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April 27, 1998

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APR 27 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Comments With Respect to Petitions for Rulemaking RM-9208, 9242

Dear Mrs. Salas:

Transmitted herewith, on behalf of Robert M. Stevens is an original and four (4) copies of his Comments with respect to the Petitions for Rulemaking submitted by TRA Communications Consultants, Inc. and Nickolaus E. Leggett, proposing creation of a low power broadcast service.

Please contact the undersigned should the Commission have any questions with respect to the filing of these Comments.

Sincerely,

Lee J. Peltzman
Counsel for
ROBERT M. STEVENS

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Proposal for Creation of a Low Power FM Broadcast Service	)	RM-9242
	)	
	)	
Proposal for Creation of a Microstation Radio Broadcasting Service	)	RM-9208
	)	

COMMENTS

Robert M. Stevens ("Stevens") hereby submits his Comments with respect to the Petitions for Rulemaking, submitted by TRA Communications Consultants, Inc. ("TRA"), proposing the creation of a low power FM broadcast service and Nickolaus E. Leggett ("Leggett") (collectively, "Petitioners"), proposing the establishment of a microstation radio broadcasting service.

Mr. Stevens, along with his wife, is the owner of Broadcast Communications, Inc., licensee of daytime AM Station WHJB, Greensburg, Pennsylvania. Mr. and Mrs. Stevens also own and operate daytime AM Station WBCW, Jeannette, Pennsylvania. Mr. Stevens has been involved in broadcasting, as an owner and/or operator of AM and FM stations in small and major markets for over twenty (20) years. As such, he brings a great deal of experience and knowledge to the subject of broadcast ownership and operation.

Mr. Stevens agrees with the assessment of Petitioners that, as a result of the actions of Congress and the Commission, [1] this country is experiencing a level of concentration in the media, especially at the local level, never before witnessed. Recent massive consolidations in local markets

[1] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Order*, 11 FCC Rcd. 12368 (1996).

have resulted in an undue concentration of economic power by a few entities in individual radio markets as well as fewer actual competitors in each market.

If anything, the Commission's procedures exacerbate the actual degree of concentration of economic power. The Commission's rules vastly overstate the extent of competition within each local radio market. For example, under the Commission's rules, Station WHJB(AM) and Station WBCW(AM) are both considered Pittsburgh stations because their principal community contours overlap or intersect the contours of Pittsburgh stations. Thus, the very existence of Steven's stations permits corporate conglomerates to own up to eight (8) commercial radio stations and dominate the local Pittsburgh radio market. Yet, in no real sense can these daytime AM stations provide effective competition to the dominant Pittsburgh FM facilities. Station WHJB(AM) does not provide a city grade signal to all of Pittsburgh and Station WBCW(AM) does not provide a city grade signal anywhere close to Pittsburgh. For the Commission to cite these stations and others as justification for allowing the massive economic concentration that currently exists in the Pittsburgh market by a few corporate broadcast conglomerates is to blink at reality.

Thus, there is a need for additional broadcast outlets which can realistically lead to more localism and diversity of ownership in broadcasting. Certainly, if these objectives could be achieved by either of these rulemaking proposals, it would serve the public interest. *See Turner Broadcasting System, Inc. v. FCC,* 117 S. Ct. 1174, 6 CR 829, 832 (1997) ("it has long been a basic tenant of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public"). Yet, Petitioners' proposals, while offered for all the right reasons, if accepted without modification, will not likely achieve those objectives. Simply allotting more low power FM stations or additional AM and FM microstations in a market will not chip away at the economic concentration of a few massive corporate licensees, or

realistically lead to more diversity of viewpoints. To the contrary, adding additional low power stations to the current mix will only hurt those stations which already are the weakest in the market.[2] And, as the Commission well knows, the weakest of the weak can normally be expected to be AM daytime stations. Such stations already operate at a severe disadvantage in their ability to serve the public and compete in the market place as a result of the technical constraints which have been imposed by the Commission. While the FCC has attempted throughout recent years to assist and encourage the development and utilization of the AM broadcast service, generally, such efforts have been limited in their success.[3]

The proposals under study offer one additional opportunity for the Commission to assist those stations which are in the most need. By permitting AM daytimers to obtain low power FM licenses, the Commission would be solving two (2) problems. First, the FCC would be allowing AM daytimers who have suffered with the unique technical problems present in the AM service to obtain some semblance of equality under the FCC's technical rules. Second, if AM daytimers take the opportunity to trade up by turning in their AM daytime licenses in return for new FM allotments, there should result a general reduction in interference levels in the existing AM band. Thus, permitting AM daytimers to trade up should reduce interference and congestion in the AM band. Improvement in the technical quality of AM service will promote the public interest objective of an overall competitive radio

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[2] Forcing stations to go dark involuntarily as a result of economic constraints resulting from the introduction of new low power stations can scarcely be viewed as leading to an increase in diversity. Such a tradeoff penalizes those broadcasters who have struggled through the years, believing the Commission's mantra that "help is on the way," while failing to increase viewpoint diversity in any meaningful sense.

[3] *E.g. Implementation of the AM Expanded Band Allotment Plan,* 6 CR. 964 (1997); *Review of the Technical Assignment Criteria for the AM Broadcast Service,* 6 FCC Rcd. 6273, 6274 (1991) ("Over the years, channel congestion and interference...have dramatically increased in the AM band....As a consequence, during the last twenty years, there has been a well-documented shift of AM listeners to newer mass media services that offer higher technical quality and better aural fidelity...In view of the undisputed public importance of the AM service, we believe that innovative and substantial regulatory steps must be taken to ensure its health and survival.")

broadcasting service. *See Review of Technical Assignment Criteria*, 6 FCC Rcd. at 6325. *Cf. Telecator Network of America*, 58 RR 2d 1443 (1985).

Stevens proposes that, in the event the Commission provides for a low power FM service, AM daytime licensees should be given the option to trade in their AM stations for new FM allotments under certain conditions.[4] Obviously, each FM allotment would need to fit under the Commission's technical rules. Additionally, the FM allotment would need to be licensed to a community within the city grade contour of the daytime AM station. There is some validity to TRA's concern that low power FM stations remain in the hands of local owners, who can better be aware of and serve the needs and interests of their communities.

In the event that a daytime AM licensee determines that it does not desire to trade in its AM station, it should not receive a penalty in any resulting lottery to award the low power FM construction permit. TRA has noted correctly that low power television holdings should not be counted as media ownership in a lottery because of the secondary-service classification of such licenses. Similarly, while AM daytime station licenses are not classified as a secondary-service, few would contest that they are at the bottom of the food-chain when it comes to primary-service stations. As such, it makes little sense to further discriminate against such technically inferior licenses by according them a weighted demerit. If anything, daytime AM licenses applying for low power FM licenses should be given a weighted preference.

As noted, Stevens supports the concept of filing windows, which have been used successfully in the low power television service for several years. Once a filing window closes, the Commission can

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[4] Steven's proposal would be legal under *Ashbacker Radio Corporation v. FCC, 326* U. S. 327 (1945). The Commission has been permitted, in the context of a rulemaking proceeding , to establish standards applicants must meet to receive consideration. *See United States v. Storer Broadcasting Co.*, 351 U. S. 192 (1956).

publish a list of applicants and provide interested parties with the standard thirty (30) days notice period for filing petitions to deny. Any mutually-exclusive applications would be decided by lottery with weighted preferences being awarded for such things as lack of ownership of other mass media and ownership of AM daytime stations. The Commission would need to seek Congressional authorization for such lotteries, however, the FCC should have no problem justifying the need for an exception to Congressionally imposed auction procedures, since use of an auction mechanism would lead to a further concentration of control of media in the hands of a few.

Stevens supports TRA's suggestion that the Commission's second and third adjacent channel spacing restrictions currently embodied in its rules as well as the FCC's intermediate frequency restrictions be eliminated as unduly burdensome and unnecessary for the purpose of implementing a new low power broadcast service. As pointed out by TRA, improvements in receiver technology warrant the elimination of these restrictions.

Stevens does not support the incorporation of a "letter perfect" processing standard by the Commission. While Stevens understands TRA's viewpoint that incorporation of such a standard by the Commission would improve service, the reality of the situation is that such a standard would be draconian in its implementation and would only lead to the filing of numerous petitions for reconsideration, further slowing down the Commission's review procedures. The far better way to proceed would be consistent with the Commission's present review procedures for applications. Applicants are given one chance to correct any deficiency. In the unlikely event that such applicants fail to make necessary changes through amendment, their applications will be subject to dismissal at that time. The purpose of the Commission's review process is not simply to reject applications, but, rather, to ensure that technically qualified applications are granted.

Finally, Stevens supports ownership limitations as suggested by Petitioners. While the Commission need not require owners work at their stations in management positions, the mere ownership by residents in the areas where their stations are located should ensure that such individuals stay in touch with the problems, needs and interests of their respective service areas. Stevens further supports a restriction on the amount of low power stations owned by any one party.

In light of the foregoing, Stevens respectfully submits that the Commission should not blindly adopt a low power broadcast service without providing for the ability of daytime AM station operators, who now operate at a severe technological disadvantage, to obtain such stations.

Respectfully submitted:

ROBERT M. STEVENS

By: _____
Lee J. Peltzman
His Attorney

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