



## SUMMARY

The Commission should not create a low power FM radio service within the FM band. Harmful interference will be caused to existing FM stations by introducing hundreds of new low power stations to an already crowded spectrum. 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 broadcast ownership. 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 Have an Adverse Economic Impact on Existing Small Broadcasters ..... 6

    D. A Public Interest Showing Has Not Been Made Justifying the Need for Low Power FM ..... 7

    E. If the Commission Creates a Low Power Service it Should Be Offered on a Noncommercial Basis or Open to Existing Broadcasters. .... 8

        1. Low Power should be completely noncommercial. .... 9

        2. Current licensees should be allowed to own low power stations. .... 9

III. CONCLUSION ..... 11

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C.

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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To: The Commission

**COMMENTS OF**  
**PILOT COMMUNICATIONS, L.L.C.**

Pilot Communications, L.L.C., 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."<sup>1</sup> While these goals are concededly

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<sup>1</sup>NPRM 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 creation of a low power radio service. 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."<sup>2</sup> Forcing a new low

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<sup>2</sup>NPRM 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.<sup>3</sup> 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. Low power broadcasters will not have the same economic and professional incentives that full power broadcasters have to prevent causing interference to other stations. The Commission has a responsibility to ensure that the signals of existing full power FM stations are not harmed by the creation of a questionable new service.

In addition to causing interference to the operations of existing broadcasters, 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 require strict monitoring by the Commission to ensure that public safety is not imperilled.

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<sup>3</sup>Broadcast Station Totals as of June 30, 1999, released July 19, 1999.

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. To lend legitimacy to the authorized low power stations the Commission will have to be even more vigilant in its attack on pirate radios.

**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.<sup>4</sup> 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 each FM channel, IBOC technology contemplates the efficient usage of the allotted spectrum. However, the addition of a digital signal within the bandwidth designated for an analog channel will reduce the frequency separation which provides insulation between adjacent channels. The

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<sup>4</sup>On 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.

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.<sup>5</sup> 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 broadcasting.<sup>6</sup> 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 this technology, and the Commission's stated support for the transition,<sup>7</sup> the Commission should not

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<sup>5</sup>"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 LPFM protection standards on the successful development of an IBOC system." NPRM at ¶ 49.

<sup>6</sup>In instituting the freeze on new television stations in certain metropolitan areas the Commission stated that "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.

<sup>7</sup>Report and Order, 10 FCC Rcd 2310, 2315 (1995).

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 Have an Adverse Economic Impact on Existing Small Broadcasters.**

The low power FM stations envisioned by the Commission would necessarily compete with existing smaller radio stations for the same listening audience and the same finite pool of advertising dollars. By further diffusing the source of revenue among a greater number of stations, the Commission will only succeed in further undermining the profitability of many stations. Smaller-sized operators are still reeling from the adverse consequences wrought by the relaxation of the ownership limits and rapid consolidation. They now face competition from large group owners with multiple stations in any given market, as well as from emerging technologies, including satellite digital audio radio service. If even more stations are introduced, many stations surviving on an already narrow profit margin will face certain economic failure. Faced with a further reduction of revenues, many small operators will have to reduce costs, leading to the loss of valuable community services such as the coverage of local news and sporting events. Eventually these smaller stations likely will turn to one of two options: (1) carrying national/syndicated programming; or (2) selling out to a large group 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 attrition within the broadcast industry. The net result will be greater consolidation of ownership within the radio industry.

**D. 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.<sup>8</sup> 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 adverse impact it will have on existing broadcasters, as well as the pending transition to digital radio. No adequate showing has been made to justify the creation of this new service which threatens to radically change the radio industry. 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 power.<sup>9</sup> It has also found that full power radio stations are better able to serve the public interest.<sup>10</sup>

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

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<sup>8</sup>“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).

<sup>9</sup>See Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations, 69 F.C.C.2d 240 (1978).

<sup>10</sup>See, Stephen Paul Dunifer, 11 FCC Rcd 718, 724 (1995).

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.

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.<sup>11</sup> 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.

**E. If the Commission Creates a Low Power Service it Should Be Offered on a Noncommercial Basis or Open to Existing Broadcasters.**

In the alternative, if the Commission decides to pursue the creation of a low power FM service, the service should be offered on a noncommercial basis, or otherwise the Commission should allow existing broadcasters to operate LPFM stations.

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<sup>11</sup>See 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).

**1. Low Power should be completely noncommercial.**

If the Commission's focus in this proceeding is truly to "address unmet needs for community-oriented radio broadcasting"<sup>12</sup> then there is no need for the new stations to be operated on a commercial basis. 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 noncommercially, the Commission will also encourage broadcasters to utilize the stations for community programming. Additionally, designating the stations as noncommercial 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 exclusively noncommercial the Commission will uphold its goal of supporting community-oriented broadcasting while combating ownership consolidation.

**2. Current licensees should be allowed to own low power stations.**

Should the Commission decide to establish a low power service on a commercial basis, 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."<sup>13</sup> The Commission states that the "goals of increased opportunity for entry, enhanced diversity and new program services"

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<sup>12</sup>NPRM ¶ 1.

<sup>13</sup>NPRM at ¶ 57.

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 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 broadcast spectrum or 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 introduction of low power service. Accordingly, Pilot Communications, L.L.C. respectfully requests that the Commission refrain from creating a low power FM service.

Respectfully submitted,

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