



KANSAS TURNPIKE AUTHORITY

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October 24, 1999

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Federal Communications Commission
Office of Secretary

The Honorable William E. Kennard
Chairman, Federal Communications Commission
445 12th Street, SW
Room 8-B201H
Washington, D.C. 20544

Dear Mr. Chairman:

Enclosed is the Kansas Turnpike Authority's response to your NPRM concerning the creation of a low power radio service.

I understand that this response was due to you much earlier than this, however we were just recently informed of the NPRM and would rather submit our comments than go completely unnoticed.

Sorry for the delay.

Sincerely,
KANSAS TURNPIKE AUTHORITY

THOMAS A. ROGERS, P.E.
Director of Communications

enclosure

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Federal Communications Commission
Office of Secretary

Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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

To: The Commission

COMMENTS OF THE KANSAS TURNPIKE AUTHORITY

The Kansas Turnpike Authority ("KTA") hereby submits its comments in the above captioned proceeding in response to the Commission's *Notice of Proposed Rulemaking* outlining the establishment of a low power FM radio service. (See *In The Matter of Creation of a Low Power Radio Service*, Notice of Proposed Rulemaking [hereinafter "Low Power Radio NPRM"], MM Docket No. 99-25, RM-9208, RM-9242 [released February 3, 1999].) As set forth below, KTA supports the creation of low power FM service for noncommercial entities, particularly public service entities that are fulfilling critical public safety functions.

INTRODUCTION AND STATEMENT OF INTEREST

The Authority was created by the Kansas Legislature in 1953 pursuant to the Act as a body politic and corporate, constituting a public instrumentality of the State of Kansas. The Act empowers the Authority to acquire, construct, maintain, repair and operate projects at such locations as may be determined by law, and the Authority may issue its bonds for any of its corporate purposes, payable solely from the tolls and revenues pledged for their payments, and to refund its bonds all as provided in the Act. The Authority operates the Turnpike. The Turnpike was completed and opened for travel in 1956. The Turnpike is the only toll road in the State of

Kansas. The Turnpike is 236 miles long and connects at its northern end with Kansas City, Kansas, proceeds west to Topeka, Kansas, as Highway I-70, turns south at Topeka, Kansas, as Highway I-335, to Emporia, Kansas, where it intersects with and becomes Highway I-35 and continues on south to its southern end at the Kansas/Oklahoma border near South Haven, Kansas. The Turnpike is a four-lane, divided superhighway highway with full control of access. Acceleration and deceleration lanes are provided at all access points and at service areas which offer fuel, food, and other conveniences at intervals along the Turnpike

It has been stated that eighty percent of the State's population resides within twenty radial miles of the Turnpike. On average, traffic on the turnpike increases between four and six percent per year.

As part of its operations KTA utilizes numerous Traveler's Information Service ("TIS") stations, referred to by KTA as "Traveler Advisory Radio" ("TAR") stations. These TIS stations are low-power AM stations authorized under Part 90 of the Commission's Rules to broadcast public safety and travel advisory information to the motoring public. KTA experiences occasional interference throughout its TIS system. During nighttime hours, under certain unfavorable atmospheric conditions, distant AM radio stations sometime impinge upon the frequencies KTA uses. Electrical disturbances, such as those inherent with electrical storms, cause interference with reception of the TIS broadcasts by KTA customers.

KTA has implemented many engineering design changes in an effort to minimize interference and increase the quality and intelligible content of the TIS system broadcasts to KTA's customers. The type of problems KTA is experiencing are commonly known throughout the AM broadcast world. There appears to be no solution to these problems known at this time. The possibility of migrating to the FM band via a low power FM service such as the one proposed in the NPRM could provide a more permanent solution to the TIS reception problems and greatly facilitate KTA's mission of furthering public safety.

Since many of KTA's customers reside or work adjacent to the Turnpike right-of-way, it is in KTA's and the public's interest to have the information broadcast from KTA's TIS system available to recipients both on the Turnpike and to those adjacent to the Turnpike. This will allow KTA customers the ability to make informed decisions concerning the advisability of traveling a desired route or taking a viable alternative.

Hence, KTA desires the Commission to adopt clear channel communications for the proposed low-power FM TIS systems, hence eliminating the possibility of co-channel interference between concurrently operating commercial FM stations and KTA's potential FM TIS system in the same frequency band.

COMMENTS IN RESPONSE TO ISSUES RAISED IN NPRM

I. The Commission Should Limit Eligibility in Any Low Power FM Service to Non-Commercial Entities.

In the NPRM, the Commission seeks comment on whether it should limit all low power and microradio services to noncommercial operations and whether eligibility should be restricted to noncommercial licensees under the Commission's current rules, NPRM at ¶ 19. KTA strongly believes the Commission should limit eligibility of this service to noncommercial entities because they provide vital public services not currently performed by commercial licensees. However, in this context "noncommercial" should not be restricted to noncommercial educational organizations as is currently the case. 47 U.S.C. § 397(6). Rather, in the arena of low power FM authorizations the Commission should define the term "noncommercial entities" as including any "exempt" organization under Section 501 of the Internal Revenue Code, 18 U.S.C. § 501(c), as well as any state or local government entity, subdivision, authority, department or corporation. For purposes of any non-government entity, the eligibility should be restricted to nonprofit entities. See 47 U.S.C. § 397(8).

There are many public safety and transportation entities like KTA throughout the nation distributing traveler safety information that could benefit from the creation of low power FM services. For numerous transportation entities, broadcast radio is the only way to convey messages on a real time basis. Necessary communications include the announcement of not only unforeseen incidents and accidents, but also planned activities, such as constructions schedules, and the suggestion of alternate routes. The role of TIS services in public safety cannot be overstated. Not only are they the primary conduit for the transmission of traffic information, but they also serve as a vital link in the chain of communication systems that will be pressed into service in the event of a local or national

emergency. Low power FM could ensure these critical messages reach motorists as expeditiously as possible, thereby improving safety and efficiency of the nation's road.

Low power and microradio services could assist local governments in communicating with their citizenry about a host of topics ranging from safety messages and public service announcements to information regarding local services. Furthermore, low power and microradio can provide citizens with useful information similar to communities' use of Public, Education and Government ("PEG") cable television channels. Unlike PEG channels, low power and microradio stations will reach the millions of Americans who do not have access to or cannot afford cable television services, but have radios in their homes.

Low power and microradio would also benefit universities, colleges, and high schools throughout the Nation. Currently, more than 140 colleges and universities operate carrier current cable or daytime only radio stations, in part due to lack of available FM spectrum and the associated costs of broadcasting a full-power signal under current regulations. Low power FM and microradio will allow educational-based stations to expand their reach to students living off-campus, neighboring families, alumni and other interested neighbors, and will provide students with an opportunity to experience local broadcasting.

II. The Commission Should Reserve a Portion of the Available Low Power and Microradio Licenses for Public Safety Entities or Provide Them with a Preference in Resolving Mutually Exclusive Applications.

As discussed in Section I, there are a variety of noncommercial entities which could benefit from the establishment of low power FM or microradio services. However, public entities performing public safety functions ("public safety entities" or "PSEs") serve a critical role unsurpassed in importance to the nation's communities. For this reason, even if the Commission determines that eligibility for low power authorizations should be limited to noncommercial applicants, KTA believes that the Commission should reserve a portion of the low power FM and microradio licenses for PSEs. The need for such reservation is even greater if the Commission decides not to limit this service to noncommercial entities.

There is ample precedent for the reservation of part of the broadcast spectrum for designated uses. Just as the Commission has reserved a portion of the FM band from 88.1 MHz to 91.9 MHz exclusively for noncommercial educational use, 47 C.F.R. §§ 73.501, 73.503, the Commission could reserve a portion of the low power band for public safety entities.

The Commission has also reserved spectrum space for police and public safety communications by deleting certain channels from the broadcast spectrum. Congress has specifically directed the reservation of broadcast spectrum for public safety uses. Following Congress' directive in the Balanced Budget Act of 1997 (Section 3004 of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Statute 251 ¶3004), the Commission reallocated 24 MHz from the UHF band to fixed and mobile use for police and public safety communications. See, Report and Order in ET Docket No. 97-157, FCC 97-421, released January 6, 1998.

Alternatively, the Commission could reserve a number of stations in each media market for PSEs. This proposal would guarantee opportunities to deliver public safety information in all markets in the same manner that the Commission has guaranteed an opportunity to deliver noncommercial educational programming in all markets by reserving at least one TV allocation per market for such noncommercial, educational use. Sixth Report and Order on TV Allocations, 41 FCC 148 (1952).

In the alternative, if the Commission determines that it's not going to reserve a portion of the low power FM and microradio spectrum or licenses for public safety entities, then KTA suggests that the Commission grant preferences to PSE applications in the event mutually exclusive applications are filed for the same license. The public interest would not be served by requiring public service entities to compete with commercial interests for spectrum space. By granting the qualified PSE with a demonstrated need for the license a preference, the Commission would recognize the important role these entities play in enhancing the lives of citizens in communities throughout the nation.

III. The Commission Should Adopt Ownership Rules That Will Enable Public Entities to Obtain the Licenses They Need To Perform Public Safety Functions.

KTA strongly urges the Commission not to adopt its proposed rule on local ownership for low power and microradio FM services because such adoption would effectively limit such licensees to a single station in each market (Section 3004 of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Statute 251 ¶3004). When Congress enacted the Telecom Act of 1996, which eliminated numerous broadcast ownership restrictions, Congress articulated its intent that there should no longer be any “one to the market” policies in radio broadcasting. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 § 202, 47 C.F.R. § 73.3555 (adopting new ownership rules from Telecom Act). The Commission’s proposed rule in the NPRM is tantamount to a “one to the market” policy for low power and microradio FM services, which Congress has directed be abandoned in the full power service. Further, such a rule would cripple the ability of public service entities like the KTA to string together multiple stations along a geographic corridor to provide necessary safety services to the motoring public. The KTA plan is to expand the present TIS system, utilizing only one frequency in each market. However, other entities may desire to use multiple frequencies in the same market. Such operations require that the entity operate more than one station in individual markets. If the Commission decides to impose some form of one to the market restriction, the Commission should carve out an exception for PSEs providing a public safety function that may require additional licenses.

KTA similarly urges the Commission not to adopt its proposed national restriction of five or ten stations for low power FM ownership particularly if, as KTA has proposed, the Commission limits the availability of this service to qualified noncommercial entities. (*Low Power Radio NPRM* at ¶60). Such restriction would effectively prohibit KTA from using low power FM for TIS system because KTA will need in excess of five or ten stations total in the markets it serves. Further, such a restriction is not consistent with the Telecommunications Act, wherein Congress eliminated national ownership restrictions altogether. *Id.* In a noncommercial context, there are no “antitrust” or market share considerations. Indeed, in a noncommercial context, there would be no economic incentive for a licensee to acquire too many stations because of their inability to be supported through sale of advertising. In the alternative, if the Commission decides to

adopt national ownership rules, KTA asks that qualified PSEs be exempt from such a rule.

KTA submits that the Commission should not employ competitive bidding or auctions if the pool of eligible applicants is restricted to noncommercial entities. The provision of the Communications Act authorizing the use of auctions for selection among competing broadcast applicants specifically excludes noncommercial educational applicants. 47 U.S.C. § 309 (j)(1). The underlying purpose of this exclusion applies to other noncommercial entities as well. By definition, noncommercial applicants will be operating low power FM stations on a not-for-profit basis. Unlike commercial operators, noncommercial broadcasters cannot recover the transaction costs of acquiring low power FM licenses through the sale of commercial advertising or for-profit operations. Noncommercial licensees do not profit from use of the nation's airways.

Further, the Commission's use of competitive bidding must be consistent with the Commission's obligations in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations and other means in order to avoid mutual exclusivity in application and licensing proceedings. 47 U.S.C. 309 (j)(6)(E). Low power FM authorizations should be licensed either upon a first-come, first served basis, or on the basis of filing windows of very short duration, with a mandatory period following the cut-off date for applicants to resolve mutual exclusivity by either settlement, frequency coordination or engineering solutions.

KTA agrees with the Commission that there should be no local residency requirement. Such a mandate would frustrate the ability of qualified PSEs to provide services. Further, there does not appear to be any demonstrated nexus between local ownership and public service.

KTA supports the Commission's proposal to prohibit any entity with an attributable interest in a full power station from having any ownership interest in a low power or microradio station in any market. (*Low Power Radio NPRM* at ¶57). Noncommercial entities should have the opportunity to broadcast to citizens without having to compete with well-funded commercial operators.

IV. The Commission Should Adopt Technical Standards That Will Permit Public Entities to Use Low Power and Microradio Services to Fulfill Public Safety Functions.

In the NPRM, the Commission seeks input on the appropriate levels of power and antenna height for this service. (*Low Power Radio NPRM* at ¶ 30) It is felt by the KTA Communications Department that, strictly in the KTA's instance, the antenna height currently allowed under Part 90 is sufficient to meet KTA objectives for a TIS system. This may not be the situation with the other, less favorable topography of other Commentaries to this NPRM, where antenna height may be more of a factor in establishing the desired radio transmission pattern. Hence, other than to comment on the acceptability of the existing antenna height for KTA, KTA relinquishes this portion of the Comment to other entities.

Concerning power levels, KTA feels that an effective radiated power ("ERP") of one hundred watts is sufficient for KTA's purposes. As in the previous paragraph, there may be other Commentaries to this NPRM who have stronger opinions about the subject of ERP than KTA. Hence, other than to comment on the acceptability of the proposed one hundred watt ERP limit for KTA's purposes, KTA relinquishes this portion of the Comment to other entities.

KTA currently operates a number of contiguous AM stations in simulcast, using a common reference for carrier frequency synchronization and single source program audio origination. Such stations are identified with more than one call sign. It is absolutely imperative that the rules for this proposed service permit such operation. Simulcast enables efficient delivery of vital traffic information in a regional corridor without confusing frequency changes, complicated signage, or interference between adjacent stations.

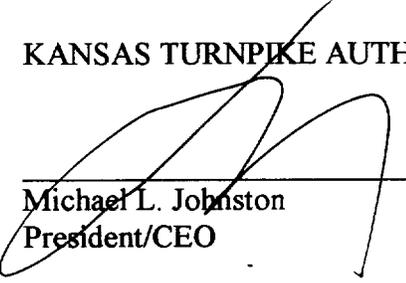
V. Conclusion

Low power FM service will greatly benefit the public. By restricting the eligibility to noncommercial entities, the Commission can ensure that the service provides needed information to the public without threatening the integrity of the

commercial aural broadcast service. Even if the Commission does not decide to limit the service to noncommercial and public service entities, the Commission should consider reserving a portion of the low power FM service to noncommercial, public service entities, for which there is precedent in past Commission policies reserving portions of the broadcast spectrum. Finally, the Commission should not impose undue restrictions that would limit the ability of public service entities to offer the benefits of low power FM service in a larger geographic area than one community.

Respectfully submitted,

KANSAS TURNPIKE AUTHORITY



Michael L. Johnston
President/CEO