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**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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

**COMMENTS OF RADIO ONE, INC.**

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**Summary**

Radio One urges the Commission to refrain from establishing a low power FM radio service. The proposed service would introduce unacceptable risks of interference to existing broadcasters as well as to the emerging in-band, on-channel digital radio service. In addition, any spectrum allocated for commercial use must be awarded through competitive bidding, which would thwart the goals of diversity and localism that prompted the Commission to initiate this proceeding in the first place. If the Commission implements any new radio service, it should be a very low power, secondary, noncommercial service. At a minimum, any decision with respect to LPFM should be delayed until the Commission has established rules and procedures for the introduction of digital radio.

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**COMMENTS OF RADIO ONE, INC.**

## I. Introduction

Radio One, Inc. ("Radio One"), through its attorneys, hereby submits the following comments in response to the *Notice of Proposed Rule Making* ("NPRM")[1] in the above-captioned proceeding. Radio One was founded in 1980 and is the largest minority-owned radio broadcasting company in the United States primarily targeting African-American listeners and consumers. Through its licensee subsidiaries, Radio One owns and operates radio stations in Washington, D.C., Baltimore, Atlanta, Philadelphia, Detroit, St. Louis, Cleveland and Richmond.

Passage of the 1996 Telecom Act has lead to dramatic changes in ownership patterns in the radio broadcasting industry. The largest radio station groups control

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1 *In re Creation of a Low Power Radio Service, Notice of Proposed Rulemaking*, 64 Fed. Reg. 7577 (February 16, 1999); *Order*, FCC 99-112 (rel. May 20, 1999).

hundreds of radio stations. In contrast, Radio One, the largest minority-owned radio broadcasting company targeting African-Americans, owns only 21 stations. As the Commission fully recognizes, moreover, minority ownership of radio stations has declined during this period of consolidation.[2]

The NPRM commendably seeks to address this problem through the creation of a new radio service.[3] Minority ownership has continued to decline, however, even while the number of full power radio stations in the already congested FM band has increased.[4] In other words, licenses of more stations provides no assurance of greater ownership diversity.

On the contrary, crowding the FM band even further with the new low power stations will simply threaten existing minority-owned licensees with harmful

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2 *Minority Commercial Broadcast Ownership in the United States*, National Telecommunications and Information Administration, August 30, 1998 (hereinafter "NTIA Survey"):

> The 1998 minority ownership numbers offer discouraging news for minority broadcasters. Although minority ownership of broadcast stations increased by 15 this year, minority ownership has not kept pace with the developments within the industry as a whole, and Black ownership is losing ground. Minority ownership of commercial broadcast stations is at a lower level today than in 1994 and 1995. Minority broadcasters are finding it increasingly difficult to compete in the rapidly consolidating broadcast industry.

3 NPRM at ¶ 10.

4 *See* NTIA Survey.

interference without furthering the Commission's objectives. Radio One and other minority-owned broadcasters have struggled for many years to compete in the broadcast industry. And even Radio One, which recently went public and now has increased access to capital, remains at a disadvantage because it is in fewer markets, reaching smaller audiences, with less powerful, and in some cases inferior, signals.[5] As demonstrated below, adoption of the proposals would introduce unacceptable risks of interference to Radio One and other existing broadcasters and also threaten the emerging in-band, on-channel ("IBOC") digital radio. At a minimum, therefore, any decision in the proceeding should be delayed until the Commission has established rules and procedures for the introduction of IBOC digital radio.

Thus, while Radio One appreciates that the LPFM proposal is intended to increase broadcast diversity and foster opportunities for small, community-based radio, it believes that the creation of a new low power FM radio service will not achieve these goals. The new licenses, because commercial, must be auctioned. As a result, only the most well-financed bidders, not the minority and small business community groups the Commission seeks to aid in this proceeding, will gain access

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5 For example, in Washington, D.C., Radio One owns two AM stations that operate with output power of 1 kw. In contrast, CBS and Chancellor each own an AM station with output power of 50 kw. Also, in Philadelphia, Radio One owns a standalone Class A FM station. In contrast, Chancellor owns five Class B FM stations, and CBS owns two Class B FM stations.

to the new service. In short, Radio One urges the Commission not to establish a LPFM service.

If the Commission nonetheless implements a new service, it should be very low power and secondary to existing full power stations to protect these stations from interference and to permit implementation of IBOC digital radio. Equally important, the service should be noncommercial so that the spectrum will be awarded to those most likely to further the Commission's goals in this proceeding and not to the highest bidder.

## II. Establishment of a Low Power Radio Service Will Not Serve the Public Interest

### A. Low Power Radio Is Not an Efficient Use of Spectrum

The Commission has already thoroughly examined whether a primary low power radio service is in the public interest, and time and time again the Commission has reasoned that the FM band cannot accommodate low power stations as providers of primary service.[6] At the same time, the Commission consistently has affirmed

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6 *See Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations*, 69 FCC 2d 240 (1978).

that full power FM broadcast stations make more efficient use of spectrum than low power stations.[7]

For example, the Commission determined that 10-watt Class D stations, which were intended to serve small areas such as college campuses, could not continue to operate on a primary basis.[8] The Commission assigned these stations secondary status because the low power stations were defeating "the opportunity for other more efficient operations which could serve larger areas."[9] And again in 1990, the Commission refused to grant FM translator stations primary status or program origination authority while emphasizing its "commitment to provide FM radio broadcast service in a manner that promotes program diversity while enhancing the incentives for efficient broadcast station development."[10]

For decades the Commission has consistently observed that low power radio stations are an inefficient use of spectrum. Nothing in the NPRM suggests, and nothing in the record demonstrates, that the Commission's earlier determinations are any less valid today.

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7 *See id.*

8 See *id.*

9 *Id.* at 248.

10 *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd. 7212, 7219 (1990).

B. Authorization of Any Low Power Service Would Threaten the Future of Digital Radio Broadcasting

Radio One opposes any change in the present interference environment that may impair or eliminate the possibility of introducing digital broadcasting in a timely and efficient manner. The proposals not only seek to introduce unacceptable risks of interference to existing broadcasters but also threaten the emerging IBOC digital radio.

The Commission has encouraged the transition to digital broadcasting,[11] and the public interest in prompt introduction of digital service is evident. As currently designed, the IBOC system would enable radio broadcasters to offer digital transmissions to the public without the need for new broadcast spectrum. Most radio broadcasters, many of whom have limited financial resources, will be able to deploy digital transmission equipment without constructing new transmission facilities.

However, the current proposals would eliminate 2nd and 3rd adjacent channel protection standards to make room for low power stations.[12] Eliminating 2nd and 3rd adjacent channel separation criteria will jeopardize the transition to digital broadcasting using IBOC technology because designers of IBOC technology have relied heavily on the existing channel allocation criteria. Changes to any of the existing

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11 *Report and Order*, Gen Docket No. 90-357, 10 FCC Rcd 2310, 2315 (1995).

12 NPRM at ¶ 42.

interference criteria, broadcasting parameters or protection contours may make the newly designed IBOC system inoperable.

The Commission must make the transition to digital broadcasting a priority. At the very least any decision with respect to LPFM should be delayed until the Commission has established rules and procedures for the introduction of digital radio, and the parameters of digital broadcasting are defined.[13]

C. Commercial Low Power Radio Licenses Must Be Awarded Through Competitive Bidding, Which Means That Deep Pocket Bidders, Not Community Groups, Would Gain the Licenses

In the NPRM, the Commission stated several broad goals that it hoped to accomplish through a low power service. The Commission stated: "Our 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."[14]

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13 *Order*, FCC 99-112 (rel. May 20, 1999) ("[W]e take this opportunity to state our intention to launch a rulemaking proceeding regarding digital radio this summer. We believe doing so at the same time we are considering proposals in the low power radio proceeding will help focus issues regarding the compatibility of the two services.")

14 NPRM at ¶ 1.

Radio One agrees with the Commission's tentative conclusion that auctions would be required in the event that there are mutually exclusive applications filed for commercial LPFM licenses. With the passage of the Balanced Budget Act of 1997, the Commission is obligated to resolve mutually exclusive broadcast applications through competitive bidding except for noncommercial educational broadcast stations and public broadcast stations.[15] The Balanced Budget Act of 1997 not only mandates auctions to resolve competing applications but also eliminates the Commission's authority to resolve mutually exclusive applications by lottery.[16] Congress envisioned that auctions would be used in the future to resolve all conflicts regarding competing applications for broadcast services.[17] Accordingly, if the Commission

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15 As amended Section 309(j) provides that, except for licenses for certain public safety noncommercial services and for certain digital television services and noncommercial educational or public broadcast stations, "the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding ... [i]f... mutually exclusive applications are accepted for any initial license or construction permit. In addition, Section 309(i), terminates the Commission's authority to issue any commercial license through the use of a system of random selection after July 1, 1997.

16 47 U.S.C. § 309(i) (1998).

17 "Any mutually exclusive applications for radio or television broadcast licenses received after June 30, 1997 shall be subject to the Commission's rules regarding competitive bidding, including applications for secondary broadcast services such as low power televisions, television translators, and television booster stations." H.R. Conf. Rep. No. 105-217 at 573, *reprinted in* 1997 U.S.C.C.A.N. 176, 194.

creates a new commercial low power radio service, mutually exclusive applications, as the Commission has tentatively concluded, must be resolved through the competitive bidding process.

Although the Commission has proposed and inevitably will make every attempt to reduce the occurrence of mutually exclusive applications for a low power radio service, given the interest already exhibited in the establishment of a low power radio service, it is clear that mutual exclusivity will occur in many cases, particularly for populous locations.[18] Even with extremely short filing windows, the probability of mutually exclusive applications filed within the relevant time period is high.

If mutual exclusivity is resolved by auction, many of the intended beneficiaries of the proposed low power radio service may not be able to afford a station. The Commission has recognized that "although auctions have many beneficial aspects, they threaten to erect another barrier to participation by small businesses and businesses owned by minorities and women by raising the cost of entry into spectrum-based service."[19] By increasing the cost of entry into a new service,

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18 *See* NPRM at ¶ 11. (The Commission received over 13,000 inquiries in the last year showing an interest in low power radio.); *see also* NPRM at ¶ 91 ("[W]e expect to receive a great number of applications, should the new service be authorized.").

19 *In re Implementation of 309(j) of the Communications Act—Competitive Bidding, Fifth Report and Order*, 9 FCC Rcd 5532 ¶10 (1994).

auctions cause new licensees who can raise enough capital to win a license to divert their financial resources from programming to the initial bidding. Auctions by their very nature result in the individual or group with the deepest pockets acquiring the license. Or, alternatively, result in the individual or group paying so much for its licenses that it cannot implement its business plan.[20] If the Commission employs competitive bidding, the Commission will severely limit its goals of increasing diversity and localism and fostering opportunities for new entrants.[21]

D. Enforcing Rules for a New LPFM Service Would Tax the Commission's Limited Resources

The ubiquity of the microradio service proposed by the Commission would inevitably lead to enforcement problems. For example, the Commission proposes to adopt an FCC transmitter certification requirement to protect spectrum integrity. It is questionable, however, whether those who have been operating illegally in the absence of a low power service would be prepared now to abide by the Commission's

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20 Nextwave Personal Communications, Inc., v. Federal Communications Commission (*In re* Nextwave Personal Communications, Inc.), 235 B.R. 277 (Bankr. S.D.N.Y. 1999); *Judge Upholds Bankruptcy Court, Rejects FCC Claim in Nextwave Case*, Washington Telecom Newswire, July 28, 1999 ("90 percent of the winning bidders are in bankruptcy or are paying 'outrageously inflated prices' for spectrum").

21 NPRM at ¶¶ 1, 8, 12.

rules. These individuals have not only acted in flagrant violation of the law but have interfered with public safety communications and air traffic control frequencies thus jeopardizing the public's welfare.[22] The Commission, with its reduced staff available to investigate and monitor compliance, is ill-prepared to take on this potentially tremendous enforcement responsibility.[23] And, broadcasters would have no other recourse than to seek assistance from an overburdened Commission.

## III. Any Low Power Radio Service Should Be Limited to Secondary Non-Commercial 10-Watt Operation

If the Commission resolves to implement a low power radio service despite the recognized risks of interference with existing and emerging services discussed above, that new service must be (i) very low power (ii) secondary and (iii) noncommercial. First, very low power, 10-watt operations present the least probability of adversely affecting full power stations or hampering the transition to digital broadcasting. Second, as explained above, the Commission has previously determined that the FM band cannot accommodate any low power stations on a primary basis

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22 NPRM at ¶ 65.

23 *Public Notice*, Compliance and Information Action, Report No. CI 95-16 (rel. October 13, 1995).

because of the inefficiencies inherent in a Class D service. Thus, any microradio stations should be secondary, as the Commission proposes.[24]

Finally, these stations should be limited to noncommercial operations to achieve the Commission's goals in this proceeding: 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."[25] Today, noncommercial stations meet the needs of their communities by offering programming that is not available on commercial radio stations. Because auctions may not be used in awarding licenses for noncommercial stations, new entrants to the broadcast industry will not be shut out by the high cost of entry associated with the initial bidding.[26] Limiting a new low power service to noncommercial stations would serve the public interest by increasing citizens' access to airwaves because of the minimal cost of entry.

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24 NPRM at ¶ 36.

25 NPRM at ¶ 1

26 47 U.S.C. § 309(j)(2)(C).

## IV. Conclusion

The creation of a low power radio service will not achieve the Commission's goals of increasing diversity and will harm existing minority broadcasters. The Commission years ago concluded that low power service is an inherently inefficient use of spectrum, and there has been no change in circumstance suggesting that the Commission's determination is any less valid today. If the Commission nonetheless determines that establishment of a low power radio service is in the public interest, Radio One urges the Commission to limit any such service to very low power, secondary noncommercial operations.

Respectfully submitted,

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