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Before the
Federal Communications Commission **RECEIVED**
Washington, DC 20554

AUG 2 1999

In re)	
)	FEDERAL COMMUNICATIONS COMMISSION
CREATION OF A LOW POWER RADIO SERVICE)	OFFICE OF THE SECRETARY
)	MM Docket No. 99-25
)	RM- 9028
)	RM-9242
To: The Commission		

COMMENTS ON NOTICE OF PROPOSED RULEMAKING

Futronics, Inc. ("Futronics"), by counsel and pursuant to FCC Rule Section 1.419, submits its comments in support of the Commission's *Notice of Proposed Rulemaking*, FCC 99-6, 64 FR 7577 (February 3, 1999), in this proceeding. As shown below, the Commission should adopt rules for a low power FM service at its earliest convenience to promote diversification in the marketplace. If the service is carefully implemented, it is unlikely that existing stations will suffer destructive interference.

I. Adoption of the proposed low power FM service would enhance programming diversity.

Adoption of the proposed low power radio service will plainly serve the important public interest in promoting the diversification of the ownership of mass communications. The Commission has long recognized that diversification of media ownership supports the First Amendment goal of promoting the availability of diverse sources of programming available to the public. See *Policy Statement on Contested Broadcast Hearings*, 1 F.C.C.2d 393, 5 Rad. Reg. 2d (P&F) 1901 (1965). This is because diverse ownership logically can be expected to translate into diverse programming. And diverse sources of information promise to facilitate an informed and astute electorate.

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Diversity is a particularly important consideration in today's marketplace. Owing to the systematic relaxation of structural ownership limitations, the broadcast industry has experienced tremendous consolidation. The consolidation of media properties have affected both audio and video programming. However, the consolidation of broadcast ownership in the video marketplace has been largely offset by the availability of alternative video programming sources, such as cable, wireless cable, satellite dishes, and Internet programming. These alternative video sources have increased both the sheer number of video channels available to the public, as well as the number of sources of video programming.

The technological advances which have increased the sources of video programming available to the public have not significantly affected the audio marketplace.^{1/} Accordingly, while the video marketplace has become more diverse, despite the consolidation in the broadcast industry, the audio marketplace continues to be marked by fewer and fewer independent voices. Adoption of the proposed low power FM service promises to ameliorate substantially the adverse effects of broadcast consolidation. Not only would additional radio voices be created, but these facilities would be uniquely situated to serve as local transmission outlets. The smaller nature of the proposed LP1000, LP100 and LP10 stations is ideally suited to encourage both local ownership, and direct participation of local owners. This in turn will encourage direct owner control of programming content. Construction and operating costs will likely be substantially lessened compared to full power audio facilities. Moreover, advertising dollars will likely also come directly from the

¹ Although audio programming is available from satellites and the Internet, the lack of a suitable portable receiver limits the utility of these sources of programming compared to a portable or automobile radio receiver.

immediate area served. Accordingly, it can be safely presumed that low power FM stations will be particularly responsive to local needs and issues.

By encouraging diversification of media ownership, the low power radio service will have the salutary effect of promoting media ownership among minorities and women without running afoul of constitutional concerns. Promotion of minority and female ownership will help offset the decrease in minority and female ownership that has resulted from the continuing trend in media consolidation. This is particularly important given that the award of full power broadcast facilities by auction is likely to exacerbate media consolidation, despite the availability of bidding credits.

To be truly a vehicle for the promotion of local broadcasting and diversification, Futronics supports ownership limitations, at least initially, for the low power radio service. For the first three years after the service is created, no one person, should be allowed to have an interest in more than seven low power FM stations. Moreover, no person should be allowed to operate more than one low power FM station with overlapping 1 mV/m service contours. In addition, Futronics supports the Commission's proposal to prohibit existing broadcasters in a community from holding low power FM stations. Futronics would take that restriction one step further and prohibit ownership of a low power FM station whose 1 mV/m service contour overlapped with any co-owned broadcast station, or a daily newspaper of general circulation within that contour.

If diversification is truly a Commission goal of the low power FM service, it will be necessary for the Commission to avoid using auctions to choose among competing proposals. As the Commission's experience with auctions for commercial mobile radio service properties has demonstrated, auctions will benefit existing media owners who have ready access to capital, not newcomers and entrepreneurs. The proposal for first come first served, and electronic filing has

merit. However, Futronics foresees that the opening of application filing under that scenario as a land rush, with the Commission's web server and incoming circuits inundated with traffic. The need for an orderly filing process is essential. Perhaps if electronic filing is used, to avoid a land rush, applications can be accepted for specific areas one at a time, rather than for the entire United States at once.

II. Low power FM stations will not likely be a significant source of destructive interference to existing FM stations.

Understandably, existing broadcasters and Congressional leaders have expressed concern regarding the potential of destructive interference from a host of new low power FM stations, operating under the Commission's proposal to abandon second and third channel adjacent protection.^{2/} Futronics is convinced that full power FM stations simply do not need third adjacent channel protection from low power FM stations. It is simply unlikely that any substantial amount of destructive interference will result within the protected 1 mV/m service contours full power FM stations from low power stations operating on third adjacent channels. The more material question is whether to require second adjacent channel interference protection. From the standpoint of LP1000 stations, Futronics would suggest that the Commission go slow before concluding that

² Although potential interference is a legitimate concern for both the industry and the Commission, the potential financial harm arising from additional competition to established broadcasters is not a factor about which the Commission should be concerned absent a specific showing of the inability of individual market segments to support additional broadcast facilities. *See Missouri-Illinois Broadcasting Co.*, 5 Rad. Reg. 2d (P&F) 482 (1965).

second adjacent channel protection is unnecessary.^{3/} However, with respect to LP100 and LP10 stations, Futronics believes the potential for destructive interference is remote.

Nevertheless, Futronics fully understands how and why the industry and some in Congress, as well as some in the Commission, might remain concerned with respect to the interference potential. Accordingly, Futronics suggests that initial grants of low power FM stations be conditional and subject for a one year period from commencement of operations on the absence of destructive interference to existing stations. In this way, existing broadcasters may be assured that this new service will not interfere with their existing service.^{4/}

III. Conclusion.

Adoption of the proposed low power FM service will serve the public interest by promoting programming diversity and facilitating additional broadcast transmission outlets. Ownership restrictions are needed at least initially to ensure that the service will truly serve to promote diversification of media ownership. Existing broadcasters' concern to prevent harmful interference is understandable, but the proposed service will not likely create substantial interference problems. Those can be dealt with most effectively by awarding conditional licenses subject to the prevention of interference to existing broadcasters. Broadcasters' concern with additional competition, should not be a substantial concern to the Commission absent a substantial showing that the public will suffer a net reduction in service – a showing that doubtfully is possible to make given the present

³ This would be particularly the case where LP1000 to Class A FM stations are concerned. Due to the relative equality of effective radiated powers between these two types of facilities, the potential for interference cannot be discounted.

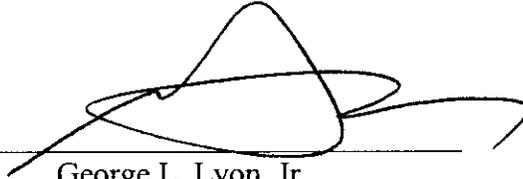
⁴ In fairness to low power licensees, the burden would be upon a complaining existing station to show the existence of harmful interference from the low power station.

economy. Accordingly, Futronics urges the Commission to adopt its low power FM proposal, subject to the modifications suggested herein.

Respectfully submitted,

FUTRONICS, INC.

By

A handwritten signature in black ink, appearing to be "George L. Lyon, Jr.", written over a horizontal line.

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