

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	MM Docket No. 99-25
	)	
Creation of a Low	)	
Power Radio Service	)	RM-9208
	)	RM-9242
	)	

**COMMENTS OF RALPH NADER AND COMMERCIAL ALERT**

We urge the Commission to promulgate rules for noncommercial low-power FM (LPFM) radio stations of up to 100 watts. It would be a modest but important step toward a stronger democracy in America, more cohesive communities, a renewed public discourse, hope for depressed inner city neighborhoods, and a richer and more diverse culture. Such action fits squarely within the Commission's statutory public interest mandate.<sup>1</sup> It is not often that a federal

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<sup>1</sup> The Communications Act of 1934, 47 U.S.C. §§ 151 et seq., as amended, contains numerous references to the public interest mandate. See, for example, 47 U.S.C. § 303, which modifies the list of the Commission's powers and responsibilities with the clause "as public convenience, interest or necessity requires"; § 303(g), which charges the Commission to "generally encourage the larger and more effective use of radio in the public interest"; § 307(c),

agency could achieve so much with so little.

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which authorizes license grants, renewals, and modifications Aif public interest, convenience or necessity will be served thereby; ð 309, which makes Athe public interest, convenience, and necessity the appropriate criterion for evaluating applications for broadcast licensure; ð 315, which preserves for broadcasters A...the obligation imposed upon them under this Act...to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance. See National Broadcasting Co. v. United States 319 U.S. 190, at 215-218 (1940).

We applaud the Commission for this rule making. We agree with its stated goals: To address unmet needs for community-oriented radio broadcasting, foster opportunities for new radio broadcast ownership, and promote additional diversity in radio voices and program services.<sup>2</sup> The goals are just right; there is a crying need for public space where ideas, art and public discourse can flourish.

The public owns the airwaves, and radio must serve the ends and purposes of the First Amendment:<sup>3</sup> to protect public discourse, which is essential to our form of self-government. Yet the hard fact remains: the current regulatory regime for radio serves to thwart the First Amendment rights and interests of most Americans. With the very limited exception of talk radio, listeners are excluded on their own airwaves, while the wealthy may speak through radio by controlling who uses their stations and for what purposes. What good is freedom of speech if nobody can afford it? Is speech truly free if only the wealthy can buy it?

The Commission's rule-making comes in the wake of narrowing developments in radio broadcasting. These include the increased concentration of radio ownership, and the prevalence of paid political and commercial advertising (even on a public radio). Let's look at them briefly. They help explain why noncommercial low-power FM is so important.

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<sup>2</sup> Notice of Proposed Rule Making, paragraph 1.

<sup>3</sup> A[T]he people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.≡ Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969).

Diversity in radio station ownership is collapsing. The Telecommunications Act of 1996 raised the number of radio outlets that any single corporation may own in any market, which loosed a flood of radio company mergers. The result has been that radio station ownership has been concentrated in fewer hands. Chancellor Media Corp. is purchasing CapStar Broadcasting Partners Inc. for \$4.1 billion, giving Chancellor about 465 radio stations.<sup>4</sup> Now Chancellor wants to get even larger. In June, Chancellor Chairman Thomas O. Hicks said that the company would like to grow our radio assets....There are a couple of larger transactions we'd be interested in...<sup>5</sup> Another notable combination was Clear Channel Communications Inc.'s \$3.8 billion acquisition of Jacor Communications Inc.<sup>6</sup> This gave Clear Channel about 450 stations in the United States. (One woman complained about the sameness of Cleveland radio, following the Chancellor and Clear Channel deals: 'It's as though McDonald's bought every restaurant in town and all you could get was a Big Mac.'<sup>7</sup>)

The purpose of these corporate-owned radio stations is to maximize profits -- not to enrich public discourse or culture. They do this by corralling the largest possible audience, and

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<sup>4</sup> A Company Town; Chancellor Media's Earnings Rise 57%. *The Los Angeles Times*, May 13, 1999.

<sup>5</sup> Rathburn, Elizabeth. A Chancellor Signs Off. *Broadcasting & Cable*, June 7, 1999.

<sup>6</sup> A The Media Business; Clear Channel Deal Backed, With Sales Set. *The New York Times*, April 27, 1999.

<sup>7</sup> Tom Feran. A Listeners Pay Price as Radio Giants Hear Only the Bottom Line. *Cleveland Plain Dealer*, June 13, 1999.

then selling it to advertisers. Market forces have not led to vibrant public discourse on the radio, or a vigorous radio culture, or diverse programming, or programming that protects and respects children and families. In fact, they have brought the opposite.

In their quest for larger audiences, more advertising and greater profits, commercial broadcasters cater to the basest standards, with ever more blatant effusions of crassness, sex talk and nihilism. Commercial rewards drive the creation, production and marketing of ever more Howard Sterns, Greasemens, shock jocks and the rest. They inevitably leads to a coarsening of our culture, which has particularly harmful effects on children.

The early history of radio was filled with promise for democracy and public service. At the First National Radio Conference in 1922, Herbert Hoover, who was then Secretary of Commerce, said that it was inconceivable that Awe should allow so great a possibility for service...to be drowned in advertising chatter..."<sup>8</sup>

Hoover was prescient.

When we turn on the radio today, what we hear is mostly mercantile values, commercialism and junk. Radio stations are cutting reporters from their staffs and reducing local coverage. Shouldn't there be choices, in a nation that purports to be based on the principle of

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<sup>8</sup> Herbert Hoover, quoted in Susan Smulyan, *Selling Radio: The Commercialization of American Broadcasting 1920-1934*. (Washington: Smithsonian Institution Press, 1994) at 70.

choice?

The citizenry is drowning in a sea of commercialism. Americans are inundated by advertisements, junk mail, junk faxes, tv and radio ads, telemarketing, billboards and more. There are ads in schools, beach sand, airport lounges, doctors offices, hospitals, convenience stores, floors of supermarkets, toilet stalls, on the Internet, and countless other places. Advertisers even tried (but have not succeeded yet) to put ads in space and on postage stamps. Tom Vanderbilt, author of *The Sneaker Book*, writes of advertisers' efforts to "hang a jingle in front of America" every waking moment.

Even public radio has become commercialized. National Public Radio now carries many underwriting messages -- which are a form of advertisement. Can't we have just a few spaces -- niches really -- that are free from advertising -- sanctuaries, in effect? Is that too much to ask?

There is a profound need in America today for public spaces in which people can talk to one another. We don't need more advertising talking at us. The Commission has a rare opportunity to use its authority over the radio spectrum to help bring these public spaces into being, through LPFM. It can open up the radio spectrum to the ideas, projects, information, arguments, art and initiatives of citizens, grass-roots organizations, foundations, associations, and religious and neighborhood groups. So doing, it can enrich the public's understanding of civic

issues and social problems. It can set aside a small corner of the public airwaves for civic educational programming to help citizens discharge their civic responsibilities.

Micropower radio could help those people working to revive and empower economically depressed areas, particularly inner cities and poor rural areas. Community stations could provide valuable job training for youth, who would learn how to operate radio equipment and manage radio stations. It could provide new avenues for exposure for up-and-coming artists, who may have a difficult time breaking into the Aplay lists≡ of large commercial stations. This is especially hard with play lists and even programming centrally produced in corporate offices. And LPFM would provide forums for local residents to work at improving the communities in which they live.

The best ownership structures for LPFM are unincorporated not-for-profit associations, or 501(c)(3) charitable organizations.<sup>9</sup> Non-commercial radio holds, by far, the best promise for placing thousands of new voices on the radio. It would have the freedom to avoid the flattened, homogenized, canned, low quality programming so widespread on commercial radio. Imagine the new voices that could flourish on LPFM -- service and advocacy groups, universities, community and civic organizations, ethnic groups, arts organizations and others. This was part of the vision for radio during its early history in the 1920's.

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<sup>9</sup> If organized as cooperatives, they could qualify for development loans from the National Cooperative Bank which was chartered by Congress in 1978.

It is not enough merely to authorize LPFM service. The Commission should allocate more spectrum for low power radio broadcasting, and introduce it when radio switches from analog to digital signals. If it does so, then the new digital receivers will be designed to receive the new frequencies. Media companies were freely given as much as \$70 billion dollars worth of spectrum as a result of the Telecommunications Act. Allocating some additional spectrum for future low power radio broadcasting is the very least that the Commission can do.

By legalizing LPFM, the Commission will win greater popular support for other public interest measures. Increasing support from grassroots America can only help the Commission withstand the powerful influence of the commercial media.

Nearly fifty years ago, the Commission declared that the main purpose of broadcasting is the development of an informed public opinion through the dissemination of news and ideas concerning the vital public issues of the day.<sup>10</sup> Congress has given the Commission explicit statutory authority to ensure that the public's airwaves are used to serve the public interest.

We strongly urge the Commission to use its authority to establish non-commercial LPFM stations -- to build a stronger democracy in America, and serve a vision grander than the profit-driven trivialization of the airwaves by most of the broadcasting and advertising industries. The Commission was not intended to merely protect the speech rights of broadcasters, advertisers and

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<sup>10</sup> Federal Communications Commission, *Editorializing by Broadcast Licensees*, document no. 856, June 1, 1949. Quoted in Cass Sunstein, *Democracy and the Problem of Free Speech*, (New York: The Free Press, 1995) at 4.

the wealthy.<sup>11</sup> We urge the Commission to uphold and protect the public's First Amendment interests in radio, to rededicate radio to the service of democracy in America. Non-commercial LPFM radio is one modest step toward that goal.

Sincerely,

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<sup>11</sup> A[T]he people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).