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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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APR 27 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Petitions of	)	
	)	
Nickolaus E. Leggett, Judith F. Leggett and Donald J. Schellhardt, Esq.	)	RM-9208
	)	
For the Creation of a Microstation Radio Broadcast Service;	)	
	)	
J. Rodger Skinner, Jr.	)	RM-9242
	)	
For the Creation of a Low Power FM Broadcast Service; and	)	
	)	
Gregory D. Deieso	)	RM-9246
	)	
For the Creation of Event Broadcast Stations	)	

To: The Commission

JOINT STATEMENT OF THE NAMED
STATE BROADCASTERS ASSOCIATIONS

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April 27, 1998

Summary

Through their beguiling use of such terms as the "national security," the "national interest," "localism" and "diversity," the Petitioners would have the Commission feel morally and legally compelled to give a broadcast microphone and transmitter to virtually anyone who wanted one. The Petitioners have proposed that the Commission create a new broadcast service that is so technically inferior that the proposed service makes a mockery of the word "broadcast." The Petitioners do not talk about public trustee responsibilities, only of the right to broadcast for themselves. This "CB-ization" of radio broadcasting stands the Communications Act on its head. The Petitioners press the Commission to grant to almost every person the right to broadcast, overlooking that it is the paramount right of listeners to be informed through a high quality full service broadcast system which has been the legal as well as operational touchstone of the radio broadcast industry since its inception. The enforcement problems presented by the Petitioners' proposals will likely be catastrophic for the FCC and the nation's courts. As the pirate radio broadcasters have shown, a $300 investment in equipment provides no assurance of responsible conduct regarding FCC rule compliance or matters of content and privacy. The Commission already has an orderly procedure for establishing new full-time radio stations. The system continues to work well to ensure that all communities and thus their citizens are not left uninformed. The Commission should, therefore, decline to take any further action in this proceeding, a proceeding which threatens to overwhelm the Commission's resources and jeopardize the Commission's regulatory regime.

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JOINT STATEMENT OF THE NAMED
STATE BROADCASTERS ASSOCIATIONS

The Alabama Broadcasters Association, the Arizona Broadcasters Association, the Arkansas Broadcasters Association, the California Broadcasters Association, the Colorado Broadcasters Association, the Connecticut Broadcasters Association, the Florida Association of Broadcasters, the Idaho State Broadcasters Association, the Illinois Broadcasters Association, the Indiana Broadcasters Association, the Iowa Broadcasters Association, the Kansas Association of Broadcasters, the Kentucky Broadcasters Association, the Louisiana Association of Broadcasters, the Maine Association of Broadcasters, the Maryland/DC/Delaware Broadcasters Association, the Massachusetts Broadcasters Association, the Michigan Association of Broadcasters, the

Minnesota Broadcasters Association, the Mississippi Association of Broadcasters, the Missouri Broadcasters Association, the Montana Broadcasters Association, the Nebraska Broadcasters Association, the Nevada Broadcasters Association, the New Hampshire Association of Broadcasters, the New Mexico Broadcasters Association, the New York State Broadcasters Association, the North Dakota Broadcasters Association, the Ohio Association of Broadcasters, the Oklahoma Association of Broadcasters, the Oregon Association of Broadcasters, the Pennsylvania Association of Broadcasters, the Radio Broadcasters Association of Puerto Rico, the Rhode Island Broadcasters Association, the South Carolina Broadcasters Association, the Tennessee Association of Broadcasters, the Texas Association of Broadcasters, the Utah Broadcasters Association, the Vermont Association of Broadcasters, the Washington State Association of Broadcasters, the West Virginia Broadcasters Association, the Wisconsin Broadcasters Association and the Wyoming Association of Broadcasters (collectively, the "Associations"), by their attorneys, and pursuant to Section 1.405 of the Commission's Rules, hereby submit this Joint Statement in opposition to the above-referenced petitions for rulemaking. Specifically, the Associations oppose these petitions for rulemaking which, individually, seek the establishment of a "microstation radio broadcasting" service, the creation of a "low power FM broadcast" service, and the creation of "Event Broadcast Stations" (collectively, the "Petitions"), and were filed, respectively, by Nickolaus E. Leggett, Judith F. Leggett and Donald J. Schellhardt, Esq., J. Rodger Skinner, Jr., and Gregory D. Deieso (collectively, the "Petitioners").[1/]

[1/] In Public Notices released on February 5 (order extending time released March 5, 1998), March 12 and March 18, 1998, the Commission gave notice that interested persons may (continued...)

INTRODUCTION AND SUMMARY

1. Through their beguiling use of such terms as the "national security," the "national interest," "localism" and "diversity," the Petitioners would have the Commission feel morally and legally compelled to give a broadcast microphone and transmitter to virtually anyone who wanted one. The Petitioners have proposed that the Commission create a new broadcast service that is so technically inferior that the proposed service makes a mockery of the word "broadcast." The Petitioners do not talk about public trustee responsibilities, only of the right to broadcast for themselves. This "CB-ization" of radio broadcasting stands the Communications Act on its head. The Petitioners press the Commission to grant to almost every person the right to broadcast, overlooking that it is the paramount right of listeners to be informed through a high quality full service broadcast system which has been the legal as well as operational touchstone of the radio broadcast industry since its inception. The enforcement problems presented by the Petitioners' proposals will likely be catastrophic for the FCC and the nation's courts. As the pirate radio broadcasters have shown, a $300 investment in equipment provides no assurance of responsible conduct regarding FCC rule compliance or matters of content and privacy. The Commission already has an orderly procedure for establishing new full-time radio stations. The system continues to work well to ensure that all communities and thus their citizens are not left uninformed. The Commission should, therefore, decline to take any further action in this proceeding, a proceeding which threatens to overwhelm the Commission's resources and jeopardize the Commission's regulatory regime.

1/ (...continued)
file statements opposing or supporting the Petitions by April 27, 1998. Accordingly, this Joint Statement is timely filed.

2. The Associations appreciate this opportunity to provide their views on the proposals submitted by the Petitioners. Each of the Associations is chartered to help create and maintain a regulatory and economic environment conducive to the growth of the free, over-the-air, full service radio and television broadcast industries in their respective states. As such, the Associations have a direct interest in this matter since they represent entities regulated by the Commission who will be directly affected by the adoption of any of the proposals. Therefore, the Associations have the requisite interest to file this Joint Statement.

3. Radio broadcasting is and always has been a local service. As has been noted in the past, "the hallmark of radio that has carried it through the years is arguably the best local news and public affairs programming of any communications medium."[2/] Radio broadcasters serve their local communities through both local programming, such as news, weather, traffic, schedules of community events, severe weather warnings, and school closing information, as well as nonbroadcast services, such as fundraising and working with community organizations.

4. The fundamentally local nature of radio broadcasting has not been altered by the voluntary sales of stations to group owners. Indeed, in the Telecommunications Act of 1996, Congress determined that lifting the cap on national radio station ownership and relaxing the rules on local radio station ownership was in the public interest.[3/] Group ownership provides substantial economies of scale, the monetary savings of which inure to the public's benefit by permitting group owners to improve the quality of their programming and facilities. Even where

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2/ Amendment of the Commission's Rules with Regard to the Establishment and Regulation of New Digital Audio Radio Services, 10 FCC Rcd 2310, 2319 (1995) (separate statement of Commissioner James H. Quello).

3/ See Pub. L. No. 104-104, 110 Stat. 56, § 202, 110 Stat. 110-111 (1996).

a station is owned by an organization hundreds of miles from the radio station's city of license, the need to provide a local service remains paramount. For their own survival, these stations must provide locally responsive content. In fact, radio's very lifeblood reinforces local connections, as even local advertising provides important information about the community to the station's listeners, and strengthens the station's local bond, regardless of where the owners live.

5. Despite the commitment and accomplishments of the Nation's full service broadcast system, a system that is being emulated by countries worldwide, the Petitioners have asked the Commission to initiate a rulemaking to create potentially tens of thousands of additional radio stations. The Petitioners define their version of local service by offering a hodgepodge of purported justifications for the massive overhaul of the existing radio landscape that they have proposed. One Petitioner asserts, without support, that "many families and neighborhoods are in a state of deterioration or collapse" and that somehow microstation broadcasters can help "energize" them to "survive and prosper."[4/] Additionally, the Petitioner claims, again without support, that microstation broadcasters would create "opportunities for upward mobility," "technical radio and electronics training to those who build and operate [such stations]," and that these microstation broadcasters would air more experimental programs than "conventional" radio stations.[5/] Another Petitioner states that unless his proposal is adopted,

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4/ Petition for a Microstation Radio Broadcasting Service, RM-9208, filed by Nickolaus E. Leggett, Judith F. Leggett, and Donald J. Schellhardt, Esq. on June 26, 1997, at 3-4.

5/ Id. at 5-6.

pirate radio stations will get "out of control."[6] This Petitioner goes on to claim that the Commission could be failing to "live up to" its Congressional mandate and that the shift to group ownership threatens to reduce the number of views and programs aired nationwide.[7]

6. No adequate showing has been made to justify the creation of this new service that seeks to transform the radio landscape by adding tens of thousands of new "stations" which present a host of regulatory and enforcement problems. At a minimum, the Petitioners' proposals, if pursued, threaten to overwhelm the Commission's resources, exacerbate enforcement issues, hinder the implementation of digital radio, and undermine other present and future rulemakings. To avoid these severe consequences, the Associations urge the Commission to end this proceeding now by declining to initiate either a rulemaking or a notice of inquiry.

DISCUSSION

A. THE COMMISSION HAS BROAD DISCRETION TO DECLINE THE REQUESTED RULEMAKING AND INQUIRY

7. The Commission is not legally required to initiate the rulemaking requested by the Petitioners. The statutory right to petition the Commission for a rulemaking is founded upon Section 553(e) of the Administrative Procedure Act ("APA"), which states that "[e]ach agency

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6/ Petition for Creation of the Low Power FM (LPFM) Broadcast Service, RM-9242, filed by J. Rodger Skinner, Jr. on February 19, 1998, at 8.

7/ Id. at 9.

shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule."[8] This right to petition for a new rule does not, however, mean that an individual has a right to the initiation of a rulemaking.

8. The legislative history of the APA makes clear that federal agencies are not required to initiate a rulemaking just because a petition is filed. In its report on the APA, the Senate Judiciary Committee clearly stated that when petitions for rulemaking are filed, the APA requires the agency to "fully and promptly consider them, take such action as may be required, and . . . notify the petitioner in case the request is denied. The agency may either grant the petition, undertake public rule making proceedings. . . or deny the petition."[9] In another portion of that Senate Judiciary Committee Report, the Committee emphasized that "the mere filing of a petition does not require an agency to grant it, or to hold a hearing, or engage in any other public rule making proceedings. The refusal of an agency to grant the petition or to hold rule making proceedings, therefore, would not per se be subject to judicial reversal."[10]

9. The Commission's own rules place the burden on the individual and contemplate that his or her petition for rulemaking <u>will be denied</u> unless that burden is met. According to Section 1.407 of the Commission's Rules,

> If the Commission determines that the petition discloses sufficient reasons in support of the action requested to justify the institution of a rulemaking proceeding, and notice and public procedure thereon are required or deemed

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[8] 5 U.S.C. § 553(e) (1998).

[9] S. Rep. No. 752, 79th Cong., 1st Sess. (1945).

[10] Id. at 201-02.

> desirable by the Commission, an appropriate notice of proposed rulemaking will be issued. In all other cases the petition for rulemaking will be denied and the petitioner will be notified of the Commission's action with the grounds therefor.[11]

10. The courts have upheld the Commission's discretion to deny petitions for rulemaking. In a case involving Commission action declining to initiate a rulemaking, the Court of Appeals for the D.C. Circuit held,

> Although the legislative history accompanying section 4(d) makes it plain that an agency must receive and respond to petitions for rulemaking, it is equally clear from the legislative history that Congress did not intend to compel an agency to undertake rulemaking merely because a petition has been filed.[12]

Thus, federal statute, the Commission's own rules, and judicial precedent confirm the Commission's broad discretion to deny a petition for rulemaking without further proceedings. A fortiori, the Commission is also under no legal obligation to issue a Notice of Inquiry in its stead.[13]

B. PETITIONERS HAVE FAILED TO PROVIDE SUFFICIENT REASONS FOR A RULEMAKING OR INQUIRY

11. The Petitions should be denied because the Petitioners have utterly failed to demonstrate the need to create a new broadcast service. Pursuant to Section 1.401(c) of the Commission's Rules, the Petitioners are required to "set forth the text or substance of the proposed rule, amendment, or rule to be repealed, together with all facts, views, arguments, and

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11/ 47 C.F.R. § 1.401(a) (emphasis added).

12/ WWHT, Inc. v. FCC, 656 F.2d 807 (D.C. Cir. 1981).

13/ See, e.g., World Press Freedom Committee, 51 R.R.2d 34 (1982) (denying petition for notice of inquiry); Rules and Policies to Further the Advancement of Black Americans in Mass Communications, 76 F.C.C.2d 835 (1980) at ¶ 9-10 (denying request to issue Notice of Inquiry).

data deemed to support the action requested, and shall indicate how the interests of petitioner will be affected."[14] As previously summarized by the Commission, "[t]he institution of a formal rulemaking proceeding in response to a petition for rulemaking is certainly not obligatory. Parties requesting rule changes, therefore, must recognize that they have the burden of convincing the Commission that the concerns expressed and the facts supporting them are sufficient to warrant the initiation of a formal proceeding."[15] Here, the Petitioners have failed to provide the Commission with such information or justifications.

12. The personalized complaints of these avid hobbyists cannot justify the initiation of a rulemaking that seeks to recreate the radio broadcasting industry. Quite simply, the Petitioners have failed to demonstrate that the Commission's 12,276 licensed radio stations[16] are failing to serve the public interest. To the contrary, there is abundant evidence that broadcasters are doing a superlative job in meeting the needs of their communities through both broadcast and nonbroadcast efforts. Very recently the commitment to public service by broadcasters was quantified as **$6.85 billion in a single year**.[17] This demonstrable commitment to public service is long standing and has endured despite the competitive challenges radio broadcasters have faced from the development of new broadcast mediums and the Telecommunications Act of 1996. Indeed, the radio industry intends to continue this commitment even as the industry moves

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[14] 47 C.F.R. § 1.401(c).

[15] Amendment of Sec. 73.658(k) of the Commission's Rules, 63 F.C.C.2d 500 (1977) at ¶ 5.

[16] Public Notice No. 83005, released April 22, 1998.

[17] Broadcasters: Bringing Community Service Home: A National Report on the Broadcast Industry's Community Service, at 2 (1998).

from analog to digital at enormous cost and risk. Radio broadcasters have established a remarkable track record of community involvement and the Petitioners have not, and cannot, demonstrate anything to the contrary.

13. A careful reading of the Petitions and supporting comments filed in this proceeding illustrate that the true (and improper) motivation behind their effort is to provide amateur radio operators with their own personal AM and FM band stations. As has been stressed by the Commission repeatedly, there is no general right to become a broadcaster.[18] Heedless of this fact, the Petitioners argue that any person wanting to use the airwaves deserves their own broadcast station. Consider the following statements from one of the Petitions:

- "The microstation radio broadcasting service would provide the opportunity for individual citizens and small groups of citizens to operate radio broadcast services."[19]
- "Even teenagers without high school educations could find that operation of a microstation is within their financial and educational reach."[20]
- "Microstations also provide radio and electronics training to those who build and operate them."[21]

Likewise, many of the comments filed thus far in the proceeding have come from like-minded hobbyists who defend the Petitioners' proposals based on their own desire to broadcast, rather than on any commitment to serve the listening public. Thus:

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[18] See National Broadcasting Co. v. United States, 319 U.S. 190 (1943); see also Red Lion Broadcasting Co., Inc. v. United States, 395 U.S. 367 (1969).

[19] Petition for a Microstation Radio Broadcasting Service, RM-9208, filed by Nickolaus E. Leggett, Judith F. Leggett, and Donald J. Schellhardt, Esq. on June 26, 1997, at 1.

[20] Id. at 4.

[21] Id. at 5.

- "I am a licensed Advanced Class radio amateur. . . . [and] I have an interest in operating a radio station. . . ."[22]
- "I hope the FCC will find a way for people like myself to practice a profession we love."[23]
- "NO licensing of any sort, just like CB radio and cellular telephone."[24]
- "Could you do us all a favor? . . . let some kids have some fun? No matter how old they are?"[25]

The Commission has already allocated spectrum in the Citizens Band and amateur radio services for hobbyists and others to use to have their voices heard, to learn about electronics, and to "have some fun." The Petitioners should not be able to use the AM and FM bands simply to have fun at the expense of the Commission, the broadcast industry and the citizens they serve.

14. Finally, Petitioners attempt to justify their radical proposals by claiming its implementation will serve the public, for example, by providing employment opportunities. However, the Petitioners cannot justify their proposals on the basis that a microradio station may result in more "opportunities for upward mobility" and "technical radio and electronics training to those who build and operate [such stations]."[26] Any proposed communications service, no matter how misguided, can be claimed to create jobs and training for those involved. As the Commission has stated in the past, "it is not this Commission's province to engage in regulatory action (by rule or otherwise) with the purpose or largely for the purpose, of furthering

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22/ Comments, RM-9208, filed by Richard Eyre-Eagles on February 16, 1998, at 1.

23/ Comments, RM-9208, filed by John L. Zolkoske on February 26, 1998, at 6.

24/ Comments, RM-9208, filed by Martha Contee (received March 10, 1998), at 1.

25/ Comments, RM-9208, filed by Frank P. Patka on April 6, 1998, at 2.

26/ Petition for a Microstation Radio Broadcasting Service, RM-9208, filed by Nickolaus E. Leggett, Judith F. Leggett, and Donald J. Schellhardt, Esq. on June 26, 1997, at 5-6.

employment or economic conditions in a particular industry or a particular part of the country."[27] Instead, the Commission must evaluate whether such proposal will in fact generate tangible public interest benefits. The instant proposals will not.

C. PURSUIT OF THE PROPOSED MICRORADIO SERVICE WILL ADVERSELY AFFECT THE PUBLIC INTEREST

1. The FCC Lacks the Resources to Handle the Onslaught of Filings and Regulatory Problems Threatened by the Petitions

15. In considering the possible addition of any new service, the Commission must, as a threshold matter, weigh the adverse effects against any purported benefits. In performing that calculus in this instance, the purported justification for the service is clearly trumped by the numerous drawbacks. When the Commission last attempted to implement a radical expansion of radio stations by allocating 689 new FM channels in BC Docket 80-90 (a result that pales in comparison to the number of stations contemplated under the Petitions), the Commission became overwhelmed. Over the first three years of Docket 80-90 processing, the Commission witnessed a 54% increase in the average number of applications filed at the Commission. Despite efforts to handle such a deluge of paperwork, such as the creation of "hard look" processing, the Commission quickly found itself buried beneath a backlog of nearly 2500 applications.[28] Here, where the proposals anticipate allocating tens of thousands more stations than were allocated in Docket 80-90, the threat of crushing the Commission's staff beneath a flood of applications is

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27/ TV Reruns, 61 F.C.C.2d 946 (1976) at ¶ 16.

28/ See Amendment of Part 73 of the Commission's Rules to Modify Processing Procedure for Commercial FM Broadcast Applications, 6 FCC Rcd 7265 (1991) at ¶ 9.

very real and unaddressed by the Petitioners.[29] The Commission would be wise to heed the warnings of its previous Commissioner Ervin S. Duggan who, upon reflection, noted that

> 80-90, however well-intentioned, was an economic disaster for the industry. While the FCC, perhaps, could not have completely foreseen the consequences, the result convinces me that precipitous regulatory change, even when undertaken in the name of competition and economic growth, is much more complicated than we can fully anticipate. Better, than, to go carefully.[30]

16. Proponents of the service may contend that the regulatory needs of this service will be less severe than those presented by Docket 80-90 radio stations, as those stations were subject to the full complement of rules and regulations to which broadcast stations are subject. However, such an argument merely begs the question of what regulations would govern such a service,[31] which in turn places the proponents on the horns of a dilemma. If full Part 73 regulation is applied to such stations, the Commission's resources will literally be overwhelmed. If, however, these stations are authorized without regulation, or with minimal regulation, operators in the service will have little or no responsibilities in which case there is no "public interest" justification for the service. As this dilemma cannot be satisfactorily resolved on either prong, consideration of the Petitions should cease.

29/ "The Commission receives many inquiries annually (over 13,000 per year!) from individuals and groups wishing to start a 'low power' or 'micro power' radio station for local broadcasts (AM or FM)." See Low Power Broadcast Radio Stations, *available at* http://www.fcc.gov/mmb/asd/lowpwr.html (April 1996) at 1.

30/ Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2841(1992).

31/ Proposals for regulation presented thus far are vague, but range from extensive regulation, "[m]ost of the Part 73 rules that apply to full-power stations will also apply to these stations," (Petition for Creation of the Low Power FM (LPFM) Broadcast Service, RM-9242, filed by J. Rodger Skinner, Jr. on February 19, 1998, at 10) to no regulation at all, "NO licensing of any sort, just like CB radio and cellular telephone" (Comments, RM-9208, filed by Martha Contee (received March 10, 1998), at 1.).

2. Creation of an Unregulated Service Will Undermine the Public Service Programming of Existing Broadcasters

17. While a justification for the microradio stations is the creation of new outlets for public expression, the result may in fact be just the opposite. The creation of thousands of very low power radio stations throughout the country will imperil the public interest service already provided by the nation's full service broadcast stations, particularly the smaller full service stations. The existing broadcast stations have been authorized to do exactly what their name implies, to transmit program materials to a broad audience.[32/] The broadcast services are thus contrasted with the common carrier and wireless services which have been authorized to provide service from one point to a limited number of intended addressees. Microradio turns this distinction on its head, looking to create thousands of stations which will target a limited number of persons more properly serviced through existing non-broadcast services. Is the congestion of the AM and FM broadcast bands by tens of thousands of stations really justified by the need of a particular community group to get out the word of its activities to its members? Or isn't this purpose better served by these ubiquitous means, e.g. telephones, fax machines, newsletters, the Internet and the like?

18. While this community service rational has been the one advanced by the proponents of microradio, the reality is that, if such stations are truly used solely for the purpose

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32/ As the Senate Committee On Commerce, Science, and Transportation noted in its Report on the Telecommunications Act of 1996, "[d]espite the introduction of numerous costly improvements in service, local broadcast service remains universally available, reaching 98 percent of American homes, a degree of coverage which exceeds even the percentage of homes receiving telephone service." S. Rpt. No. 104-23, 104th Cong., 1st Sess. 9 (1995).

of disseminating news of the events of particular community groups, they will be redundant, endlessly repeating the same announcements (a function better served by a telephone answering machine which can, on demand, provide such information), or be used only sporadically (resulting in wasted spectrum), or they will fill up their airtime with material similar to that already programmed by existing broadcasters. If the latter result occurs, based on the experience with pirate radio stations which have sprung up throughout the country, these stations will no doubt splinter audiences and compete for local advertising dollars with existing broadcasters. And which broadcasters will be those hardest hit by such competition? It will not be the large group owners with access to substantial capital and national advertising dollars. Instead, it will be those remaining smaller broadcasters not affiliated with major groups, who rely on local advertising support for their livelihood and for the unique services that they provide to their communities.[33/] That financial pressure will, in turn, as it did as a result of Docket 80-90, spur even more consolidation which is the very evil which the Petitioners have said justifies their Petitions.

19. As the microradio stations proliferate, they will no doubt target the very advertisers that are targeted by the local radio broadcaster. While competition in and of itself may not be something to be feared, or an evil to be prevented by regulation, concerns about unfair competition have always been a seminal reason for oversight by regulatory agencies. It would be grossly unfair to allow these microradio stations to broadcast exempt from the same

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33/ The majority of broadcast stations remain in the hands of individual owners or small groups. According to "Who Owns What," April 27, 1998, only 8.3% of the nation's 12,276 stations are held by the top 5 group owners, and only 18.7% are owned by the top 50 group owners. Thus, more than 80% of all stations continue to be held by individuals, small corporations, and small group owners.

regulatory requirements to which full service stations must adhere. Without having to honor, for example, requests for discounted political advertising, to provide an EAS system, to maintain a main studio staffed during normal business hours, or to produce and document, through quarterly issues programs lists, the types of public service programs as full service broadcasters are required to provide, etc. the microradio station will have an unfair competitive advantage which should not be permitted by the Commission.

3. Effective Regulation of Microradio Stations Would Be Impossible

20. As shown, the need to regulate microradio is imperative. Yet, given the realities of the FCC's resources, the task of regulation will be impossible to accomplish. The Petitioners have suggested that at least one microradio be established in virtually every community in the United States. With an estimated 32,000 communities in the U.S.,[34/] this would mean at least an 361% increase in the number of broadcast stations.[35/] An increase of even a fraction of that many stations will swamp the Commission's resources. The Commission's staff already has its hands full with the current number of broadcast stations. For example, during calendar year 1997, the Commission's Mass Media Bureau disposed of 6,205 assignment and transfer applications, the Enforcement Division disposed of 8,002 complaints, and the customer service team handled

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34/ According to data from the 1990 Census, there are 19,332 incorporated cities and towns in the United States, and an additional 4,110 "census-designated places," which are unincorporated places of relatively dense population. When other local government units such as townships, identified by the Census Bureau as "minor civil divisions," are included, the total rises to more than 32,000. Places, Towns, and Townships, ix, (Deirdre A. Gaquin & Richard W. Dodge, eds., 2d ed. 1998).

35/ Percentage of increase calculated by adding the number of current radio stations (12,276) to the number proposed by the Petitioners (32,000) and dividing that total by the current number of stations (12,276).

12,000 inquiries.[36] The Petitioners' proposal would increase exponentially the number of applications to be processed, the number of stations to be monitored, and the number of inquiries to which the Commission must respond. Petitioners have not addressed how the Commission, with its limited staff, could handle such a substantial increase in work load without a huge increase in funding, an increase unlikely to be approved in the current budgetary climate.

21. How, realistically, is the FCC going to be able to effectively regulate the ownership and operations of tens of thousands of microradio stations? Aside from issues of citizenship, multiple ownership, etc., there are a plethora of rules relating, for example, to station identification announcements, sponsor identification announcements, political editorials, the personal attack rule, political debates, political advertisements, obscene and indecent programming, station promotions and contests, lottery advertising, Emergency Alert System (EAS) broadcasts, and the rebroadcast of telephone conversations without consent, main studio location, public inspection files, licensee participation in drug trafficking, time brokerage, operating hours, unattended operation, tower lighting and painting, and RF radiation, which will need to be enforced.

22. Furthermore, if the Commission were to authorize microradio broadcasting, the Commission will be besieged by a constant stream of demands for power increases, changes in tower height and location, and other modifications. Even before the Commission has considered the Petitions, commenters have begun to demand more power, increased tower height, and

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[36] Statistics taken from the *1997 Customer Satisfaction Report* on the Commission's Web site, *available at* http://www.fcc.gov/mmb/obc/mmb98fnl.html.

decreased regulation,[37] with an eye towards inching their way towards facilities that will rival those of existing full service broadcast stations. If a microradio service were to be authorized, the Commission would not have sufficient resources to respond to the thousands of requests for modified facilities, and to police the microstations to determine whether they are in compliance with their authorizations.

23. The authorization of those stations will inevitably create technical problems for the existing broadcast industry. The Commission is required the Communications Act of 1934, as amended, to "make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations."[38] As former Commissioner James H. Quello said, "it is axiomatic that for each new service introduced, interference to existing service is also introduced."[39] In the proposed microradio broadcast service, the problems of interference are likely to be compounded by the fact that some of these broadcasters, operating without experience and resources, may use unreliable equipment. This interference will mean the disruption of full service broadcasts to consumers who will be unable to receive the broadcast

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37/ See, e.g., Comments, RM-9208, filed by William L. Martin on March 6, 1998 ("I request that the output power be increased from 1 watt to 10 watts and the height limitation be increased from 50 feet to 100 feet.); Comments, RM-9208, filed by William J. Spry on February 19, 1998 (suggesting "a 250 watt maximum limitation with a much higher antenna limitation, such as 150 feet above ground level, vertical polarization."); Comments, RM-9208, filed by Harold F. Parshall ("Full time stations could operate with level [sic] of from 100 watts to 3000 watts. There should be no limitation on antenna height.").

38/ 47 U.S.C. § 303(f) (1998).

39/ Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments, 94 F.C.C.2d 152, 201 (1983) (dissenting statement of Commissioner James H. Quello).

signals to which they have become accustomed. Even worse, there is a serious potential that microstation broadcasters could cause interference to sensitive aviation communications and air navigation signals, threatening the safety of the nation's aviation system. Thus, vigilant enforcement would be required at a time when the FCC is already cutting back on its field personnel. In fact, the Commission has been relying heavily on the Associations, through voluntary self-inspection programs administered in cooperation with the FCC, to police full service broadcast stations. Who will provide such services for the tens of thousands of new microradio stations?

24. Finally, contrary to the Petitioners' statements, pirate radio stations will likely continue to flourish if microstations are permitted. With tens of thousands of tiny "legal" operations popping up throughout the country, pirate radio operators would go unnoticed wherever they set up shop. Most would assume the pirates were simply the latest microstation to go on the air. The strain on the enforcement of Commission rules that would inevitably follow from the rapid installment of tens of thousands of new microstations will in effect encourage more pirate broadcasting and further blur the line between legal broadcasting and pirate radio.

25. As the Commission is well aware, pirate radio stations cause disruption to the reception of full service broadcasts and pose a serious threat to the health and safety of all citizens. As FCC Chairman William Kennard said, "Unlicensed radio operations . . . pose a threat to critical air traffic communications and a risk to safety of life due to the interfering transmissions."[40] Further, Richard D. Lee, Acting Chief of the FCC Compliance and

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[40] FCC Closes down Unlicensed Radio Operation That Threatened Air Safety at Sacramento Airport; Fourth Airport Interference Incident in Five Months, FCC News

(continued...)

Information Bureau (CIB), said, "There is an increased problem for public and aircraft safety because of unlicensed FM operations. Hopefully we can eliminate this problem before a catastrophic accident resulting in loss of lives occurs due to interference on the airwaves."[41] The legitimization of pirate radio cannot be tolerated.

26. In short, the authorization of microstations will not solve the FCC's private radio problems. Instead, the problem will be exacerbated at the same time that a crushing new burden will have been added to a Commission already overloaded with responsibilities. Given the limited and speculative benefits of such service and the massive problems that the service will create, a fast and unequivocal rejection of the Petitions is mandated.

4. The Uncertainty and Technical Issues Involved in This Matter Undermine the Progress Being Achieved in Other FCC Proceedings

27. The Commission has been entrusted with the important role of regulating the broadcast spectrum.[42] In protecting and allocating this resource, the Commission must utilize the spectrum as efficiently as possible. In the past, the Commission has determined that

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40/ (...continued)
Report, No. CI 98-3 (March 20, 1998); Unlicensed Radio Operation in Puerto Rico Endangering Air Safety Communications at San Juan International Airport Shut Down by FCC, FCC News Report No. CI 98-1 (February 6, 1998); FCC Closes down Unlicensed Radio Operators That Were Threatening Air Safety at Two Florida Airports, FCC News Report, No. CI 97-12 (October 24, 1997).

41/ FCC Closes down Unlicensed Radio Operators That Were Threatening Air Safety at Two Florida Airports, FCC News Report, No. CI 97-12 (October 24, 1997).

42/ "It quickly became apparent that broadcast frequencies constituted a scarce resource whose use could be regulated and rationalized only by the Government. . . . Consequently the Federal Radio Commission was established to allocate frequencies among competing applicants in a manner responsive to the public convenience, interest, or necessity." Red Lion Broadcasting v. FCC, 395 U.S. 367 (1969) (internal quotation and citation omitted).

permitting many low-power transmitters is a less efficient way to allocate this resource than permitting fewer transmitters broadcasting at a higher power.[43] Given the numerous demands placed on the spectrum from emerging technologies, the Commission should be concerned with the frivolous waste of valuable spectrum.

28. While the Commission has been focusing its attention in recent months on the conversion of the nation's television system from the conventional, analog service to an improved digital television ("DTV") service, engineers have been working for years on designing a new digital radio service. It is our understanding that at least one firm has made substantial progress and expects to have a formal proposal ready by the end of this year. This proposal is based on the assumption that the current spacing requirements remain intact. The changes in the channel spacing regulations proposed by the Petitioners, or the addition of tens of thousands of new stations, would threaten or make impossible the digital radio technology in which so much has been invested over the years. The Commission should not upset the settled expectation of digital radio developers and further delay this service to the public.[44]

29. Moreover, the uncertainty resulting from the requested NPRM, let alone the new service, substantially complicates FCC consideration of many other currently pending proceedings. On its face, virtually all of the Commission's multiple ownership rules will be impacted. Moreover, as the Commission decides which full service regulations should or should

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[43] See Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations, 69 F.C.C.2d 240 (1978).

[44] The Associations hereby state their support of the position taken by the National Association of Broadcasters on this issue, as expressed in "Micro-Radio: Forget About It!" Radio Week, April 27, 1998, at 1.

not apply to the microradio service, the purpose of virtually every regulation will have to be examined. The open-endedness of such a ponderous review provides yet one more reason for rejection of the pending proposals.

CONCLUSION

The United States enjoys the dedication and accomplishments of a free, over-the-air, locally based, full service radio broadcast industry which is the envy of the world. These broadcasters serve their communities in powerful and helpful ways, while at the same time providing endless hours of enjoyment to the listening public. The FCC should not jeopardize this critically important full service industry by advancing a scheme that rests on speculative benefits and poses serious regulatory and technical problems. Accordingly, the Associations request that the Commission terminate this proceeding without taking any further action.

Respectfully submitted,

Alabama Broadcasters Association
Arizona Broadcasters Association
Arkansas Broadcasters Association
California Broadcasters Association
Colorado Broadcasters Association
Connecticut Broadcasters Association
Florida Association of Broadcasters
Idaho State Broadcasters Association
Illinois Broadcasters Association
Indiana Broadcasters Association
Iowa Broadcasters Association
Kansas Association of Broadcasters
Kentucky Broadcasters Association
Louisiana Association of Broadcasters
Maine Association of Broadcasters
Maryland/DC/Delaware Broadcasters Association
Massachusetts Broadcasters Association
Michigan Association of Broadcasters