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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Amendment of Part 73 of the Commission's Rules to Create a Low Power FM Broadcast Service	)	MM Docket No. _____ Rule Making No. 9242
	)	
	)	
	)	
	)	

To: Chief, Mass Media Bureau

OPPOSITION TO PETITION FOR RULE MAKING

Radio One, Inc. (hereinafter "Radio One"), owner and operator of eleven radio stations in the Washington, D.C., Baltimore, Maryland, and Philadelphia, Pennsylvania, markets hereby opposes the Petition for Rule Making (hereinafter "Petition") filed February 20, 1998, by TRA Communications Consultants, Inc. (hereinafter "Petitioner") asking that the Federal Communications Commission amend its rules to create a new low power FM broadcast service. By Public Notice released March 10, 1998, the FCC requested that parties file comments to the Petition on or before April 27, 1998. Therefore, these comments are timely filed.

Petitioner's proposal to create a new low power FM broadcast service should be summarily dismissed. Not only is it unacceptable for filing because it suffers from numerous procedural deficiencies but it proposes an influx of licensing issues that will

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tax the Commission's limited resources. In support of its opposition, Radio One hereby submits as follows.

SUMMARY OF PROPOSAL

1. Petitioner proposes a three-tiered low power FM service nationwide that would be used to broadcast events and/or target particular segments of the community and be potentially supported by advertising revenue. The first tier, referred to as LPFM-3, would permit broadcasts for specific events and for a limited period of time. Coverage of such facilities would extend one to two miles. The second tier, referred to as LPFM-2, would have a maximum power of 50 watts and a maximum antenna height of 150 feet HAAT with coverage extending about five miles. The intended recipients of these broadcasts would be small areas within a community. The third tier, referred to as LPFM-1, would be comparable to Class A FM stations with a maximum power of 3 kilowatts and a maximum antenna height of 328 feet HAAT. Coverage of such facilities would extend approximately 15 miles. This type of low power station would have to comply with the regulations applicable to full power broadcast stations. Ownership of LPFM-1 stations, either through original application or transfer, would be limited to those persons whose primary residence is within 50 miles of the low power station's tower site.

ARGUMENT

A. Procedural Deficiency Requires That the Commission Dismiss the Petition

2. Section 1.401(b) of the Commission's Rules requires that a petition for rule making conform to Section 1.52 of the rules. The Petition as filed fails to comply with that rule. Section 1.52 requires that a party not represented by counsel "sign and verify the document and state his address". The rule further describes the contents of the verification as a statement that a petitioner "has read the document; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay." Mr. Skinner, the person who signed on behalf of the Petitioner, does not state that he is an attorney and thus the verification required of a petitioner not represented by counsel should have been submitted. This omission is sufficient grounds for the Commission to dismiss the Petition as unacceptable for filing. In the Matter of Amendment of Section 73.202(b), Table of Allotments (Lincoln, Osage Beach, Steeleville and Warsaw, Missouri), 7 FCC Rcd 3015 (Allocations Branch 1992), aff'd, 11 FCC Rcd 6372 (Policy and Rules Division 1996)(counterproposals dismissed without consideration for failure to submit the verification required by Section 1.52).

B. Petitioner Has Failed to Establish the Demand for a New Low Power FM Broadcast Service

3. Section 1.401(c) establishes what information should be contained in a petition to amend the rules. The petition is to set forth the "facts, views, arguments and data deemed to support the action requested". While the Petitioner laments the state of

the radio industry due to consolidation and the need for this new service, the Petition is devoid of any supporting materials. It qualifies as a monologue; a wish list of what Petitioner alone thinks the public wants.

4. There is no data to illustrate that the service described is being demanded by either prospective operators or listeners. There is no data to demonstrate that there would be a sufficient advertising base to support the operation nationwide of the services described as LPFM-1 and LPFM-2. Most startling is the absence from the Petition of any technical data prepared by a qualified engineer addressing the frequencies to be allotted, confirming that there is sufficient spectrum available to create the service or estimating the number of stations that would be created. Although Petitioner spends five pages describing how new channels can fit into the current allocation scheme, its opinion that interference to existing broadcasters or degradation of reception to the public will not occur is unsupported.

5. As the proponent of a brand new service, it is incumbent upon the Petitioner to offer objective, supporting information. See Section 1.401(c). This the Petitioner has not done. While Petitioner states that through "careful study" during the past two years it "gain[ed] an awareness of the wants and needs of the various types of users" and studied the technical issues, no surveys, polling data, interviews or channel studies were submitted in support of the Petition. See Petition at ¶¶ 19, 64. Instead, Petitioner makes statements that it intends the Commission to accept as factual. For example, Petitioner recites at Paragraph 1 that the Commission receives 13,000 inquiries

per year from parties who want to own a low power radio station. Reference is made to the Commission's web page as the source for this information. Neither a date nor a citation is provided. At Paragraph 11, Petitioner emphatically states that the definition of a small business as promulgated by the Small Business Administration encompasses 93% of all radio stations. Petitioner fails to recite the origin of that figure. Finally, Petitioner at Paragraph 22 matter-of-factly states that there should be sufficient channels available to permit allocation of one or more channels for LPFM-1 service in each market. Again, no support for this claim is provided. It is incumbent upon the Petitioner to substantiate its proposal. That has not been done.

C. Low Power FM Broadcast Service Will Tax the Commission's Limited Resources

6. The Petitioner proposes that stations with various levels of power and serving different areas of interest be authorized nationwide. Petitioner makes no attempt to estimate the number of individual stations that could be authorized. One can estimate that based upon the minimal power proposed for at least the LPFM-2 and LPFM-3 services that thousands of low power FM stations would be created. It is the Commission's responsibility to investigate and sanction a licensee that violates the rules. The Commission's responsibility is immense given the thousands of entities licensed to operate. This new service would add significantly to the Commission's burden. Yet, the staff available to investigate and monitor compliance was cut by one-third in fiscal year 1997. Public Notice, Compliance and Information Action, Report No. CI 95-16, released October 13, 1995. There is an administrative cost associated with the implementation,

monitoring and maintenance of a new service. The Commission is ill-prepared at this juncture to assume this additional responsibility.

7. Finally, the most compelling reason why the Commission should reject Petitioner's proposal for a new low power FM service is its recent experience with unauthorized operations commonly referred to as "pirate radio stations". The illegal operation of such facilities has increased dramatically this past year. In a Public Notice released March 20, 1998, the Commission announced that it shut down an unlicensed operation causing interference to air traffic control at Sacramento Executive Airport. Public Notice, Compliance and Information Action, Report No. CI 98-3, March 20, 1998. This was the fourth time in five months that the Commission shut down unlicensed operations interfering with air traffic control frequencies. Those other incidents occurred in Miami, Florida, West Palm Beach, Florida and San Juan, Puerto Rico. Most recently, a trade publication reported that two separately operated unlicensed radio stations were shut down in Tampa, Florida. Inside Radio, April 17, 1998.

8. Petitioner states that the service he proposes will cause the "bulk of the 'pirate radio' problem" to disappear. Petition at ¶ 15. Petitioner offers no evidence to support this sweeping conclusion. And, the obdurate conduct of those operating pirate stations contradicts this conclusion. A pirate radio station broadcasts on a frequency without authority from the Commission. Hence, by definition the operation is illegal. Petitioner offers no comfort that by merely making a low power FM service available, that those violating the law will hang up their microphones, apply for a license and retreat

quietly if a license is not awarded. While the low power FM service would be authorized, and pirate radio stations are not, the parameters of proposed operation, at least for the two lower tiered services, could spawn an entire new wave of renegade broadcasters.

9. Certainly, the Commission should consider implementing a new service if it is demonstrated that such service is technically feasible and will serve the public interest. Petitioner's proposal is fraught with potential problems and is devoid of supporting factual information in contravention of the rules. For these reasons, Radio One, Inc., respectfully requests that the Commission dismiss the Petition.

RADIO ONE, INC.

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April 27, 1998

CERTIFICATE OF SERVICE

I, Deborah R. Hawkins, Assistant to the General Counsel of Radio One, Inc., hereby certify that a true and correct copy of the foregoing Opposition to Petition for Rule Making was sent this 27th day of April, 1998, by first-class mail, postage prepaid, to the following:

*Douglas Webbink, Esq.
Chief, Policy and Rules Division
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* BY HAND DELIVERY

Deborah R. Hawkins

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