

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Proposal for Creation of the Low)
Power FM (LPFM) Broadcast) RM-9242
Service)

To: Chief, Mass Media Bureau

COMMENTS OF COX RADIO, INC.

Cox Radio, Inc. ("Cox"), by its attorneys, submits herewith its Comments on the Petition for Rulemaking submitted by TRA Communications Consultants, Inc. ("TRA") proposing the creation of a new low power FM broadcast service.^{1/} As shown herein, the Commission should not initiate a rulemaking to consider TRA's proposal. Establishment of a low power FM service is manifestly not in the public interest. If implemented, TRA's proposal would lead to exacerbated crowding and unacceptable interference in the FM band, contrary to the mandate of Section 307(b) of the Communications Act of 1934, as amended.^{2/}

TRA fails to demonstrate how its proposed low power FM service ("LPFM") would satisfy Section 307(b)'s basic requirements for the allocation of broadcast spectrum. Under Section 307(b) of the Act, the FCC must

make such distribution of licenses, frequencies, hours of operation and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

^{1/} Office of Public Affairs, Reference Operations Division, Petition for Rulemaking Filed, Public Notice, Report No. 2261 (Mar. 10, 1998).

^{2/} 47 U.S.C. § 151 *et. seq.* (1994) (the "Act").

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47 U.S.C. § 307(b). A new LPFM service, however, would cause interference to existing full power FM stations and, with respect to TRA's proposed "LPFM-1" service,^{3/} would preclude the construction and operation of new full power FM facilities. These results are plainly inconsistent with the statute.

Over the past 20 years, the Commission has consistently rejected proposals to authorize low power FM stations to operate on a primary basis pursuant to Section 307(b) requirements with respect to efficiency and interference. The Commission has held that full power FM stations "make more efficient use of the spectrum than . . . [low power FM stations] in that the ratio of coverage to interference area is much larger for full-service stations than for low-power [stations]."^{4/} Accordingly, in 1978, the Commission stopped accepting applications for new low power Class D noncommercial stations and required existing facilities to upgrade or move to commercial channels because these low power FM stations were "impeding the licensing of more efficient Class B and C stations."^{5/} And, in 1990, after an extensive review of the FM translator service, for the same reasons, the Commission declined to consider proposals that FM translators be licensed on a primary basis.^{6/}

^{3/} Under TRA's proposal, "LPFM-1" stations would operate as primary service facilities with power level and tower height not to exceed 3 kw and 328 feet, respectively. LPFM-1 stations would receive protection from other LPFM services as well as new full power FM stations.

^{4/} *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Notice of Inquiry, MM Docket No. 88-140, 3 FCC Rcd 3664, 3668 (1998).

^{5/} *Id.*

^{6/} *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, MM Docket No. 88-140, 5 FCC Rcd 7212, 7213 (1990), *on*

The Commission's rationale of ensuring spectrum efficiency and non-interference to full power FM stations is even more compelling today than it was 10 or 20 years ago. Such service would have a disastrous impact on full power stations' ability to continue to provide free, over-the-air interference-free service to the public. In 1978, there were 3,066 commercial and 973 non-commercial authorized full power FM stations.⁷¹ In 1988, when the Commission launched its FM translator inquiry and tentatively decided to retain translators' secondary status, there were 4,116 commercial and 1,356 non-commercial authorized full power FM stations.⁸¹ As of February 1998, there are 5,577 commercial and 1,947 non-commercial full power FM stations authorized nationwide.⁹¹ Thus, over a 20 year period, the number of authorized commercial FM stations has increased by approximately 75%, and the number of authorized non-commercial FM stations has increased by over 100%.

These figures demonstrate the dramatic concentration that has occurred in the FM band over a relatively short period of time. It is unlikely that the FM band could sustain the increased crowding and interference levels that are certain to result from a new LPFM service. Clearly, increased interference in the FM band is of no benefit to the public which has come to rely on the wide-area interference-free service provided by full power FM stations.

reconsideration, Memorandum Opinion and Order, 8 FCC Rcd 5093 (1993).

⁷¹ Federal Communications Commission, *44th Annual Report-Fiscal Year 1978*, at 23-24 (1978).

⁸¹ Federal Communications Commission, *54th Annual Report-Fiscal Year 1988*, at 20 (1988).

⁹¹ "Broadcast Station Totals As [Of] February 28, 1998," News Release (Mar. 23, 1998).

The Commission's own experience with illegal pirate radio operations provides compelling evidence that a new LPFM service would cause unacceptable levels of interference to FM stations. TRA conveniently ignores the inherent problem with pirate radio and even "legal" low power FM operations -- namely, that such operations interfere with authorized full power FM stations and other licensed communications services to the detriment of the public.^{10/} Over the past year alone, the FCC has taken enforcement action against pirate radio operators in California, Puerto Rico, Florida, Ohio, Washington and Texas, just to name a few, who were causing interference to authorized full power FM stations and more significantly to aviation communications and air navigation signals.^{11/} In

^{10/} TRA also does not address how the FCC would oversee LPFM licensing and operations. The FCC would be required not only to process construction permit and license applications (including mutually exclusive applications) but also to monitor and adjudicate the numerous interference complaints that are certain to be filed. Cox submits that given the extraordinary difficulties the Commission has experienced until recently in monitoring and bringing enforcement action against illegal low power FM stations, the Commission simply does not have sufficient staff or financial resources necessary to oversee the expansive low power service that TRA is proposing.

^{11/} See "FCC Closes Down Unlicensed Radio Operation in Cleveland Causing Interference to Public Radio Station," News Release, Report No. CI 98-5 (Apr. 15, 1998) (illegal FM radio operation on 89.9 MHz); *In re Lewis B. Arnold Chewelah, Washington, Order to Show Cause and Notice of Opportunity for Hearing*, CIB Docket No. 98-45 (Apr. 6, 1998) (unauthorized station operating on 95.3 MHz interfering with authorized full power FM stations); *In Re Keith Perry Leander, Texas, Order to Show Cause and Notice of Opportunity for Hearing*, CIB Docket No. 98-46 (Apr. 6, 1998) (illegal FM operations on 88.5 MHz); "FCC Closes Down Unlicensed Radio Operation that Threatened Air Safety at Sacramento Airport; Fourth Airport Interference Incident in Five Months," News Release, Report No. CI 98-3 (Mar. 20, 1998) (pirate radio station operating on 107.2 MHz); "Unlicensed Radio Operation in Puerto Rico Endangering Air Safety Communications at San Juan International Airport Shut Down by FCC," News Release, Report No. CI 98-1 (Feb. 6, 1998) (pirate radio station operating on 98.1 MHz); "FCC Closes Down Unlicensed Radio Operators that were Threatening Air Safety at Two Florida Airports," News Release, Report No. CI-97-12 (Oct. 24, 1997) (illegal FM radio station operating on 105.5 MHz, 106.5 MHz and frequencies in the aviation band).

light of these documented, substantial interference problems and the grave danger low power FM operations pose to the public safety, authorizing a new low power FM service would be a disastrous step indeed.

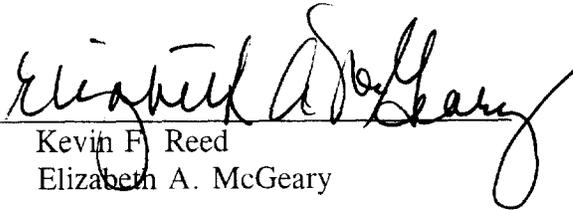
TRA's proposal also would preclude the initiation of new full power FM stations. In its Petition, TRA suggests that LPFM-1 stations should be protected from interference from new full power FM stations. Again, however, the Act's requirement that broadcast spectrum be allocated efficiently demands otherwise. Stations that provide coverage over a wider area without causing interference serve the public interest far more efficiently and effectively than these with limited coverage and greater interference potential. TRA fails to provide any legitimate basis for preferring LPFM services to new full power FM services.

In sum, consideration of TRA's proposal in a formal rulemaking proceeding is unwarranted. The Commission already has considered and rejected numerous proposals to create a primary low power FM service. The same rationale which supported these prior decisions applies equally here. Authorizing a new low power FM service on a primary basis would violate Section 307(b) of the Act and would not result in any benefit (and indeed would be harmful) to the public. LPFM service would result in unacceptable crowding in an already concentrated FM band, would result in substantial interference to existing full power FM facilities and air navigation signals, and in some cases would preclude the authorization of new full power FM services. These results cannot be reconciled with the FCC's mandate

to ensure the fair, equitable and efficient distribution of radio services. Accordingly, TRA's petition should be dismissed without further consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Comments of Cox Radio, Inc." was sent on this 27th day of April, 1998, via United States first class mail postage pre-paid to the following:

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