

Before The

Federal Communications Commission
Washington, D.C. 20554

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

TO: Chief, Mass Media Bureau

COMMENTS OF JOHN ERIC HOEHN

The FCC NPRM proposes to establish rules authorizing new, low power FM (LPFM) radio stations. The Commission proposes up to three new classes of stations with different technical requirements. The stated goals are "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."

The Commission proposes to promote these goals by adding the new stations while eliminating third adjacent channel protections and perhaps disregarding second adjacent protections.

The first reason the Commission gives for this is consolidation due to the liberalization of local ownership rules in the last few years. The Commission should recall that this policy is not one decided by the FCC which can simply be reversed. It is the Communications Act of 1996 that relaxed the ownership rules. An act of Congress should not be subject to an end run by a regulatory agency, no matter how the agency disagrees with it. This petitioner has differences with parts of the Act, but clearly all must abide by the Act until it is changed.

Furthermore, a little history is in order to discover why the Act did what it did in terms of local ownership. No one on the FCC at this time goes back far enough into the history of radio broadcasting in recent times to see why the industry is where it is.

At one time, an FCC rule prevented a radio station from being sold at a profit within three years of it's purchase. This served to insure that the owners of stations were primarily operating companies which planned on earning profits from the service they provided on the air rather than by buying and selling stations. When the rule was lifted, station prices shot up, and shortly thereafter there were financial hard times for stations when the operating income of the stations could not keep up with the debt payments. This is the first case of ownership rule changes being detrimental.

At about the same time, the FCC decided to change it's FM allocations policies. Previously, the Commission allocated stations based on population. The FCC decided that a more efficient use of the spectrum would happen if stations of any class could be allocated to any community on any channel. The now well known Docket 80-90. Communities with populations of less than 1000 people were

given full Class C facilities. The stations immediately turned towards the nearest large market to maximize revenues, leaving the small community of license with a radio station in name only. Soon the larger markets were seeing their compliment of FM stations increase dramatically. Revenues per station plunged and again some stations flirted or actually went into bankruptcy. A second rule change proves to have bad consequences.

The petitioner points out this history to demonstrate that the unintended consequences of previous rule changes can have profound effects. I'm certain the FCC did not intend to have the anti-trafficking rule removal lead to economic problems, but it did. They certainly did not see docket 80-90 leading to the abandonment of small communities of license, financial hardship, LMA agreements, and finally the ownership changes in the most recent Communications Act, but it did.

The consequences of the FCC LPFM proposal CAN BE FORESEEN. They lead to further problems, and provide little or no solutions.

First, the FCC's goals of diversity and new local service can be foreseen to be unsuccessful. The FCC proposes no national ownership limits, and no local residency requirement. (The petitioner wonders if the Commission could even impose a residency requirement). It also proposed no regulation of programming beyond the obscenity regulations.

This can lead to one place quickly. New companies without ties to traditional broadcasting companies will be within their rights to file for hundreds of LPFM stations, and to feed the same programming via a network type arrangement. There are no proposals to prevent this. Thus the FCC proposal will fail to give local programming or local ownership a chance. The new LPFM groups will just be another player in the radio broadcast landscape.

The petitioner sympathizes with the FCC, because there is no way to regulate localism. The very idea of local may even be obsolete. With new ways of interconnecting stations, it is impractical to call a show local because of where the studio is, or whether or not a satellite is involved in the program's transmission.

A consequence far worse than the previous examples comes from the FCC proposal to change or eliminate the technical rules that protect stations from interference. None of the previous changes to ownership or allocations reduced the protections that control interference. On this occasion, largely because maintaining protections will prevent a sufficient number of new stations from being added, protections upon which hundreds of millions of receivers in the market are based will be cast aside.

A parallel might be the addition of more stations to the AM band, along with allowing stations on AM to use low power levels to extend their hours.

Once again, the result is predictable. The receiver manufacturers will adjust the performance of their equipment to prevent the listener from suffering from the interference. This will likely be realized by reducing receiver sensitivity and narrowing the I.F. stages of the receivers. The direct result of this will be poorer coverage for ALL FM stations, and higher distortion in the receivers.

Other comments will no doubt address the technical concerns, but this comment seeks to point out the likely result from LPFM. It is hoped that the FCC will

test receivers for performance degradation BEFORE LPFM is put on the air nationwide.

Finally, the FCC needs to begin looking at broadcasting as a mature industry. The FCC has regulated FM radio as a growth industry, where problems of disparity of ownership could be solved by increasing the supply of stations.

A comparison to the airline industry might be in order. At one time, the FAA could control monopolies by simply adding more capacity from competitors. Today the FAA uses different methods because the industry is now mature. No one would suggest that the cure for a monopoly at an airport would be to greatly increase the number of flights at that airport without evaluating the effects on the system. And certainly no one would justify this compromise by announcing that while it would cause crashes, it would be mostly small planes crashing, and the flaming wreckage would usually fall in an unpopulated area.

This is exactly the proposal before us with LPFM. There is no proposed testing to see what effect the changes will have on receivers in the market today not to mention the transition to digital. The FCC points out that there will be increased interference, but that it should be tolerated because it would not affect too many people, and usually the small station would get the worst interference. This simply can not be the future of FM.

If anything, the FCC should only allow new classes where they can meet full protection for existing stations and receivers. While this will not result in the maximum number of stations as the FCC desires, it is the only way to be certain that the FM band is not damaged.

Respectfully Submitted

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