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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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APR 27 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Attn: Mass Media Bureau

COMMENTS OF THE COLORADO BROADCASTERS ASSOCIATION

The Colorado Broadcasters Association ("CBA") is an organization created by and made up of radio and television broadcast stations in the State of Colorado. These stations provide coverage to the entire state and service to its diverse population. The CBA is very concerned over the proposal advanced by J. Rodger Skinner, Jr./TRA Communications Consultants, Inc. ("TRA"), to establish what it calls a lower power FM service including a temporary "special event" service. The proposal is not based on a technical need, but rather an alleged social need, a concept of that is difficult to accept given the forced feeding of the FM service in Docket 80-90. Indeed, the FM service and the entire broadcast service is seriously overpopulated and adding a low power FM service is simply going to exacerbate an already serious overpopulation problem.

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As the Commission knows, FM service is subject to substantial service area constraints resulting from the existence of so many FM broadcast stations. In those areas where these constraints do not exist, an FM broadcast signal can travel great distances, especially where the antenna is located on a high tower or on a mountain peak or high hill. Thus, attempting to add low power FM stations as a service with the concept of such addition being on an "non-interference" basis raises substantial problems right at the very beginning.

What this proposal seems to have as the impetus for its advancement is to somehow legitimize what has heretofore been called "pirate" stations. There is little doubt that the same type of person who has been engaged in pirate radio would also be engaged in low power FM stations and the enforcement of the Commission's regulations with respect to the requirements of responsible licensees in such matters as political broadcasting, EAS, reports, etc., would be extremely difficult if not impossible to enforce. The obligation of complying with the Commission's rules in providing service in the greater public interest would continue to fall on the commercial FM broadcast stations whose very existence depends on their ability to reach the public with a clear signal which will provide the nexus for the support of a station by advertisers.

The history of the Communications Act and the chaos that was designed to cure must not be forgotten. The 1927 Act For the Regulation of Radio Communications (44 Stat. 1162) replaced the Act to Regulate Radio Communications of August 13, 1912, (37 Stat. 302) because the Secretary of Commerce had no discretion in issuing licenses and stations operating on unassigned frequencies were free from penalty

(*U.S. v. Zenith Radio Corporation*, 12 F.2d 614 (1926). Since the Act to Regulate Radio Communications of 1912 did not achieve the control that Congress intended, the Act for the Regulation of Radio Communications of 1927 was adopted. It was that act that established the Federal Radio Commission. Still, later the Communications Act of 1934 was adopted, establishing once and for all the Federal Communications Commission which was expected to control the airways and keep them clean and unimpeded by unlicenced stations that would cause interference to their operation. With some drawbacks, the Communications Act of 1934 (the "Act") has worked rather well, and while amended on a number of occasions, the thrust has remained the same, namely, protection of the airways.

The provisions of the Telecommunications Act of 1996 cited by TRA is a distortion of the intent of that Act. Lowering barriers for the ownership of telecommunication service, does not answer the problem of the control required by the Commission to prevent the interference that the proposed operation of a low power FM station would necessarily create. It is very nice to state that LPFM facilities would not create any problem, but that is simply not the case as has already been experienced with respect to the large number of pirate stations that exist and which the Commission has been largely unable to discourage, much less eliminate. The LPFM-1 type of station which could operate with a power up to 3 kW ERP and an antenna height of up to 100 meters duplicates the Class A FM stations that were part of the rules for a number of years, and there are still FM stations that are limited in power and height.

The concept requires licensing of all three grades of stations and the so-called special event stations would require considerable effort on the part of the Commission to license these facilities every time there is an event occurring someplace around the country. (That there may be repeat events is hardly beneficial.) Staffing required for this type of operation and the enforcement of the Commission's protection rules is just more than the FCC should be required to do, and indeed, is able to do.

The operation of a broadcast station is not a God given right, and the actions of the FCC controlling the airwaves in order to achieve the most efficient broadcast system in the world is not to be undone in the name of social change. Persons or organizations interested in contacting a narrow segment of the population can easily do so by publishing a newsletter. Moreover, the proposed ownership restrictions requiring applicants to live within a 50 mile radius is subject to fraud both before and after an application is filed and would very likely be unconstitutional. It is less than believable that the Commission, having once granted an authorization to an LPFM licensee, would take it away just because that person moved more than 50 miles from the assigned licensed location.

No matter how well intentioned the proposal of TRA Communications Consultants, Inc. and its president, J. Rodger Skinner, Jr., might be, it does not realistically face up to the responsibility of the Commission in the regulation of

broadcasting. Moreover, the proposal is so fraught with administrative difficulty, it is guaranteed to create the very chaos that the Commission is required to eliminate.

Respectfully submitted,

COLORADO BROADCASTERS ASSOCIATION

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