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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of

Creation of a Low
Power Radio Service

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MM Docket No. 99-25

RM-9208

RM-9242

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF
BUCKLEY BROADCASTING CORPORATION

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SUMMARY

The Commission should not create a low power FM radio service within the FM band. Introducing hundreds of new low power stations to an already crowded spectrum will cause harmful interference to existing FM stations. The creation of low power FM will hinder or prevent the planned transition from analog to digital radio broadcasting. Further, the addition of numerous low power and/or microradio stations will have an adverse economic impact on existing small FM broadcasters and foster greater consolidation of ownership within the broadcast industry. Ultimately, the creation of this new service will prove detrimental to the continued vitality and public service of the FM band. The Commission has failed to properly address the public interest showing necessary for the implementation of a low power radio service. The introduction of low power radio stations will have a tremendous negative impact on the future of the FM band and the public as a whole; therefore, the Commission should terminate this rule making and refrain from creating a low power FM radio service.

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

II. DISCUSSION 2

 A. The Creation of Low Power FM Will Undermine Spectrum Integrity by Causing Harmful Interference to Existing FM Stations. 2

 B. The Creation of a Low Power Service Will Prevent the Transition of FM Broadcasting from Analog to Digital Technology. 4

 C. The Creation of Low Power FM Will Undermine the Public Service Programming of Existing Broadcasters 6

 D. The Commission Does Not Have Adequate Resources to Support the Creation of Low Power FM. 8

 E. A Public Interest Showing Has Not Been Made Justifying the Need for Low Power FM 12

 F. If the Commission Creates a Low Power Service it Should Be Entirely Non-commercial, Open to Existing Broadcasters, and Comply with the Same Regulations Applicable to Full Power Stations. 15

 1. Low Power should be completely non-commercial. 15

 2. Low Power should comply with the same regulations currently applicable to full power 16

 3. Current licensees should be allowed to own low power stations. 16

III. CONCLUSION 18

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To: The Commission

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BUCKLEY BROADCASTING CORPORATION

Buckley Broadcasting Corporation, 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 submit 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 subsequently extended to August 2, 1999; therefore, these comments are timely filed.

I. INTRODUCTION AND SUMMARY

The Commission's contemplation of the creation of a new low power FM service is ill-advised and contrary to the agency's directive to regulate in the public interest. 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

¹NPRM at ¶ 1.

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 an entirely new service at the expense of broadcasters and the public they serve. Low power FM should not be allowed to undermine the integrity of the FM spectrum.

The creation of a low power FM radio service will overwhelm the Commission's resources and repeat the debacle which followed the addition of hundreds of FM stations in Docket 80-90. The threat of interference to existing broadcasters, the workload involved in establishing a new radio service, and the risk of hindering or preventing the transition to digital radio broadcasting all militate against the pursuit of low power radio. The addition of hundreds, if not thousands, of low power and/or microradio stations will foster greater consolidation of broadcast ownership and increase the proliferation of pirate radio operators. The creation of this new service will prove detrimental to the continued vitality and public service of the FM band. In addition, the Commission has failed to properly address the public interest showing necessary for the implementation of a low power radio service and it is unclear that such a showing could be made.

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

²NPRM at ¶ 20.

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 7,779 commercial and non-commercial licensed radio stations.³ This means not only that there are 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.

In addition to causing interference to the operations of existing broadcasters, there is a serious potential that low power broadcasters could also cause interference to aviation communications and air navigation signals, threatening the safety of the nation's aviation system. Novice broadcasters with poor equipment, limited experience, and even more limited finances will create a liability which the Commission will have to monitor in order to ensure that low power broadcasters do not threaten public safety. Similarly, low power broadcasters will not

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

have the same economic and professional incentives that full power broadcasters have to prevent interference to other stations.

Further, the creation of low power FM and/or microradio will encourage even greater proliferation of pirate radio stations, thereby exacerbating one of the problems this NPRM ostensibly sought to resolve. With hundreds of newly-licensed low power stations entering the airwaves, pirate radio operators will go largely unnoticed. The Commission's enforcement mechanisms will be greatly strained by the addition of the new stations, effectively encouraging more pirate broadcasting. In order to lend legitimacy to the authorized low power stations the Commission will have to be even more vigilant in its attack on pirate radios. The creation of low power FM will establish a fertile atmosphere for the increase of pirate radios, as they pop up amidst the numerous newly-licensed stations.

B. The Creation of a Low Power Service Will Prevent the Transition of FM Broadcasting from Analog to Digital Technology.

At a time when the Commission should be ensuring the smooth transition of its analog radio service to digital radio, the contemplation of squeezing a new low power service into the existing FM band is ill-conceived. Looking to the future, broadcasters are in the process of developing technology for the provision of digital radio service to the public.⁴ To that end, broadcasters are currently working to perfect in-band on-channel (IBOC) technology which will allow FM stations to broadcast a digital signal along with their existing analog signal. By utilizing existing spacing protections and working within the 200 kHz of bandwidth allotted for

⁴On October 9, 1998, USA Digital Radio Partners, L.P. ("USADR") filed a petition for rule making with the Commission requesting the initiation of a proceeding to permit digital audio broadcasting in AM and FM radio.

each FM channel, IBOC technology contemplates the efficient usage of the allotted spectrum. The addition of a digital signal within the bandwidth designated for an analog channel, however, will reduce the frequency separation which provides insulation between adjacent channels. The addition of thousands of new stations, or any changes in the channel spacing regulations, therefore, could make impossible the digital radio technology.

As the NPRM indicates, there are numerous unresolved questions regarding the emerging digital radio service and the extent to which interference protection is needed to ensure that a quality signal is provided to the public.⁵ Whereas the Commission froze the TV Table of Allotments over a decade before the first digital television station came on the air, the Commission has not felt compelled to afford similar protections to radio broadcasters during the transition to digital radio broadcasting.⁶ While digital radio does not contemplate the same one-to-one channel swap necessary for the move from NTSC to DTV, the need to ensure adequate space within the band for the anticipated transition is equally pressing. The continued progress toward digital radio should take precedence over the nascent pursuit of a low power service. Given the desirability of digital radio, the ongoing efforts by the broadcast community to develop

⁵"We are concerned that our understanding of future IBOC systems is preliminary and that we may not be fully aware of any negative impact or restrictions that authorization of low power radio service would have on the transition to a digital IBOC technology for FM stations. Clearly, we need to better understand the potential impact of second-adjacent channel LPM protection standards on the successful development of an IBOC system." NPRM at ¶ 49.

⁶In instituting the freeze on new television stations in certain metropolitan areas the Commission stated, "it is necessary to preserve sufficient broadcast spectrum to insure reasonable options relating to spectrum issues for these new technologies." Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, Order, RM-5811, released July 17, 1987.

this technology, and the Commission's stated support for the transition,⁷ the Commission should not undertake any actions which could jeopardize or in any way complicate a move to terrestrial digital radio broadcasting.

C. The Creation of Low Power FM Will Undermine the Public Service Programming of Existing Broadcasters.

The creation of a low power FM will imperil the service which the nation's full power broadcast stations currently provide to the public. The addition of low power stations will create greater economic pressure on existing broadcasters, particularly for smaller stations in smaller markets, as more stations attempt to share a static source of revenue. By adding a class of less experienced, poorly financed broadcasters to the airwaves, the Commission threatens to cause more consolidation of ownership within the radio industry. Furthermore, greater interference and lower quality programming from low power stations will hinder the ability of full power stations to clearly reach listeners, as well as undermine the credibility of the programming in the FM band as a whole.

The low power FM stations that the Commission envisions would necessarily compete with existing smaller radio stations for the same listening audience and the same finite sources of advertising dollars. By further diffusing the source of revenue among more and more stations, the Commission will only succeed in creating a greater number of less profitable stations. The large number of existing FM stations currently face competition from emerging technologies as well as an increased number of FM stations. If even more stations are introduced, many of the stations surviving on an already narrow profit margin will be faced with economic failure. At a

⁷Report and Order, 10 FCC Rcd 2310, 2315 (1995).

minimum, the stations will have to reduce costs, potentially leading to the loss of valuable community services such as the coverage of local news and sporting events. Faced with economic demise, eventually these smaller stations likely will turn to one of two options: (1) carrying national/syndicated programming; or (2) selling the station to a larger owner of multiple stations. In either case, the FCC's introduction of LPFM will squeeze out existing stations which currently serve the public interest in an admirable fashion. The precedent of Docket 80-90 demonstrates that the introduction of numerous new stations will produce exactly this type of consolidation within the broadcast industry.

Furthermore, one of the Commission's stated reasons for considering low power is to "provide a low-cost means of serving urban communities and neighborhoods."⁸ By its own engineering studies, however, the Commission has determined that depending on the interference protections adopted, few, if any, low power stations can be added to the FM spectrum in larger cities.⁹ The engineering reality alone defeats the attempt to reach communities and groups that the Commission feels are under-represented in urban broadcasting. Thus, instead of satisfying the perceived need to add to the collection of voices in larger cities where ethnic, social, and economic minorities may lack a voice, the low power service will only be able to add stations in the more suburban and rural areas, where a similar rationale does not support the need for LPFM.

⁸NPRM at ¶ 1.

⁹NPRM at Appendix D.

In addition, low power FM stations, operated by inexperienced broadcasters with inferior equipment, will not be able to provide the public with the quality programming and strong signals on which it has come to rely. The limited range of low power stations, coupled with interference in the FM band and less powerful transmitters, will prevent low power radio stations from duplicating the strong, far-reaching signal of a full power FM station. Similarly, low power stations will be unable to offer the quality programming that full power FM stations currently provide to the public. Inexperienced broadcasters, operating with a limited budget, will not achieve the level of programming that the public expects on the airwaves. A low power radio service simply will not maintain the high quality entertainment, information, and local news which characterizes the FM band.

D. The Commission Does Not Have Adequate Resources to Support the Creation of Low Power FM.

The creation of a new FM service will entail a tremendous amount of work, both at the inception of the service and thereafter for the indefinite future. This costly increase in the Commission's workload contradicts any attempt to maintain or reduce the size of the FCC. The Commission currently lacks the ability to handle the influx of applications and regulatory problems that will necessarily follow the initiation of a new service.

The Commission has acknowledged that it "expect[s] to receive a great number of applications, should the new services be authorized."¹⁰ Depending on the various interference standards the Commission could adopt, the number of new low power FM stations created by

¹⁰NPRM at ¶ 91. By its estimation at least 13,000 people visited the FCC's website seeking information on low power radio stations in the twelve months prior to the release of the NPRM. NPRM at ¶ 11.

this rule making could be as high as 2,000, not including microradio stations.¹¹ This staggering number of new stations would completely overwhelm the Commission's current licensing process. The resulting burden on the Commission's resources would prove detrimental to the efficient administration of existing broadcast licenses, and thus detrimental to the public as a whole.

While the NPRM suggests that an interactive computer program could be created to allow applicants to apply for new stations electronically via the Commission's website, thereby reducing the burden on the Commission, the fact of the matter is that such a process is untested and currently nonexistent.¹² Regardless of whether a computer program actually is developed to handle the initial application process, in order to authorize, regulate, and enforce the new service, the Commission will have to deal with a plethora of additional issues which require time, resources, and money. For example, the Commission will need to verify that engineering and equipment used by low power broadcasters complies with technical requirements in order to prevent interference to existing full power FM stations. Similarly, it is proposed that certification of the transmitters used by all LPFM stations be required in order to ensure compliance with out-of-channel emission requirements.¹³ The Commission also proposes to employ the same character qualification standards and alien ownership rules currently applicable

¹¹NPRM at Appendix D.

¹²"We may be able to develop a system whereby the application could first be analyzed against existing facilities and, perhaps, even against previously filed applications. Such a system could then promptly inform the filer whether the requested frequency is available and if the application is acceptable for filing based on current data." NPRM at ¶ 95. (emphasis added.)

¹³NPRM at ¶ 51.

to full power licensees. Furthermore, for those applications which are mutually exclusive either an auction or a lottery will likely have to be held, in order to select one licensee from a pool of qualified applicants.

Arguably, an auction is required by statute in order to resolve problems of mutual exclusivity that might arise in a new low power service. Section 309(j) of the Communications Act of 1934, as amended, directs that in cases where there are “mutually exclusive applications for any initial license or construction permit, then... the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding.”¹⁴ Therefore, the Commission will need to implement auction procedures to comply with the statutory requirements. However, an auction is a complex and expensive proposition for a potential broadcaster. While the Commission seeks to attract community groups, non-profit corporations, and minorities to low power broadcasting, the necessity for an auction will serve as a tremendous deterrent to small broadcasters. The complexity and high cost of a broadcast auction will deter participation by the very people the Commission is trying to engage.

The issues illustrated above arise only in the initial licensing process; once the station licenses are actually awarded the Commission will face an additional onslaught of filings requiring constant attention. Facility modifications, requests for Special Temporary Authority, changes in ownership, regulatory fees, etc., the needs attendant to a new broadcast service are endless. Similarly, the broadcast rules regarding political advertisements, obscene and indecent programming, lottery advertising, operating hours, Emergency Alert System (EAS), etc., will

¹⁴47 U.S.C. § 309(j).

have to be established and enforced for low power. The authorization of a new broadcast service will place numerous, on-going demands on Commission resources, the vast majority of which cannot be alleviated by an as-yet-undeveloped computer system.

The closest, and most recent, parallel to the proposed creation of a new low power FM service comes from the Commission's attempt to implement an expansion of radio stations by allocating 689 new FM channels in Docket 80-90. Even though the number of stations involved in the Docket 80-90 proceeding was far less than the number proposed for LPFM, the Commission was overwhelmed by the deluge of applications.¹⁵ The Commission's inability to handle the crush of applications in the 80-90 proceeding does not bode well for the attempt to create an entirely new low power FM service with many times the number of stations involved in Docket 80-90.

Although proponents may contend that the regulatory demands of a low power service will be less severe than the full power stations involved in Docket 80-90, the NPRM indicates that the Commission envisions applying many of the full power regulations to low power FM. But even if full Part 73 regulations are only applied to LP 1000 stations, the Commission still lacks the ability to authorize and regulate the several hundred LP 1000 stations this proceeding would create. Similarly, with the potential for nearly 1,400 LP 100 stations, and many times that number of microradio stations, the burden will be substantial even if full licensing requirements

¹⁵Within the first three years of Docket 80-90, the Commission experienced a 54% increase in the average number of applications filed with the Commission. Even with the advent of "hard look" processing, the agency quickly developed a backlog of nearly 2,500 applications. See Amendment of Part 73 of the Commission's Rules to Modify Processing Procedure for Commercial FM Broadcast Applications, 6 FCC Rcd 7265 (1991) at ¶ 9.

are not applied to the smaller stations. The addition of these low power stations will overwhelm and hinder the Commission as surely as the addition of 689 FM stations did in the Docket 80-90 proceeding.

E. A Public Interest Showing Has Not Been Made Justifying the Need for Low Power FM.

The Commission has been entrusted with the important role of regulating the broadcast spectrum.¹⁶ In protecting and allocating this resource, the Commission must utilize the spectrum as efficiently as possible. To that end, the Commission has not satisfactorily determined that it is in the public interest to create a new FM service, especially in light of the potential interference to existing broadcasters, the pending transition to digital radio, and the negative impact the deluge of applications will have on the Commission. No adequate showing has been made to justify the creation of this new service which threatens to radically change the radio industry and stall the Commission amidst regulatory and enforcement problems. In the past, the Commission has determined that permitting many low power transmitters is a less efficient way to allocate the broadcast spectrum than permitting fewer transmitters broadcasting at a higher

¹⁶“It quickly became apparent that broadcast frequencies constituted a scarce resource whose use could be regulated and rationalized only by the Government. . . . Consequently the Federal Radio Commission was established to allocate frequencies among competing applicants in a manner responsive to the public convenience, interest, or necessity.” Red Lion Broadcasting v. FCC, 395 U.S. 367 (1969) (internal quotation and citation omitted).

power.¹⁷ It has also found that full power radio stations are better able to serve the public interest.¹⁸

Broadcasters continue to meet the needs of their communities in an admirable fashion, through both broadcast and nonbroadcast efforts. Radio broadcasting is inherently a local service, providing local programming such as weather, news, sports, traffic, schedules of community events, severe weather warnings, and school closing information. While proponents of this rule making herald the need for greater community broadcasting, there has been no demonstration of a failure by existing broadcasters to provide local programming responsive to their communities.

The Commission's initiation of this rule making seems to legitimize the illegal actions of pirate radio operators. Although the Commission, in conjunction with other government agencies, continues to pursue and terminate illegal radio operations, merely the issuance of an NPRM on this topic lends credibility to the activity of pirate radios. By pursuing LPFM, the Commission seems to accept the pirate operators' message that there is no room for diversity within the existing legitimate broadcast industry. The Commission's actions imply that full power stations should be left to larger, group owners and that smaller voices should pursue the alternative of a low power station. The Commission reinforces the perception that pirate broadcasters have the right idea to abandon legitimate full power stations and simply throw up a transmitter to reach their audience. By entertaining the creation of low power, the implication is

¹⁷See Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations, 69 F.C.C.2d 240 (1978).

¹⁸See, Stephen Paul Dunifer, 11 FCC Rcd 718, 724 (1995).

that existing full power broadcasters are somehow deficient in their service to the public, a notion for which there is no support.

Although the notion of low power FM conjures up appealing images of populist broadcasting, the radio spectrum cannot accommodate every voice in the United States that wishes to broadcast its message. Indeed, the Commission and the Supreme Court have consistently held that with regard to the airwaves the public is afforded only the right to information and not the right to broadcast.¹⁹ Spectrum is allocated in the amateur radio services and the Citizens Band for hobbyists and others to use to have their voices heard and to learn about the mechanics of radio broadcasting. Allowing amateur broadcasters to use the FM band would come at the expense of the Commission, the broadcast industry, and ultimately, the public whom the broadcasters serve.

Numerous alternative mechanisms currently exist that would fill the needs that the Commission seeks to address. Time brokerage arrangements allow access to the airwaves so that people can broadcast information, news, and ideas to the public. Similarly, web sites, fax machines, and community newsletters, all form alternatives to spread information and ideas throughout a discrete community or group of people. Granted none of these options carries quite the same romantic appeal as starting one's own radio station, but the Commission exists to protect the airwaves and provide the public with broad access to information, not access to the airwaves by all comers. Thus, other means currently exist for achieving the dissemination of

¹⁹See National Broadcasting Co. v. United States, 319 U.S. 190 (1943); see also, Red Lion Broadcasting Co., Inc. v. United States, 395 U.S. 367 (1969).

news and entertainment at the community level and the Commission has not sufficiently supported the need for the creation of an entirely new radio service within the FM band.

F. If the Commission Creates a Low Power Service it Should Be Entirely Non-commercial, Open to Existing Broadcasters, and Comply with the Same Regulations Applicable to Full Power Stations.

In the alternative, if the Commission decides to pursue the creation of a low power FM service it should allow existing broadcasters to apply for stations, the service should be completely non-commercial, and the same regulations should apply to low power as exist for full power stations. These measures will help to ensure that low power operates in the public interest, while at the same time achieving the Commission's stated goals.

1. Low Power should be completely non-commercial.

If the Commission's focus in this proceeding is truly to "address unmet needs for community-oriented radio broadcasting"²⁰ then there is no need for the new stations to be commercial. In light of the minimal cost anticipated for low power stations, churches, community groups, and colleges will be able to maintain a station without selling advertising. By requiring low power stations to operate non-commercially the Commission will also encourage broadcasters to utilize the stations for community programming. Additionally, designating the stations as non-commercial will help prevent the further consolidation of ownership within the broadcasting industry. As discussed above, if the radio market is flooded with additional stations competing for the same local advertising dollars, the end result will be greater economic pressure and increased group ownership. By designating low power stations as

²⁰NPRM ¶ 1.

exclusively non-commercial the Commission will uphold its goal of supporting community-oriented broadcasting while combating ownership consolidation.

2. Low Power should comply with the same regulations currently applicable to full power.

The Commission must apply consistent standards throughout the FM service, regardless of the type of station, to safeguard the integrity of the FM band. In order to protect existing FM stations and aviation equipment from interference, all low power radio stations, from LP 1000 to microradio, should be subject to the same regulations currently applicable to full power stations. Although the broadcast contours of low power will be significantly smaller than full power, the mantle of broadcasting in the public interest will apply undiminished. Therefore, in order to ensure that the stations serve the public the full gamut of Commission rules, from political rules to EAS requirements, should apply to the new service. By consistently applying regulations throughout the radio service, the Commission will protect the public and the broadcast spectrum.

3. Current licensees should be allowed to own low power stations.

Should the Commission decide to establish a low power service, existing broadcasters should be allowed to apply for licenses. The NPRM proposes that a person or entity with an attributable interest in a full power broadcast station would not be permitted to own an interest in “any LPFM (or microradio) station in any market.”²¹ The Commission states that the “goals of increased opportunity for entry, enhanced diversity and new program services” would be hard, if not impossible, to achieve if current licensees are eligible for the new service. A licensee who has successfully operated an AM or FM station, however, would be an ideal candidate for a low

²¹NPRM at ¶ 57.

power station. The fact that a licensee was previously approved by the Commission and complied with the FCC regulations indicates that the applicant is qualified to hold a low power license. Current licensees and permittees have the broadcasting experience necessary to make the new low power service a success. By drawing on their engineering, programming, and financial experience, existing broadcasters would help low power stations achieve the high level of signal quality and programming of full power FM stations.

III. CONCLUSION

The proposed low power FM service is not an efficient use of the spectrum nor of the Commission's resources. Low power FM threatens to be a problematic service to administer and regulate given the interference issues involved. Digital radio and the move toward IBOC technology should take precedence over the creation of low power FM. As with the addition of any new service, the Commission must weigh the adverse effects of such a service against the purported benefits. In this instance, the inordinate amount of work necessary to coordinate the interference protection for a new class of stations within the already crowded FM band is not justified by the resulting low power stations. Accordingly, Buckley Broadcasting Corporation respectfully requests that the Commission refrain from creating a low power FM service.

Respectfully submitted,

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