

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

In the Matter of  
Creation of a Low Power Radio Service

MM Docket No. 99-25  
RM-9208  
RM-942

To: The Commission

COMMENTS OF JESSE WALKER

My personal connection to the radio industry is peripheral at best: my broadcasting experience is limited to several years as a DJ at my college radio station and some volunteer work at a noncommercial station near Seattle. I am writing in two roles: as a listener distressed by the bland sameness that passes for radio on most stations, and as a journalist who has written about broadcasting issues in several venues, including *Radio World*, *The New Republic*, *Reason*, and the Cato Institute's *Policy Analysis* series.

I am pleased that the commission is seriously considering the idea of low-power FM, and, on balance, I suppose I support the proposed rulemaking. That said, the plan has many flaws, and I hope the commission will act to rectify them before putting it into effect.

Under a bright surface, American radio is in poor shape. Though the industry's profits have been rising, the percentage of Americans who actually listen regularly to the radio has been steadily falling, recently hitting a low not seen since 1981. Few stations

seem willing to experiment anymore. Most regard their formats as straightjackets, to be removed only if presented with a potentially more profitable straightjacket.

That's their prerogative, of course. But it ought to be the prerogative of the rest of us to try to do better: to fill the gaps we see in the existing stations' programming, and to take the risks the established broadcasters are unwilling to take. Instead, we are restrained by a fearsome array of entry barriers. The technical cost of starting a station is only a thousand dollars or so — more if we want a professional staff and top-grade equipment, less if we're willing to do ultra-local radio on a shoestring. The legal cost can reach the millions.

It is small wonder that the National Association of Broadcasters and the various state broadcast associations have opposed micro radio so vociferously. Microbroadcasting means competition. It means an influx of new stations — potentially thousands of them — to pick off the listeners the established broadcasters been unable to retain. It means the value of existing licenses will no longer be so inflated. In short, it means the kind of free market to which the NAB loves to give lip service but would never embrace in practice.

Against this threat, the broadcasters' lobby has offered a host of specious arguments. It seems hardly necessary to reiterate that a low-power station is no more likely to interfere with other operations than a larger station is; if anything, since its power is weaker, it would be less likely to pose such a problem. *Particular* micro stations may be a problem, depending on where they are, but that's equally true of big outlets. (It's true that eliminating third-adjacent channel protection would lead to some more interference, but this would only be a significant problem on obsolete radio receivers. As an antidote to the NAB's and others' hysteria on this issue, I recommend the Receiver Evaluation

Project commissioned by the National Lawyers Guild's Committee on Democratic Communications, attached to their comments as Exhibit B.)

Nor should the commission credit the big broadcasters' complaint that micro radio would prevent the orderly implementation of digital radio. Thus far, their complaints have been entirely speculative, but even if there were a conflict here, I would hope the commission would choose microbroadcasting over IBOC. The idea that listeners would prefer better fidelity on their existing radio stations over a new array of radio stations to choose from is simply ridiculous, especially since most people listen to the radio under conditions — traffic, the workplace — where they're not likely to notice the difference in fidelity at all.

Anti-micro advocates have also argued that there is no need for micro radio — that the new stations would only duplicate programming available elsewhere on the dial, or would offer programs no one would want to hear. That is nonsense, of course: there is plenty of programming rarely or never played on the radio for which there is, nonetheless, a potential demand. Many foreign languages are virtually absent from the dial, and micro radio is ideally suited for this sort of service, since immigrant communities tend to live in relatively small, concentrated areas. As larger operations cut back on local news, micro radio stations would be well-suited to pick up the slack. Micro stations could cover sports ignored by the established sports stations (a minor league baseball team in one city, a small college's basketball squad in another). They could play music that attracts people to clubs but doesn't fit the commercial stations' formats, from techno to alternative country. They could offer different political perspectives, or broadcast city council meetings, or resurrect radio drama.

It would be up to each microbroadcaster to note which local needs aren't being filled by the existing radio stations and to try to meet them independently. This is called entrepreneurship, and it is, theoretically, the foundation of this country's economic system.

It is also called free speech, and it is, theoretically, the foundation of this country's political system. That in itself should be enough to dismiss the established stations' argument. If there's room for more people on the airwaves, the FCC has no business denying them stations simply because some of their programs might be duplicative or unpopular. Make no mistake: some micro stations will offer bad programming, and some will not attract audiences. That is the price we pay for innovation: to allow experimentation, we must allow failure. Today's radio industry seems terribly frightened of taking chances. It would do them good to face some competition that isn't as risk-averse.

But while legalizing microbroadcasting is a wonderful idea, the FCC's proposed rulemaking has some problems. The worst of these is the decision to relegate the lower-powered classes of stations to secondary status. Microbroadcasting is, by definition, locally based, low-power radio. Rather than concentrate its benefits on a new class of thousand-watt stations, the FCC should legalize stations of 100 watts or less, with full protection. The provision to allow one party to own as many as five stations is also problematic: I have nothing against small radio groups in themselves, but an explicitly *micro* service should limit ownership to one per entity. If the FCC wishes to lower the entry barriers facing higher-power stations and small chains, that's fine by me, but it

should not do so under the guise of legalizing micro radio service. (There's something to be said for dropping the idea of a special "service" altogether and simply making a wholesale assault on barriers to entry — but I'll get to that later.)

The FCC shouldn't simply allow new 10-watt and 100-watt stations to flourish: it should protect the existing Class D stations by restoring them to primary status, and it should allow existing translators to originate programming. There's no sense in creating a new microbroadcasting service while undercutting the one you already have, and there's no sense in searching for places where new stations can be fit when there are already low-power transmitters whose owners might want to try their hand at microcasting.

I am also disturbed by the suggestion that the new service might be closed to men and women with a history of unlicensed broadcasting. If anything, when handing out the new licenses, a preference should be given to those who have already established themselves on the air and built a following by offering good programming unavailable elsewhere on the dial.

This raises the issue of how the new licenses should be distributed. Auctions would arguably defeat one of micro radio's chief purposes, to open broadcasting to those of low means. My gut preference is for a system of first-come, first-serve, but I understand how a gold-rush approach might encourage stations to go on the air with shoddy preparation, and I can imagine how it would overwhelm the FCC. The ideal approach would be to declare a first-come, first-serve approach to the past — i.e., to give a preference to established micro stations that do not interfere with their neighbors, and to micro stations that were once established but went off the air in anticipation of the FCC's rulemaking

— and then the distribute the first wave of new licenses via a lottery. With the initial rush handled in that matter, it would no doubt be safe to return to a homesteading approach.

I know the commission has received several petitions calling for an exclusively noncommercial micro radio service, not just from established broadcasters (who find noncommercial stations less threatening) but from left-wing media activists (who figure there's enough commercialism on the air already, and fear that capitalist micro stations would drive out the nonprofit kind). In my view, the concerns of the latter are misplaced: given the difficulties of attracting enough advertisers to support a commercial station with a small coverage area, and the converse ease of running a small station at cost on a volunteer basis, the noncommercial stations are actually more likely to outcompete their commercial brethren.

Nonetheless, for political reasons, it may be advisable to reserve a certain number of licenses for noncommercial use only, and I would not find it objectionable if the commission did this. I also understand that it may be illegal for the FCC to issue new commercial licenses by any means other than an auction. If so, that is the one reasonable argument for restricting micro radio to noncommercial stations.

In general, the new service should be geared toward opening the air to as many newcomers as possible. Entry barriers should be low, and the application process should be simple, cheap and easy. Once on the air, the new stations should face a minimal regulatory burden.

Above all, a micro radio service should only be a beginning. There will still be much, much more that Washington could do — or, rather, stop doing — to allow lively radio to flourish.

*It should lower more entry barriers.* Besides permitting stations to broadcast at less than 100 watts and would removing the fees and paperwork that would-be broadcasters now must endure, the FCC should take another look at the expensive technical specifications it has enacted to prevent interference with other signals. These are actually inefficient: It would make much more sense just to hold broadcasters liable for any interference they may cause and then, with that incentive in place, let them figure out how they're going to avoid stepping on other signals' toes. Among other things, this would fuel technical innovation, as low-budget engineers strive to build cheaper equipment that nonetheless gets the job done. The present system, by contrast, locks archaic technologies into place.

*It should allow frequencies to subdivide.* Suppose a station can be heard over, say, 100 square miles. That same area could be served by several stations on the same frequency, if they divided the region into smaller coverage areas with appropriate buffers between them. But under present law, while one can sell a signal, one cannot sell a piece of that signal.

That's not exactly accurate: Technically, the spectrum is government property, and you can't sell a signal you don't own. But one can, with relatively little trouble, sell a license to broadcast over a particular frequency. What one can't do is subdivide a frequency and sell off a chunk of it.

So if our hypothetical station decides to sell itself outright to a chain, it can. But if it wants to reduce its wattage and let an entrepreneur or civic group take over part of its previous coverage area, it will somehow have to guarantee to the buyers that the FCC will allow them to transmit to the space it has emptied. There is, of course, no way to do this; and even if there were, the application process for the new station would still be long, stormy, and expensive. The risk for the buyers would be too high.

When a giant falls or falters, smaller outlets ought to be able to rush in and take pieces of the electromagnetic ground where he once stood. Instead, the law says he has to sell all his ethereal territory at once, meaning that only another giant can afford to buy it. So the law encourages consolidation, which in turn encourages centralized, automated, prefabricated programming.

*It should allow stations to broadcast closer to one another.* As I noted earlier, the FCC's current channel-separation rules are based on the technical standards of the 1950s; it's now possible for far more stations to fit onto the spectrum without interfering with one another. I can see why stations are wary about relaxing these rules. But at the very least, the commission should let them sell interference easements, allowing both established and new broadcasters to set up shop at a close-by frequency if they pay for the privilege.

*It should open up new spectrum.* Anyone who keeps up with both broadcasting and point-to-point communications will soon note a strange contradiction. The broadcasters believe the airwaves are almost completely filled. The phone companies believe the available spectrum is actually expanding: As new technologies make it easier to divide

the electromagnetic spectrum ever more finely, for all practical purposes we get more of it.

This conflict doesn't just reflect the fact that broadcast stations cannot compress or split up their frequencies. It reflects the fact that they are limited to two artificial reservations, the AM and FM bands. If the FCC would open more of the ether to broadcasting, manufacturers could sell downconverters that would attach to or sit near a radio and convert signals sent over other sections of the spectrum. This technology already exists, but if you want to bring down the price of the converter, you'll need a highly integrated device without a high parts cost, and to get companies to invest in developing such a machine, you'll need a regulatory regime that will allow the product to be put to the use for which it was devised.

In the long run, the FCC should drop the notion of "zoning" the spectrum altogether. Those who hold pieces of the ether should have the flexibility to use it as they please, for broadcasting or cellular phone services or anything else. The present system, in which Washington reserves most sections of the spectrum for specific uses only, has led to a massive misallocation of the airwaves, discouraging innovation and — as with the commission's technical specs — locking old technologies in place.

Broadcasting has been a cartel for too long. Micro radio is an opportunity to allow far more competition and variety on the airwaves, to make radio far more open, diverse, and lively than ever before. I favor the adoption of the proposed rulemaking, along with the modifications I have recommended above.

I'm pleased the FCC is considering this important step. I hope it takes it — and then takes many more.

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