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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matters of	)	
	)	
Petition for a Microstation Radio Broadcasting Service	)	RM-9208
	)	
and	)	
	)	
Proposal for Creation of the Low Power FM (LPFM) Broadcast Service	)	RM-9242

TO: The Commission

COMMENTS OF PRESS COMMUNICATIONS LLC

1. Press Communications LLC ("Press"), licensee of Stations WBUD(AM) and WKXW(FM), Trenton, New Jersey, and WBSS(FM), Millville, New Jersey, hereby submits its Comments on the petitions for rule making submitted by the proponents in the two above-captioned matters. The proponents in RM-9208 are Nickolaus E. Leggett, Judith F. Leggett and Donald J. Schellhardt, Esq. (collectively, "Leggett/Schellhardt"), and the proponent in RM-9242 is J. Rodger Skinner, Jr., TRA Communications Consultants, Inc. ("Skinner").

2. As a preliminary observation, Press notes that the two petitions for rule making in question here are at the very initial stages of consideration. That is, the Commission has not yet issued even a notice of inquiry concerning the matters discussed by the proponents, let alone a notice of proposed rule making. Rather, all the public has are the petitions themselves. As a result, it would in Press's view be premature to attempt to address in exhaustive detail each and every aspect of the two

proposals. Instead, Press will utilize these Comments to address a number of general considerations which, Press believes, substantially undercut the proponents' claim that some kind of low power broadcast service is in any way necessary, appropriate or even easily feasible. Of course, Press reserves the right to submit more detailed comments with respect to these and other aspects of the proposals in the event that the Commission elects to take further procedural steps in the direction of adoption of these (or similar) proposals.

3. Although they vary in certain details, the Leggett/Schellhardt petition and the Skinner petition both center on a general proposal: to create a new radio broadcast service, in the existing radio broadcast band, which would feature stations operating at considerably lower power than those presently permitted by the Commission's rules. The idea is that the development of such a low power radio service would permit thousands of new stations to blossom forth in virtually all communities across the country. According to the proponents, all these new stations would contribute to the diversity of broadcast voices available to the listening public, enhance minority ownership opportunities in broadcasting, make low cost local advertising time available, and generally advance the public interest in the face of the overwhelming consolidation of the radio industry which has occurred since enactment of the Telecommunications Act of 1996.

4. As agreeable and unassailable as the proponents' various platitudes may seem, the fact is that creation of a

service along the proposed lines would not achieve the proponents' stated goals and would likely cause substantial harm to the public and to the Commission. Further, at least one extremely attractive -- non-broadcast -- alternative exists which would likely accomplish many of the proponents' goals while avoiding the serious short-comings of their proposals.

5. First, both of the petitions are based on the notion that scads of low power stations could be dropped in just about anywhere without causing any serious degradation to the service provided by existing broadcasters. Based on its own experience, Press doubts seriously the technical validity of the proponents' claim. The fact is that radio transmissions of any strength -- even at the relatively low powers proposed by the proponents -- create the serious risk of interference to other stations operating on related frequencies. For example, Press itself has encountered interference from a noncommercial educational operation authorized by the Commission which was operating within the terms of its authorization. Those problems were ultimately resolved, but only after extensive efforts by Press, the noncommercial licensee and the Commission staff.

6. Press anticipates that such problems would be legion if the Commission were to authorize thousands of new stations, even at low power. These fears are aggravated by the suggestion (at page 8 of the Leggett/Schellhardt petition) that low power licensees be allowed to "establish, build, and maintain their own transmitters." If stations operating properly with reasonably reliable equipment can still cause interference, the chances of

interference from home-built, home-maintained equipment of uncertain design and reliability are reasonably high.

7. Concern about potential interference is further aggravated by the Commission's own limited enforcement capabilities. For several years the Commission's presence in the field has been reduced, and the enforcement-related activities of the Commission's field officials has seemed (to Press, at least) to be somewhat limited. If Press's observations along these lines are accurate, then creation of a vast number of new potential sources of interference would appear ill-advised: if the Commission may not have the resources to fully and effectively police existing users of the spectrum, the Commission most certainly will not have sufficient resources if the number of broadcast spectrum users increases as proposed.

8. The impact of the proposals on the Commission's own resources in Washington is also a consideration which neither of the proponents appears to address effectively. Inviting the submission of thousands, or even tens of thousands, of applications creates the very real likelihood that the Commission's ability to process those applications, as well as other pending applications, will be brought to a standstill. The Commission may recall its experience when it created the low power television service in the early 1980s. Vast numbers of applications clogged the halls of the Commission; it certainly appeared that those vast numbers of applications (and the work necessitated by the mere fact that they were filed and had to be dealt with in some way by the staff) adversely affected the flow

of the Commission's work for some time. The Commission can easily and legitimately expect the same situation to arise if a new low power radio service is created.

9. Moreover, as part of the processing of this onslaught of applications, the Commission would have to adopt a process for resolving mutual exclusivity. Normally, the Congressionally-mandated auction process would be expected to be utilized. However, both Leggett/Schellhardt and Skinner urge the Commission not to require auctions for the proposed low power radio service, because auctions would increase the overall cost of entry into the business. There are several problems with this proposal. First, it is not at all clear that the Commission has the discretion not to use auctions: the language of the Balanced Budget Act of 1997 seems to mandate their use, which would give the Commission no alternative. Thus, if the petitions' proposals are contingent on immunity from the auction process, those proposals may not even get out of the starting gate.

10. But even if the Commission were able to fashion some exemption from auctions for the proposed low power radio service, the Commission would still have to come up with some process for disposing of mutually exclusive applications. The Commission has already spent at least four years unsuccessfully trying to devise such a process following the decision in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993). There is no reason to believe that that task would be significantly easier in the context of a new service. So, by adopting such a new service and by exempting the service from auctions, the Commission would be placing itself

back in precisely the supposedly insoluble conundrum from which the auction provisions of the Balanced Budget Act attempted to extricate the Commission.

11. Press is mindful of the petitioners' underlying goal of enhancing "minority" ownership and diversity of program choices. As lofty and well-intentioned as these goals may be, the fact is that they, too, raise a number of difficult questions. First, how is "diversity" to be defined? The Court of Appeals has recently had occasion to note the Commission's inability to define that term. See Lutheran Church-Missouri Synod, No. 97-1116 (D.C. Cir., April 14, 1998). And indeed, any attempted definition (and related licensing limitations based on that definition) would carry the Commission back to the kind of format regulation which the Commission abandoned (with the approval of the Supreme Court) as inappropriate and unworkable long ago. See FCC v. WNCN Listeners Guild, ___ U.S. ____ (1981).

12. Second, the stated goal of increasing "minority" ownership of broadcast stations encounters an even more obvious, and unsurmountable, obstacle. Under the U.S. Constitution, race-based governmental policies can be justified, if at all, only in extraordinarily limited circumstances. See Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995); Lutheran Church-Missouri Synod v. FCC, supra. To the best of Press's knowledge, the circumstances surrounding the licensing of broadcasting stations cannot constitutionally support any race-based licensing scheme. Thus, the petitioners' notion that their new low power service could somehow be reserved for "minorities" (meaning, presumably,

racial or ethnic "minorities", however that term may be defined) cannot be realized consistently with well-established standards of constitutionality.

13. Press is also constrained to note that the suggestion that "minorities" should be given favored access to the proposed low power licenses is itself a dubious proposition. Why, after all, does it make any sense to assume that "minorities" can or should be satisfied with some low-power, limited-reach authorization? If the Commission (notwithstanding the clear constitutional impediment discussed above) were to announce its goal of using low power radio service as a means of increasing "minority" ownership, would not that be the equivalent of having the government provide sub-standard housing to "minorities" in sub-standard neighborhoods. Would not such an approach be nothing more than a patronizing ploy to create the impression of helping "minorities" by throwing them a patently inferior bone?

14. Press suspects that the petitioners would counter by saying that even such inferior facilities would afford "minorities" with experience in the industry and the opportunity to get themselves heard. Perhaps so, but the utility of such "experience" and the actual extent of any such "opportunity" would appear to be very limited. Press submits that, if the twin opportunities of experience and an audience are deemed to be primary goals of the proposed low power service, it would make more sense for the Commission to encourage anyone who might be interested in low power broadcasting to instead take up web-casting, or the use of internet audio capabilities to transmit

programming to a potentially large audience.

15. Web-casting can be accomplished with limited capital. Essentially, an interested party would need to acquire some basic programming equipment (e.g., CD player, cassette player, turntable, simple audio mixing board) and access to an internet audio distribution provider. The programming would then be fed through that provider out to the internet, where it would be accessible to anyone anywhere on the planet with an internet-accessible computer with audio capabilities. For an investment which would probably be significantly less than what would be needed to build and operate even a low-power radio station, a web-caster could enjoy a potential audience of vastly greater size.

16. Of course, a likely rejoinder to that suggestion is that, unlike computers, radios are generally available in cars and are readily transportable. Putting aside the obvious exception of laptop computers, which are increasingly available in relatively low-cost configurations which would permit reception of such web-casts, Press notes that the car radio consideration would in fact be irrelevant. Recall that the proponents of low power radio apparently really do intend for it to be low power -- the Leggett/Schellhardt petition suggests at one point that low power stations would serve, at most, "several square miles". Legget/Schellhardt Petition at 8. But cars generally travel considerably farther than a mile or two in most trips in which car radio listening is an important factor -- mainly because the amount of time it takes to drive a couple of

miles is hardly enough to result in significant exposure to any one radio station during the drive.

17. This is particularly true where, as the petitioners seem to suggest, the programming they anticipate for these low power stations may be largely informational. Again, it is not likely that such informational programming would be useful if received in the context of a short hop down to the grocery store for a gallon of milk.

18. Rather, it appears to Press that the programming which the petitioners envision for their proposed service would be the type of programming for which the audience would likely be listening at home or in the office, in an environment in which extended listening would be possible. Web-casting affords precisely that type of environment.

19. Moreover, unlike low power stations which would be forced to operate in a geographically restricted area with limited facilities permitting access to only a limited audience, web-casting would permit the "broadcaster" to reach a virtually unlimited audience, both near and far. This would far better serve the goal of exposing the talents of previously undiscovered programmers, which appears to be at least a secondary goal of the proposed low power service. After all, even the most talented low power broadcaster is likely to reach an extremely limited audience within his/her extremely limited service area; by contrast, that same person coudl extend the scope of his/her audience exponentially through web-casting.

20. Press anticipates that low power proponents may argue

that not everybody has computers, but everybody has radios. Perhaps. But the Commission is surely aware of the extent to which sophisticated computers are becoming increasingly available in the workplace, in libraries, and in the home. And the Commission is also surely aware of the dramatic decrease in prices of such computers within the last several years. Under these circumstances, the Commission can validly expect that, by the time any low power radio service might be established, the availability of computers to the general populace will have increased substantially.

21. In view of the foregoing, Press submits that it would be neither necessary nor appropriate to authorize a low power radio broadcast service. To the contrary, such a service could have serious adverse effects, while any arguably beneficial effects could not be achieved consistently with the Constitution. By contrast, at least one alternative mechanism (web-casting) is available which could achieve those beneficial effects without raising any constitutional issues -- or issues of spectrum interference or processing-line slow-downs.

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W. - Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Press Communications LLC

April 27, 1998

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 27th day of April, 1998, I have caused copies of the foregoing "Comments of Press Communications LLC" to be hand delivered (as indicated below) or placed in the United States mail, first class postage prepaid, addressed to the following individuals:

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

Nickolaus E. Leggett
Judith F. Leggett
1432 Northgate Square, #2A
Reston, Virginia 20190-3748

Donald J. Schellhardt, Esquire
45 Bracewood Road
Waterbury, Connecticut 06706

/s/ Harry F. Cole
Harry F. Cole