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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition for Rulemaking To Establish A Microstation Radio Broadcasting Service	)	RM-9208
	)	
Proposal for Creation of the Low Power FM (LPFM) Broadcast Service	)	RM-9242

To: The Commission

STATEMENT OF
NATIONAL PUBLIC RADIO, INC.

Pursuant to Section 1.405 of the Commission's Rules, 47 C.F.R. § 1.405, National Public Radio, Inc. ("NPR") hereby submits its Statement on the above-referenced petitions for rulemaking proposing the establishment of a low power radio broadcast service. See Public Notice, Report No. 2254, File No. RM-9208, Feb. 5, 1998 [hereinafter "Microstation Petition"]; Public Notice, Report No. 2261, File No. RM-9242, March 10, 1998 [hereinafter "Low Power Petition"].

NPR is a non-profit membership corporation that produces and distributes noncommercial educational programming through more than 590 public radio stations nationwide. Among its award winning programs are *All Things Considered*®, *Morning Edition*®, *Talk Of The Nation*®, and *Performance Today*®. NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its member stations.

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NPR and its member stations recognize and value the public policy objective of fostering a diversity of broadcast voices to ensure the availability of programming responsive to local needs and interests. Since its origins in the first part of this century, public radio has pursued a mission of producing and disseminating programming to meet the needs of audiences unserved and underserved by commercial media. We appreciate, as well, the Commission's long-standing support for public radio. Indeed, the exclusive reservation of the lower 20 channels of the FM band for noncommercial educational use made possible the current nationwide system of locally-oriented public radio stations.[1]

We are also aware that in 1948 the Commission sought to encourage the development of public radio by authorizing noncommercial educational stations to transmit with 10 watts or less of power. In the half century since that decision, however, much has changed.

Perhaps most importantly, the broadcast spectrum in many portions of the country is now severely congested.[2] Indeed, by the mid-1960s, the increasing congestion of the FM band led the

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[1] See Adoption of Rules Concerning Operation of Non-Commercial Educational Broadcast Stations, 3 Fed. Reg. 312 (1938); Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations, 69 F.C.C.2d 240, 240-41 (1978).

Congress has also directly sought to promote the development and expansion of locally-oriented public radio since first enacting the Public Broadcasting Act thirty years ago. See Pub. L. No. 90-129, 81 Stat. 368 (1967). A substantial part of this endeavor has been to fund the construction of radio stations to serve as local outlets of community expression:

> Local stations are the bedrock of this system [of public radio broadcasting] and as such must be responsive to the needs and desires of the public which they serve. It is not intended, therefore, that these stations be mere conduits for the productions of other stations or other outside sources.

S. Rep. No. 222, 90th Cong., 1st Sess. 7 (1967).

[2] See Conflict Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 7 FCC Rcd. 4917, 1919 (1992) (noting "the significant increase in the number of

Commission to observe: "the time may well be at hand when proper use of the increasingly crowded educational FM band requires restrictions on the future authorization and continuance of 10-watt operations."[3] That time actually arrived a little more than a decade later, when the Commission determined that efficient usage of the radio frequency spectrum required the discontinuance of low power stations in the reserved portion of the FM band.[4] Since that decision, the Commission has consistently favored the development of full service radio broadcasting.[5]

It is against this now long-standing policy in favor of full service broadcasting that the

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FM stations and the accompanying congestion in the FM band that has occurred since the formation of the FM Table of Allotments in 1964"); Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments, 94 F.C.C.2d 152, 153 (1983) (noting that "under the [then] present allotment rules, additional service cannot be offered to many parts of the nation where demand has not been satisfied"); Review of the Technical Assignment Criteria for the AM Broadcast Service, 6 FCC Rcd. 6273, 6274 (1991) ("Over the years . . ., channel congestion and interference, both radio- and environmentally-induced, have dramatically increased in the AM band.")

[3] Notice of Inquiry, FCC 66-1007, 31 Fed. Reg. 14755, 14756 (1966).

[4] Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations, 69 F.C.C.2d at 248. "Specifically, the Commission observed that FM radio broadcast stations make more efficient use of the spectrum than low power stations because the ratio of coverage to interference area is much larger for higher power FM radio broadcast stations." Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 5 FCC Rcd. 2106, 2112 (1990).

[5] See Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 73 R.R.2d 722, 729 (1993).

While the Low Power Petition, in particular, proposes use only of the non-reserved spectrum, and NPR would not support use of the congested reserved portion of the FM band for the proposed service, there are many public radio stations located throughout the non-reserved spectrum that would be affected by harmful interference emanating from low power broadcast stations.

proposals to establish new low power broadcast services must be evaluated.[6]

1. As an initial matter, neither Petition sets forth with any degree of specificity the rules being proposed for consideration, and this failure should not mask the complexity of the technical and regulatory issues presented. The Commission's rules require that a petition for rulemaking "set forth the text or substance of the proposed rule, amendment, or rule to be repealed." 47 C.F.R. § 1.401(c). What might constitute a matter of technical noncompliance with the Commission's pleading rules in other circumstances reveals a fundamentally incomplete proposal in this case. Indeed, the Microstation Petition appears to acknowledge the inchoate nature of the service it proposes by suggesting that the Commission initiate a notice of inquiry regarding the very concept of a micro-broadcasting service rather than a rulemaking proceeding.[7]

While the Low Power Petition is somewhat more detailed, it also ignores basic issues. For instance, unless the low power stations would qualify as "noncommercial educational broadcast stations" or "public broadcast stations" under the Communications Act,[8] a system of competitive bidding would have to be devised to allocate licenses in those circumstances in which all the competing applicants for a particular frequency seek to establish a commercial

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[6] To the extent the Low Power Petition also proposes an event broadcasting service, Low Power Petition at ¶¶ 20, 27, NPR incorporates by reference herein its Statement filed today in response to the Petition for Rulemaking to Establish Event Broadcast Stations. See Statement of National Public Radio, Amendment of Part 73 of the Rules and Regulations to Establish Event Broadcast Stations, File No. RM-9246. Like that Petition, the Low Power Petition fails to set forth the rules that it is proposing for adoption, has proposed a broadcast service that would likely consume significant Commission resources both to establish and to oversee, and has failed to demonstrate a substantial public interest to be served.

[7] Microstation Petition at 10. Cf. Microstation Radio Broadcast Service Petition for Rulemaking, Order Extending Time, DA 98437, rel. March 5, 1998 (granting a 7 week extension of time to comment on the petition "because of the unusually complex nature of the proposal.")

[8] 47 U.S.C. § 397(6).

operation.[9] Similarly, the Low Power Petition makes no attempt to reconcile one of the most fundamental aspects of the proposal -- strict limits on the number of low power stations owned by a single individual and entity -- with the statutory prohibition against commercial ownership limits.[10] Before proceeding, therefore, the Commission should consider whether, in light of all of its responsibilities and priorities, it wishes to dedicate its own expertise and resources to crafting a regulatory regime to govern a new low power broadcasting service.

2. The proposed low power broadcast stations are likely to pose unacceptable interference to full service stations and undermine the transition to digital radio broadcasting. While the Petitions generally propose low power broadcast operations on a secondary basis to full service stations, the Commission nonetheless must consider the significant interference issues likely to arise. Over time, the increase in interference levels associated with the increased congestion described above has taken a toll on the listening habits of the American public. Whether consciously considered or not, listeners tune out channels that offer lower fidelity reception, are plagued by interference at certain locations, suffer from splatter or stoplight "grunge", or for other reasons cannot compete with the quality of sound available on their cassette and CD players.

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[9] Compare Low Power Petition at 19, ¶ 50 with 47 U.S.C. § 309(j) and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, Notice of Proposed Rulemaking, MM Docket No. 97-234, rel. Nov. 26, 1998.

[10] Compare Low Power Petition at 21 ("[I]t is ***imperative*** that the Commission establish strict ownership restrictions on this new service.") with Telecommunications Act of 1996, Pub. L. No. 104-104, § 202, 110 Stat. 56, 110-111 (directing the Commission to eliminate the national limits on ownership of AM and FM broadcast stations and substantially increasing the local ownership limits).

The authorization of thousands of new low power broadcast stations[11] is certain to exacerbate the existing interference problems, particularly to the extent the Commission's basic technical regulations would be discarded.[12] Radio reception is an inherently probabilistic phenomenon. At line-of-sight FM frequencies, signal strengths commonly vary by factors of 100 to 1000 within a few feet of the same receiving location. This highly volatile signal variation is due to everyday terrain reflection and obstruction characteristics at individual locations. Only the lack of competing signals keeps the receivers "locked" to the protected channel of the tuned-to broadcast station aided by the "capture effect" of the FM receiver's limiter. The presence of low levels of adjacent channel interference, even operations at the most modest power levels, would disrupt reception for listeners within a very wide zone, particularly near commuting roadways.[13]

The Low Power Petition also envisions at least one type of service that would compete directly with full service stations.[14] Specifically, the LPFM-1 stations would operate with a maximum effective radiated power (ERP) level of 3 kW and a maximum antenna HAAT of 100 meters. Far from constituting low power facilities, these stations would fall within the existing

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[11] See Farhi, Radio's Next Wave, The Washington Post, Apr. 21, 1998, at C5 (quoting one of the Microstation Petitioners as predicting the creation of "'thousands and thousands' of new stations nationwide").

[12] See Low Power Petition at 14 & 18-19 (proposing elimination of the second and third adjacent channel spacing restrictions and the intermediate frequency spacing restrictions contained in the Commission's current technical rules).

[13] For these reasons, it is a misstatement of basic radio principles to suggest that stronger signals would automatically "override" lower power broadcasts. See Microstation Petition at 7.

[14] Low Power Petition at 11. The Microstation Petition appears to propose one class of low power stations, which would operate on a secondary basis. See Microstation Petition at 6-7 & 8.

category of Class A full service stations.[15]

Even if such stations could be coordinated to avoid interference with existing full service stations, their presence would prevent those existing stations from (1) extending their signal coverage or (2) replacing secondary, and therefore frequently displaced, auxiliary broadcast facilities. Such a consequence would be particularly harmful to public radio stations, which often rely on auxiliary broadcast facilities to reach unserved areas or to maintain existing service. It would also make it even more difficult to establish new full service stations. All of these consequences would be contrary to the Federal interest in extending public telecommunications services to as much of the public as possible.[16]

Finally, the prospect of thousands of new low power broadcast stations would jeopardize the most significant development affecting radio since the FM band was allocated -- In-Band, On-Channel (IBOC) digital radio. All of the proposed systems for IBOC digital radio require coexistence with the parent analog FM station by transmitting digital audio at protected levels on adjacent channel spectrum. This adjacent channel spectrum is the very same spectrum that the Petitioners propose to utilize. As a result, the existence of low power transmitters could pose insurmountable interference problems and render the promise of digital radio illusory.

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[15] See 47 C.F.R. § 73.211.

[16] See, e.g., 47 U.S.C. § 396(a)(7) ("[I]t is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States.")

The Microstation Petition also offers no explanation for the establishment of a class of full power stations outside of the existing licensing regime -- other than the Petitioner's dissatisfaction with the existing regulatory structure. Regardless of the basis of that dissatisfaction, it is difficult to understand how rectifying even the perceived flaws attributable to Commission policies (rather than statutory mandates) will be accomplished through the creation of a new class of full service stations.

Before proceeding, therefore, the Commission must consider how it will address the interference posed by low power broadcast stations to full service stations now and in the future.

3. The administrative costs associated with overseeing a low power radio service are likely to be substantial. The Commission should not underestimate the cost of overseeing a new low power radio service. The Microstation Petition, for instance, proposes a number of regulatory requirements, such as a limit on the number of facilities owned by a single entity, residency requirements, minimum hours of operation, and a mandatory time period to commence operation.[17] The Low Power Petition suggests similar, but even more detailed, requirements.[18] Assuring compliance with requirements such as these by the many thousands of individuals and entities predicted to seek low power licenses poses a daunting task.

Given the nationwide scale of the proposed low power services, and the general lack of engineering analysis offered in support, substantial Commission resources would likely be required to referee interference disputes. Moreover, adding thousands of new broadcast licensees has profound implications for enforcement of the Commission's content regulations. See generally 47 C.F.R. Subpart H (Rules Applicable to All Broadcast Stations). If broadcasting is such a "uniquely pervasive" communications medium that it warrants close content regulation,[19] it makes no practical difference to the listener whether the source of the content is a low power station transmitting from a mile away or a full service station transmitting from five or ten miles

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[17] Microstation Petition at 9-10.

[18] See, e.g., Low Power Petition at 20 ("Proof of local residence within 50 miles of the proposed antenna site should be submitted for an applicant, if a sole proprietor or for each party to the application if a corporation or other entity.")

[19] See FCC v. Pacifica Foundation, 438 U.S. 726, 748-749 (1978).

away. Before proceeding, therefore, the Commission should consider whether it is prepared to expend the administrative resources necessary to enforce the Commission's technical, content, and other regulations.

4. While the goal of increasing the diversity of media voices is clearly an important one, it is neither self evident nor established in either of the Petitions that the goal and the associated societal benefits are likely to be realized by a low power radio broadcasting service. The principal benefit associated with a low power service is the ability of a low power station to serve communities of interests localized in small geographic areas. One must ask, however, whether within a signal contour area "ranging in size from a square mile to several square miles,"[20] the interests of potential listeners would fall into distinct niches, "such as golfing, flying, archery, energy conservation, ecology, animal rights, etc."[21] While the coincidence of both programmatic and geographic communities of interests undoubtedly occurs, there is no empirical evidence presented to suggest that it is so common that it warrants the establishment of a nationwide system of low power broadcast stations.

Given the congestion in the AM and FM bands, moreover, the benefits associated with the proposal may be better realized through other means of electronic communication, such as the Internet. The Internet is revolutionary because it connects individuals with distinct interests, whether those individuals reside within the same town or on opposite sides of the planet, and because it offers a variety of communications capabilities, including one-way, two-way,

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[20] Microstation Petition at 8.

[21] Id. at 1. It is even more of a stretch to assume that the appeal of particular programming to listeners within such small service areas will demonstrate the appeal of a station's programming to a broader geographic population. See id. at 5-6.

multimedia, and interactive functionality. Moreover, Internet-based content providers are already utilizing these features to serve communities of interests, including communities of common programmatic and geographic interests.[22]

In addition to its attributes as a communications medium, the Internet also offers low barriers to participation, opportunities for personal advancement through life-long learning, and exposure to technological innovation. These are many of the same benefits that a micro-radio broadcasting service is claimed to promote.[23] Before proceeding, therefore, the Commission should consider whether the admittedly worthwhile objectives sought by the Petitions might be achieved without any Commission action at all.

Respectfully Submitted,

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[22] See, e.g., www.yahoo.com (providing access to "Yahoo! Metros", featuring categories of information services offered on a geographically localized basis.)

[23] See Microstation Petition at 4-6.

CERTIFICATE OF SERVICE

I, Gregory A. Lewis, hereby certify that a copy of the foregoing Statement of National Public Radio, Inc. was sent this 27th day of April, 1998, by first class mail, postage prepaid to the following:

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