

August 2, 1999

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FEDERAL COMMUNICATIONS COMMISSION
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BY HAND

Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

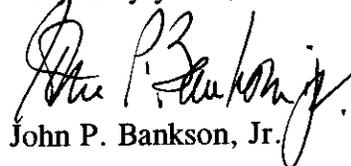
Re: (MM Docket No. 99-25)
Low Power FM Rulemaking
Comments of CUE Corporation

Dear Ms Salas:

We are filing the original and four (4) copies of the Comments of CUE Corporation in the above captioned matter.

Please stamp the enclosed copy of this filing as received and return it to our courier.

Very truly yours,


John P. Bankson, Jr.

Enclosures

JPB/jb

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Before the
Federal Communications Commission
Washington, DC 20554

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF CUE CORPORATION

Cue Corporation (CUE), by its attorneys and pursuant to 47 C.F.R. § 1.415, files its comments in the captioned rulemaking proposing a new low power FM (LPFM) radio service.

1. CUE provides valuable communication services which depend on the use of sidebands of FM stations throughout the U.S. CUE recognizes that subcarriers of FM channels are secondary to main channel FM operations. CUE is aware of engineering analyses filed and to be filed with the Commission in the above docket which make a definitive case against the creation of an LPFM radio service. CUE urges the Commission to heed those studies and to reject all proposals for a new LPFM service for which the case has not been made and which would be contrary to the public interest.

2. A viable alternative exists to provide local information and service throughout the country. That is the Internet which has unlimited capacity for providing community information and service without any impact on FM stations and channel utilization . The potential impact on CUE is one unintended consequence of these proposals.

3. CUE believes that maintaining adjacent channel protection is essential, not only for its operations but also for existing FM stations, particularly second adjacent channels. A fundamental truism of history is: when mistakes are forgotten, they will be repeated. Much prior experience with radio rule changes and licensing justifies rejection of the proposed LPFM

service. The notion that more is better is plainly wrong. The Commission initially promulgated a Table of Allotments for commercial FM, 47 C.F.R. §73.202. FM was later shifted to a demand system; however, the Commission soon saw the error of its ways and reinstated the FM Table of Allotments in 1964. The many allotments adopted in BC Docket 80-90 increased the number of FM stations within the framework of established mileage separations, adjacent channel protections, and power limitations. It did not add a new FM service. The Commission has recognized the inefficiency of low power FM operation; in 1978, the Commission decided that effective radiated power below 100 watts is inefficient spectrum use under 47 U.S.C. §307(b).¹ Nothing has occurred since to change that reality, see 47 C.F.R. §§ 73.211(a)(1)(i) and 73.511(a).

4. Creation of a new LPFM service would be a radical departure from these prior Commission rulings. It is vital to remember that once the genie is out of the bottle, there is no way to put it back. Intense care is required, particularly with regard to digital in-band, on-channel (IBOC) technology.² The future of digital FM must be resolved before consideration of LPFM rules because the latter could foreclose full consideration of conversion from analog to

¹ Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations, 69 FCC 2d 240, 248-250 (1978).

² See USA Digital Radio Partners, L.P., Petition for Rulemaking, filed October 7, 1998.

digital radio. The Commission in 1993 assumed an obligation to IBOC and existing FM
broadcasters:

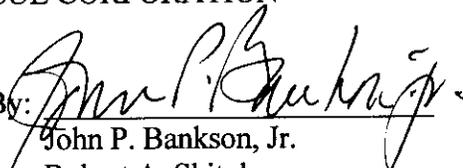
“We continue to support efforts to implement terrestrial in-band (Digital Audio Radio Service) technology. We believe that existing radio broadcasters can and should have an opportunity to take advantage of new digital radio technologies.”³

While the Commission has broad rule making authority, it may not repeal the laws of physics.

5. There is now no public interest reason to: (1) disrupt current FM broadcasting; (2) foreclose full and measured consideration of conversion to terrestrial digital audio broadcasting; and (3) create an administrative nightmare, both in initial licensing and subsequent oversight, in order to establish an LPFM service. There is even less reason to do so because a viable alternative exists for specialized neighborhood directed and community broadcast services, the Internet, which has limitless potential to fulfil the stated objectives of the proponents of LPFM radio service.

Respectfully submitted,

CUE CORPORATION

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August 2, 1999

³ Amendment of the Commission's Rules with Regard to the Establishment and Regulation of New Digital Audio Radio Services, 7 FCC Rcd 7776, 7778 (1993).

Certificate of Service

I, Josefina Barberena, hereby certify that on August 2, 1999, a copy of the foregoing Comments of CUE Corporation was served by hand on the following:

Ms. Judy Boley
Federal Communications Commission
The Portals
Room C-1804
445 – 12th Street, S.W.
Washington, DC 20554

Mr. Timothy Fain
OMB Desk Officer
10236 NEOB
725 – 17th Street, N.W.
Washington, DC 20503


Josefina Barberena