions associated with the micro broadcasting movement and related precedent-setting cases. Further, resource allocation data and details concerning past interdiction or prohibition of unlicensed broadcasters were contained only in this form.

Observation of participants in various situations, whether in meetings, on the street, during interviews, or in court, was an important aspect of data collection. “Observing is indispensable to the research styles of ethnography, naturalistic inquiry, and the case study. Only the human investigator situated in a scene is able to register the subtle, processual actions of other human beings” (Lindlof, 1995, p. 134). For example, observation was critical in understanding the relationships between the participants during the court proceedings. During one session, David Silberman, FCC attorney, made a reference to the relative ages of Judge Claudia Wilken and himself. Her reaction to his comment would not have shown up on any court transcript and could only have been reported through direct observation.

While interviews were the primary source of data, document analysis and observations were an integral part of the research process. Lindlof (1995) argued that “data from the complementary can then enrich, or impose qualifications on, explanations arising from the primary one” (p. 239). More important for the present study, “[a] commitment to multiple modes of data generation leads to thickly described cases” (Lindlof, 1995, p. 239). In the following sections of the chapter, the specific research methods employed in the present study are discussed.

Interview Statement and Interviewee Briefing

Six individuals were interviewed for this study (see Appendix A). An interview statement was read prior to the beginning of all interviews describing the purpose and

uses of the information gathered during the interview and requesting permission to tape record the session (see Appendix B for Interview Statement). Interviewees were informed that the study concerned the history of unlicensed broadcasting, the modern micro broadcasting movement in the Bay Area with a focus on the Dunifer case, and the size and strength of the unlicensed broadcasting phenomenon in the United States. Further, interviewees were told the general purpose of this thesis would be to produce a “picture” of the micro broadcasting movement as it currently exists and how it might develop. The interviewer also informed the interviewees that they would, at times, be asked to give opinions on certain subjects or to speculate on future events, and that these comments would be noted as such. Interviewees were encouraged to ask any questions concerning the study, as well as the identities of other participants interviewed. If interviewees inquired about the content of previous interviews, the researcher provided only general information. Further, all interviewees were offered access to the thesis upon its completion.

Interview Schedule Design

Interview schedules were constructed prior to all interviews. The exceptions to this were the unexpected interview opportunities with Daniel Emrick and David Silberman that occurred during the researcher’s visit to FCC Headquarters in Washington, DC. These interviews were conducted using the Lawrence Clance interview schedule as a reference point. Impromptu questions were then generated with a focus on broad open-ended questions that allowed the interviewees the opportunity to more fully express their views and volunteer data spontaneously. This, in turn, generated follow-up questions.

The criteria for question selection were based on several factors. Primarily, questions were designed to yield information in two areas: (1) collection of basic data concerning actual events, policies, procedures, and time-lines; and (2) interviewees’

attitudes, opinions, and perceptions of themselves and the other participants, especially the opposition. A moderately-scheduled interview strategy was employed because it “offers freedom to probe into answers and adapt to different interviewees and situations” (Stewart & Cash, 1994, p. 49). This type of interview schedule tends to yield the maximum amount of data with a minimum of digression (see Appendix B for interview schedules).

As stated above, questions were generally aimed at acquiring basic information and attitudes and opinions. Although the full original interview schedules are available in Appendix B, often specific questions were eliminated by previous answers. Further, other questions that had not been originally included on the interview schedule were suggested by an interviewee’s response. An example of this could be found in the Tom Schreiner interview. When asking Schreiner about his background in radio, he responded by saying that he had no experience in radio or broadcasting. He went on to state that he was a high school dropout and a carpenter retrained as a academic. Although the original question was posed to gain basic background information in a specific area and lead to follow-up technical questions concerning radio, it instead generated a different set of questions and provided unforeseen background data. Any further questions concerning engineering or technical issues would be of little use. However, questions concerning a technical novice’s experience in radio seemed appropriate.

Another example of the dynamic nature of interviews occurred in the meeting with the FCC’s Clance. The researcher posed a question concerning a rumor that the FCC, having already expanded its subpoena powers, was looking to arm its agents. The question was designed to first obtain a basic yes/no answer and second to detect possible evasiveness if a non-specific response were given. Clance’s answer was long, detailed, and vehement in the rejection of arming FCC agents. Rather than basic data, his

comments yielded a great deal of information concerning the attitudes of the FCC rank and file and their roles in regulating communication.

Field notes were made after each interview concerning the researcher's reactions, the physical interview environment, and the apparent attitude of the interviewee towards certain questions and subjects. Field observation procedures and criteria are discussed in the following section.

Observation Procedures and Criteria

Observations were conducted using a combination of outside observation, or as a complete observer, and interaction with events and those being observed, as a participant observer (Lindlof, 1995). Researcher interaction consisted mostly of casual conversations with participants and bystanders. These conversations were not recorded. After the contact was made, the researcher disengaged from the scene and made notes, usually on audio tape.

Observation notes were both handwritten and tape recorded, with the latter used in a majority of observation situations. However, because of the prohibition against electronic recording devices in federal courtrooms, handwritten notation was used in those situations.

Field notes were organized into four major sections. Section one contained time, date, location, and a list of participants. Section two included observations of events as they unfolded. Primary criteria for observation were the actions and reactions of participants as they applied to the research questions listed at the end of Chapter 2, the physical environment and its apparent effects, and actual information about micro radio and its proponents. Section three contained the reactions and interpretations of the researcher to events and participants, including personal interaction between the observer and the participants. Finally, section four involved the transfer of field notes to computer

hard-drive and the addition of further comments by the researcher concerning the observation data after a period of time and reflection.

Document Selection and Analysis

Initial document acquisition criteria were simple and concise: any document with the mention of unlicensed, micro, or pirate radio was examined. There were several reasons for this. First, the FCC as the primary source for documents for this study, did not recognize any differences among the various modes or motivations of unlicensed broadcasters in its record keeping. This made it necessary to access all available documents in order to assure that no important data were overlooked. Second, the different preferences for certain titles and descriptors by the parties involved required that attention be paid to a variety of references, many of which were obscure. Third, as noted in Chapter 1, the general lack of information concerning unlicensed broadcasting made a broad search critical to complete the data set. Depending on the document source, different strategies were employed in document selection.

The FCC's data organization methods required a broad approach to document collection. Documents gathered and analyzed covered four primary areas: Information concerning the interdiction of unlicensed broadcasters; press reports and other outside documentation collected by the FCC; budgetary, staffing and resource distribution data contained in FCC annual reports; and legal documents. Documents were used to the degree that they answered the research questions posed at the end of Chapter 2.

The Committee for Democratic Communication (CDC) was the second source of documents for this study. These documents consisted almost exclusively of legal briefs associated with the Dunifer case. Other documents obtained were of secondary source material collected and compiled by the CDC. The vast majority of these data were relevant to this study.

Data-gathering Strategies

Correspondence was initiated with all the parties involved: the FCC in Washington, DC and the Hayward, CA field office; the Committee for Democratic Communication in San Francisco; Free Radio Berkeley and Stephen Dunifer; Free Radio Santa Cruz and Tom Schreiner; and San Francisco Liberation Radio and Richard Edmonson (see Appendix A for detailed interviewee information). Kate Henton at the Hayward FCC office provided information and suggested filing a Freedom of Information Act (FOIA) request to expedite matters. This was done June 11, 1994. Preliminary data, such as historical and legal background material, were gathered through computer searches and monitoring of radio hobbyist publications and the Free Radio Berkeley newsletter.

After initial contact was made with FCC headquarters in Washington, DC, correspondence was initiated with Lawrence Clance, Assistant Bureau Chief for Law, Field Operations Bureau (FOB). The Field Operations Bureau was re-designated the Compliance and Information Bureau (CIB) in the Fall of 1995 and will be referred to as such from this point on. According to the FCC's FOIA Office and Clance himself, he was their "pirate radio expert." At this point, requests for interviews were mailed out to Clance, Dunifer, and Edmonson. In addition, Louis Hiken of the Committee for Democratic Communication (CDC), attorney for Dunifer and Edmonson, was contacted. All replied that they would be willing to be interviewed for this study.

Allan Corn, a member of the legal staff at the CDC, provided CDC records concerning unlicensed broadcasting and the micro radio movement. This material was gathered at the CDC office in San Francisco and photocopied. It consisted of legal briefs, newsletters, journal articles, and media coverage.

Appointments for interviews were scheduled for the winter and spring of 1995. The first interviews took place at FCC Headquarters in Washington, DC on January 10.

Access to the FCC library was provided and other material was obtained from CIB files. This information concerned FCC annual reports and actions against unlicensed broadcasters as well as data concerning FCC field offices. Clance was interviewed and set up additional interviews with other FCC employees. David Silberman, the primary FCC attorney in the Dunifer case, was interviewed, as well as Daniel S. Emrick, an engineer and Chief of Investigations Branch, Enforcement Division, CIB.

The FCC provided information that might indicate the frequency and band location of interdicted unlicensed broadcasters over the past 10 years. Clance stated that while specific statistical data on such activities did not exist, every FCC action was followed by a news release that was kept on file. However, these data were not available and were not on file at the Washington office. A list of FCC field offices was acquired with the intention of requesting additional data from each one, as Clance thought these offices might keep better data for their own areas of jurisdiction. Upon returning from Washington in mid-January, the researcher sent information requests to each office. Unfortunately, over the next six weeks, all but a few requests were sent back referring the researcher to Clance for that data. Clance was e-mailed concerning this. He then intervened providing some data by the end of February, most of which were redundant to other information previously obtained. During transcription of the Clance interview, it was discovered that he had mentioned that all fines had been removed as a result of the FCC fine table being invalidated by a federal court. Clance was contacted, and after some hesitation, he volunteered that the information was in the FCC data base. A printout concerning FCC fines was provided to the researcher.

The researcher analyzed the printout and all other FCC data concerning the frequency and band locations of unlicensed broadcasting. This analysis revealed that the data were insufficient to discover any trends or patterns in the interdiction of unlicensed broadcasters. This was because of several factors. The primary problem was that FCC

field offices did not keep or report unlicensed broadcaster violations in a consistent manner. Some offices issued news releases as a deterrent. Other offices did not, reasoning that the publicity would encourage others to try unlicensed broadcasting. Certain field offices reported all violations of Section 301 simply as violations of Section 301; others detailed specific sections violated, and still others added comments concerning the violation. Further, there was no central clearinghouse for any information concerning this subject. This made any analysis problematic because the information was incomplete to an unknown degree. Further, many incidents of 301 violations could not be confirmed as unlicensed broadcasters, only as probable occurrences. At this point, this line of investigation was terminated. The only valuable data discovered was that the FCC, because of inconsistent recording and filing systems concerning violations, would not be able to detect any increase over time in unlicensed broadcasting activity until it became so large as to be unmistakable.

On January 20, Judge Claudia Wilken heard arguments concerning a request for a preliminary injunction by Silberman against Stephen Dunifer of Free Radio Berkeley, which was ultimately denied. These proceedings were observed and notes were taken as well as recordings outside the Federal District Courthouse in Oakland, CA where a rally for the defendant was held.

Subsequent interviews were conducted with Louis Hiken on February 15 and Stephen Dunifer on March 1. Repeated attempts were made to contact Richard Edmonson over the course of six months, without result, despite his agreeing to be interviewed. As the research window began to close, this interview was deleted. At this time a micro station began operation in Santa Cruz. A station meeting time and place were discovered and a one meeting was observed and notes taken. Tom Schreiner, a primary actor in the organization, was interested in the study and agreed to an interview,

which took place on May 31. Further monitoring and observations of Free Radio Santa Cruz took place until November 1995.

The bulk of data-gathering efforts were completed in August after the FCC issued its response to Judge Wilken's request for explanation and information on January 20. An official copy of this was provided by Clance at the Compliance and Information Bureau (CIB).

Analysis focused on two main avenues of inquiry: (1) A case study of the micro radio movement in the Bay Area, and (2) the difficulties involved with FCC interdiction of micro radio. Once all the interviews were transcribed they were highlighted and notes were taken on specific and general subject matter. Material highlighted concerned participants' attitudes, perceptions, and stated motivations, as well as factual data concerning, for example, legal procedures. Interviewee references to factual data or events were compared with FCC and CDC documentation as well as news stories, and other data sources. The data were combined and organized to form a historical analysis and synthesis of the development of the micro broadcasting movement in North Central California. Further research was conducted on FCC precedent cases, the First Amendment and limited analysis of its philosophical roots as a way to position the case study within its larger regulatory and Constitutional contexts.

The second part of the data analysis process progressed in such a fashion as to indicate, through systematic analysis, the difficulty of using established FCC procedures to interdict micro radio. Analysis focused on superimposing past FCC procedures dealing with commercial or corporate violators, high-profile individuals, and traditional unlicensed broadcasters (pirates) on micro radio practitioners' activities.

CHAPTER 4

Findings, Discussion, and Interpretations

All interviews referred to in this thesis were conducted by this researcher during the winter and spring of 1995. For further information on these interviews, including locations, see Appendix A.

This study focused on the main thrust of the micro broadcasting movement as it developed in the San Francisco Bay Area and thus it may appear that this is where the movement originated. However, all participants interviewed in this study, as well as all data collected from the press and other sources, pointed to Mbanna Kantako, a blind African-American micro broadcaster in Illinois, as the originator of the modern micro broadcasting movement. (See Chapter 3 for more detailed information on Kantako and Black Liberation Radio.) San Francisco Bay Area micro broadcasters looked to his experiences before embarking on their own paths of electronic civil disobedience.

Kantako's case is currently on hold because the FCC did not pursue it. According to Allan Corn, a member of the National Lawyers Guild, the Committee for Democratic Communication (CDC) is using the case of United States v. Dunifer (No. C 94-03542 CW) to push for regulatory acceptance of micro broadcasting, utilizing many of the same arguments employed in the Kantako brief. Louis Hiken, Stephen Dunifer's attorney, stated that Kantako was originally approached concerning making this challenge, but he declined to participate (observations of National Lawyers Guild forum on micro radio, September 22, 1995, Berkeley, CA). Lawrence Clance, Assistant Bureau Chief for Law, Compliance and Information Bureau, Federal Communications Commission, said that while the FCC was still interested in pursuing the Kantako case, the local U.S. Attorney's Office viewed the case as a low priority for prosecution proceedings (Appendix A,

personal interview, January 10, 1995). Thus, no further action has been taken, although the case remains open.

U.S. v. Dunifer (No. C 94-03542 CW) is on-going as of this writing. While initial hearings have impacted the micro radio movement (Ewell, 1995), conclusions concerning the ultimate outcome of this case must be tentative. In fact, Hiken of the CDC stated that the real trial had not begun (Appendix A, personal interview, February 15, 1995). Hiken believed the two sides were still arguing the administrative aspects of the case which he viewed as precursors to the case's primary issues. He further stated that the substantive issues associated with the case concerning access and Constitutional considerations had not yet been addressed in court. However, FCC officials disagreed with Hiken's assessment, taking the position that the Dunifer case was wholly an administrative matter concerning an unlicensed broadcast and the subsequent fine (Akizuki, 1995; FCC, 1995b).

The Origins of the San Francisco Bay Area Micro Radio Movement

The origins of the San Francisco Bay Area micro radio movement are obscure and almost mythic in nature. As with the Free Speech Movement of the 1960s, of which most of the micro radio movement's founders were a part, micro radio began in Berkeley, CA in People's Park in the early 1990s. People's Park is a small piece of land owned by the University of California. Along with typical recreational activities, it has been a site for conflicts involving citizens, students, local and university police, and university officials. These conflicts involved political and social issues as well arguments involving the utilization of the park itself and still continue to the time of this writing.

In the late 1980s and early 1990s, a conflict arose concerning amplified music at People's Park. Tom Schreiner of Free Radio Santa Cruz said that the City of Berkeley set up an apparently confusing permit procedure that resulted in the Berkeley police confiscating amplification equipment from several concerts at the park (Appendix A,

personal interview, May 31, 1995). Since most of this equipment was rented, this resulted in unexpected expenses for the organizers and for a while stymied efforts to produce live music at the park. According to Schreiner, who was living in Berkeley at the time, someone had the idea of installing a half-watt FM transmitter on stage. The audience could then bring portable radios that would be tuned to the half-watt transmitter that would, in turn, broadcast the music on stage. A half-watt transmitter is legal under Part 15 of the Communications Act. This would make the regulated amplification equipment unnecessary and bypass the city ordinance. The concept worked and successfully circumvented the ordinance. Schreiner attributed the use of the transmitter to Dunifer of Free Radio Berkeley (Appendix A, May 31, 1995).

Dunifer said that his initial motivation for starting the process that resulted in Free Radio Berkeley, the Free Communications Coalition, and the San Francisco Micro Radio Movement, was the Gulf War in 1990 (Appendix A, personal interview, March 1, 1995). Dunifer stated that his “total and absolute disgust” with what happened during the war spurred him to action. He further argued that “the media essentially moved into a spare office in the Pentagon and tried to make it some national celebration that we murdered several hundred thousand people in that part of the world.” It was Dunifer’s perception that the media were coopted by the Pentagon and became a propaganda tool for American foreign policy (Appendix A, March 1, 1995).

Dunifer stated he was a veteran of the Berkeley Free Speech Movement and numerous other social causes since the 1960s (Appendix A, March 1, 1995). He also described himself a full-time community activist. However, he stated that his experience in communications predated his role as activist. His first job, at age 17, was as a broadcast engineer at a television station in the Los Angeles area. At that time he received his First Class Radio and Telephone License. Dunifer described himself as a self-taught engineer and technician who has spent most of his life being self employed in

those trades. As with many of the people who have gotten involved in unlicensed broadcasting, his fascination with communication and community broadcasting has been a life-long one. Therefore, it is not surprising that this would eventually merge with his activist inclinations and lead to an electronic media-based incarnation. As noted in the Ewell (1995) article, although the movement is essentially non-hierarchical, Dunifer is conceptual leader of, and a primary player in, the day-to-day operations of Free Radio Berkeley and the Free Communications Coalition.

The Micro Radio Movement Forms

Information concerning the formation of the micro radio movement in the San Francisco Bay Area was provided by Dunifer, Hiken, and Schreiner in their interviews with this researcher. In addition, press documentation was used to further elaborate on the movement's development (Akizuki, 1995; Dunifer, 1994, 1995; Ewell, 1995; Fine, 1994; Milner, 1993).

The micro radio movement in the Bay Area was mostly contained under an umbrella organization called the Free Communications Coalition, the "People's FCC" as its proponents called it. The Coalition included many parts, the most visible of which were the micro radio stations that fell under its banner. Dunifer said these stations were not controlled, as in a network environment, but usually shared information and technical support as well as a basic philosophy concerning media access (Appendix A, March 1, 1995). From Dunifer's perspective, placement of a station under the Coalition banner had no requirements other than a passion for free speech and an abhorrence of censorship. The Free Communications Coalition was also seen as a possible mediator of disputes between micro radio stations, thus eliminating much of the need for intervention by the FCC (Appendix A, March 1, 1995).

Another aspect of this organization has been the design, assembly, shipping, and marketing of micro radio transmitter kits and related equipment. Schreiner observed that

a majority of micro radio stations in California have used Free Radio Berkeley kits, although similar kits have been available from other sources (Appendix A, May 31, 1995). Schreiner added that these kits are constantly being updated and improved, as illustrated by the fact that of the five micro transmitters purchased in the Santa Cruz, CA area over the course of six months, all were of different design generations. Dunifer also has offered workshops and videos on the assembly and operation of these transmitters. The size of a shoe box and getting smaller all the time, these transmitters have become more transportable and efficient with each new generation. The FRB operation has supplied transmitters to the United Nations for developing nations, primarily the Philippines, and the Chiapas Movement in Mexico. According to Dunifer, the Free Communications Coalition operation had shipped in excess of 400 transmitter kits domestically as of March 1995 (Appendix A, March 1, 1995).

The third aspect of the coalition has been the activist/outreach program. According to Dunifer, this was the most influential aspect of the movement. This has involved media outreach, public education, demonstrations, and the general goal of spreading the word of micro radio to the nation and the world. The activist/outreach program has included a newsletter, Reclaiming the Airwaves, with a circulation of 10,000 world wide; an Internet site; and a communications network that has reached activists involved in all areas (Appendix A, March 1, 1995).

Testing the Spectrum

Dunifer related that the first full broadcast of a Free Radio Berkeley transmitter was at a Rainbow Gathering in April 1992 using an early prototype transmitter (Appendix A, March 1, 1995). In December 1992 and January 1993 Dunifer broadcast from in front of KPFA-FM, a Pacifica Foundation Network station in Berkeley. KPFA is the flagship station of the Pacifica Network, a private nonprofit organization. Over the past three years, Dunifer and others have criticized KPFA for having abandoned its progressive

agenda. Many former KPFA staff members have relocated to Free Radio Berkeley and other Bay Area micro stations (observations of National Lawyers Guild forum on micro radio, September 22, 1995, Berkeley, CA). Dunifer stated that he chose the KPFA location in order to embarrass the station for no longer being “people’s radio” (Appendix A, March 1, 1995).

Dunifer also stated that Free Radio Berkeley had been selling transmitter kits since the late 1980s (Appendix A, March 1, 1995). Since the micro radio stations were so small, broadcasts were carried out from various locations in the Berkeley Hills and from Dunifer’s 1964 Volvo station wagon. Broadcasting from different locations further served the purpose of making the station’s signal more difficult to trace (Fine, 1994). Eventually, Dunifer moved the operation to his home and workshop on Allstone Way in Berkeley. Dunifer did not provide an explicit rationale for moving the operation to his home in his interview or press documents (Appendix A, March 1, 1995). However, this researcher would speculate that Dunifer decided to broadcast from a fixed location in order to facilitate FCC detection and subsequent action.

According to four Declarations filed by FCC engineers on October 6, 1994, the local field office became aware of Free Radio Berkeley on the evening of April 25, 1993. On May 2, 1993, FCC field agents again monitored Dunifer’s signal and tracked it to his home on Allstone Way. The FCC engineers reported in the Declarations that the occupants of the house denied the existence of the station. On June 1, 1993, the San Francisco Office of the FCC issued a Notice of Apparent Liability (NAL) to Dunifer for violation of Section 301 of the Communications Act, broadcasting without a license. The NAL carried a fine of \$20,000, an excessive amount when compared to other NALs issued by the FCC for similar violations (FCC, 1989, 1990a-e, 1991a-c). As mentioned in Chapter 2, most fines have ranged from \$750 to \$1,000.

Challenging the FCC

Free Radio Berkeley was put on the air as part of a concerted challenge to the FCC regulatory scheme. In this context, “scheme” is defined as “a program of action to be followed” (Flexner, 1987, p. 1713). This term is commonly used in legal and regulatory arenas. FRB was specifically challenging 69 FCC 2d 240 (1978), part of the regulatory scheme that set a limit on the minimum size of 100 watts for an FM radio station. Also at issue was the excessive cost of the licensing, engineering, and operation of a station 100 watts or larger. This cost precludes the ownership or operation of a licensed radio station by 95% of the U.S. population, and firmly places control of the media in the hands of the other 5% (National Lawyers Guild, 1992). The specific issues of the case are examined later in this chapter.

Dunifer said that he was a great believer in direct action and civil disobedience (Appendix A, March 1, 1995). Therefore, he saw his decision to move directly to electronic civil disobedience and an open challenge to the FCC as a logical one. It was Dunifer’s stated intention to draw the attention of the FCC and force a court hearing on the legitimacy of the current regulatory scheme, a plan that had been fermenting since 1990. Statements made by Dunifer and Hiken confirmed this and suggested that CDC involvement occurred just prior to the broadcasts that led to the FCC issuing the NAL (Appendix A, March 1, 1995; February 15, 1995, respectively).

Committee for Democratic Communication (CDC)

The Committee for Democratic Communication (CDC) is part of the National Lawyers Guild and focuses on issues that deal with equitable access to all forms of communication, particularly electronic. Hiken, a University of California, Berkeley educated lawyer and another alumnus of the Berkeley Free Speech Movement, worked on research in support of Mbanna Kantako’s broadcasts since 1989. Hiken stated that after an initial action, the FCC did not move directly against Kantako (Appendix A, February

15, 1995). Therefore, Hiken and the CDC simply prepared data in support of Kantako's case specifically and micro radio in general. Hiken also was involved in another unlicensed broadcaster's case in Arizona in the form of filing a Friend of the Court brief on his behalf.

Dunifer's decision to make his station fixed instead of mobile occurred after an initial meeting with lawyers from the CDC including Hiken and Peter Francks. This change allowed the FCC to locate the station more easily and thereby draw the FCC into court. Dunifer's knowledge of electronic communication would seem to discount the idea that he did not expect the FCC to be able to find him. According to Schreiner of Free Radio Santa Cruz (FRSC), finding an FM transmitter is relatively easy (Appendix A, May 31, 1995). He illustrated this by referring to the media's success in finding the FRSC transmitter site with equipment that he stated could be purchased for a few dollars at Radio Shack.

Dunifer and Hiken believed that their three-part strategy was well-planned and executed. First, Dunifer's acts of electronic civil disobedience drew the FCC into court. Second, Dunifer and Hiken stated that there was an effort to get other activists across the country to also engage in acts of electronic civil disobedience. Third, they reasoned that these acts of electronic civil disobedience would force the FCC to justify its regulatory scheme in open court in a timely fashion (Appendix A, March 1, 1995; February 15, 1995).

Micro Radio Spreads Across the Bay

While the FCC was issuing a Notice of Apparent Liability (NAL) to Free Radio Berkeley, other Bay Area activists were using radio as a mobilizing tool. For example, Richard Edmonson was also operating a Free Radio Berkeley transmitter in the San Francisco Area. Edmonson would drive his Volkswagen van to some high ground and broadcast at 93.7 FM in the evenings. San Francisco Liberation Radio, as it was called,

was eventually tracked down by the FCC and was issued a NAL for \$10,000 (Fine, 1994; FCC, 1995a). Hiken stated that Edmonson came under the sponsorship of the CDC and has been pleading his case using arguments similar to those used in the Dunifer case (Appendix A, February 15, 1995). These arguments are discussed in detail later in this chapter.

Food Not Bombs, a feed-the-poor activist organization, also got behind the micro broadcasting movement and was a partial sponsor of Radio Libre, broadcast from San Francisco. According to an article in Reclaiming the Airwaves (McHenry, 1995), as well as Dunifer and Schreiner, Food Not Bombs regularly supplied programming to many micro radio stations (Appendix A, March 1, 1995; May 31, 1995, respectively).

Legal Maneuvering

Data used for this section were compiled through interviews with Hiken, Dunifer, Clance, and David Silberman (see Appendix A), as well as FCC documents. These documents, filed October 6, 1994, were Complaint for Declaratory and Injunctive Relief, Plaintiff's Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction, and Plaintiff's Notice of Motion and Motion for Preliminary Injunction (case No. C 94-3542 CW).

Both Hiken, Dunifer's attorney, and Clance, FCC official, discussed the forfeiture process which began after the FCC issued Dunifer the Notice of Apparent Liability (NAL) (Appendix A, February 15, 1995; January 10, 1995, respectively). The forfeiture process consisted of the steps taken by the FCC to recoup the fine it levied in the NAL. In the Dunifer case, forfeiture referred to a monetary forfeiture, or fine, as opposed to the seizing of equipment. Hiken said that the CDC attacked the basic forfeiture scheme, the financial criteria of what the forfeiture should be, and the Constitutionality of the entire licensing process itself as it applied to micro radio (Appendix A, February 15, 1995). However, the arguments raised concerning the forfeiture scheme and its application were

moot, when the Court of Appeals for the Federal District Court of Washington, DC vacated the FCC Table of Fines (USTA v. FCC, 28 F.3d 1232, 1994).

The FCC sustained the CDC's opposition to Dunifer's Notice of Apparent Liability. Under the operating rules of the FCC, there was no hearing, no investigation, or opportunity for argument. The local FCC office then issued a Notice of Forfeiture (NOF), confirming its assertion of liability. The CDC challenged the Notice of Forfeiture. The agency reiterated the propriety of the Notice, and informed Dunifer and his counsel that they could file an application for review, which was a petition to review that decision. That was in December 1993. The FCC took no further action until December 1994, 18 months after the initial NAL. Hiken stated that at this point, and without further contacting the CDC or Dunifer, the FCC filed for a Preliminary Injunction and Declaratory Relief with the Federal District Court for the Northern District of California to enjoin further broadcasts by Dunifer (Appendix A, February 15, 1995). Clance confirmed that this action was consistent with FCC actions in the past concerning unlicensed broadcasting (Appendix A, January 10, 1995). If the court enjoined Dunifer from broadcasting, and he ignored the injunction and continued to broadcast, he would be in contempt of court. This would then case leave the case to the U.S. Attorney's office to prosecute (Bender, 1988; Boyd, 1983; Kuipers, 1989).

United States v. Dunifer

Arguments for the case were presented by the CDC and the FCC in the hearing that took place on January 20, 1995 in Federal District Courthouse in Oakland, CA (case No. C 94-3542 CW). The present discussion of these arguments is an assemblage of information obtained through court and FCC documentation. Court and FCC documents included Complaint for Declaratory and Injunctive Relief, Plaintiff's Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction, and Plaintiff's Notice of Motion and Motion for Preliminary Injunction, filed October 6, 1994; the

Memorandum and Order Denying Plaintiff's Motion for a Preliminary Injunction and Staying this Action filed January 30, 1995; and the FCC Memorandum and Opinion Order 95-333 released August 2, 1995. Interviews with the two arguing attorneys, Hiken for Dunifer and Silberman for the FCC, were also used for this discussion (Appendix A, February 15, 1995; January 10, 1995, respectively), as well as this researcher's observations of the hearing itself.

An Analogy

It may be useful to frame the basic arguments in terms of an analogy used repeatedly by all FCC personnel interviewed as well as by Hiken of the CDC. The FCC likens itself to a "traffic cop" or "safety patrol" and the electromagnetic spectrum to a "highway." Driving is a privilege, not a right, and rules of the road are needed to keep people from running over each other. The FCC enforces these rules as a traffic cop would the speed limit. Hiken responded to this analogy by stating that the spectrum, held in trust for the American people by the government, is like a highway everyone paid taxes to build, but only the richest five percent of the population can drive on it (Appendix A, February 15, 1995). Everyone else just gets to watch. Hiken admitted that rules of the road are needed. He just believed that everyone should have the opportunity to drive on it.

At Issue

At its most basic level, Dunifer's decision to broadcast without a license was the primary issue. According to Silberman (Appendix A, January 10, 1995) and the FCC's Declaratory Statements filed October 6, 1994, broadcasting without a license was why the FCC took action to bring Dunifer to court. In Silberman's view, this was the only pertinent issue in the eyes of the FCC (Appendix A, January 10, 1995). From Dunifer's perspective, to concentrate on this would miss the primary rationale behind his action. Dunifer said that he made a calculated decision to challenge the regulatory structure of

the FCC in a forum and manner with which he, as an activist, was most familiar: through civil disobedience and in court (Appendix A, March 1, 1995). This brought the issue into the public forum and moved the process from an internal FCC matter to an external federal court issue.

The FCC Position

The case the FCC presented in U.S. v. Dunifer was consistent with FCC actions taken in the past (Bender, 1988; FCC, 1991a-d). Enforced through the Compliance and Information Bureau, FCC policy draws its authority to interdict and penalize unlicensed broadcasters through Section 301 and 503, respectively, of the Communications Act. Congress gave the FCC the authority to establish a licensing scheme and regulations that act in “the public interest, convenience, and necessity.” Since Congress did not define what this was, this statement was left to the discretion of the Commission to define. At the Act’s essence, pertaining to this case, was the basic premise that an individual would need a license issued by the FCC, as the government’s agent, to broadcast an FM signal over a half-watt in power.

Silberman, as the attorney for the FCC, stated that this was a simple case of someone (Dunifer) who wished to broadcast without obtaining a license. Silberman noted that all cases brought before a judge concerning the FCC’s right to regulate the airwaves in a manner determined by the agency, have been decided in the favor of the FCC (Appendix A, January 10, 1995). All precedents in federal court and the U.S. Supreme Court support this contention. Further, all major issues concerning the right of the FCC to regulate as it saw fit, barring an act of Congress, have been argued and fallen in the FCC’s favor as detailed in Chapter 2 of this thesis. Therefore, from the FCC’s perspective, there were no grounds for an argument; Dunifer simply broke the law and end of case (Appendix A, Silberman, Clance, January 10, 1995).

Silberman did state that if Dunifer wanted to be able to obtain a permit to broadcast below the 100-watt minimum, he could have taken one of the two paths made available to the public to challenge FCC regulations. These paths were a request for a waiver or a petition for a rule making. A rule making is a request by petition for a change in a particular regulatory structure (FCC, 1993a). These options would involve a review by the Commission itself as to the merits of the request brought through official channels. Dunifer did not attempt these officially-sanctioned avenues to alter the regulation scheme to allow him to broadcast legally. Dunifer's stated motivation for violating Section 301, to challenge the regulatory scheme, had no merit in Silberman's view since an administrative solution was possible (Appendix A, January 10, 1995; observations of U.S. v. Dunifer hearing, January 20, 1995).

The FCC also took the position that the court needed to file a preliminary injunction against Dunifer to enjoin him from broadcasting because of irreparable harm caused by his illegal transmissions. The FCC supported its claim of irreparable harm in two ways. First, the FCC accused Dunifer of interference with licensed broadcasters. However, these allegations were not substantiated in court (observations of U.S. v. Dunifer hearing, January 20, 1995). Second, the FCC argued that Dunifer's actions harmed the regulatory scheme itself (FCC, 1995b). According to Silberman, unchecked violation of the law would cause an increase in violations and lead to "chaos" on the airwaves similar to what occurred in the late 1920s (Appendix A, January 10, 1995; see also Chapter 2). If the court were to issue such an injunction, any future broadcast would leave Dunifer in contempt of court. This would necessitate prosecution by the U.S. Attorney, thus removing the FCC from the legal process. As explained in Chapter 2, the FCC would cease to be involved because the issue would no longer be illegal broadcasting, but contempt of court, a criminal offense.

During the hearing, Silberman strenuously argued these facts, and cited multiple precedents of what he considered similar cases. Silberman implied that Judge Wilken's decision had been dictated in advance by other courts' actions. Silberman further reiterated the dire consequences of the judge not finding in his favor. His actions seemed to aggravate Wilken. This was particularly evident when Silberman made a reference to the relative ages of Wilken and himself, Silberman being the older of the two. Silberman stated that the judge was not yet born when the Constitutionality of section 301 was established in the 1943 NBC case (319 US 190, 227, 1943). Citing the nature of the Dunifer case, Judge Wilken questioned her own jurisdiction, as well as the case's Constitutional considerations. Silberman responded that she did have jurisdiction, that there were no Constitutional considerations, and that she virtually had to find in the FCC's favor. Silberman talked over the judge and Hiken six or seven times to reiterate the FCC's position (observations of U.S. v. Dunifer hearing, January 20, 1995).

Dunifer's Position

From examination of documents provided by the CDC, press reports, and personal interviews, the Dunifer/CDC position was essentially one of access. From the beginning, the arguments pertaining to fine scheduling and application were eliminated. This is because another court removed this issue by ruling separately that the Table of Fines in use was in violation of the FCC's own rule-making procedures (USTA v. FCC, 28 F.3d 1232, 1994). In USTA v. FCC, the court ordered the FCC to follow the agency's rule-making procedures when altering regulations. The Table of Fines was a schedule used to assign specific fines for particular violations.

Hiken, in arguing Dunifer's case, contended in the January 20, 1995 court hearing that the Commission's rules, which did not provide for licensing of a stand-alone transmitter under 100 watts, were overly restrictive and constituted a total ban against micro broadcasting (National Lawyers Guild, 1992; observations of U.S. v. Dunifer

hearing, January 20, 1995). Therefore, Hiken said the rules violated Dunifer's First Amendment right to free speech. A stand-alone transmitter sends primary signals, as opposed to an FM translator, which simply boosts a signal to increase range. FM translators are legal and in wide use (FCC, 1995b). Thus, the Commission's failure to establish regulations for a micro power radio service violated its mandate to create a regulatory scheme that was the least restrictive in terms of state interest (National Lawyers Guild, 1992).

Moreover, Hiken argued in the court hearing that because the FCC had refused to issue low-power radio licenses, a large percentage of individuals could not afford to participate in this medium. The cost of establishing a 100-watt radio station is easily in excess of \$100,000, much of it in legal, licensing, and engineering fees. This leaves only the wealthy in control of the airwaves (National Lawyers Guild, 1992). Dunifer said that he believed that most of these costs were artificial and were designed to restrict access, violating his interpretation of the FCC's mandate to provide for "the public interest, convenience, and necessity" (Appendix A, March 1, 1995). In the court brief, Dunifer's attorneys argued that such a financial qualification did not serve the public interest, and violated the equal protection clause of the Constitution (National Lawyers Guild, 1992).

Additionally, Hiken argued in the court hearing that the Commission's rules violated international treaties such as the U.N. Declaration of Human Rights, the International Covenant of Civil and Political Rights, and the American Convention on Human Rights. Since the United States is a signatory of these treaties, these treaties became U.S. law. The central theme of these treaties, as applied to this case, was that of a person's right to communicate freely with others (FCC, 1995b; National Lawyers Guild, 1992).

Hiken's arguments were primarily in response to Silberman's statements. On multiple occasions, Hiken had to plead to the court when Silberman interrupted him.

Hiken contended that the precedents stated by Silberman had no bearing on Dunifer's case because they did not deal with micro radio and the challenging of regulatory schemes. Further, those cases dealt with the right of the FCC to regulate the airwaves or selectively issue licenses as it saw fit. Hiken stated that he was not arguing these points (observations of U.S. v. Dunifer hearing, January 20, 1995).

Hiken responded to the FCC's assertion that Dunifer had administrative alternatives to breaking the law in three ways. First, Hiken stated that such alternatives were not real alternatives because of the cost and time involved. Second, he argued that Dunifer's individual's Constitutional rights were violated because he did not have the opportunity to apply for a broadcasting license. Third, Hiken stated that the FCC rule-making and waiver process, which allowed the Commission itself to rule without review until an appeal to the courts, was an excessively lengthy process (Appendix A, February 15, 1995; observations of U.S. v. Dunifer hearing, January 20, 1995).

Judge Wilken's Decision Concerning United States v. Dunifer

Judge Wilken found that there were Constitutional issues involved with the Dunifer case, that there was not compelling evidence of interference with licensed operations as documented by the FCC, and that the issue of irreparable harm had not been proven to her satisfaction. Wilken concluded "my inclination is to deny the preliminary injunction and to stay the proceedings and to turn to the FCC to act on it in the context of the forfeiture proceedings, so that this court will have guidance with respect to the need of those regulations and the balancing of the need for the regulations against the Constitutional interests of the people to broadcast." She issued a continuance, and instructed the FCC to examine its regulatory scheme and whether it was proper in light of new technologies, and return with explanations and justifications of its policies. At that time, Wilken would have the proper information to decide on the Constitutionality of the scheme. Further, the judge could not find any "egregious hazards" to the public interest,

as implied by Silberman, that would justify a stay of a preliminary injunction. Despite Silberman's pleading against giving "carte blanche" to people who would operate a radio station without a license, Wilken stated in the court hearing that she was sticking by her decision that the public interest was not endangered ("Memorandum and Order," January 30, 1995; observations of U.S. v. Dunifer hearing, January 20, 1995).

Micro-proliferation: A Can of Worms

During the January 20, 1995 court hearing, Silberman stated that by not enjoining further broadcasts of Free Radio Berkeley, Judge Wilken was "opening a can of worms" (Ewell, 1995). In fact, after the stay by Judge Wilken, the Free Communications Coalition declared in its newsletter, Reclaiming the Airwaves (1995): "Now is the time to seize the space before this window of opportunity slams shut" (p. 1). The effort was to put as many stations on the air as possible while the FCC clarified its position to the court. This period of enforcement confusion was seen by the micro broadcasters as an opportunity to operate in the open with less fear of FCC action (Ewell, 1995). Although the FCC could still seek inspection of unlicensed stations and issue Notices of Apparent Liability, the ultimate outcome of those actions would be in doubt. Any work done might be fruitless in the event, however unlikely, that the FCC would accept a low-power radio service.

From the period starting in February 1995 and ending in August 1995, the number of micro radio stations in the Greater Bay Area and Northern California increased markedly. The original three were Free Radio Berkeley, San Francisco Liberation Radio, and Radio Libre (located in the Mission District in San Francisco). The Free Communications Coalition and Free Radio Santa Cruz (FRSC) reported additional micro radio sources, including stations in Sausalito, Hunters Point in San Francisco, San José, and Mendocino County, as well as other parts of rural Northern California (Ewell, 1995; "On the Air," 1995). A major area of proliferation was in Santa Cruz County. In

addition to Free Radio Santa Cruz, located in the city of Santa Cruz, there were two stations in Watsonville, one of which was a 40-watt transmitter, another in Salinas operating on the same frequency with different programming, and a back-up transmitter for Free Radio Santa Cruz for servicing or other eventualities. According to Schreiner of Free Radio Santa Cruz, there were at least two other transmitters on-line and technically ready to go. He put the total number of micro stations in California at 20 or more (Appendix A, May 31, 1995).

The Salinas and Watsonville stations were operated by Latinos and broadcast in Spanish, with some English programming. These stations were operated, at least in part, as organizing tools for labor. The micro radio movement in Santa Cruz and Northern Monterey was a significant off-shoot of the San Francisco Movement and warranted further attention (Appendix A, May 31, 1995).

Parallel Developments

While the Dunifer case was developing, other micro radio stations were organizing and going on the air. In order to enhance the general understanding of this phenomenon, an examination of Free Radio Santa Cruz and related Monterey Bay stations is discussed below.

Free Radio Santa Cruz

Information concerning Free Radio Santa Cruz (FRSC) was gathered from three main sources: (1) an interview with Schreiner, one of FRSC's founders; (2) observations of a FRSC meeting on May 13, 1995; and (3) an article in the Santa Cruz Good Times (Davidson, 1995) focusing on FRSC.

Schreiner, like so many people involved with micro radio, described himself in the interview as a long-time activist. As mentioned earlier, his roots go back to the Free Speech Movement in Berkeley in the 1960s. Schreiner stated that he has been a "perpetrator" in micro broadcasting. Unlike Dunifer, he was not an engineer or

technician, he has been an organizer. A high school dropout and professional carpenter, Schreiner has been working on a degree in anthropology at the University of California, Berkeley. He saw early on the possibilities in micro broadcasting, especially in organizing the new “dispossessed” class he observed emerging in America. The first station he helped set up was the first one in the Monterey Bay Area. A Spanish station located in the city of Salinas, it predated Free Radio Santa Cruz by several months (Appendix A, May 31, 1995).

Free Radio Santa Cruz was almost an accident. There was some interest by local activists, and initial encouragement by Tom Revielle of Radio Free Venice in Southern California. Revielle was shut down by the FCC in June 1991 and fined \$1,000 (FCC, 1991a). He relocated to Santa Cruz and attempted to take part in the organization of Free Radio Santa Cruz. However, personality conflicts developed between Revielle and other staff members and he left to start his own station. Revielle had a complete studio and transmitter ready for operation, but had not gone beyond the testing stage (observations of Free Radio Santa Cruz staff meeting, May 13, 1995). Although there was noticeable tension between the two stations, Free Radio Santa Cruz has given full technical support to Revielle. The principles of access and abhorrence of censorship, evident in Bay Area stations, were seen again here.

Schreiner described Free Radio Santa Cruz as an egalitarian coalition which began meeting in March 1995 and went on the air a month later. The first broadcast was a reading of the Bill of Rights and the International Workers of the World (IWW) preamble (Appendix A, May 31, 1995). Considering the experience level of the staff, it was not surprising that there were some technical difficulties at first. Soon after the first broadcast, FRSC slipped frequencies down from 89.3 to 88.9, which is KUSP, a public radio station in Santa Cruz (Davidson, 1995). Unfortunately, this happened during a KUSP pledge drive. The interference was discovered almost immediately by FRSC staff

members who were monitoring the signal and the transmitter was shut down. Frequency stability was established soon after and FRSC was back on the air (Appendix A, May 31, 1995). The station has been broadcasting nearly 24 hours a day ever since and was still on the air as of November 1995.

The location of FRSC was always fixed, as opposed to mobile, although the studio itself has changed locations several times. Schreiner stated that Free Radio Santa Cruz is not a Free Communications Coalition station. However, Schreiner did add that FRSC is in contact with other stations in California as well as with the Committee for Democratic Communication. The FCC has visited the studio in Santa Cruz twice as of November 1995. Staff members denied the FCC access to the transmitter both times. So far FCC actions have resulted in a temporary disruption of mail service and the questioning of people whose names appeared on the phone service for the station. On several occasions, on-air announcers have called the FCC in Hayward, and put the agents on the air, live (Appendix A, May 31, 1995). The last report from FRSC was that it had changed frequencies to 96.3 FM, changed studio location, and increased power to 40 watts (personal communication via e-mail with Schreiner, September 15, 1995). The frequency change was in response to information that an FM translator was going on-line on 89.3 as well as to lessen the chance of interference with KUSP at 88.9. According to Schreiner, this had an added bonus of decreasing tension between those who supported the public radio station and those who operated the micro operation (personal communication via e-mail with Schreiner, September 15, 1995).

Although FRSC followed the aggressive civil disobedience of Free Radio Berkeley, Free Radio Santa Cruz differed from Dunifer's station in one important area. Where FRB generally followed FCC content regulations, FRSC openly violated obscenity regulations as interpreted by the FCC. FRSC's argument was that it was following local "community standards" in terms of obscenity; that Santa Cruz is used to

the rawer side of discourse. However, the CDC communicated to FRSC that, although it would help if it could, the content violations made a defense difficult. This had not dissuaded these broadcasters, most of whom had no broadcasting experience and shared only a vision of what they perceive as free speech (Appendix A, May 31, 1995).

United States v. Dunifer Continues

After several months, during which the micro radio movement expanded and developed, the FCC fulfilled Federal District Court Judge Wilken's request for further information and responded to the regulatory questions posed by the court. The following section both describes that response and provides this researcher's interpretations of the events which transpired.

The FCC Responds

In this section of the chapter, the FCC response is detailed and discussed in its relationship to the central themes and arguments as interpreted by the researcher as well as those presented by Dunifer. After asking for and being granted several postponements, the FCC responded to Judge Wilken's request for review on August 2, 1995. In a 14-page Memorandum Opinion and Order (FCC, 1995b), the FCC answered Dunifer's challenges and upheld its earlier regulatory scheme. The only change came in the area of the forfeiture. The FCC recognized the fine as excessive, reducing it to \$10,000. The paragraphs below describe the FCC's arguments outlined in the Memorandum Opinion and Order, contrast those arguments with Dunifer's position, and offer this researcher's interpretations of the issues in question.

In response to Dunifer's allegations that the current regulatory scheme violated his First Amendment right of free speech, the FCC cited 60 years of statutory procedure in establishing its rules and regulations, as well as the requirement by Congress that an individual file a written application for a license. Further, the FCC argued that Congress gave the FCC the power to design a regulatory scheme as the FCC saw fit. The purpose

of a license was to prevent interference by reserving spectrum space for that signal. If no license were required, conflict and interference could not be prevented, only dealt with after the fact. This situation would be “costly, disruptive, inefficient, and directly contrary to the expressed will of Congress” (FCC, 1995b, p. 3).

The statement concerning the possibilities for conflict and interference in an unlicensed spectrum are accurate. However, Daniel S. Emrick, Chief of Investigations Branch, Enforcement Division, Information and Compliance Bureau, said that conflict and signal interference regularly occur between licensed commercial broadcasters (Appendix A, personal interview, January 10, 1995). Thus, licensing does not prevent interference. Rather, station licensing provides a mechanism for resolving disputes concerning interference and other issues. Moreover, Hiken was not arguing that Dunifer was exempt from needing a license to broadcast. He argued that Dunifer had not been given the opportunity to obtain a license because the FCC did not license low-power broadcasting (Appendix A, February 15, 1995; observations of U.S. v. Dunifer hearing, January 20, 1995).

Several court cases have established the lack of any constitutional right to use radio facilities (Red Lion Broadcasting Co. v. FCC [395 U.S. 367, 390, 1969], National Broadcasting Co. v. US, [319 U.S. 190, 227, 1943], and Turner Broadcasting System v. FCC [114 S. Ct. 2445, 2456-57, 1994]). Since there is limited spectrum space, the government has an interest in regulating it. Because there is not enough space for everyone, some people will not be able to obtain a license. These cases were standard fare in previous unlicensed broadcasting cases (see Chapter 2). The concept that individuals need a license to broadcast was widely accepted by the courts and most broadcasters. However, many unlicensed broadcasters have rejected the government’s jurisdiction over the airwaves (e.g., Shields & Ogles, 1992)

Dunifer did not argue this. As discussed later in this chapter, he did mention that his station's lack of proven interference brings into question the FCC's action against him in terms of the Commerce Clause of the Constitution. However, it was only a small part of the overall argument. Dunifer wanted the ability to apply for a micro power broadcasting license. This is prohibited by the FCC; therefore, he could not apply for a license. The court cases cited above were primarily concerned with licenses that were denied. In contrast, Dunifer could not even apply for a license.

The FCC contended that Dunifer did not follow agency procedures to attempt to change the rules concerning low-power broadcasting. The FCC Memorandum and Order (FCC, 1995b) discussed the opportunity for appeals during the waiver or rule-making petition process. The FCC provided an example in which the agency lost a decision concerning its stand on a rule-making petition on appeal. This was to illustrate that there was a fair process for individuals to challenge and change FCC regulations, even if the FCC did not agree with those changes. From the FCC's perspective there were administrative remedies available rather than breaking the law (FCC, 1995b).

Silberman, an FCC attorney, expressed his objections to Dunifer's disregard for established rules and procedures (Appendix A, January 10, 1995). However, seeking a more immediate remedy to what was perceived as a Constitutional violation would seem to be justified. Civil disobedience has a long and generally accepted history in the United States, especially if it is non-violent. In addition, the cost and time of such a rule-making or waiver campaign makes that strategy unavailable to most people. Such an endeavor could literally take years and cost hundreds of thousands of dollars, much of the cost in attorney fees. However, the CDC's assistance in this case was pro bono for two reasons. First, the CDC has a commitment to free communication (observations from National Lawyers Guild forum on micro radio, September 22, 1995, Berkeley, CA). Second, CDC lawyers had prepared a brief for the Mbanna Kantako case concerning micro broadcasting

(National Lawyers Guild, 1992). It was also doubtful that the CDC could commit to the high costs and time involved in a rule-making effort. According to Hiken, media law is a very exclusive club usually involving millions of dollars in lawyers' fees. Thus, Hiken's position was that pursuing administrative avenues to operate a low-power radio station presented a financial burden most people could not afford (Appendix A, February 15, 1995).

Dunifer and the CDC also argued against a rule-making or waiver request because they believed micro broadcasters should not have to ask permission for what should be a fundamental right (Ewell, 1995; observations from National Lawyers Guild forum on micro radio, September 22, 1995, Berkeley, CA). Further, the fact that the FCC had been aware of Kantako's operation since 1989 and had taken no further action, led the CDC to contend in its court brief that the FCC itself should have taken steps to allow for this new technology to enter the regulatory scheme (National Lawyers Guild, 1992). The remedy of a waiver would also allow only Dunifer to broadcast, rather than allow the broader use of this technology. As Hiken, Dunifer's CDC lawyer, stated "The principle is that micro stations have the right to broadcast, and that's what this thing's about." He went on to say, "look at their Act [the Communications Act]. It obligates upon them [the FCC] the mandate that they assist the American people in incorporating new technologies, in initiating on their own rule-making procedure. . . for ensuring the broadest use of the airwaves" (Appendix A, February 15, 1995). Thus, the CDC's position was that the FCC had its chance to recognize and address this issue in 1989 and when the FCC failed to act, the CDC challenged the FCC's policies and procedures.

In the FCC's Memorandum Opinion and Order, the agency found Dunifer's claim that the lack of a low-power radio service violated his right to free speech under the First Amendment was unavailing in several ways (FCC, 1995b). First, the FCC argued that these technical specifications were not based on the content of speech, and, therefore,

were not speech related. Second, there need only be reasonable means of promoting the statute's public interest standard to survive a First Amendment challenge. Third, FCC regulations meet the terms of the Intermediate Scrutiny Test, the statutory objective of ensuring "fair, efficient, and equitable distribution of radio service." Further, "The Commission's rules pertaining to low power broadcasting services are reasonably related to this permissible statutory objective and are designed to allow the most efficient use of the spectrum" (FCC, 1995b, pp. 4-5).

The FCC then devoted a section of its Memorandum Opinion and Order (FCC, 1995b) to the process involved in the establishment of regulations for low-power FM translators and rejected a request to allow them to have original programming. That would have permitted a defacto low-power service.

The Commission went on to state that public hearings were held in the process of deciding to raise the minimum broadcasting power to 100 watts. After the public hearings were completed, the Commission decided that it was a more efficient use of the spectrum, would provide more diverse programming to rural areas, and reduce interference with bigger stations and especially channel 6 television if low-power radio were eliminated. "The Commission's public interest determination to provide for increased power to these facilities [upgrade low watt to high watt] was based on its goal of providing, on a nation-wide basis, a stable, efficient, and diverse radio communication service" (FCC, 1995b, p. 5). The FCC further noted Dunifer had a chance to participate in these hearings and did not.

While the FCC's arguments addressed the issues raised by Dunifer, several weaknesses can be identified in those arguments. First, the right of free speech addresses access as well as context. Thus, the First Amendment is concerned with both the ability to speak in a public place and the content of that speech. Dunifer and his attorneys argued that the FCC violated his First Amendment rights by denying him the ability to speak

(Davidson, 1995). Similarly, the premise of a free press is historically based on the right to own and operate a literal “press,” in the mechanical sense, as a person sees fit (Altschull, 1990). In the case of FRB, Dunifer was arguing that he should be able to use his “printing press,” a micro radio transmitter.

Second, the argument dealing with the review of the low-power translator service was not examined in light of the Constitutional or access questions raised by the Dunifer case. Also, if low-power radio stations cause interference, it would seem translator stations would cause interference as well. They operate with the same relative power and differ only in that they re-broadcast other signals instead of originating programming.

Third, limiting the number of radio stations would seem to hinder rather than facilitate diversity. Random House defines diversity as variety (Flexner, 1987, p. 574). Higher station wattage leads to a larger broadcast area resulting in fewer stations and less variety for a particular region of the country.

Fourth, the FCC statement that Dunifer did not participate in the 1978 decision to establish a limit on minimum broadcasting power (69 FCC 2d 240), 15 years before the NAL was issued, was accurate, although irrelevant. Kahane (1995) defined irrelevant reasons as “reasons or premises that are irrelevant to a conclusion. . . . In typical cases of irrelevant reason, the attempt is made to make the listener or reader believe that the issue has been addressed, and, indeed, addressed satisfactorily, when in fact it hasn’t” (pp. 69-70). In addition, the United States system of government has always been open to constant revision, and is revised on a regular basis. Even the Constitution has been amended, and has had amendments repealed numerous times. Thus, while Dunifer did not participate in the 1978 hearings, this would not preclude him from seeking changes in 1995 FCC practices and policies.

The FCC also reiterated its stand on the efficient use of the spectrum as it has since the 1930s. In its Memorandum Opinion and Order (FCC, 1995b), the FCC argued

that high-power stations typically have better quality equipment, bigger and better signal strength, and take up bigger and better-defined areas. Therefore, such stations are easier to track and regulate. In contrast, smaller stations, operating on the fringe of a larger station's contour, or official area of operation, can cause interference, which is harder to find and correct because of the weaker signal strength. Further, the low-power transmitters "typically used by unlicensed radio operators" do not meet technical standards concerning signal drift and stability which will inevitably lead to interference (FCC, 1995b, p. 7). Thus, rules and regulations are needed to keep the spectrum clear. In addition, the FCC argued that low-power FM cannot adequately service communities and mobile audiences and could interfere with larger stations. The FCC noted that super high-power stations are also not permitted. Apparently the middle ground as defined by the FCC will give the American public the maximum number of stations with the maximum reach, thus ensuring the FCC's definition of diversity.

A smaller station within the contour of a larger station will cause interference, but only if the two stations were on, or near, the same frequency. As Emrick, an FCC official, noted, prevention of interference is the primary reason for licensing radio stations (Appendix A, January 10, 1995). Therefore, this interference problem would be less likely to exist if the FCC licensed micro radio stations as the agency has done with larger stations. That is, if micro radio stations were licensed, they would have their own frequency assignment. Thus, they would be no more likely to cause interference than higher-wattage stations. It would be possible for unlicensed radio operators to have substandard equipment and cause interference with other stations. However, this problem would be eliminated by FCC licensing and the technical frequency stability standards that would come with licensing. In fact, 10-watt Class D FM stations were licensed prior to 1978. According to FCC documentation, the decision to no longer license such stations was not based on interference or frequency instability (69 FCC 2d 240, 1978).

As it has in the past (69 FCC 2d 240, 1978; McChesney, 1993), the Commission repeatedly returned to the bigger is better (up to a point) technical perspective (FCC, 1995b). However, another issue was raised in Memorandum and Opinion Order (FCC, 1995b): Maximum wattage stations are more economically feasible and a micro station cannot cover enough area to make a profit. However, micro radio stations generally incur minimal costs and have a non-commercial orientation (Ewell, 1995; Fine, 1994). Thus, although the FCC's concerns are applicable to higher-wattage stations, this particular economic argument does not seem to fit the case of the typical micro broadcasting operation.

Dunifer used the Canadian system of regulating micro radio as a model for such a system in the United States (FCC, 1995b; National Lawyers Guild, 1992). The FCC responded in its Memorandum and Opinion Order (FCC, 1995b) that even Canada has made an individual obtain a license first. This is an easy task since the Canadians license micro radio, thus making it unnecessary to broadcast illegally. The main thrust of the Commission's argument was centered around the different population and broadcast operation densities. There are obviously more people and more radio stations in the United States. While this is true, it may not, as the FCC stated, preclude such a system here. There can only be as many stations as there are frequencies. If micro radio were licensed, the number of low-power stations could be regulated. However, such licensing might reduce the number of large contour stations (high-wattage stations that occupy a specific frequency over a large geographical area) because of the presence of small operations.

Dunifer also argued that since his transmissions did not interfere with a licensed operation or cross state lines, he was protected from prosecution under the Commerce Clause of the Constitution (FCC, 1995b; National Lawyers Guild, 1992). Although this argument has been used previously by unlicensed broadcasters, it has been repeatedly

rejected by courts in the past (Phipps, 1991). Hiken stated that the rationale underlying this argument was that none of the applicable cases involved micro radio and most of the stations in past cases did cause interference (Appendix A, February 15, 1995). The FCC also mentioned in this section of its Memorandum Opinion and Order that if micro radio were unregulated under the Commerce Clause, then the proliferation of stations would lead to interference (FCC, 1995b). However, according to Hiken, such interference, if it involved a licensed broadcast station, would fall under the Commerce Clause and could be regulated (Appendix A, February 15, 1995).

The FCC also stated in its Memorandum and Opinion Order (FCC, 1995b) that Congress gave the FCC the mandate to operate in “the public interest, convenience, and necessity” (p. 10). Defining what this mandate constituted was left to the discretion of the FCC. Dunifer argued that the current regulatory scheme disallows micro broadcasting, denies access to poor and minorities, and therefore violates the Equal Protection Clause of the Constitution. The Commission reserved the right to define what was in the public interest, and did not see a micro broadcast service as being in the definition of the public interest, despite the increased access to the poor and minorities (National Lawyers Guild, 1992). Although the technology is available for these people to broadcast, the artificial requirements of minimum power, legal, and licensing fees makes it inaccessible.

Dunifer's attorneys listed a number of international treaties, mentioned previously in this chapter, in relation to the right to communicate with others (National Lawyers Guild, 1992). In its Memorandum and Opinion Order (FCC, 1995b), the Commission dismissed this argument, having examined these treaties and finding no specific mention of micro broadcasting. The FCC did not comment on the concepts of communication discussed. The agency added that there was nothing contained within those treaties that would give someone a right to broadcast without a license or without the permission of

the FCC. However, Dunifer did not request the right to broadcast without a license. Rather, he broadcast without a license as a protest against not having a micro broadcasting license available.

The remainder of the FCC's arguments in its Memorandum and Opinion Order (FCC, 1995b) was directed towards the forfeiture and NAL process itself. Dunifer contended that he should have been warned before he was fined, based on the notion that the fining system was set up for licensees. Dunifer stated because he was not a licensed broadcaster took him out of the information loop regarding penalties and therefore entitled him to a warning first (FCC, 1995b). The Commission rejected this, reasoning that since Dunifer chose to broadcast as if he were a licensed station, but without obtaining a license first, he should be subject to the same penalties. Further, the FCC noted there is nothing in FCC rules and regulations that required it to issue warnings. Any warnings issued in the past were a judgment call by the particular field office. Clance stated this type of flexibility in procedure and fining as initiated by individual field offices could cause confusion, but was consistent with earlier actions (Appendix A, January 10, 1995).

Dunifer also brought up the issue of legal representation which had caused Mbanna Kantako to walk out of court (see Chapter 2). The FCC position was that in a civil action, as opposed to a criminal action, the right to counsel does not exist. While this is true before the forfeiture appeal stage, once the forfeiture is appealed, an individual is entitled to counsel. The Commission added that Dunifer had been able to retain counsel. This made invalid the argument that his lack of funds and state-appointed counsel violated his rights (FCC, 1995b; Shields & Ogles, 1992).

The argument that Dunifer's fine was excessive was addressed in part in the FCC's Memorandum Opinion and Order. The FCC did reduce his fine to \$10,000 from \$20,000. Although the \$10,000 fine was in excess of the standard fine (Davidson, 1995),

FCC regulations allow for a maximum fine of \$10,000 per day for parties other than those who have sought Commission authorization. Again, the flexibility of enforcement procedures applies to the levying of fines and was codified by the FCC. “[T]he nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offense, ability to pay, and such other matters as justice may require” can be taken into consideration when assessing fines (FCC, 1995b, p. 13). The NAL only cited one violation, therefore the maximum fine for one violation was issued (FCC, 1995b).

This flexibility has been given to allow for a different penalty for the high school student playing disc jockey in his or her garage, and an adult who intentionally and publicly operates in violation of the law. In its Memorandum Opinion and Order (FCC, 1995b), the FCC pointed out one of Dunifer’s numerous press interviews as an example of his intransigence. Thus, the FCC argued Dunifer willfully violated the law rather than violating the law out of ignorance.

Finally, Dunifer stated that he could not afford to pay such a fine (FCC, 1995b). Financial ability to pay fines has been a major mediating force in forfeiture procedures. Examination of FCC printouts concerning fines and violations (FCC, 1995a) indicated that the FCC routinely took ability to pay into account when deciding on the final amount of a forfeiture order. However, Dunifer had not filed any financial statements with the FCC concerning the ability to pay. Therefore, the amount of the fine stood at \$10,000. Considering Commission history concerning these matters, any compelling financial information provided by Dunifer in the future would likely result in the lowering of the fine (FCC, 1995a).

The Commission response ended simply with the statement that Dunifer’s arguments were denied and a fine was issued, with instructions on how to pay.

The Next Phase

Another conference was scheduled for September 22, 1995 for the attorneys for Dunifer and the FCC to work out the details concerning future meetings and court dates. Researcher observations of this conference and discussions with Dunifer outside the courthouse confirmed this agenda. A forum held by the National Lawyers Guild that evening at 8 o'clock in Berkeley, CA verified that schedule. Peter Francks, another one of Dunifer's attorneys, stated during this forum that the hearings concerning the broader issues of this case would probably not take place until after January 1996. The issues referred to by Francks centered around the constitutionality of the FCC's regulatory scheme. He stated that these issues will be debated using testimony by expert witnesses. At that point, Judge Wilken is expected to review the issues involved and address the FCC request for a preliminary injunction. Considering the stated positions of both parties, and the unlikelihood of either the FCC or Dunifer conceding, any decision made by Judge Wilken would likely result in an appeal with the probability of the case reaching the Supreme Court. Silberman and Hiken confirmed they were willing to go as far as necessary to prevail (Appendix A, January 10, 1995; February 15, 1995, respectively).

The Commission response gave only short service to the primary issues involved in the Dunifer challenge to the regulatory scheme. The FCC concentrated on the actual violation that formed the protest and gave Dunifer the legal standing to enter court and challenge the regulatory scheme. The agency's position was that Congress gave the FCC the right to make and interpret the rules, Dunifer broke those rules, and therefore, he must pay the penalty.

“ [T]heir [the FCC's] decision provides remarkable insight into the government's complete lack of understanding of the reasons for the communication revolution

represented by micro radio.” (Allan Hopper, CDC Attorney, “FCC rejects low power,” 1995).

FCC Enforcement Difficulties

The position taken by the FCC in the Memorandum Opinion and Order dated August 2, 1995 (FCC, 1995b), one of no compromise concerning the technology and use of micro radio, seemed to disregard the enforcement difficulties involved with the expansion of the micro broadcasting movement. The first hurdle the FCC had to overcome was one of limited resources. According to the FCC’s Annual Report for 1993, the last year available, FCC employee units totaled only 451 for its field offices and 1,292 for its Washington, DC offices, for a total of 1,743. The total budget for 1993 was \$140,000,000, much of which was earmarked for specific projects, such as the \$11,500,000 to implement the Cable Television Consumer Protection and Competition Act of 1992. This fiscal allocation was distributed over a number of bureaus, of which the Compliance and Information Bureau (CIB), is only one. Clance stated actual funding levels for the CIB are unavailable (Appendix A, January 10, 1995). The number of employees for CIB was listed at 374 for 1993 (FCC, 1993b).

Funding and personnel were spread over 35 field offices with 307 employees, and the main offices in Washington, DC, which had 67 employees. As of 1993, California had the largest number of field offices with four. Additional field offices were located in 23 other states and Puerto Rico. Although the FCC had listening sites around the country, these sites could only give the appropriate field offices a general area to search. Locations of unlicensed broadcasters were often discovered through investigations of complaints and the monitoring of press. The primary mode of tracking these broadcasters was with radio detection finding (RDF) vehicles. Emrick, an engineer with the FCC, stated the FCC had approximately 75 such vehicles in operation spread out over the different field offices and the research facility that the FCC operated in

Powder Springs, GA (Appendix A, January 10, 1995). Some offices had only one vehicle, while other offices had upwards to three. These vehicles were all custom fit with RDF equipment at the Powder Springs facility, at a combined cost of vehicle and electronics equipment approaching \$80,000 each, not including labor.

The FCC must monitor and regulate 6,900 conventional FM stations (FCC, 1995b) in addition to all AM stations, transmission towers, television, cable service, and a host of other electronics technology and manufacturing. Nearly all these regulatory and enforcement functions were handled by the field offices (FCC, 1993b). Thus, the agency was spread fairly thinly. The prospect of attempting to track down over 400 unlicensed broadcasters, and process them through the NAL and forfeiture procedure could prove to be problematic.

The portability of a micro station, which would easily fit in a large backpack, including power source, further added to the tracking difficulties. Even if the number of unlicensed stations were exaggerated, half that projected number would be difficult to interdict ("forbid" or "prohibit" [Flexner, 1987, p. 993]). Moreover, although he did not provide specific numbers, Dunifer stated that the number of kits ordered each year from FRB has been increasing steadily. Combined with the ability of others to construct such units, an end result is an ever-increasing, difficult-to-track, number of transmitters (Appendix A, March 1, 1995).

Added to the difficulty of locating such stations and the processing of Notices of Apparent Liability (NAL) and Notices of Forfeiture (NOF) has been taking action against broadcasters who have refused to pay fines or stop broadcasting. Even in the current climate where Kantako refused to pay his fine or stop broadcasting since 1989 with no further FCC action, enforcement had been difficult. When violators have refused to acknowledge Notices of Apparent Liability (NAL) and Notices of Forfeiture, the FCC has had to go to the local U.S. Attorney to obtain assistance in prosecution, search

warrants, and equipment seizure orders. According to Clance, an armed officer must serve a search warrant (Appendix A, January 10, 1995). This usually has been a Federal Marshal, and rarely, local police. FCC field agents do not carry firearms. Both Clance and Emrick stated that any move to arm FCC agents would be strenuously opposed internally (Appendix A, Clance, Emrick, January 10, 1995). FCC agents only carried firearms during World War II, when the agents played a counter-espionage role. Clance further stated that obtaining cooperation from some U.S. Attorneys, who regularly deal with drug trafficking and organized crime cases, ranged from difficult to impossible. He noted the problems associated with convincing a U.S. Attorney that someone operating a 10-watt radio station without a license deserves the attorney's time and energy (Appendix A, January 10, 1995). It would be easy to see how local police would not go out of their way for the same reasons, especially since it would be a federal action outside their jurisdiction. Moreover, court action involving micro broadcasting station would present further difficulties.

In the past, pirate radio stations usually consisted of one to several people, or were managed or coordinated by an individual. As with commercial stations, the pirate operations tended to be hierarchical in nature. All the micro broadcasting organizations in the San Francisco Greater Bay Area known to this researcher are not structured hierarchically. It might seem to the casual observer that Dunifer and Free Radio Berkeley are one and the same entity. However, Ewell's (1995) article on Free Radio Berkeley and Dunifer's statements indicate that this is not the case. As Dunifer stated, he just elected to take the heat to bring the case into court (Appendix A, March 1, 1995). These stations were primarily coalitions with several key people, and no one clearly in authority. This was true of FRB by Dunifer's admission, and was also true of Free Radio Santa Cruz. FRSC was very adamant in its rejection of traditional hierarchy (Davidson, 1995). The influence of Food Not Bombs, the IWW, and the Green Party in many of these stations

has served to reinforce this tendency. With no leader, it has been difficult for the FCC to find an individual to prosecute. Further, the FCC has had to convince a judge that the individual identified was the responsible party (Kuipers, 1989). This would probably be the unfortunate person who happened to be on the air when the authorities showed up, as in the RNI case (Kuipers, 1989), or perhaps the individual(s) who rented the space where the transmitter was located. Issuing a preliminary injunction against an individual to stop broadcasting would only stop that individual, no one else. The FCC would have to get action taken against a whole staff to make such a legal remedy work in a non-hierarchical environment. Providing individuals could be proven to be responsible, the penalties for such individuals would produce even more difficulties.

Besides the possibility of going to jail for contempt of court in the case of a violation of a preliminary injunction, the only other penalties involved are monetary forfeiture and the seizure of equipment. As stated above, enjoining a few people may not be enough to stop others from broadcasting. The concept of a fine as a penalty was based on deterring a money generating broadcast or manufacturing facility from breaking the rules. If individuals were primarily trying to make money, a fine could prove to be a deterrent. Even an individual with real property or assets could be dissuaded from acting in a manner that would cause her or him to be fined. However, a individual with no assets, either in cash or property, would not have been deterred. According to FCC records (FCC, 1995a), fines were regularly reduced or eliminated when the person fined produced proof that she or he did not have the money to pay. A majority, if not all of those involved in the movement, were poor. As Schreiner of Free Radio Santa Cruz explained, this was a movement of the dispossessed and their supporters (Appendix A, May 31, 1995). These people had no property, investments, or savings. Many of them did not even own cars or have bank accounts. With no money to lose, the prospect of a fine was meaningless. The FCC would have to move to incarceration as a remedy, and

considering the backlog in the American court system at both the federal and state levels, such an option did not seem viable.

The seizure of equipment could be a major setback to a small poor radio station, but the replacement cost for such equipment was relatively minimal and getting less expensive all the time. A group of people could easily contribute \$10 each, or hold a benefit to pay for the replacement of such equipment. To raise \$500 would not be a lot of money for a group of dedicated activists and their supporters. Since many of the people involved were veterans of grassroots social activism, they were well schooled in fund-raising methods.

Finally, the FCC seemed to underestimate the micro broadcasting movement. As illustrated by the FCC response to Judge Wilken's request, the FCC dealt with the Dunifer case as just another individual who wanted to broadcast without a license. This can be seen from the citations and language used, as well as the fixation on issues covered in past unlicensed broadcasting cases. Based on this researcher's inquiries, the only indication of FCC acknowledgment of a fundamental difference between micro broadcasters and traditional radio pirates came from Emrick. He assigned the title "pirate" primarily to short-wave operators, while acknowledging that there was a "distinction" between micro broadcasters and other unlicensed FM broadcasters. "I generally try not to use the term [pirate]," when describing FM activity (Appendix A, January 10, 1995).

The Free Communications Coalition in conjunction with the Committee for Democratic Communication in this researcher's estimation were two very organized and experienced organizations. The Free Communications Coalition strength was contained in its associations with other well-established activist organizations with which it shared members and common cause, as well as a non-hierarchical system of organization. Schreiner stated that the movement welcomed all viewpoints, as long as they supported

the concepts of free speech and communication (Appendix A, May 31, 1995). Currently, most stations could be classified as “left wing” in their political orientation. However, this would be an oversimplification of staff composition. Most announcers appeared apolitical, with ages ranging from 8 to 80. On March 2, 1995, the day after Dunifer was interviewed, he had meetings to set up shows for the Gray Panthers, a senior citizen activist group, and a group from Berkeley High School. Free Radio Santa Cruz had several shows where elementary school students had total control (Appendix A, May 31, 1995; Davidson, 1995). The decision of what goes on the air depended on what the announcer wanted to do; all an individual had to do to get on the air was show up to be trained and arrive for his or her shifts. With such a broad base of support, these stations might be harder to undermine than the FCC realizes.

Summary

The Bay Area micro radio movement and its off-shoots have posed a distinct challenge to FCC regulatory and enforcement policy. Since the FCC’s enforcement strategies and policies are highly documented, the CDC has had a large data base from which to work in developing counter-strategies. The apparent insistence of the FCC to treat Dunifer’s activities as a standard pirate broadcast case has affected the agency’s ability to rise to the regulatory challenge presented by Dunifer.

As explicitly stated in the title of the case, U.S. v. Dunifer, the Commission seemed determined to treat this issue as it concerned the individual, and not the movement. Dunifer’s decision to be the test case for access to radio broadcasting by the larger population seemingly has been ignored by the FCC, which has continued to focus on Dunifer himself and two violations of Section 301 of the Communications Act. The larger implications and consequences of micro radio proliferation, its proponents, and support base, will continue to create problems for the FCC regardless of the outcome of this individual case.

Operations such as Free Radio Santa Cruz (FRSC) and the Latino broadcast stations to the south indicated the spread of the concept of micro radio as well as varying degrees of application, content, and mission. As Schreiner of FRSC said, while the Hispanic stations were more conservative, FRSC leaned the other way (Appendix A, May 31, 1995). This variety was seen in other Bay Area micro broadcasters as well. They embraced the idea, seized the space, and are unlikely to give it up without a fight.

The FCC's apparent underestimation of micro radio's potential impact was further seen when the availability of agency resources were combined with seemingly limited enforcement capacities as it interacted with a spreading micro broadcasting movement. Taking into consideration the chain of events that led to this case, the state of technology in use, and the attitudes of the participants, a simple solution seems unlikely. This and other implications of the present study will be discussed further in Chapter 5.

CHAPTER 5

Summary, Conclusions, and Implications

The primary purpose of this study was to examine the development of the micro broadcasting movement in the San Francisco Bay Area. This necessitated pursuing three interrelated avenues of research: (1) The history of Free Radio Berkeley and its founder Stephen Dunifer; (2) Dunifer's legal interaction with the Federal Communications Commission; and (3) an examination of other micro radio operations in the Greater Bay Area with a focus on Free Radio Santa Cruz.

Unlicensed broadcasting in the United States has taken many forms since the advent of federal broadcast regulation in the late 1920s. Starting with commercial and private broadcasters seeking ways to circumvent the new federal broadcast regulations, unlicensed broadcasting quickly moved into the amateur sector. After the end of World War II, short-wave radio pirates came to the forefront of unlicensed radio activity. This was occasionally interrupted by high-profile pirates who grabbed the attention of the Federal Communications Commission (FCC) and the press, including off-shore pirate stations such as Radio Free America and Radio New York International (RNI). Although these cases drew much attention, they were more the exception than the rule.

With the rise of social unrest in the late 1960s, more unlicensed broadcasters moved to the normal AM and FM bands, although short-wave pirates still dominated unlicensed activity. This began to change in the mid-1980s as a new type of unlicensed broadcaster emerged: the micro broadcaster. Usually operating on the FM band in the 10-watt range, the micro broadcasters embraced a social agenda and presented themselves as a people's alternative to commercial and corporate-sponsored public radio. Unlike their predecessors, these unlicensed broadcasters moved into the open and began to defy the FCC's regulatory scheme that made such low-power stations illegal. At the forefront

of this challenge was Stephen Dunifer, the founder of Free Radio Berkeley in Berkeley, CA. Dunifer's challenge to the FCC began with the agency citing him for unlicensed broadcasting. With the help of the Committee for Democratic Communication (CDC), a part of the National Lawyers Guild, Dunifer moved to make a direct challenge to the FCC's regulatory scheme in federal court.

In the findings section of this thesis, Dunifer and Free Radio Berkeley were investigated from their onset and followed as the case, United States v. Dunifer, developed in federal court. At the heart of his challenge was the notion that only the wealthy could participate in electronic discourse because this inexpensive form of broadcasting was illegal. The FCC moved to request a preliminary injunction to stop Dunifer from broadcasting. In an unprecedented decision, the federal court judge denied the FCC request and called into question the FCC's prohibition on micro radio. This set the stage for hearings on the validity of Dunifer's arguments. As this case developed, other activists became involved in micro broadcasting and a growing number of micro radio stations began operating throughout Northern California.

The FCC, facing this high level of unlicensed radio proliferation, was confronted with a number of difficulties in trying to shut down these stations. These difficulties had to do with the activist nature of the broadcasters and the FCC's lack of financial resources. This made fining them, the primary tool of FCC enforcement, problematic.

At the time of this writing, the Dunifer case is awaiting the next series of hearings and micro radio stations are spreading out across Northern California. Since this story is in progress, only tentative conclusions can be drawn from the findings in this thesis. However, with Dunifer's and the FCC's arguments presented, and all available data collected, aspects of these phenomena can be explored.

The micro broadcasting movement is a significant deviation from past unlicensed activities and the normal commercially-based corporate environment to which the FCC is

accustomed. Louis Hiken, Dunifer's attorney, contended in his interview with this researcher on February 15, 1995 that the Commission "absolutely" knew what the micro broadcasting movement meant and was taking steps to stifle it. However, the preponderance of information gathered in the present study indicates that the FCC's rank and file either failed to grasp the primary differences between past pirate activity and present micro radio or chose to ignore the issues Dunifer's case raised. These factors may have been compounded by the FCC's limited economic and personnel resources.

Previous unlicensed broadcasters sought to broadcast on their own terms for reasons ranging from profit, as with the off-shore pirate Radio New York International (RNI) (Bender, 1988), to political ferment, as in the Reverend McIntire case (Radio Free America) (Boyd, 1983). In contrast, the present micro broadcasting movement, generally embraced by dedicated activists, is grounded in the fundamental principle of legitimate access to a means of communication. The primary proponents of this movement have already committed their lives to pursuing their definition of social justice, and they view micro radio as an important tool in attaining their goals. Thus, the use of radio is not an end to itself, nor is the right of a particular person, Stephen Dunifer of Free Radio Berkeley or Richard Edmonson of San Francisco Liberation Radio, to broadcast. Rather, micro radio is a means to achieving the principle of democratic communication (Ewell, 1995; Fine, 1994). As Hiken explained in his February 15, 1995 interview with this researcher, "One consideration that is important to realize is that micro radio is only one prototype of the concept of democratic communication. . . . So, it's important to look at micro radio in that overall context, and not just as an end to itself." It is this view of micro radio as a tool of social change that the FCC failed to publicly acknowledge.

Micro communication is clearly becoming an important area of study. The idea of democratic communication extends far beyond the initial argument concerning micro radio. Average people, as opposed to large public or private institutions, having the

ability and access to communication technology, could alter the landscape of mass communication. All those interviewed who were participating in micro radio or the Free Communications Movement, a more accurate title for this phenomenon, had interests, ideas, and plans for the major means of electronic communication, including television, the Internet, and computer technology. Dunifer, as of November 1995, is designing a broadcast device that can be hooked-up to a personal computer and placed on a roof top with a small antenna. The end result is that, for a \$100, people can have their own nodes or servers. He described this technology in an interview with this researcher on March 1, 1995 and in statements made during a National Lawyers Guild forum on micro radio on September 22, 1995 in Berkeley, CA. Tom Schreiner of Free Radio Santa Cruz stated in his interview with this researcher on May 31, 1995 that he has recruited help in developing plans for an FM transmitter that is sealed and integrated. The transmitter should be able to meet all FCC specifications, not require a technician, and be about the size of a cigar box.

The technology exists for these and other innovations that will allow ordinary people to produce as well as consume media, to own the means of media production and communicate with others in their own language and on their own terms. This would be a distinct shift from the dominant mass communication paradigm which is dictated by traditional media sources, most of which are profit driven (Beniger, 1989). Because of the low cost, these new technologies could eliminate the restrictions that are endemic to profit-driven mass media. Even public broadcasting is restricted by the immense costs of maintaining large facilities and the need to please revenue-generating target audiences along with corporate sponsors and underwriters.

Micro radio's legal battle goes beyond the abstract concepts of electronic access by the average person. Those involved made it clear that they see the media as predominantly controlled by wealthy corporations and the privileged few, the "haves,"

who cooperate with the government to maintain the status-quo. This is a direct threat to the survival of civil rights, as well as the physical survival of the burgeoning underclass, the “have-nots” or the “dispossessed,” as Schreiner called these people (Appendix A, May 31, 1995). In the view of Schreiner, and many of the micro broadcasters, denying media access is one of several ways in which the rights of people whose only crime is being poor or not motivated by the drive to acquire property, cash, and power, are eliminated (observations of Free Radio Santa Cruz staff meeting, Santa Cruz, CA, May 13, 1995; observations of micro radio rally, Oakland CA, January 22, 1995). This alienation of the have-nots is evident on the political right as well as the left. Media as community organizing tools are apolitical, and with all likelihood, will be embraced by many people of different ethnic and political persuasions who feel threatened by the public and private powers which control these resources.

This revolution of technological access is going to occur with or without official government approval. Those involved in the Bay Area micro broadcasting movement stated without reservation that their actions will continue, whether or not the FCC approves. The micro broadcasters are prepared for either eventuality. They have studied the opposition and know the FCC’s limitations. This information is from interviews with Stephen Dunifer on March 1, 1995, and Tom Schreiner on May 31, 1995 with this researcher.

Micro broadcasting, and micro communication more generally, benefits those who govern as well as those governed. Citing Hume and Milton, media scholar Herbert Altschull (1990) argued, “since people are likely to believe bad things about their governors one way or the other, it is safer for the ruler to have those bad things put down in writing, because then they can come to his [or her] attention more easily” (p. 64). Thus, it would seem important for the FCC to note this reason for the initial movement to provide a “free press,” or in this case, a “free radio.” Moreover, this notion of a free radio

is concerned with owning the means of communication, then a printing press, now a transmitter, the Internet, or other emerging forms of communication technologies. In this case, free radio has nothing to do with content, but everything to do with free speech and the ability to communicate with others. Electronic discourse, held in a public forum without governmental interference, keeps dissent in the open and part of the governing process. To push those who dissent underground adds to an already-existing climate of alienation, and drives people away from any feeling of commonality that they may have with the mainstream. Once there, that deviation, unmoderated by contact with the larger body of American culture, can fester and lead to conflict that can damage the all-too-frail fabric of our society. Keeping all viewpoints in the public forum, the “market place of ideas,” supports evolution instead of revolution. In this case, if access is not given, then it will be taken.

Difficulties in Communication

In the midst of interviewing the individuals on both sides of the micro radio debate, examining commercial broadcasting’s reaction, the opinions of FCC officials, and informal discussions with coalition members, this researcher observed a central tendency: A lack of respect or sympathy for the opposition. This animosity was wide-spread, often extreme, and at times led to disregarding the actual content of the other person’s speech. Each party seemed unable to relate to or understand the other side’s position, motivations, or philosophies. In any conflict, this would be true to some extent. But the extreme nature of the animosity in this case was on the level of combatants. This lack of respect for the forces that drove these individuals to their philosophies, whether FCC engineers or announcers at micro stations, made any productive communication difficult, if not impossible. Further, the participants on each side seemed to assume that they understood the other’s perspective. However, interview and observational data suggest this is not the case.

All parties were friendly and cooperative with the researcher; all seemed to be decent people with good senses of humor. The demonizing of individuals as either “government thugs” or “anarchist socio-paths” is counter-productive to the possibility of resolving the conflict. For eventually, some resolution must be agreed upon.

Indicator Technology

Radio was the first electronic mass communication device that allowed direct signal transmission into people’s homes, as well as being within the financial means of most Americans. Considering this, and that most mass communication technology has taken radio’s path in terms of regulation and use, radio can be considered an “indicator technology.” An indicator species is a species that, for whatever reason, can be used to judge the health of a particular area. As an indicator species can be used by biologists to gauge the viability of an entire ecosystem, an indicator technology can be used to indicate the direction or viability of a particular area of technological development; in this case, communication technology.

Once it became established, radio operated as a general entertainment and news medium. Primarily operated by a few networks, radio gradually took a narrower marketing approach, concentrating on specific audiences and age groups. Television has followed the same path. Having started with general audiences and network control by the original “big three” (NBC, CBS, and ABC), television has progressed towards a wider variety of players owning stations and networks that target more and more specific audiences . Like radio, with its dominant signal format approach, television stations that are all news, all sports, or all comedy have become the norm. Radio followed this path of specialization because of demands placed upon it by the advent of television. Television is now following a similar path because of the advent of cable, videotape, and other technologies (Beniger, 1986; Comstock, 1989).

Radio was the first electronic communication device that could directly connect with people at almost any time and in almost any location. Although the equipment for receiving broadcast signals has been relatively inexpensive and easy to acquire for some time, the means to send those signals adequately have only recently emerged from the ranks of radio hobbyists and engineers and started to spread across the country. As an indicator technology, the problems associated with controlling and regulating radio are a likely preview of things to come in other communication media.

Radio is an indicator technology at a philosophical level as well as a technical one. While the availability of print technology has played a crucial role in facilitating public discourse, the use of radio is the next logical step to broaden participation in such discourse and without institutional filters. The micro radio movement may be the first stage in a larger effort to bring democratic principles to electronic media as a whole. As printing presses dropped in price, and ultimately word processing and photocopying opened publishing to the majority, so could the dropping price, familiarity, and benefits of broadcasting take it into the public realm. To many people in North Central California, it already has.

Limitations

While the present study has several intriguing implications for micro broadcasting research specifically and mass communication research more generally, any conclusions drawn from this study must be tentative in nature. The primary limitation of the present research project is that it is a case study. Although a case study can provide depth in its analysis, generalizations are difficult to make. That is, events and issues relevant to the micro broadcasting movement in the San Francisco Bay Area may only be applicable to that particular region and the specific individuals involved.

Another limitation of the study stems from the motivations and perspectives of the those who participated in the study. Responses in interviews, statements made in

meetings, and documents provided were undoubtedly influenced by the individuals' biases and agendas. Therefore, any information gathered must be viewed with a critical eye to its source.

Finally, the United States v. Dunifer case is still in progress. Thus, any implications drawn from this case are subject to qualification pending its final outcome. Although some individuals interviewed for this study were forthcoming with their predictions for the case's future, these statements cannot be interpreted as definitive.

Opportunities for Further Research

Considering the general lack of scholarship in this area, as discussed in Chapters 1 and 2, the opportunities for future meaningful research are many. Mbanna Kantako, the founder of the micro radio movement and operator of Black Liberation Radio in Springfield, IL, made an intriguing statement concerning the drop in crime and the increase of community cohesion after the introduction of a micro station in his primarily African-American housing project (Shields & Ogles, 1992). Determining the validity of this statement by conducting a field study would yield invaluable data that might offer a cheaper and saner answer to urban crime and disintegration than building more prisons.

Along the lines of minority studies, the low key, but crucial participation in the micro broadcasting movement of Latino stations would make an excellent area of study. This is especially true regarding their connections with peasant movements in Mexico. These stations are organizing tools for labor, as well as playing an essential role in cultural preservation.

The association of other grassroots organizations mentioned in this study, such as Food Not Bombs, the International Workers of the World (IWW), and the Green Party, with micro radio could be examined to discover where they differ or resemble each other. The possible impact of this technology as a unifying force for these organizations might prove interesting.

The non-hierarchical coalition nature of most of these stations poses unique problems in a society primarily based on hierarchical structures. A comparative examination of commercial, public, and micro power radio stations to examine the decision-making process and the levels of innovation and communication among staff members and management could yield interesting data. This would especially be true in light of the trend toward the wholesale elimination of much of corporate middle management during the 1980s and 1990s, and the subsequent flattening of traditional hierarchical structures (Conrad, 1994).

Finally, a more detailed study of the aspects of the broader Free Communications Movement as it relates to other technologies, especially the Internet, is warranted. The present case study of the micro broadcasting movement in the San Francisco Bay Area has only scratched the surface of a complex social movement. The instigators of such movements are easily identified and analyzed. However, the average coalition member, and her or his personal agendas in participating in micro broadcasting, could prove to be enlightening to the grassroots elements involved in the movement.

Micro communication's interface with traditional mass media and culture will provide a fruitful source of research possibilities, in terms of social, legal, governmental, and cultural ramifications for years to come. As the access to the means of the production of media escalates with the "bloody edge of technology" driving the most of the costs ever downward, the impact of such movements and concepts will be felt well into the next century, providing research opportunities on which this researcher can only speculate.

FOOTNOTES

¹The doctrine of “un-clean hands” may have some validity in a broader regulatory sense. Nichols and Soley (1987) noted that the CIA regularly broadcasts into nations that do not wish to have signals in their airspace, which would be a violation of the Communications Act if the signals were directed at the United States.

²The Syracuse Peace Council v. FCC case was an appeal from a federal district court case, Merideth Corporation v. FCC (809 F.2d 863 and 867 F.2d 654). Previous researchers cited Syracuse Peace Council v. FCC rather than Merideth Corporation v. FCC when discussing the issues involved in the case (e.g., National Lawyers Guild, 1992; Spitzer, 1989). To avoid confusion, the case is referred to and cited as Syracuse Peace Council v. FCC (110 S. Ct. 717, 1990) in this thesis. The term certiorari denied, in relation to the Supreme Court, simply means the court reviewed a case that was appealed to it from a lower court and elected not to hear it. This, in effect, lets the decision of the lower court stand.

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Syracuse Peace Council v. FCC, 110 S. Ct. 717 (1990).

Turner Broadcasting System, Inc. v. FCC, 114 S. Ct. 2445, 2456-57 (1994).

United States v. American Bond & Mortgage, 31 F. 2d 448 (1929).

United States v. Stephen Paul Dunifer, No. C 94-03542 CW, slip op. (United States District Court for the Northern District of California, January 30, 1995).

USTA v. FCC, 28 F.3d 1232 (1994).

Court Documents

Complaint for Declaratory and Injunctive Relief (United States District Court for the Northern District of California, October 6, 1994, No. C 94-3542 CW).

Declaration of David Doon in Support of Motion for Preliminary Injunction (United States District Court for the Northern District of California, October 6, 1994, No. C 94-3542 CW).

Declaration of David K. Hartshorn in Support of Motion for Preliminary Injunction (United States District Court for the Northern District of California, October 6, 1994, No. C 94-3542 CW).

Declaration of Philip M. Kane in Support of Motion for Preliminary Injunction (United States District Court for the Northern District of California, October 6, 1994, No. C 94-3542 CW).

Declaration of William R. Zears in Support of Motion for Preliminary Injunction (United States District Court for the Northern District of California, October 6, 1994, No. C 94-3542 CW).

Memorandum and Order Denying Plaintiff's Motion for Preliminary Injunction and Staying this Action (United States District Court for the Northern District of California, January 30, 1995, No. C 94-3542 CW).

Plaintiff's Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction (United States District Court for the Northern District of California, October 6, 1994, No. C 94-3542 CW).

Plaintiff's Notice of Motion and Motion for Preliminary Injunction (United States District Court for the Northern District of California, October 6, 1994, No. C 94-3542 CW).

Federal Law

Communications Act of 1934, 48 Stat. 1064 (1934), 47 United States C.A. @ 151 et. seq.

Federal Register

Communications Act of 1934, @ 311, 47 United States C. 115 (1993).

APPENDIX A

List of Interviewees

Lawrence R. Clance, Assistant Bureau Chief for Law, Compliance and Information Bureau, Federal Communications Commission. Interview conducted at 1919 M St., Rm. 714, Washington, DC, January 10, 1995.

Daniel S. Emrick, Chief of Investigations Branch, Enforcement Division, Compliance and Information Bureau, Federal Communications Commission. Interview conducted at 1919 M St., Washington, DC, January 10, 1995.

David Silberman, Attorney, Information and Compliance Bureau, Federal Communications Commission. Interview conducted at 1919 M St., Washington, DC, January 10, 1995.

Louis Hiken, Attorney for Stephen P. Dunifer, Member of Committee for Democratic Communication. Interview conducted at One Sansome St., Ste. 900, San Francisco, CA, February 15, 1995.

Stephen Paul Dunifer, Activist, Electrical Engineer, Founder of Radio Free Berkeley. Interview conducted at 809 B Allstone Way, Berkeley, CA, March 1, 1995

Tom Schreiner, Activist, Facilitator of micro radio stations in Santa Cruz and Monterey Counties including Free Radio Santa Cruz. Interview conducted at 334 Anchorage Ave., Santa Cruz, CA, May 31, 1995.

Note: All interviews conducted, audiotaped, and transcribed by Ted M. Coopman.

APPENDIX B

Interview Statement and Schedules

INTERVIEW STATEMENT

As a requirement for research under the Department of Journalism and Mass Communications, San Jose State University, I am required to give you the following information:

This interview is being conducted for scholarly research with the intention of publication at a later date. All statements or comments will be on the record and may be quoted or likewise attributed to the source from which they came. To further this end, and for the sake of accuracy, these interviews will be tape recorded in addition to written notes. Do you have any questions or concerns about these conditions? Do you agree to these conditions?

INTERVIEW SCHEDULES

Interviewee: Larry Clance
Title: Field Operations Bureau; Assistant Bureau Chief for Law
Interviewer: Ted M. Coopman
Location: FCC Building, 1919 M St., Washington, DC
Phone: 202-418-1110
date: 1/10/95 time: 10:00 AM

READ INTERVIEW STATEMENT

1. Please describe your duties at the FCC.
 - a. How long have you been at the FCC?
 - b. What positions have you held at the FCC?
 - c. How did you get involved with the FCC?
 - d. What is your background in law?
2. How long have you been involved in the unlicensed broadcasting aspect of federal regulation?
 - a. What interests you in this area?
 - b. Why is that?
3. What motivates you in the pursuit of your duties?
 - a. Do you feel that is important?
 - b. Why?
4. Is there a "typical" illegal broadcaster?
 - a. How would you describe such a person?
 - b. In your opinion, what motivates an illegal broadcaster?
 - c. What do you base this on?
5. Are you familiar with the current suit by the Committee for Democratic Communication?

- a. Based on your experience, what do you think is the likely outcome of such a suit?
 - b. As a representative of the FCC, what would be the ideal outcome of such a suit?
6. What do you feel motivates those who have brought such a suit?
7. Are you familiar with the arguments for micro broadcasting?
 - a. Is micro broadcasting feasible?
 - b. Why/why not?
8. Under what circumstances would micro broadcasting be feasible?
9. In your opinion, is there a compromise that you feel would satisfy both the FCC and micro broadcasters?
 - a. What would that be?
 - b. What if the small transmitters were frequency stable and inspectable?
10. In your opinion, is the current restriction on minimum power for an FM transmitter fair, in terms of public access to the spectrum?
11. Despite the current restriction on transmitters under 100 watts, what is the overall justification for not licensing micro broadcasters?
12. What do you think of allocating a section or percentage of available spectrum space to micro broadcasters?
 - a. What about spectrum scarcity?
 - b. What about the Syracuse Peace Council case?
13. In your experience, are the number of incidents of illegal broadcasting increasing, decreasing, or remaining steady?
14. Considering the increasing availability of micro-broadcasting technology, do you feel that interdiction is a viable control option?
15. Indicators seem to point to an increase in unlicensed radio broadcasting. if this is a trend, do you believe that it will extend into other electronic media?
16. Traditionally, unlicensed broadcasting has been dealt with through injunctions and equipment seizures. If the problem escalates, are there plans for other punitive actions against these broadcasters?
 - a. What about jail time?
 - b. How would that be implemented?
17. Is it true that authorization for arming FCC field agents is being sought?
 - a. What is the argument for arming FCC field agents?
 - b. Have any agents ever been assaulted on duty?
 - c. What happened?
18. How does the FCC decide what unlicensed broadcasters to shut down?
 - a. Is there a set policy?

- b. Many unlicensed broadcasters operate out of educational facilities, others, such as BASS-FM in Miami, are private community stations. Since the FCC has not taken steps to eliminate all unlicensed stations, how can it justify going after the stations that it does, while ignoring these other broadcasters?
 - c. What about equal protection?
- 19. Has your budget increased, decreased, or remained stable since you started this position?
 - a. Approximately how much would that be?
 - b. How would that compare to other departments?
- 20. Does the FCC have any plans to significantly alter the Communications Act of 1934 in terms of section 301?
- 21. If you could sit down with a couple of the unlicensed broadcasters, what would you say to try and convince them that what they are doing is wrong?
- 22. Have there been any other incidents concerning satellite piracy other than Playboy or HBO?
- 23. Would you please discuss the recent purchase of several radio detection vehicles?
- 24. Are you familiar with the concept of have frequencies rated, as in dividing the band up for content?
 - a. Are you familiar with Matthew Spitzer?
 - b. Are you familiar with his journal article dealing federal regulation?
- 25. Is there anything you would like to add to what you have said or discussed that we have not covered?

Note: Silberman and Emrick interviews were taken from Clance schedule. See Chapter 3.

INTERVIEW SCHEDULE

Interviewee: Louis Hiken

Title: Lawyer, National Lawyers Guild, member Committee for Democratic Communication, Representing Dunifer.

Location: One Sansome St., Ste. 900, San Francisco, CA 94101

Phone: 415-705-6464

Date: 2/15/95 Time: 11:00 AM

READ INTERVIEW STATEMENT

- 1. Please state your full name and your current position.
 - a. How long have you been a lawyer with the National Lawyers Guild?
 - b. How long have you been involved with the Committee for Democratic Communication?
 - c. What is your background in law?
- 2. What motivated you to get involved with the National Lawyers Guild?

3. What motivated you to get involved with the Committee for Democratic Communication?
4. How did you get involved with Stephen Dunifer?
 - a. When did that happen?
 - b. Why did that interest you?
5. Would you please give a overview of the course of events concerning this case?
 - a. What would be the official case number or cite for this case?
 - b. How you ever defended someone against the FCC before?
 - c. When did this all start?
6. In your opinion, what is at stake in this case?
 - a. How would this differ from other cases in the past concerning unlicensed broadcasting?
 - b. Why is that?
7. The decision of Judge Wilken was rather surprising, considering past precedents. Do you feel this was significant or just a fluke?
 - a. Why is that?
 - b. Could you be more specific?
8. Is the next round in court still going to be March 3 rd?
 - a. Any predictions?
 - b. What are your thoughts on this?
9. Besides the action against Mr. Dunifer, is there a separate suit against the FCC involving Mr. Kantako and others?
 - a. I was allowed to copy a draft of Mbanna Kantako Micro Radio Practitioners, the Communities of the United States v. FCC. Is that still happening?
 - b. What is the status of that suit?
10. For you and your client, what would be the best possible out come of this case?
 - a. Do you think that is attainable?
 - b. What do you feel is the likely outcome of this case?
11. There have been a number of challenges to the FCC's regulatory set up, as well as their right to regulate the airwaves. Why would this challenge succeed where they have failed?
 - a. What about spectrum scarcity?
 - b. What about Turner v. FCC?
12. There was talk of requests for rule changes with the FCC, and when I was interviewing their representative, he also mentioned that Mr. Dunifer should have gone through these channels, why wasn't this avenue taken?
 - a. Was it explored at all?
 - b. Why is that?
13. What do you feel motivates the FCC in shutting down unlicensed broadcasters?
 - a. What leads you to believe that?
 - b. Why is that?

14. In your opinion, is there a concerted effort by the FCC to stifle small community based broadcasting?
 - a. What do you think their motivation is?
 - b. What do you base that on?
15. From a practical stand point, do you think the FCC can successfully interdict micro-radio in the United States?
16. In you opinion, does the FCC has a grasp of the scope of the micro radio movement?
 - a. There have been a lot of numbers thrown around, what do you think the scope of this movement is?
 - b. What do you base that on?
17. If you could literally sit down with the members of the Commission, what would you say to them concerning this issue?
18. I realize that your time is precious, I really appreciate the opportunity to talk to you. Is there anything else you would like to say or comment at this time?
19. Would it be all right to ask some follow-up questions at a later date?
20. Could I please have your e-mail address?

INTERVIEW SCHEDULE

Interviewee: Stephen Paul Dunifer
 Title: Micro-broadcaster, defendant in U.S. vs. Dunifer, operator of Free Radio Berkeley, editor of *Reclaiming the Airwaves*.
 Location: 809 B Allstone Way, Berkeley, CA.
 Phone: 510-464-3041
 Date: 3/1/95 Time: 1:00 PM

READ INTERVIEW STATEMENT

1. Please state your full name and describe your duties for Free Radio Berkeley.
 - a. What motivated you start Free Radio Berkeley?
 - b. What prompted the idea for radio vs. some other medium.
2. How are you related to the newsletter, *Reclaiming the Airwaves*?
 - a. What motivated you to start this newsletter?
 - b. What is the current circulation?
3. How are you related to the Free Communications Coalition?
 - a. How long has that been in existence?
 - b. What is the stated purpose of the Free Communications Coalition?
4. What is your background in radio broadcasting?

- a. What about your experience as an engineer?
 - b. Where did you receive your training?
5. Please describe your preparation for, and your actual first broadcast?
 - a. How long did it take to get to the point where you could broadcast?
 - b. When was that?
6. When you first started Free Radio Berkeley, was it your intent to set yourself up as a challenge to the regulations against low-power radio?
 - a. What is the goal of your efforts with Free Radio Berkeley?
 - b. Has that goal changed?
 - c. When did the Committee for Democratic Communication become involved?
7. Describe your first encounter with the FCC.
 - a. When was that?
 - b. What is your most memorable run-in with the FCC?
8. With a community station in Cupertino, KKUP, and several other public and educational radio stations in the greater Bay Area, why didn't you just access those?
 - a. Why is that?
 - b. What do you base that on?
9. Why did you choose to go ahead and broadcast instead of seeking a waiver or a rule change?
 - a. Did you investigate the waiver option?
 - b. Did you investigate the rule change option?
10. How did you feel when Judge Wilken denied the FCC's request for an injunction?
 - a. Did you think that there was a good chance that would happen?
 - b. What would you have done if Wilken had granted the injunction?
 - c. How far were you prepared to go?
11. In your opinion, what is motivating the FCC to go after you?
 - a. Why do you think the FCC is pursuing you, instead of Black Liberation Radio?
 - b. Why is that?
12. In your opinion, what is the best possible outcome of this case?
 - a. Do you think that is likely?
 - b. If you lose the next round, will you appeal?
13. The FCC regards your broadcasts as dangerous. What is your reaction to that?
 - a. There have been accusations of interference with licensed stations. How do you respond to that?
 - b. Would you shut down if you discovered interference with another station?
14. Providing the FCC approves micro broadcasting, how do you think it should be set up, non-commercial, commercial, non-profit, or something different?
 - a. How would you regulate micro-broadcasting?
 - b. Would you place any restrictions on the licensing of micro power stations?
15. If you are successful in your challenge, what will you do?

16. There have been a lot of numbers thrown around about the size of the micro broadcasting movement. How many stations do you think are currently in operation in the US?
 - a. What do you base that on?
 - b. How many do you think operate on a regular basis, regular being once a week?
17. How would someone go about getting started in micro-radio?
 - a. Could the average person set that up?
 - b. What type of time commitment are we talking about?
18. Do you see the trend of micro-broadcasting extending to other media, such as TV?
 - a. What do you base that on?
 - b. Do you know of any unlicensed micro-television stations?
19. Some unlicensed broadcasters have reported harassment from other government agencies. Have you been contacted by other government agencies or police?
 - a. What happened?
 - b. Do you see that as continuing?
20. What did you do before the micro-broadcasting started?
 - a. Where was that?
 - b. Do you ever wish you were still doing that?
21. Is there anything you would like to add that we haven't discussed?
22. Would it be all right to contact you with some follow-up questions?

INTERVIEW SCHEDULE

Interviewee: Tom Schreiner

Title: Micro-broadcaster, engineer Free Radio Santa Cruz, micro stations in Watsonville and Salinas

Location: 334 Anchorage Ave., Santa Cruz, CA.

Phone: 408-476-1322

Date: 5/31/95 Time: 9:00 PM

READ INTERVIEW STATEMENT

1. Please state your full name and describe your duties for Free Radio Santa Cruz.
 - a. What motivated you start participating in micro broadcasting?
 - b. What prompted the idea for radio versus some other medium.
 - c. How would you describe your role in the micro broadcasting movement?
2. What other micro radio stations are you involved with?
 - a. What got you involved with these stations?
 - b. In what capacity do you serve these stations?
 - c. How many micro stations, to the best of your knowledge, are operating in Santa Cruz County?
 - d. How about in California?

- e. How about the United States?
- 3. Are you involved with the Free Communications Coalition?
 - a. How long has that been?
 - b. Is there an association with that organization?
- 4. What is your background in radio broadcasting?
 - a. What about your experience as an engineer?
 - b. Where did you receive your training?
- 5. Please describe your preparation for, and your actual first broadcast?
 - a. How long did it take to get to the point where you could broadcast?
 - b. When was that?
- 6. When you first started your involvement with Free Radio Santa Cruz, was it your intent to set yourself up as a challenge to the regulations against low power radio?
 - a. What is the goal of your efforts with Free Radio Santa Cruz?
 - b. Has that goal changed?
- 7. If the FCC wins in the Dunifer case, how will this affect your efforts?
 - a. Will you still broadcast in the open?
 - b. If the FCC brings an injunction against Free Radio Santa Cruz, what do you think would happen to the station?
- 8. What is the primary goal of you involvement with electronic civil disobedience?
- 9. You mentioned earlier that you had some technical solutions to micro radio problems, would you discuss these?
 - a. Do you think that would make this technology more available?
 - b. Do you think that would make this technology more acceptable to the FCC?
- 10. How do you think the FCC will handle the regulation of micro broadcasting?
 - a. What leads you to believe that?
 - b. Do you think that is feasible?
 - c. Why is that?
- 11. You asked me to mention satellites on the phone the other day, so what about them?
- 12. Mr. Dunifer has some involvement with the Chiapas Autonomy movement in terms of supplying equipment. Are you involved with this effort?
 - a. In what way?
 - b. Is this support political or philosophical?
 - c. What is the international impact of this type of technology?
- 13. The FCC regards micro broadcasts as dangerous. What is your reaction to that?
- 14. Providing the FCC approves micro broadcasting, how do you think it should be set up, non-commercial, commercial, non-profit, or something different?
 - a. How would you regulate micro-broadcasting?
 - b. Would you place any restrictions on the licensing of micro power stations?

15. FRSC does not follow any content restrictions in its format. What is your opinion of this?
 - a. Considering the problems this could cause, in terms of sanctions, do you feel this stand is wise?
 - b. Even if micro-broadcasting is legitimized, content regulation will probably still exist, how would you move to eliminate this?
16. There have been a lot of numbers thrown around about the size of the micro broadcasting movement, how many stations do you think are currently in operation in the U.S.?
 - a. What do you base that on?
 - b. How many do you think operate on a regular basis, regular being once a week?
17. How would someone go about getting started in micro-radio?
 - a. Could the average person set that up?
 - b. What type of time commitment are we talking about?
18. Do you see the trend of micro-broadcasting extending to other media, such as TV?
 - a. What do you base that on?
 - b. Do you know of any unlicensed micro-television stations?
19. Some unlicensed broadcasters have reported harassment from other government agencies. Have you been contacted by other government agencies or police?
 - a. What happened?
 - b. Do you see that as continuing?
20. What did you do before the micro-broadcasting started?
 - a. Where was that?
 - b. Do you ever wish you were still doing that?
21. Is there anything you would like to add that we haven't discussed?
22. Would it be all right to contact you with some follow up questions?