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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	RM-9208
Microstation Radio Broadcast Service Petition for Rulemaking	)	
	)	
Low Power FM (LPFM) Broadcast Service Petition for Rulemaking	)	RM-9242

To: The Commission

REPLY COMMENTS OF ECI LICENSE COMPANY, L.P.

ECI License Company, L.P. ("ECI") hereby replies to comments submitted in response to the above-captioned Petitions for Rulemaking filed by Nickolaus E. and Judith F. Leggett and J. Rodger Skinner, Jr. ("Petitioners"). The proposals for a low power radio service advanced by Petitioners have generated expressions of both unqualified enthusiasm and grave concern from a variety of commenting parties. On balance, however, the apprehensions expressed by ECI and others regarding the impact of a so-called "microradio" service on the existing level of service provided by current radio licensees far outweigh the aspirations and good intentions of those favoring the proposal.

I. Introduction

Operating one's own broadcast facility is an idea that obviously has great allure for many people — quite a few individuals have submitted brief comments indicating a desire to obtain licenses if a low-power radio service is established. These expressions of interest are far from the groundswell that one might have expected given the opportunity presented by this concept. Notably, a large number of commenters, including the majority of the most

comprehensive and detailed responses to the Petitions, strongly oppose further consideration of the Petitioners' proposals.

II. The Addition Of New Low Power Stations To The Broadcast Radio Frequency Bands Would Have A Potentially Disastrous Impact On the Current Level Of Service.

Most of the commenters opposing the Petitioners share ECI's concern that the addition of many new low power radio stations in the existing AM and FM broadcast bands would result in a substantial increase in destructive interference, jeopardizing the existing level of service provided to radio listeners.[1/] As the Commission well understands, each time an additional transmitter is added on a particular frequency, the amount of "noise" within the band is increased, not just with respect to other transmissions on that frequency, but to adjacent frequencies and second- and third-order harmonic channels as well. Given the present heavy saturation of stations within the broadcast bands, any addition of a large number of new station operators in these frequencies would provide far more new interference than new service, reducing reception of existing stations that radio listeners enjoy and rely on for critical information.[2/] In addition, as other commenters observe, packing additional small

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1/ *See, e.g.*, Comments of Chester P. Coleman at 2-3; Comments of Educational Media Foundation at 1-3; Comments of Greater Media, Inc. at 2-7; Comments of Frank Luepke at 2; Comments of National Public Radio ("NPR") at 5-8; Comments of New Jersey Broadcasting, Inc. at 3-5; Comments of North Carolina and Virginia Broadcasters Associations at 2-3; Comments of William A. O'Brien at 1; Comments of Portland Area Radio Council at 1; Comments of Press Communications LLC ("Press") at 3-4; and Comments of Southern Minnesota Broadcasting Co. at 2-4.

2/ *See, e.g.*, Comments of National Association of Broadcasters ("NAB") at 9-11; Greater Media Comments at 3.

facilities into the broadcast bands would inevitably endanger the implementation of new digital broadcast services.[3]

Many commenters also echo ECI's concern that, in the present climate of reduced administrative resources for the FCC, any implementation would have a catastrophic impact because the agency, already forced to curtail field inspections and other oversight activities, may well be left unable to process thousands of applications to provide low power service or to adequately police the activities of the new microbroadcasters ultimately authorized.[4] These concerns are hardly idle speculation; a significant number of Commission licensees have already suffered harmful interference as a result of the actions of unlawful, pirate radio stations. For example, of the seven markets served by ECI, there has been recent pirate station activity in four — Kansas City, Sacramento, Seattle and Tampa-St. Petersburg.[5] In some cases, operations are shut down by the FCC only to reappear a short time later on a different frequency and/or broadcasting from a different location. As there are certain to be many areas where demand for micro-station licenses would outstrip their availability (especially the congested urban areas), it is unlikely that regularizing some manner of microradio operation would eliminate the urge of some miscreants to flout the FCC and broadcast at their whim. Indeed, as there are a significant number of individuals who deny even the FCC's authority to regulate "intrastate" radio stations,[6] it seems doubtful that many

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[3] *See* NAB Comments at 13-25; Greater Media Comments at 5; NPR Comments at 7; State Broadcasters Comments at 21; Comments of USA Digital Radio Partners, L.P. at 5-9.

[4] *See, e.g.*, NAB Comments at 33-38; Greater Media Comments at 6; Luepke Comments at 2-4; NPR Comments at 8-9; North Carolina/Virginia Broadcasters Comments at 3; O'Brien Comments at 1; Press Comments at 4-5; State Broadcasters Comments at 16-18.

[5] *See also, e.g.*, Comments of Greater Media, Inc. at 7.

[6] *See, e.g.*, Comments of David Moore at 4-18.

of the current illegal operators would line up for the opportunity to apply for an official license and willingly agree to FCC regulations. Yet the agency would likely be less able to police these outlaws if it were also employing its scarce resources to exercise oversight and enforcement authority over thousands of authorized low power licensees, some of which will be operating transmitting equipment for the first time.

Interference will not only cause radio listeners to suffer degraded reception, but could also result in a reduction in the range and types of programs available to audiences due to the adverse economic impact on existing broadcasters.[7]

The most significant economic danger to broadcasters posed by a sudden increase in the number of radio stations is not potential competition for advertising revenue,[8] but the fragmentation of audiences and the confusion likely to result from the launch of many new outlets.[9] One indication of the muddle that can be produced is the adverse experience of one of ECI's competitors in the Tampa market, Station WHPT, which operates at 102.5 MHZ. A notorious pirate broadcaster operating on the second-adjacent channel spurred multiple complaints to this station from both listeners and advertisers who mistook the pirate's profanity-laced broadcasts for WHPT programming — in part because the unauthorized transmissions were actually picked up by some receivers on WHPT's licensed channel. In this way, stations can suffer losses in listenership and good will, as well as increased costs for

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7/ *See, e.g.*, NAB Comments at 27-28; State Broadcasters Comments at 14-16.

8/ Even if microbroadcasters were allowed to operate on a commercial basis, because of their small service areas, they would not be likely to attract significant advertising revenue — although stations in more rural areas could indeed pose a severe threat to the financial underpinnings of existing operators in these communities. Nonetheless, in the event that low power broadcasters were authorized as for-profit enterprises, the desire to attract advertisers could be a compelling impetus for increasing power, with or without FCC authorization.

9/ *See, e.g.*, Comments of Roswell Radio, Inc. at 4-5.

promotion and legal expenses, because of the irresponsible actions of others who are not dedicated to providing quality broadcast service.

This potential impact is of greatest concern not to the large national radio groups, but to small broadcasters, which have less visibility and smaller budgets.[10/] These stations are now providing localized, community-oriented service — like that which the proponents of low power radio only purport to offer at some time in the future — yet these existing broadcasters would be the most threatened by a proliferation of new transmitters in their communities. Just as the proliferation of new stations as a consequence of Docket 80-90 created severe disruption within local markets, especially stand-alone stations and new operations, the implementation of thousands of microradio stations would affect most directly those licensees which operate individual local stations.

The community service provided by existing licensed broadcasters should not be underestimated. Some supporters of the Petitions suggest that current broadcast licensees do not provide adequate service to the public. In fact, however, the overwhelming weight of the evidence demonstrates that broadcasters are providing tremendous public benefits to their communities in the form of informational programming, public service announcements, sponsorship of ethnic and community festivals, fundraising assistance to charitable groups, organizational and publicity assistance for efforts to collect food, clothing, toys and other items for the needy, and hosting and support for minority job recruitment workshops, to cite

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10/ *See, e.g.*, Comments of William A. O'Brien at 1 (WJLS AM/FM, Beckley, West Virginia); Comments of New Wavo Communication Group, Inc. at 1-2 (KVST-FM, Monroe, Texas); Comments of Bayview Communications, Inc. at 1-2 (KLAM-AM/KCDV-FM, Cordova, Alaska); Comments of JEM Broadcasting Co. at 1-2 (KESE(AM), Bentonville, Arkansas); Comments of John King at 1-2 (KBIM AM/FM, Roswell, New Mexico).

just some of the efforts undertaken.[11] In the aggregate, the total value of broadcasters commitment of resources to public service endeavors has recently been estimated at $6.85 billion over the course of a single year.[12] These substantial public benefits must not be placed at risk cavalierly and without solid justification.

III. Petitioners Have Offered Insufficient Justification For The Commission To Proceed With An Inquiry Or Rulemaking Concerning Microradio, Particularly In View Of The Adverse Impact Such A Service Would Have On The Existing Public Service Provided By Current Licensees.

As amply demonstrated above, and in the dozens of initial comments filed in response to the Commission's public notice, there are severe problems with the type of rules changes that the Petitioners propose. Accordingly, there is a high hurdle for these proposals to overcome before it would be appropriate for the Commission to give them any further consideration.[13] It is therefore surprising how little tangible justification has been offered by the Petitioners and other proponents of low power radio for placing the existing high quality service at risk. In contrast to those pointing out the very real deficiencies in these proposals, the proponents themselves have offered little in support of this concept except for generalized assertions that their proposals would enhance the diversity of viewpoints and programming formats available to listeners, serve currently unserved communities and interest groups, and provide new chances for citizen involvement in broadcasting, including expanded opportunities for minorities. Instead of addressing themselves to the critical question of

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11/ With respect to minority communities in urban areas, there are typically multiple stations devoted primarily to programming aimed at serving African-American and Hispanic listeners, while less sizeable minority populations are often served by particular programming blocs or individual programs.

12/ *See* Comments of the State Broadcasters Associations at 9, *citing Broadcasters: Bringing Community Service Home* at 2 (1998).

13/ *See* State Broadcasters Comments at 8-9.

whether a microradio service is necessary or desirable — which is the only real issue at this juncture, before the Commission has even decided to initiate an inquiry or rulemaking — these parties have prematurely focused almost entirely on questions relating to exactly how such a service might be regulated. As ECI and several other commenters have pointed out, however, there is no basis for the service that is proposed.[14]

As with any proposal for new service, a critical issue that the Commission must confront is whether the attainable benefits of establishing such a service merit the risks and the costs that launching it will entail. In Docket 80-90, the Commission proceeded to alter the nature of the industry by proclaiming that "more is better." The results of that experiment nearly forced 25% of all stations off the air. The new localized service that was postulated not only did not materialize, but the existing service was severely harmed. The lessons from that proceeding must not be ignored in this instance. In the case of microradio, the actual benefits of the service would, once again, not come close to justifying the risk to existing service that is involved.

On a fundamental level, the Petitioners propose to reach niche affinity groups and community audiences in small geographic areas through a medium that is ill-suited to such a purpose. There is real meaning in the term broad-casting — a service which is inherently intended to reach large audiences over wide listening areas. Microbroadcasting is a contradiction in terms.[15]

Specifically, in the original Leggett Petition, it was suggested that "specialized stations" could devote air time to "subjects and activities such as golfing, flying, archery,

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[14] *See, e.g.*, Comments of Robert L. Caron at 3; State Broadcasters Comments at 5-6 & 8-12; NAB Comments at 25-33.

[15] *See also* Broadcast Signal Lab Comments at 2; State Broadcasters Comments at 3.

energy conservation, ecology, animal rights, etc."[16] To the extent that advocates of new radio service seek to reach individuals with such avocational interests, or non-mainstream musical tastes, a small wattage "broadcast" station that covers only a limited area is particularly inappropriate as a vehicle for doing so. It would not be an efficient use of spectrum to authorize new radio transmitters with the purpose of reaching the half-dozen archery enthusiasts, or even the 100 golfers, that might reside within the service area of a low power station.[17] Indeed, the Commission has already authorized the new satellite-delivered DARS service with the object of serving niche audiences,[18] and that service, with the ability to aggregate hobbyists nationwide, is a far better avenue for serving such interest groups, assuming that sufficient demand even exists.

On the other hand, to the extent that microradio is seen as a means of serving small communities, these needs are already served more efficiently by existing full power broadcasters in rural areas and small cities. Only in large urban areas could it be argued that there are identifiable yet small geographic or ethnic communities that do not receive comprehensive service from stations that are currently operating. However, these are the areas in which the available broadcast spectrum is already fully utilized, and low power stations could not be created without displacing existing service. Given the balance of costs and benefits of offering more specialized broadcast service to discrete geographic communities, the potential needs of these areas can be met in a more practical and efficient

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16/ *See* Leggett Petition (RM-9208) at 1.

17/ *See also* Susquehanna Radio Corp. Comments at 1-2; NPR Comments at 9 ("While the coincidence of both programmatic and geographic communities of interests undoubtedly occurs, there is no empirical evidence presented to suggest that it is so common that it warrants the establishment of a nationwide system of low power broadcast station.")

18/ *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310 - 2360 MHZ Frequency Band*, 12 FCC Rcd 5754, 5761-62 (1997).

manner through newsletters, town meetings, community newspapers, telephone communications, sound trucks, and reliance on existing broadcast stations, rather than by carving new slices out of the radiofrequency spectrum.[19]

Finally, there is a noticeable current running through the comments of proponents of low power radio that suggests many supporters of the concept are motivated primarily by the allure of having their own outlet on the public airwaves, and not by any desire to serve a particular community or other public purpose.[20] This raises the very real prospect that microradio could be little more than a "Vanity Broadcasting Service," satisfying the ego of licensees, while providing very little in added value to the radio listener,[21] and at the same time placing in great jeopardy the high quality, professional news, talk, music, and information services upon which listeners have come to rely.

19/ Indeed, as several commenters point out, the Internet is fast providing for "microbroadcasters" the same opportunity that it has been providing for "micropublishers." With an investment similar to that required to start a small wireless broadcasting station, an individual could become an Internet broadcaster, or "webcaster," instead. *See* Greater Media Comments at 7; NPR Comments at 9-10; NAB Comments at 31. While low-cost receivers for such services are not currently as inexpensive or ubiquitous as radio receivers, with the pace of advancement in this area of consumer technology (*e.g.*, Internet-only computers costing less than $500), it seems likely, in the event public demand develops, that such products could be available before a microradio service could be launched. Therefore, this avenue would seem a more realistic means for new narrowcast radio stations to develop.

20/ *See* State Broadcasters Comments at 10-11, *citing* various submissions.

21/ *See, e.g.*, Comments of Bergman Broadcasting at 3-4.

IV. Conclusion

For the foregoing reasons, ECI strongly urges the Commission not to proceed further with any rulemaking that would potentially disrupt the current terrestrial broadcast system in an effort to achieve the ellusive goal of broadening the diversity of services and formats now provided by radio broadcasters. Adding hundreds or thousands of new low power stations to the existing broadcast service would only degrade reception and undermine the existing high-quality service that listeners expect.

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CERTIFICATE OF SERVICE

I, Yaiza E. Garabito, hereby certify that true and correct copies of the foregoing "Reply Comments of ECI License Co., L.P." were served this 26th day of May, 1998, by U.S. Mail, postage prepaid, to the following persons at the addresses listed below:

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