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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition for a Microstation Radio Broadcasting Service	)	RM No. 9208
	)	
Proposal for Creation of the Low Power FM (LPFM) Broadcast Service	)	RM No. 9242
	)	
Amendment of Part 73 of the Rules and Regulations to Establish Event Broadcast Stations	)	RM No. 9246
	)	

REPLY TO COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS
BY AMERICANS FOR RADIO DIVERSITY

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INTRODUCTION

Americans for Radio Diversity[1] (ARD) files the following reply to comments made by the National Association of Broadcasters. ARD advocates the creation of a regulatory structure for

[1]Americans for Radio Diversity is a non-profit incorporated organization of radio listeners concerned about industry consolidation and the lack of diverse programming and ownership in the radio market. Its members do not have a monetary or financial interest in the industry, and it does not operate or intend to operate a low power radio station.

low power FM broadcast similar to those proposed by the above petitions. ARD's minor differences with those petitions are addressed in separate comments filed with the FCC as well as our own petition for rule making. This reply is limited to specific comments filed by the NAB.

I. AMERICANS FOR RADIO DIVERSITY DISAGREES WITH NAB'S CLAIM THAT LOW-POWER BROADCASTING IS AN INEFFICIENT USE OF SPECTRUM.

The NAB claims that micro- or low-power radio is an inefficient use of spectrum in general[2] and specifically that the Leggett proposal's plan to clear two channels for micro-power stations is infeasible.[3] ARD disagrees with their general claim because we believe there is currently unused space on the FM band that could be used to add low-power stations that would not interfere with current broadcasting. Furthermore, in regards to the Leggett proposal, NAB undermines their own claim when they state, "This [clearing two channels] is clearly not feasible because in highly populated areas, particularly along the east and west coasts of the continental United States, there are no available channels to which the displaced full-service broadcasters could relocate."[4] This implies that the spectrum in many places has room for no more full power stations and while that may cast doubts on the Leggett plan to free up a particular channel it only strengthens the argument for low power radio in general. If the spectrum is "too full" to add another full power station yet has any space at all available for low-power stations (even if only a single station) clearly the most efficient use of the spectrum is to add the low power station(s). Trading a single full-power station for a single low-power station is of course inefficient, but so is a market with

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[2] NAB Comments Sec. III A.

[3] Id. at III A. 3.

[4] Id.

25 full-power stations compared to one with 25 full-power and one low-power. In standard economic analysis adding the single low-power station results in a Pareto superior allocation of goods--no consumer is made worse off and at least one is made better off. Contrary to NAB's contention, *not* allowing low-power radio is an inefficient use of the spectrum.

NAB also claims that a micro- or low-power service would result in the preclusion of full-power station authorizations.[5] ARD does not agree with this contention (since there are many areas where a low-power station would fit in the spectrum but a full-power station would not) but even if we accept this as true it is not the indictment of low-power radio that the NAB claims it to be. The NAB goes to great lengths in their comments to claim that one large station (the kind their members operate) better serves the public than several low-power stations would.[6] But is this really the case?

Consider the geography of the typical metropolitan area. It consists of many smaller neighborhoods often distinguished along racial or ethnic lines; e.g. Hispanic, Native American, Asian, African American, and the ubiquitous Chinatowns and Little Italies. Each of these communities, some with a high percentage of non-English speaking residents, would benefit from a local low-power station that served their community, in some cases in their native language. Such stations would also be available for advertising from small businesses and local merchants for whom full-power stations are impractical. Certainly the NAB would not contend that these disparate communities would be better served instead by the addition of yet one more full-power station aimed at the white middle-class, the favorite demographic of the advertisers who support the NAB owned stations.

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[5] Id. at Sec. III A. 4.

[6] Id at Sec. III A. 3 and Figure 1.

In any case, since there does not appear to be any great clamoring on the NAB's part for the addition of full-power stations their preclusion argument seems to be a bit of a red herring. It becomes apparent that the most efficient use of the radio spectrum is a mix of both full- and low-power stations.

II. THE CURRENT BROADCAST SERVICE LACKS SUFFICIENT DIVERSITY.

NAB's further contention that "there is no need for a micro- or low power radio service" because "current radio broadcast services serve virtually every need"[7], if it is indeed being made with a straight face, takes little refutation. If every need is being filled why are there dozens of serious unlicensed micro-broadcasters operating? If every need is being filled why is radio listenership at a 17 year low?[8] Are all the needs of minority communities being met when the number of black and Hispanic owned radio stations has dropped 10% since the passage of the 1996 Telecom Act?[9] If all needs are being met why did an FCC Commissioner recently state, "There are still far more citizens who want to speak over the public airways than can be accommodated"?[10]

The NAB comments that "there is evidence that the diversity of formats has not decreased" due to the consolidation of ownership[11] yet doesn't actually present that evidence. In a document

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[7] Id. at III. C. 1.

[8] "Corporate Radio Still Sucks", Rolling Stone #785, April 30, 1998, p. 27.

[9] "Cable's hold on America", The Economist, January 24, 1998, p.61.

[10] Speech by Commissioner Gloria Tristani to the Federal Communications Bar Association, May 21, 1998.

[11] NAB Comments Sec. III. C. 1.

with over 100 footnotes one assumes that if that evidence really did exist it could have been squeezed in. The NAB then speculates that "the increase in efficiencies that results from common ownership *could* [emphasis added] allow stations to offer new and distinct niche programming that was otherwise unavailable prior to consolidation."[12] Leaving aside the fact that this contradicts their thesis that all needs are already being met, ARD notes that for two years the NAB has been saying that this *could* happen yet there is no evidence that it *has* happened or ever *will* happen.[13]

III. THE NAB MISINTERPRETS ECONOMICS AND THE PUBLIC INTEREST.

The NAB further claims that adding a new service would likely decrease the overall service to the public. Supporting this claim the NAB laments the adding of 2277 new FM stations between 1983 and 1991 noting that the industry was saved from "severe economic and financial stress" only by the loosening of ownership rules in 1996.[14]

Every first year economics student knows that free market capitalism is premised on a large number of small producers competing to provide consumers with products they want.
The NAB turns the capitalist system on its head by claiming that the market works better with a small number of firms in control.

What the NAB is really talking about here is protection from new competition which is made clear in their summation stating, "The moral of this story is that the Commission needs to consider

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[12] Id.

[13] NAB ends this paragraph by taking a shot at the petitioners for advocating a service that "only a handful of people...want to hear." This begs the question, How do a handful of people differ from a niche market?

[14] NAB Comments Sec. III. C. 2.

the impact on existing radio stations before authorizing a new service..." The short answer to that contention is, No it doesn't. The FCC's job is not to protect the market share of existing stations, or the financial status of companies currently in the business, or even to protect the interests of advertisers who want access to listeners. The FCC's job is to ensure that the public has access to diverse information and entertainment over the nation's airwaves. While there are certainly fine points to debate about how that should best be done, to imply that the FCC's duty is to anyone other that the listening public is a fundamental misinterpretation of both case law and the Constitution. In ARD's view the NAB's line of argument here is too concerned with protecting their financial interests at the expense of the public's interest. That public interest would be best served by the licensing of low-power radio stations.

IV. THE ALTERNATIVES TO LOW-POWER BROADCASTING ARE INSUFFICIENT.

The NAB's contention that there are other outlets available without resorting to establishing a new service is flawed as well, and their suggestion of the internet as a solution is especially cynical considering that only twelve pages earlier they argued against low-power broadcasting because people would be unable to receive it in their cars.[15] They cite the case of Alan Fried, a "long-time pirate"[NAB's term] who found a traditional outlet for his programming by leasing time on Children's Broadcasting Corporation (CBC) stations and found time for his programming on a non-commercial station in Minneapolis. But in Mr. Fried's case a three hour show once a week on a non-commercial station is a far cry from the seven days a week he broadcast on his own and

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[15] NAB Comments Sec. III. A. 1. Of course low-power stations *can* be received in a car or on a walkman or on a portable radio. In fact it has been this author's personal experience that reception of low-power stations is actually much better in a car than it is in a home. The internet is not nearly so portable.

the arrangement with CBC is only temporary.[16] Meanwhile, the frequency on which he formerly operated sits empty. The efficient solution would be to grant Mr. Fried a license for his former, non-interfering, low-power broadcast and free up time on both CBC and the non-commercial station for other broadcasts.

V. NAB'S FEAR THAT THE ADMINISTRATION OF A LOW-POWER SERVICE WOULD BE TOO DIFFICULT IS UNFOUNDED.

As for the NAB's claim that administrative difficulties would burden the Commission[17] ARD believes that the FCC is more than capable of handling the task and that expenses incurred would, in part, be offset by avoiding the numerous enforcement actions and legal challenges involved in the current handling of the low-power broadcast question.

CONCLUSION

All parties in this debate are well acquainted with the US Supreme Court's holding in *Red Lion* but it bears repeating nevertheless:

> It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market...It is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences which is crucial here.[18]

It is the FCC's duty to serve the listening public and it can do this by increasing access to the

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[16] Personal communication.

[17] NAB Comments, Sec. III. D.

[18] *Red Lion Broadcasting Co., Inc. v. FCC*, 395 U.S. 367, 389-90 (1969).

radio spectrum through the authorization of low-power broadcasting by and for individuals who are not at present adequately served by the radio industry. The FCC should therefore reject the arguments of the NAB and establish a regulatory system for low-power radio broadcasting.

Respectfully submitted,

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