

Before the Federal Communications Commission
Washington, DC 20554

In the Matter of Rulemaking Number RM-9242, Amendment of the FM Service Rules to authorize a
Low Power FM Broadcast Service

To: The Commission
July 23, 1998

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Reply Comments of Alan Freed

In reply to:

Comments of the National Association of Broadcasters ("NAB")

Comments of USA Digital Radio, LP ("USADR")

Comments of State Broadcasters Associations

INTRODUCTION

The respondent is a broadcaster of 20 years, having worked in various capacities at a number of licensed radio stations, both commercial and noncommercial. The following comments are in support of a regulated Low Power FM Broadcast Service and are being filed with the Commission to rebut arguments and inaccurate statements promulgated by parties in this rulemaking process.

I. THE RELATIONSHIP - OR LACK THEREOF - BETWEEN THE PROPOSED SERVICE AND "PIRATE" BROADCASTING AS ARGUED BY THE NATIONAL ASSOCIATION OF BROADCASTERS & STATE BROADCASTERS ASSOCIATIONS

Simply put, there is none. I would take the opportunity to note at this time that the proposed LPFM service and "pirate" broadcasting are separate issues which the NAB frequently presents as a single issue, even prior to this proceeding. The proposal under discussion is for a regulated service and for those who will operate within the rules established. While there will likely always be parties who choose to operate outside of established regulation, no matter how reasonable, the concept of LPFM should not be viewed as a relief to unlicensed broadcasting. It is a valid service based on its own merits, those being chiefly the delivery to the public of new and unavailable programming by small operators unable to gain access to the existing broadcast structure. The frequent discussion of and references to "pirate" broadcasting in the consideration of a new LPFM service is nothing more than an incendiary mechanism floated by LPFM opponents to incite fear and opposition. "Pirate" broadcasting is both inappropriate and irrelevant to this discussion. This respondent also reminds the Commission that a license in and of itself does not guarantee good stewardship of our airwaves as evidenced by the enforcement history of FCC action against licensees for conduct and operation in violation of FCC rules and regulations. NAB member stations are among those the Commission has acted against for such infractions.

II. EXISTING STATIONS DO NOT SERVE ALL LISTENERS

Assertions by NAB that existing broadcasters are meeting all needs of the public is false and self-serving. The fundamental principal of broadcasting to a relatively large number of people does not include any precise minimum number of listeners to validate a station's service. Some LPFM

stations in densely populated areas will certainly serve more people than currently-licensed stations in sparsely-populated areas. The NAB's contention that "narrowcasting" by LPFM stations is somehow undesirable is in direct contradiction to the example above in a) that it places a value judgment on a particular type of programming regardless of the number of people reached; and b) that "narrowcasting" is precisely the direction existing broadcasters have been pursuing in recent years, some examples being: all-sports, urban adult, rap/hip-hop (urban youth), childrens radio, motivational programming, young country, and various niches of religious programming. Still, despite the fractionalization of American radio, sizable constituencies remain unserved by the existing broadcast environment. While it would be impossible for every interest to have its own format or station, the creation of an LPFM service will provide radio service for many of those not currently served by existing formats and programming which do not speak to them.

Many proponents of the Telecom Act of 1996 claimed that consolidation of radio would result in greater programming diversity. The American public has yet to enjoy this benefit of the Act; in fact, the NAB itself admits in its reply comments that we may never see such diversification by saying, "it may be possible for existing stations to offer new and distinct niche programming that was otherwise unavailable before consolidation." [emphasis added]

NAB claims that, "a low power station would not be able to serve communities as well as a larger station...[and] would not be able to provide consistent and reliable service." The first part of the statement is false on the basis that LPFM is in fact *intended to serve communities*, whereas a full-power station is, by NAB's own admission elsewhere in its reply, designed to serve a city, or larger area (additionally, the basis of a "City Of License"). The second half of the statement is specious; it is simply not true.

There are few examples of real-world LPFM broadcasters as a new LPFM service would create. However, two examples of responsible, efficient LPFM broadcasters are worth noting: 1) "Beat Radio" in Minneapolis, MN, which, in 1996, operated with a consistent, reliable schedule and offered programming desired by its community which was not available on any other station; 2) Free Radio 105.5 in Hamilton, OH in 1996 and 1997. This LPFM station also provided a service unfulfilled by its existing broadcasters and was embraced by its community. These examples directly contradict the baseless and purely speculative contentions by NAB.

In concluding this section on the service provided by existing, licensed operators (or not provided, as the case may be), respondent cites three stations in Minneapolis, MN - KTCZ, WRQC and KDWB (a recent recipient of both the NAB-bestowed "Marconi" and "Crystal" awards) - all operated by Chancellor Media, which have a policy against running local political ads, apparently based on nothing more than financial consideration and ease of administration. In a September 24, 1997 City Pages newspaper story on the Minneapolis mayoral campaign, the stations' Vice President and General Manager, Marc Kalman explained the rationale for the policy:

"There's a lot of laws you have to follow and a lot of paperwork. And no sales result from that work. It's just not worth it."

This respondent is alarmed that stations of this stature refuse to make the airwaves available to candidates for major governmental positions; and these individuals are willing to pay for the service. Further, with such an exclusionary policy in force, the stations do not offer alternate possibilities of exposure (paid or free) during times that a large number of listeners might hear such exposure, if at all. Thus, candidates for local governmental offices are completely precluded from access on these stations and listeners to these stations are deprived of valuable information on important issues. Such a policy does not promote a robust and informed city or community, nor does it serve the public interest.

III. MICRO- OR LOW-POWER RADIO WILL NOT PRECLUDE FULL POWER STATIONS

NAB claims that LPFM stations will hinder the allocation of full-power stations is misleading at

best. LPFM stations, like full-power stations, will want to be heard by listeners, and as good stewards of the spectrum won't wish to cause interference to other stations. That said, LPFM stations will be allocated to spectrum which cannot sustain a full-power station based on current FCC spacing requirements and allocations, yet can support a low-power station. This is a far more efficient use of a limited resource than allowing it to be wasted simply because a full-power station is too powerful for the particular spectrum parcel. In many instances - particularly large cities - market spectrum allocations have been established to the extent that no further full-power authorizations can be granted and no further upgrades are possible, making the identification of prospective LPFM channels relatively simple.

IV. IBOC

USADR, in its comments, makes the claim that allowing LPFM stations to operate on second and third adjacent channels from existing full powered stations would result in interference to its proposed IBOC (in band-on channel) digital radio system. Similar claims are also made by other LPFM opponents, notably the NAB. However, it is interesting to note that USADR is now operating an experimental analog/digital hybrid facility (at 93.5 in Columbia, MD, with call sign WD2XAB) inside the protected contours of two second adjacent class B FM stations (93.1 WPOC in Baltimore and 93.9 WKYS in Washington, both full omnidirectional class B facilities). An article in the July 8, 1998 issue of Radio World notes that the facility operates with approximately 600 watts from an omnidirectional facility, which is more power than has been requested by the majority of LPFM proponents (who are typically advocating power levels of 250 watts or less).

If USADR seriously believed its claims of second adjacent channel interference, they would be unable to use this experimental facility, since it would cause and/or receive significant interference from WPOC and/or WKYS, rendering the test results questionable at best, and most likely worthless. At the very least, the existence of this experimental station should be considered an acknowledgement by USADR that their IBOC digital system can coexist safely with second and third adjacent channels that are operating in an analog only mode. Thus, the ongoing research into IBOC digital should not serve as an impediment to allowing analog LPFM stations to operate within the protected contours of full powered second and third adjacent stations.

V. FALSE CLAIMS OF "CB-IZATION" OF THE AIRWAVES

The assertion by the State Broadcasters Associations that the adoption of an LPFM service would cause what they creatively label "CB-ization" of radio broadcasting, fails on the fact that the proposed service is a regulated service and, as such, contains operating standards, just as existing services do. Irresponsible operation is and will not be inherent in low power broadcasting, just as responsible operation is not inherent in current licensed broadcasting, as evidenced by past and continuing FCC enforcement action against licensed broadcasters.

VI. CLAIMS OF PUBLIC DANGER CAUSED BY LPFM

While not directly related to the issue of LPFM, respondent notes that the recent failure of the Galaxy III communications satellite - an FCC-licensed service - caused far more danger to the public by interrupting, for example, national paging services to doctors, than any LPFM station could. Once more, respondent emphasizes that any example of interference allegedly caused by an LPFM station is based on unlicensed, unregulated activity, which is irrelevant to this discussion.

VII. INACCURATE STATEMENTS MADE TO THE COMMISSION BY NAB ABOUT RESPONDENT

The respondent is surprised to find himself cited by the NAB in its position against LPFM (Section C subpart 5). Perhaps he should be flattered that such a powerful and established lobbying group

has found him of significant importance to spotlight in its paperwork. However, the NAB's staff is either egregiously ignorant or is attempting to slyly misrepresent the facts to the Commission by withholding information in their discussion of respondent as it supposedly relates to this issue. A concise review reveals the transparent, mean-spirited intent of the NAB and the irrelevance of its introduction into this proceeding:

To begin with, NAB attempts to blackball the respondent by portraying him as a "longtime pirate." For the record, the NAB's claim is false. Respondent is not nor has been a "longtime pirate." Maybe it's semantics ("pirate"), maybe it's a case of definitions ("longtime"), but the NAB's description is nothing but typical PR hyperbole (as is most of its anti-LPFM arguments and claims, some of which are discussed in this document). Perhaps the NAB is so obsessed with the "pirate" issue that they've confused the respondent with a true "longtime," now former "pirate," Alan Weiner?

Continuing, NAB, in attempting to claim alternatives to LPFM for prospective LPFM aspirants, cites the relationship of the respondent [operating as "Beat Radio"] with Children's Broadcasting Corporation (CBC). NAB conveniently fails to explain to the Commission that this is a temporary arrangement, a fact well-publicized within the industry and trade press. In fact, it can be argued that this opportunity for Beat Radio with CBC arose for two reasons in support of LPFM:

- a) because of the size, power and influence that a corporate giant - ABC/Disney - levied over a smaller, upstart operator, CBC, forcing CBC out of the children's radio business (Aahs World Radio) and the ultimate sale of all CBC licenses based on this pressure. This development is parallel to the radio industry overall, the big decimating the small;
- b) due to the public's response and support of 20-watt Beat Radio's initial 103-day run in Minneapolis, MN during the summer of 1996, proving the effectiveness of LPFM in a real-world environment.

NAB's incomplete citation of respondent's volunteer work at noncommercial KFAI/Minneapolis illustrates its skewing of the facts in an attempt to fool the Commission into believing a half-truth. Respondent's involvement at KFAI was in reality a mere three-hour-a-week block at 2-5 am Mondays. This, of course, is not equal to a preferred fulltime schedule, a fact of which the NAB is fully aware.

To stress the outlandish nature of the NAB's contextualization of the cited access to "traditional outlets," respondent would ask if NAB member stations are willing to trade their licenses for such NAB-implied equal access to the airwaves? The NAB shows itself to be nothing short of foolish and selfish in arguing that such access should be acceptable to everyone but their privileged membership.

NAB, continuing its lobbying against LPFM, goes on to suggest the Internet as an alternative to broadcasting. Such a comparison is akin to the relationship between a bicycle and a 747 jet. Broadcasting and netcasting are two distinctly different communication mediums which bear no resemblance to one another and which are in no way equal. Similar to above, respondent would ask if NAB member stations are willing to turn in their licenses in favor of Internet-exclusive distribution; if the answer is "no," then NAB's assertions are disposable.

CONCLUSION

In closing, I thank you for your consideration of both a new Low Power FM Broadcast Service and of my comments on same.



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CERTIFICATE OF SERVICE

I, Alan Freed, do hereby certify that a true and correct copy of the foregoing "Reply Comments" was sent via first class mail, this July 23, 1998 to the following parties:

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