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

In the matter of	)	
	)	
Proposal(s) for the Creation of a	)	RM 98-9208
Low-Power FM Broadcast Service	)	RM ~~98~~-9242

COMMENTS OF WOLFGANG V KURTZ
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To: The Commission

A new Low Power FM Service is in the Public Interest

As a member of the commercial broadcast community in Southcentral Alaska with a long-standing interest and involvement in community radio, we are submitting these comments to the FCC in support of a Low-Power FM (LPFM) service. These comments are tendered on behalf of the community interest in promoting diversity of expression on the public airwaves, and in providing access thereto. As a commercial broadcaster, we have witnessed the negative effects of consolidation described in the proposals and have, in part, contributed to them ourselves.

The immediate need for a "new" service arises out of the alarming consolidation of broadcast licenses under relatively few owners. Not only has this consolidation contributed to a decline in minority ownership and expression, it has created a non-competitive environment whereby small broadcasters are straight-jacketed into emulating their (much) bigger brothers. It has leveraged more control to the large commercial operators in setting advertising rates and reduced access to advertising by smaller operators and community businesses. The sole benefit has accrued to large broadcast corporations, along with participating brokers and investors, in the form of unjust enrichment at the expense of the public interest.

The need for the proposed service has also been spurred by the rapid decrease in costs involved in lower power broadcasting. The proliferation of inexpensive broadcast equipment is a natural democratizing influence on mass media broadcast and represents one of the oft-touted benefits of the free-market system. Sophisticated broadcast equipment, capable of reaching an entire community and fully compliant with FCC technical requirements, can now be purchased by the average citizen for about the same cost as good stereo system. Furthermore, advances in technology have rendered much of the FCC technical regimen for allocating broadcast licenses obsolete.

Federal administration of broadcast spectrum is not wholly concerned with the satisfaction of commercial interests. It should take into consideration the changing face and cost of technology and the opportunities to provide citizens with expanded access to established forums for public expression. Arguably, commerce should take a back seat to Constitutional issues in the freely accessible AM/FM/TV spectrum. Access to broadcast forums for public speech, as protected by the 1st Amendment, has been denied to community citizens in the past on discriminatory grounds under the guise of the scarcity of the resource. The proposed regulatory process related to the allocation of broadcast licenses will erect larger, perhaps insurmountable, discriminatory barriers to new, different and unrepresented voices.

A LPFM service can be part of a solution to counter these obstacles and the usurpation of scores of community voices by faceless, bland and generic non-community programming that has pretenses to community service and representation, but in fact provides nothing more to the community than satellite or cable programming. In the interest of providing community access to the public airwaves, perhaps these non-community operators could be relegated to satellite or cable delivery as it is more suited to the content.

The Final Solution(s)

The proposals under consideration suggest varying approaches to implementation of a LPFM service. To simply changes in the regulatory process, it is preferable to use proven regulatory mechanisms with some modifications in establishing LPFM. By restoring originating Class D licensing (presently only available in Alaska) with a primary service preference, reductions in required protections to second and third adjacent channels and allowance for commercial operation, the FCC can effect a direct and responsive solution. It is our position is that this is the minimum acceptable solution toward establishing a meaningful LPFM service.

A second-tier LPFM service similar to that proposed by the Community Radio Coalition, using much of the regulatory language presently in place for FM translators, would bridge the gap between FM Classes D and A. With a primary service preference as well as reductions in protections to second and third adjacent channels this LPFM service would provide access to individuals and organizations with the resources to comply with more stringent regulation and the concomitant costs.

To preserve the spirit and purpose of establishing these services, licensees must be restricted to one facility per community. 40 mV/m f(50,10) coverage overlap between facilities licensed to a common operator should not be permitted. 40 mV/m f(50,10) coverage within legally established boundaries of a community already served by the applicant should not be permitted. For the purposes of this discussion, applicant refers also to those individuals with any ownership or voting interest in an organization or corporation applying for the service.

We urge that such construction permits and licenses be non-transferable and that licenses be valid for a period of fourteen (14) years on a non-renewable basis. As a licensee, the applicant would be required to operate as a completely independent entity or corporation. The applicant may not share resources, facilities or personnel with other community AM/FM/TV licenses or operators regardless of ownership interest. This would include management, programming consultants, sales staff, production staff and on-air personnel as well as studio equipment, studio and office space. Construction and operational costs must be internal to the applicant – no direct payments, loans or donations from other applicants or licensees can be allowed. The construction permit should be valid for twelve (12) months without the possibility of extension(s).

Additionally, licensees should be prohibited under all circumstances from modifications in license class or other changes that would serve to materially increase the license coverage area. There must be an operable studio within the 40 mV/m f(50,10) contour and it must be the origination point for programming without allowance for waivers. Direct real-time satellite or network programming must be routed through the studio and be restricted to less than 50% of broadcast content. No allowance for re-broadcasting or simulcasting of community broadcast signals should be made, except for EAS requirements. Licensing should require full-time operation without exception to maximize the use of the resource. If this stricture presents an undue burden, the applicant may propose time-sharing with other eligible individuals or organizations. Violation of regulations would render the license forfeit – no mediating fine structure should be implemented.

The residency requirement should stipulate that the applicant be a resident of the state in which the community of allocation is located. State or community law regarding residency for voter registration should be used as the establishing criteria. If the applicant is a corporation or other organization, a simple majority of the controlling members must meet, and continue to meet, the residency requirements. The internal rules or by-laws of the applicant must acknowledge and comply with these requirements for the applicant to be eligible for licensing. Further ownership and programming restrictions as outlined in the proposals would difficult and costly to effect, enforce and defend especially in regard to residency and SBA guidelines for licensee income.

As mentioned in the proposals under consideration, LPFM service, especially a re-introduced Class D, should be exempted from the proposed auction process and ideally be licensed on an on-demand basis. In recent years, many cross-filed broadcast applications, especially for commercial channels, have been submitted with anti-competitive intent or with the expectation of unjust enrichment at the expense of the originating applicant. The FCC and its regulations have been ineffective in countering these tactics and in prosecuting the fraudulent conduct of those applicants. Community applicants should be protected from these manifestations of predatory commercial broadcast interests. An on-demand licensing regimen will serve to reduce the incidence of interference with fair and non-discriminatory assignment of broadcast licenses.

Summation

To date, objections to a LPFM service are superficially concerned with Public Safety, the lack of administrative and regulatory resources as well as congestion and interference in the broadcast bands. These objections are obviously and laughably anti-competitive in nature and are the sole province of the National Association of Broadcasters, its mouthpieces, and its members. We will address these issues specifically in Reply Comments as they arise. However, that the NAB and its members should bear more consideration than the issue of equal and non-discriminatory access to publicly held resources is a testimony to how far the Federal Government and the FCC have strayed from protecting the public interest in favor of special interest lobbies.

A LPFM service can provide more avenues for expression in the community and a greater variety of expression available to the public. LPFM service can provide access to these avenues by minorities and unrepresented 1st Amendment speakers. LPFM service can provide jobs for community residents displaced by the rapacious consolidation taking place in the broadcast industry. LPFM service can provide reasonable advertising rates to small business. LPFM service can create more small businesses and grow the broadcast equipment manufacturing industry. LPFM can take advantage of, and drive, the technological innovations that continue to revolutionize broadcasting.

Therefore, in consideration of the submitted proposals and these comments, the public interest determines the need for a meaningful LPFM service. It is the FCC's responsibility to see that the public interest is served.

Respectfully submitted,

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