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August 02, 1999

Federal Communications Commission
Magalie Roman Salas
Office of the Secretary,
TW-A306, Federal Communications Commission,
445 12th Street, S.W.,
Washington, D.C. 20554.

Dear Ms. Salas:

Attached herewith are an original and four copies of "Comments of Barry Magrill on MM 99-25". The comments in this proceeding are, respectfully, directed to the Mass Media Bureau. If there are any questions regarding these comments, I may be reached at (352) 371-4288.

Sincerely,

Barry Magrill

Barry Magrill

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Comments of Barry Magrill on MM Docket No. 99-25

General:

These comments are presented on behalf of Barry Magrill to support the concept of an LPFM service, with several exceptions. These comments are being transmitted via ecfs but I wish them to be considered formally, therefore an additional paper filing consisting of one original and four copies is being sent simultaneously with this filing.

The FCC requests comments on the establishment of a new multi-tiered FM service, modeled loosely on the current classes of stations. Comments provided to the FCC at last year's NOI have been modified and material added which is pertinent to the latest FCC request for comments. I believe that the new service is both timely and in the public interest.

Need for Service:

Large corporations have already monopolized most medium and large markets representing large portions of the listening audience and more acquisitions occur each week. This results in fewer individuals being responsible for programming and fewer choices. For example, all of the stations licensed to Orange County (Orlando), Florida are owned by one of three corporations. Of over a dozen FM facilities in the area only one, lower-powered, independently owned, station provides a service contour over the community. While there is no indication that the number of formats has decreased or that the public interest has been compromised by the consolidation of owners, there is virtually no chance that any new broadcasters could enter the market in the foreseeable future. In addition, the high cost of acquiring and running today's major radio properties usually makes owners unwilling to experiment with new ideas or serve smaller niche markets. At issue is not whether these large corporations have failed to serve the public. Instead, the issue is do we have an opportunity to serve the public even better by creating a new service that allows new ideas to be given a voice. By sharp contrast with the above example, Union County, Florida with twelve thousand people has no radio stations at all. Union County is located between Jacksonville and Gainesville, each of which have a number of stations licensed to them. Due to protection contours, no station can be allocated to any of the towns in Union County. In both cases, there is a need to increase diversity in radio broadcasting. Further, in the case of the more rural communities, there is an opportunity to bring local service where there can be none now. Based on the projections of the number of new stations both by the FCC method and others it is apparent that a significant increase in diversity is practical and desirable if the Commission approves this service.

Implementation:

The rules governing the roll-out of LPTV worked well and, could be reworked to inaugurate the LPFM service. In order to limit the cost for applications, especially in large urban areas where there would be a high demand; the applications should be first-come-first-served. This could be easily done by applying via the Internet.

Diversity:

Ownership should be restricted to promote diversity. As in the LPTV service no person or entity would be permitted to tender more than 5 applications during a nationwide filing window. No person or entity should hold more than ten LPFM stations, nationally, however it may be wise to allow ownership of a combination of LPFM and full powered stations, provided that they are not in the same market. This would allow new entrepreneurs to enter the market and then transition to full powered broadcasting, if desired. Once the station limit is reached, the owner must divest one LPFM for each new full powered facility acquired.

As has been the policy in the past, mere ownership of broadcasting company stock in amounts less than five percent should not disqualify a person from applying for, or owning an LPFM. If ownership were restricted to those having no other interest whatsoever in broadcasting, many potential voices would be silenced because they owned a few shares of stock in Disney, or Clear-channel, etc. Clearly, a person who inherited a few shares of Disney stock should not have to sell them to apply for a station. Limiting these potential broadcasters would not be in the public's interest.

To prevent trafficking, construction permits for LPFM's should not be sellable and a licensed LPFM should not be eligible for sale for one year. Distress sales could be allowed, with the seller precluded from owning an LPFM for some period, perhaps one to five years, thereafter.

LPFMs will, in many cases, be faced with stiff competition from large corporations. In order to survive, it is very likely that the LPFM broadcaster may have to become very efficient. One way to achieve this is to allow LPFMs to enter into LMAs with other LPFMs in a market, however, to protect diversity, LPFMs should not be allowed to enter such agreements with full powered broadcasters.

In MM 99-25, the Commission proposes to limit ownership of LPFMs to a "one to a community" rule. The definition of "community" is of some concern. If community refers to any city within a market, that may prove burdensome to the LPFM broadcaster. In the case of Gainesville-Ocala, Florida, the two communities are separated by about 40 miles, yet are rated as a single market. The LPFM broadcaster who wishes to compete market-wide must be able to broadcast in both communities to do so. Similar examples can be found for markets across the US.

Effect on Full-Powered Broadcasting:

There have been several arguments attacking the notion of an LPFM service which appeal to the sentimental as opposed to the rational. One argument, put forth by the NAB, alleges that the increased competition will cause stations to loose out on advertising and, perhaps, some to fail. The rhetoric would have us believe that broadcasters should be guaranteed limited competition and the attendant monopolistic profit. Not even the phone company buys into this line of reasoning anymore and the benefit to their customers is well known. Commercial broadcasting is a business venture. If a new entrant in a market does a better job than an established broadcaster, the established broadcaster has two choices; do a better job or be replaced by the new entrant. In either case, the beneficiary is the public, so why cater to mediocrity? Frankly, if a full-powered station's revenues or ratings are adversely affected by a facility with a 5km coverage radius, the full-powered broadcaster should reconsider their programming choices. The NAB once said stations would be forced off the air due to increased competition with the advent of Docket 80-90. Despite docket 80-90, or perhaps because of it, prices for stations only climbed and many areas have been fortunate to now receive an increased diversity of programming. Very few stations went silent. Finally, except in special circumstances, it is generally not the government's position to decide when there is enough competition or diversity in an industry. This is especially important in light of the fact that we are, indirectly, dealing with aspects of free speech. Competition is one of the important factors in improving service to our citizens.

Engineering Concerns:

There has been a lot of discussion about the interference levels that might be produced by LPFM stations. There are several things to bear in mind when considering these arguments. One is that the contours derived fifty years ago are now somewhat questionable due to the changes in receiver design. In the case of most automotive and better home gear, the image rejection and sensitivity have both been significantly improved casting some doubt on the current validity of the U/D ratios used to calculate the spacing charts in 73.207 of the Commission's rules. It is also empirically clear that these receivers are generally able to receive useable signals well beyond the secondary contours of stations. On the other hand, most clock radios and personal stereos have both poor sensitivity and selectivity, however the poor performance of these inexpensive radios actually highlights another need for the LPFM service. Although full powered broadcasters are protected to the 60 or 54 dBu contour, most of the cheap radios perform poorly beyond the 70dBu contour, making protection to the secondary contour are relatively meaningless. Local LPFM signals would provide fill-in service to those radios located in the suburban and semi-rural areas. Secondly, the art of engineering is almost always an issue of compromise. This means that the benefits of the new service must be weighed against any potential interference problems. While it may be relatively harmless to allow LPFM stations to operate without regard to 2nd and 3rd adjacency issues, I have not heard of any definitive or scientific studies on this matter. Without more study, it might be unwise to eliminate a rule that has worked for many years. Instead, the new service could be inaugurated and then modified if the Commission determines, based on research, that it is safe to do so. Abolishing or reducing the 2nd and 3rd adjacency rules is probably a matter best left for a separate rule making and should be considered for all classes of stations at that time.

It is in the public interest to commence the service as soon as possible to as many areas as possible. One alternate solution would be to allow the new service to accept any interference, but not to cause interference to other stations. When the spacing rules were initially adopted, the Commission was trying to encourage the new service by making sure that each new station had a clearly defined coverage area that served the most listeners possible. If there was a prohibited overlap, then the station had to find a location where it's coverage would not be adversely affected. Changes in the rules, specifically adoption of 73.215, have allowed stations to use directional antennas to avoid receiving interference from others. Anyone examining the Commission's U/D ratio rules will quickly realize that, when a high powered and low powered pair of stations are involved, the low powered station almost never causes interference. Instead, it receives interference from the larger station. If you are the smaller station wishing to move closer to the high powered station, the solution is to use a directional antenna thereby reducing the smaller station's coverage area to avoid receiving interference. Frankly, the logic of this eludes me and it seems clearly contrary to the public's interest as it may deprive large populations from receiving signals that may be perfectly usable. If the LPFM stations were allowed to receive interference, then they could be dropped into many communities where they would otherwise be excluded. If it is found that the LPFMs are not adversely affected by the changes, then the changes could later be added to the rest of the FM service as well.

By not completely eliminating any of the existing interference criteria for LPFMs, there would be much less concern for effects on IBOC. IBOC has been talked of and demonstrated for at least five years and it is still facing technical problems that may or may not ever be resolved. Due to the benefits of LPFM, it would be preferable to roll out the service now instead of waiting for the IBOC issues to be settled, if indeed they ever are. This would simply require the designers of IBOC to possibly implement a better system. Based on the claims in the literature, it seems likely that the present system may work without modification even if the 2nd and 3rd adjacency protections are removed. In any case, the means for implementing LPFM are here now. It is also clear that there is a significant public benefit from an LPFM service. The same cannot be said of IBOC at this time in light of its significant technical challenges.

In MM 99-25, the Commission proposes to require LP-1000 stations to operate with at least 500 Watts equivalent power. Considering that the current class A stations are required to operate with only 100 Watts @ 30 meters, equivalent, the requirement of 500 Watts seems burdensome. Why not leave the coverage decisions to the licensee, with the provision that if the facility drops below 100Watts, it's classified as an LP-100? This is more consistent with the current rules regarding station classes.

Effect on Piracy:

Some have suggested that permitting an LPFM service in some way acquiesces to pirates. The recent increases in so called "pirate" broadcasting may simply be a sign that there is truly a need for a new service. Those people who have little respect for the law will probably continue to break the law. Those who normally obey the law will continue to keep it. This service will likely have little effect on pirate broadcasters who flaunt the laws. They will continue to do so until forcibly stopped, however those "pirates" who seek to be legitimate broadcasters will avail themselves of the opportunity presented. In so doing, there will finally be some needed controls on emissions and program content. An LPFM service would also take the wind out of the arguments that only the rich can afford broadcasting facilities and that there is a legitimate need for pirate stations because of the first amendment.

Micro-LPFM Service (Less than 10W):

A micro powered LPFM service (LP-10) may have enormous benefits to many segments of the population. Such a service would be perfect for schools, churches, and other organizations to cover their campuses. Another use could be for theme parks, airports and other government organizations to use as visitor information facilities and traffic control. The service would also provide an inexpensive means of entry in to broadcasting for thousands of potential broadcasters. Many of today's broadcasters developed their interest in broadcasting with unlicensed broadcasting. The micro LPFM service is so valuable in these respects that the Commission may want to consider reserving, at least temporarily, some channels for micro broadcasting. Protection from interference of other micro LPFMs is probably necessary to the extent that they should have some minimum distance requirements for co-channel and first adjacencies. Without such a requirement it is possible that, in dense urban areas, a new LP-10 could pop up on the same channel in every block. The resulting interference would make them useless and the potential effects of intermodulation could result in harmful interference to other channels.

Commercial vs. NCE & Programming Issues:

Low-power broadcasting, by its very nature, lends itself more to those who wish to experiment with unique programming or to serve niche markets passed over by the full-powered facilities. Further, LPFM station availability would encourage a new group of entrepreneurs to engage in broadcasting. Commercial use of LPFMs not only gives new entrepreneurs an opportunity to explore commercial broadcasting, it may also be a valuable outlet for local shops and businesses to advertise on a budget more fitting the local nature of their businesses. For this reason, LPFMs should be allowed as commercial entities within the non-reserved portion of the band.

As with full service broadcasting, local forces and ideas should drive the programming of LPFM stations. To require specific public interest programming would be hard to police, given the large numbers of new stations expected, and may not fit with certain types of unusual formats. The Commission has recognized that local forces are the best directors of station programming. This is, arguably, even more true for LPFMs.

Renewability:

The Commission asks whether LP-100 and LP-10 stations should have non-renewable licenses so that others may take their turns at the microphone. The relatively low value of these smaller stations should provide ample opportunity for others to purchase, at a modest cost, these stations. Further, it seems unfair that a broadcaster may spend five or more years experimenting with programming to find a viable format only to have someone new come along and take over just as the station begins to develop a core audience. In the long run, this will limit experimentation as these broadcasters will be inclined to invest less in the programming of the station, especially toward the end of the license period.

Conclusion:

The concept of an LPFM service is in the public interest as described in RM 99-25 with several exceptions. The provisions for localism should be abandoned in favor of diversity and limitations on applications should be handled in a manner similar to LPTV service. The elimination of the adjacent and I/F interference criteria should be converted to a separate proceeding as it may be pertinent to full power broadcasting as well. Such a service would likely benefit the public in light of the consolidations of ownership affecting full power FM stations that has reduced the diversity of voices controlling our airwaves.

Respectfully Submitted,

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