ORIGINAL
DOCKET FILE COPY ORIGINAL

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

RECEIVED
APR 27 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: The Commission

COMMENTS IN SUPPORT OF PETITION FOR RULEMAKING

John A. Carollo, Jr.[1/], by his attorneys, hereby submits his comments in support of TRA Communications Consultants, Inc.'s (TRA) Petition for Rulemaking for the creation of a new Low Power FM (LPFM) broadcast service.

INTRODUCTION

Section 257 of the Communications Act of 1934, as amended (the "Act"), which was added to the Act by the Telecommunications Act of 1996 (the "Telecom Act") mandates that the Commission complete a proceeding to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the provision of ownership of telecommunications services. 47 U.S.C. § 257 (1997). The Commission completed its first step in complying with the Telecom Act's mandate with the Commission's report released on May 8, 1997. Report, *In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses,* 12 FCC Rcd. 16802 (1997). In that report, the Commission described its efforts to,

[1/] Dr. John A. Carollo, Jr. is the owner and President of Sebastopol Radio Corporation, formerly licensee of KJZY (FM) Sebastopol, California.

No. of Copies rec'd 0+4
List ABCDE

among other things, increase opportunities for small business participation in the telecommunications market. The Commission also explained that its efforts in reducing or eliminating market entry barriers and providing opportunities for small businesses will continue. The introduction of Low Power FM ("LPFM") service, with the proper restrictions for ownership, provides the perfect opportunity for the Commission to continue such efforts to fulfill the mandate of Section 257 of the Act.

Further, Chairman William E. Kennard recently spoke of the Commission's desire to continue providing opportunities for small businesses. Chairman Kennard specifically indicated his interest in low power broadcasting and the "possibility of creating a low power radio service so that small businesses and churches and community groups can use the airwaves to broadcast to their communities."[2/]

II. By Authorizing LPFM Service, the Commission Would Reduce The Problematic "Pirate Radio" Stations and Provide Opportunities for Authorized Community Broadcasting.

Numerous "pirate radio" stations are being operated illegally by unlicensed operators. As a result, the Commission is spending scarce resources and valuable time and effort to end these operations. Unlicensed radio transmissions create a danger of interference to important authorized radio communications services. Such transmissions using equipment of unknown technical integrity raise particular concern because of the potential for harmful interference to authorized services, including public safety and aircraft frequencies.[3/] By providing LPFM

[2/] Chairman William E. Kennard, Remarks to the Rainbow/PUSH Coalition in Chicago, Illinois, March 16, 1998.

[3/] There have been numerous proceedings before the Commission in which the FCC has had to close down unlicensed radio operations or issue orders to show cause why "cease and desist" orders should not be issued. *See, e.g.* Report, *Compliance and Information Action; FCC*

services, the Commission will be able to provide legal airwaves to those currently resorting to pirate practices. At a minimum, by the Commission's making available low power stations to authorized small business licensees, the "pirates" will have fewer opportunities for unlicensed operation.

TRA Communications Consultants, Inc. (hereinafter referred to as "Petitioner"), in its Petition for Rulemaking filed with the Commission on February 20, 1998, proposes four alternative uses for the LPFM service. One of these proposed uses is for stations serving very "small communities", those generally operated by unlicensed users. This type of service, if its use were properly restricted by the Commission, could potentially provide enormous benefits to the public. Such a service could provide opportunities for educational institutions, religious organizations, or other community-based organizations to provide training and experience in broadcasting, thus furthering the public interest.

IV. The Commission has Various Means Available to Avoid Mutual Exclusivity in LPFM and Licensing Proceedings.

The Commission should not utilize the auction process to decide between mutually exclusive applicants because of the limited financial means of prospective LPFM applicants. Section 309(j)(6)(e) of the Communications Act of 1934, as amended, provides:

> "(j) Use of competitive bidding.
>
> ....
>
> (6) Rules of construction. Nothing in this subsection, or in the use of competitive bidding, shall--
>
> ...

Closes Down Unlicensed Radio Operation that Threatened Air Safety at Sacramento Airport; Fourth Airport Interference Five Months, Report No. CI 98-3, April 2, 1998; *See also,* Report, *FCC Issues Hearing Notices to Five Unlicensed FM Radio Operators*, Report No. CI 98-4, April 6, 1998.

(e) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings."

The LPFM service's proposed use is to provide radio service capabilities to small businesses, educational institutions, and other organizations which serve the public interest. Therefore, in order to further such public interest, the Commission must do whatever is within its power to avoid mutual exclusivity in the application and licensing proceedings for LPFM. The options made available to the Commission, including negotiations, threshold qualifications, or the lottery process, are feasible solutions to any possible mutual exclusivity among LPFM applicants.

The legislative history that accompanied the Balanced Budget Act of 1997 (the "Budget Act"), Pub. L. No. 105-33, 111 Stat. 251, is instructive on this point. Section 3002(a) of the Budget Act expanded the scope of the Commission's auction authority to encompass the auction of initial broadcast authorizations. 47 U.S.C. § 309(j)(1). However, while expanding that authority, Congress cautioned the Commission as follows:

> [T]he Conferees emphasize that, notwithstanding its expanded auction authority, the Commission must still ensure that its determinations regarding mutual exclusivity are consistent with the Commission's obligations under Section 309(j)(6)(E). The Conferees are particularly concerned that the Commission might interpret its expanded competitive bidding authority in a manner that minimizes its obligations under Section 309(j)(6)(E), thus overlooking engineering solutions, negotiation or other tools that avoid mutual exclusivity.

Joint Explanatory Statement of the Committee of Conference on H.R. 2015, Balanced Budget Act of 1997, *Congressional Record*, July 29, 1997, at H6173.

In any event, to the extent such services are proposed for noncommercial service such as that envisioned by Carollo, auctions should not be employed. See, 47 U.S.C. §§ 309(j)(2)(C) and 397(6).

IV. The Commission should Make more Efficient Use of the FM Band without Interference.

By providing for LPFM service, the Commission will be making efficient use of the available spectrum in the FM band. Spaces on the spectrum which lie between the full-power stations can be filled by low power radio services. A similar objective was achieved by the Commission with its introduction of Low Power Television ("LPTV") in 1983. It would be appropriate for the Commission to adopt many of the same procedures used for LPTV in promulgating regulations for LPFM.

Petitioner sets forth proposed technical standards to be adopted by the Commission if it decides to make available a LPFM service, and describes the standards for each of the proposed LPFM services. While Dr. Carollo agrees with many of the standards and restrictions proposed by Petitioner, comment will be reserved until a Notice of Proposed Rulemaking has been issued by the Commission, once its experts have had a chance to review the proposals and formulate possible alternatives.

V. The Commission should Issue a Notice of Proposed Rulemaking As Soon As Possible So that Clear Rules May be Established and LPFM Broadcasting May Begin.

The Commission should treat time as of the essence in its consideration of providing spectrum for low power radio because of the potential furthering of the public interest associated with the possibility of LPFM services. On one hand, there are many careful considerations which must accompany the provision of LPFM service, and on the other, there is great potential for the Commission to further its efforts for providing opportunities for small businesses and non-profit educational organizations and schools through LPFM. Therefore, it is imperative that the Commission begin its rulemaking process as soon as possible so that clear rules may be promulgated and idle FM spectrum be put to productive use.

Respectfully submitted,

JOHN A. CAROLLO, JR.

Stephen Díaz Gavin
PATTON BOGGS, L.L.P.
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000

His Counsel

Dated: April 27, 1998

CERTIFICATE OF SERVICE

I, Lisa Y. Taylor, a secretary in the law firm of Patton Boggs, L.L.P., hereby certify that on this 27th day of April, 1998, I caused to be delivered by U.S. Mail, a copy of the foregoing **"Comments in Support of Petition for Rulemaking"** to the following:

J. Rodger Skinner, Jr.
President
TRA Communications Consultants, Inc.
6431 NW 65th Terrace
Pompano Beach, FL 33067-1546

Lisa Y. Taylor

Lisa Y. Taylor