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July 23, 1998

Office of the Secretary (1800)
Room 222
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re:
RM-9242 Proposal for Creation of the Low Power FM (LPFM) Broadcast Service

RM-9246 Rule making to establish an Event Broadcast Radio Stations

RM-9208 Petition for a Microstation Radio Broadcasting Service

To whom it may concern:

Attached are five signed copies of comments of Barry Magrill in the above referenced proceedings. If there are any questions or problems, I may be called at (352) 317-0378.

Sincerely,

Barry Magrill

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No. of Copies rec'd 0+4
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RM-9242 Proposal for Creation of the Low Power FM (LPFM) Broadcast Service

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RM-9208 Petition for a Microstation Radio Broadcasting Service

Comments of Barry Magrill

General

These comments are presented on behalf of Barry Magrill to support the concept of an LPFM service, with several exceptions. In RM-9242, the petitioner requests the establishment of a new multi-tiered FM service, modeled loosely on the current classes of stations. The highest powered examples of this new service approach the coverage areas of current class A stations, thus making them equivalent to full powered stations. By adding near full-powered stations based on interference criteria, the petitioner seeks to change the method that the FCC uses for adding full powered stations from spacing to contour based rules. While this method has been used successfully in the educational segment of the band and probably has merit in the commercial area, the Commission should institute a proceeding to determine if these changes could or should be applied to all stations before granting special privilege to any class of station.

In RM-9248, the petitioner proposes low-powered "cellular" channels be designated for AM and FM bands in each community. While this proposal could work, it would restrict each cell area to one new facility, even though there might be adequate spectrum for more. This proposal does not efficiently promote diversity in broadcasting due to its limited implementation. Also, by only allocating a single channel, demand for those channels in densely populated, urban areas may cause the value of these stations to rival full-powered stations making it nearly impossible for prospective new entrants to add their voices to the airwaves.

Perhaps, a more expedient and beneficial approach would be to add an LPFM service based upon existing translator rules. I contend that the service effectively already exists in the form of translators operating outside of the 60dBu contours of the stations they rebroadcast. These facilities operate with their own body of rules, create little interference and would better serve the public by being unique voices as opposed to echoing the voice of their master. Most would agree that a diversity of programming is far better than having only a few choices. An LPFM service could be established easily by making simple administrative changes to the existing translator rules, thus giving LPFMs the same status as translators. This would reduce changes to the rules while permitting a valuable service to emerge. Persons or

eliminates competition and experimentation making the airwaves in most markets about as interesting as listening to your friends' description of their trip to the Grand Canyon.

Low-power broadcasting, by its very nature, tends to be driven to originate it own programming which is unique and fills niches over looked by more cautious full-power broadcasters. LPFM station availability would encourage a new group of entrepreneurs to engage in broadcasting.

Implementation

The rules governing the roll-out of LPTV worked well and, with a few exceptions, could be used to inaugurate the LPFM service. In order to limit the cost for applications, especially in large urban areas where there would be a high demand; the applications should be first-come-first-served. Currently, the US. Patent and Trademark Office (USPTO) uses this method. The USPTO specifies that the time and date stamp on a US Post Office Express Mail packet constitutes the moment of filing. The USPTO also accepts filings which are hand delivered or courier service delivered, but the time of filing is the actual moment of delivery. If two or more mutually exclusive applications are posted or received simultaneously, applicants could be given a choice of dividing the territory by splitting the overlap through amended engineering or going to a lottery.

Diversity

Ownership should be restricted to promote diversity. As in the LPTV service no person or entity would be permitted to tender more than 5 applications during a nationwide filing window and no person or entity could hold more than five stations, which could be any combination of LPFM and full powered stations. This allows entrepreneurs to enter the market and then transition to full powered broadcasting, if desired. Once the five station limit is reached, the owner must divest one LPFM for each new facility acquired.

Mere ownership of broadcasting company stock in amounts less than five percent should not disqualify a person from applying for, or owning an LPFM. If ownership were restricted to those having no other interest whatsoever in broadcasting, many potential voices would be silenced because they owned a few shares of stock in Disney, or Jacor, etc. Does a person who inherited one share of Disney stock have to sell it to apply for a station? Clearly limiting these potential broadcasters would not be in the public's interest.

To prevent trafficking, construction permits for LPFM's would not be sellable and a licensed LPFM should not be eligible for sale for one year.

Effect on Broadcasting

There have been several arguments attacking the notion of an LPFM service which appeal to the sentimental as opposed to the rational. One argument, put forth by the NAB, alleges that the increased competition will cause stations to loose out on advertising and, perhaps, some to fail. The rhetoric would have us believe that broadcasters should be guaranteed limited competition and the attendant monopolistic profit. Not even the phone company buys into this line of reasoning anymore and the benefit to their customers is well known. Commercial broadcasting is a business venture. If a new entrant in a market does a better job than an established broadcaster, the established broadcaster has two choices; do a better job or be replaced by the new entrant. In either case, the beneficiary is the public, so why cater to mediocrity? Frankly, if a full-powered station's revenues or ratings are adversely affected by a facility with a 5km coverage radius, the full-powered broadcaster should reconsider their programming choices. The NAB once said stations would be forced off the air due to increased competition with the advent of Docket 80-90. Despite docket 80-90, or perhaps because of it, prices for stations only climbed and many areas have been fortunate to now receive an increased diversity of programming. Very few stations went silent.

Effect on Piracy

Some have suggested that permitting an LPFM service in some way acquiesces to pirates. The recent increases in so called "pirate" broadcasting may simply be a sign that there is truly a need for a new service. Those people who have little respect for the law will probably continue to break the law. Those who normally obey the law will continue to keep it. This service will likely have little effect on pirate broadcasters who flaunt the laws. They will continue to do so until forcibly stopped, however those "pirates" who seek to be legitimate broadcasters will avail themselves of the opportunity presented. In so doing, there will finally be some needed controls on emissions and program content. An LPFM service would also take the wind out arguments that only the rich can afford a broadcasting facilities and that there is a legitimate need for pirate stations because of the first amendment.

Other Exceptions with RM-9242

Although strongly supporting the establishment of an LPFM service, these comments must disagree with the following items.

1. Since local ownership has been struck down by the courts as a preference in comparative issues, it should not be used as a criteria for limiting LPFM applications. The true benefit to the public is in diversity of voices, not localism.

As a consequence, the residency requirement proposed in section 12 and elsewhere in the original proposal is unnecessary and probably illegal.

2. Petitioner requests a special preference for LPTV owners who are displaced by full powered broadcasters. No preference should be afforded to present owners of any class of station. Such an action seems totally unjustified if the goal is as much diversity as possible. Specifically, while it is easy to be sympathetic to the plight of LPTVs that may be displaced due to the coming changes in full powered TV, giving present or past station owners an LPFM preference would run contrary to the public need for diversity. In addition, LPTV service has always operated as a secondary service and was subject to displacement by full service stations, as would the new LPFM service.

3. Petitioner suggests elimination of I/F and certain adjacent frequency rules. It would be prudent to convene a separate rule making to determine if the rules concerning second and third adjacencies should be modified and, if so, how. Modern radios apparently have inherently better image rejection, however the petitioner has not provided any relevant engineering information determining how much better the average radio is. The petitioner does note many short spaced stations which operate with little or no interference complaints, but he does not describe the nature of the short-

spacing, therefore it is not possible to determine to whether these examples are relevant. If the rules covering adjacent and I/F separation are to be modified those rules should be examined by the engineering community to determine to what extent, if any, they should be changed for all stations.

4. Paragraph 9 of the petition refers to section 257 (a) of the Telecommunications Act of 1996, however it seems that the word telecommunications applies to the providers of cellular telephone and PCS instead of broadcasting. Section 257 (b) seems applicable to broadcasting.

Special Event & Unlicensed Service

RM-9242 and RM-9246 seek to establish a special event service. These comments support the establishment of special event stations to broadcast for limited periods of time with a maximum ERP of five watts and antenna height of 15 meters using type approved equipment. Additionally, an unlicensed service using 50mW ERP or less of power at 15 meters AGL or 3 meters above a building roof would be useful for attractions such as theaters, arenas, rodeos, and even home use where the current permissible power levels are inadequate. It is likely that interference from such services would be negligible due to the low power involved.

Conclusion

The concept of an LPFM service is in the public interest as described in RM-9242 with several exceptions. The provisions for localism should be abandoned in favor of diversity and limitations on applications should be handled in a manner similar to LPTV service. The elimination of the adjacent and I/F interference criteria should be converted to a separate proceeding as it may be pertinent to full power broadcasting as well. The LPFM service could be easily implemented by administrative changes to the existing translator rules permitting local program origination. Such a service would likely benefit the public in light of the consolidations of ownership affecting full power FM stations that has reduced the diversity of voices controlling our airwaves.

Respectfully Submitted,

Barry Magrill

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