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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS

Tuned In Broadcasting, Inc. ("Tuned In") by its attorneys, and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, hereby submits its comments in response to the above-captioned *Notice of Proposed Rule Making* (the "*NPRM*"), MM Docket No. 99-25, released February 3, 1999. By Orders released March 19, 1999, and May 20, 1999, the comment period in this proceeding was extended to August 2, 1999; therefore, these comments are timely filed.

I. INTRODUCTION AND SUMMARY

The Commission's proposed creation of a new low power FM service is ill-advised and contrary to the agency's directive to regulate in the public interest. Tuned In, the licensee of a number of existing low power Class A FM stations in and around the Nashville, Tennessee metropolitan area, has first hand knowledge of the difficulty of operating a technically inferior facility in a market dominated by high power stations. Tuned In also has first hand knowledge of the difficulties of operating a station where there is a significantly higher powered FM station on a

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second adjacent channel. As set forth in more detail below, Tuned In's experience in operating a grandfathered short-spaced station with a higher powered second adjacent channel station causing significant interference demonstrates the difficulty that a low power FM station would have in an operating environment where there was little or no protection against second adjacent channel interference. In essence, new LPFM stations will create interference, but will be able to render little or no appreciable service. For these reasons, Tuned In urges the Commission to reconsider its proposal to adopt a low power FM radio service.

The Commission states in the NPRM that its goals in this proceeding 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."[1/] While these goals are concededly laudable, attempting to achieve them by creating an unnecessary and problematic new service is contrary to the Commission's role of regulating the airwaves in the public interest. The Commission should not create a new service which will undermine the integrity of the FM band, be injurious to existing stations both technically and economically, and create little or none of the benefit which the Commission seeks.

Background

Tuned In operates one AM and four FM stations in central Tennessee. Three of these FM stations are in the Nashville MSA. All of the company's FM stations are Class A stations, many limited to only three kilowatts of effective radiated power. The company's original station, WRLT, Franklin, Tennessee, was authorized prior to the adoption of the FM spacing rules in 1964, and is shortspaced to two high power FM stations, one a 100 kW Class C station which also serves the metropolitan Nashville area on a channel second adjacent to the one used by

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1/ NPRM at ¶ 1.

WRLT. Thus, the operation of WRLT provides the a real life example of what a low power station would face if the technical constraints currently in place for full power FM stations were loosened to allow these new facilities. Simply put, the prospect is not pretty.

As an operator of low power stations, Tuned In has provided unique programming on its stations in order to carve out a market niche that draws people to its stations, even when those stations are hard to find on the FM dial. As set forth in more detail below, Tuned In believes that, should the Commission authorize a low power FM service, any limited service provided by such stations will economically injure those stations which the FCC should be most inclined to protect: those of the local owner or the new entrant operating substandard technical facilities in larger markets. It will not be the large group owners who will be hurt, as their high powered stations will continue to have the dominant coverage in their markets. Instead, it will be the local owner such as Tuned In, with a smaller, more specialized audience, which will suffer most from the operation of the low power radio stations.

For these reasons, as set forth in more detail below, Tuned In urges the Commission to abandon its efforts to create a new low power FM service.

II. DISCUSSION

A. The Creation of Low Power FM Will Undermine Spectrum Integrity by Causing Harmful Interference to Existing FM Stations.

As the Commission points out in its NPRM, "[e]nsuring the effective and efficient use of the spectrum is one of the fundamental responsibilities of the Commission."[2] Forcing a new low power service into the existing FM band, however, threatens to create little more than interference. According to the Commission's most recent numbers, the FM band currently has

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[2] NPRM at ¶ 20.

7,779 commercial and non-commercial licensed radio stations.[3] This means not only that there is a large number of FM stations providing diverse programming to the communities across the country, but also that the band is already congested. In contrast, the AM band has 4,781 licensed stations and television has 1,594.

The Commission's current interference spacing requirements exist to protect the signals of authorized FM channels and ensure that the public is able to clearly receive the station's programming. A basic tenet of broadcasting is the provision of a strong, quality signal on which the public can rely. This fundamental goal will be threatened by the creation of a new low power service. The addition of numerous new stations to an already crowded spectrum can only serve to degrade the quality of existing signals. The Commission has a responsibility to ensure that the signals of existing full power FM stations, broadcasting in the public interest, are not harmed by the creation of a questionable new service.

Tuned In's WRLT operates on a Class A channel in Franklin Tennessee, a community close to Nashville. WRLT was authorized prior to 1964, and is thus classified as a grandfathered shortspaced station with respect to two stations, WVVR in Hopkinsville, Kentucky, and WWTN, licensed to Manchester, Tennessee. WWTN actually operates close to Nashville on a channel second adjacent to WRLT. WWTN was authorized to operate with full Class C facilities in close proximity to WRLT based on an application filed pursuant to Section 73.213 of the Commission's rules which allows pre-1964 grandfathered shortspaced stations to ignore second and third adjacent channel stations in making applications to the Commission.[4] When WWTN increased its

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[3] Broadcast Station Totals as of June 30, 1999, released July 19, 1999.

[4] WWTN was authorized under the rules in effect prior to 1989. However, the rule allowing grandfathered shortspaced stations to ignore second adjacent channel

(continued...)

power to 100 kilowatts in the same metropolitan area as that in which WRLT operates, WRLT's 3 kilowatt signal was irretrievably injured.

Tuned In has submitted to the Commission ample evidence of the havoc to WRLT's listenership created by WWTN increasing its power on a second adjacent channel. WRLT listeners by the hundreds wrote and called with their problems, and many of these letters have been submitted to the Commission in connection with the WWTN license application.

Tuned In raises these facts not to reargue the grant of the WWTN application, which is otherwise being addressed by the Commission. Instead, it is to provide the Commission with a real world example of the benefits of diligent enforcement of its existing policies on second adjacent channel spacings. While many of the trade associations will no doubt produce engineering studies which demonstrate the interference caused by the elimination of second adjacent channel spacing, the hundreds of letters from WRLT listeners which have been provided to the Commission in connection with the WWTN license application demonstrate the real world reception difficulties created by waiver of these protections. Just as WRLT receives significant, destructive interference from WWTN, causing the WRLT signal to be unlistenable even in some parts of its own city of license, so too will the low power advocates find that, if the Commission authorizes low power FM by doing away with the second adjacent channel interference requirements, most of the operators of these stations will get little reception of their station. Thus, the new low power stations will serve only to increase interference in the FM band. This does no one any benefit, and the Commission should not allow it to happen.

B. Low Power FM Will Hurt the Local Station Owner

4/ (...continued)
shortspacing was repealed by the Commission, but was reinstated by Commission action in 1998.

The parties most likely to be harmed by such a change in Commission rules are stations such as those operated by Tuned In. Tuned In has been able to acquire stations licensed to communities in the Nashville area, but not high powered stations actually licensed to the city or covering the entire metropolitan area. Through unique programming, Tuned In has attracted a small but loyal audience who listens to the station throughout the metropolitan area, often in areas beyond the normally protected contours of the company's stations. Low power radio may threaten the existence of the local owner like Tuned In, both by increasing interference on the FM band, and by eating into the loyal audience which Tuned In has developed.

Many local owners start their broadcasting companies by buying stations in smaller markets, or stations in larger cities that do not have full market coverage. The increased interference from low power radio stations "shoehorned" into the FM band will only create more interference which will further harm the reception of stations, such as those owned by Tuned In, in areas where they provide service to listeners necessary for their economic well-being. The listenership of Tuned In's stations beyond their 1 mV/m contours is an important factor in the survival of these stations. To create new stations which will impact on that reception will harm the very owners that the Commission is seeking to encourage, those who are local owner-operators.

From an economic standpoint as well, the LPFM station will impact not on the large, mass market broadcast station, but instead on the smaller niche programmers who are more likely to be locally or minority owned operations. These stations have small targeted audiences which if eroded, even minimally by a LPFM station, will suffer the most. The marginal audience erosion due to the LPFM will eat into what little economic margin many of the existing small, locally owned station may have, leading to the erosion of many of these stations' very economic viability.

Such an erosion can only lead to the result that station's such as those owned by Tuned In may well end up having to forego their local programming for some more economically efficient satellite format, or sell out to a large group owner, thus harming the diversity which already exists in the radio marketplace. The Commission should not allow this to happen.

Conclusion

Both economically and technically, LPFM is a bad idea. LPFM is most likely to injure the locally owned station, eliminating listeners outside of the station's protected service areas and eating away at the station's economic base. The result of the adoption of LPFM is most likely to be less diversity, not the greater diversity sought by the Commission. Thus, the Commission should abandon its plans to authorize the low power FM service.

Respectfully Submitted,

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