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Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

CREATION OF A LOW POWER)
RADIO SERVICE)

MM Docket No. 99-25

RM-9208

RM-9242

To: The Commission

PETITION FOR RECONSIDERATION

The New York State Thruway Authority ("NYSTA" or the "Thruway"), pursuant to Section 405(a) of the Communications Act of 1934, as amended (the "Act"),¹ and 1.429 of the Commission's Rules², hereby requests that the Commission reconsider in part its Report and Order on the Creation of Low Power Radio Service.³ The Thruway commends the Commission for not only adopting rules to permit such a service but also for extending licensee eligibility to public service and safety entities such as the Thruway. However, the Low Power FM Order fails to address properly certain practical solutions to some of the concerns articulated about this service, such as permitting the use of directionalized antennas to minimize interference to full-power radio stations. In addition, the Low Power FM Order fails to take into account the practical need of larger, public service entities such as the NYSTA to operate a significant number of stations to dispense public safety information over the large geographic areas within their jurisdictions. Accordingly, for the

¹ 47 U.S.C. § 405(a).

² 47 C.F.R. § 1.429(a).

³ In the Matter of Creation of Low Power Radio Service (Report and Order in MM Docket No. 99-25), 15 FCC Rcd ____ (FCC 00-19, released January 27, 2000), 65 Fed. Reg. 7616 (Feb. 15, 2000) (hereinafter "Low Power FM Order").

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reasons respectfully set forth below, the Thruway requests that the Commission reconsider in part certain aspects of the Low Power FM Order.

The Commission's Decision Not To Allow Directional Antenna Patterns Is Inconsistent with The Commission's Statutory Directive To Make The Most Efficient Use Of The Spectrum

In the Low Power FM Order, the Commission concluded that it will not permit the use of directionalized antennas by low power FM licensees. Low Power FM Order, ¶ 108. This is inconsistent with the Commission's statutory responsibility to make the most efficient use of the radio frequency in its distribution of licenses and power for radio stations. 47 U.S.C. § 307(b). Moreover, the decision ignores the practical effect of properly designed directionalized facilities, which can minimize interference that might be caused to existing full-power stations, as well as protect LPFM stations from received interference. The Commission should reverse the prohibition on the use of directional antennas in Section 73.816 of the Rules, as adopted in the Low Power FM Order.⁴

In its Comments in this proceeding, NYSTA noted that it intended to use 100-watt low power FM facilities to replace its existing Traveler's Information Service ("TIS") facilities, which operate on the AM band.⁵ The low power FM antennas would be directionalized to focus coverage

⁴ 47 C.F.R. § 73.816. In addition, other rules would need to be conformed to permit use of directional antennas.

⁵ NYSTA noted the difficulties that it has encountered in using the AM band for its TIS facilities: "As part of its operations NYSTA utilizes numerous Traveler's Information Service ("TIS") 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. NYSTA experiences interference throughout its TIS system. During the daytime hours, the interference is particularly strong in the New York City Metro area where atmospheric conditions and received interference from commercial AM radio stations and other TIS facilities significantly reduce, or in some instances eliminate, the operational effectiveness of NYSTA's TIS system. During the nighttime hours, co-channel interference from overpowered AM broadcast stations produce so much interference that at times they knock the Authority's TIS stations off the air; in the Syracuse area the problem is caused by an overpowered Canadian radio station, and in the New York City metro area an overpowered Caribbean station is the source of interference." (Comments, p. 2).

along the Thruway's right-of-way, thereby minimizing the stations' coverage contours and potential for interference, while still allowing the Thruway to ensure that its public safety information reaches the motorists using the roadway. (Comments, p. 3).⁶ Other highway authorities would be expected to use LPFM stations in a similar manner because their stated interest in the LPFM service is replacement of existing TIS facilities operating on the AM band.⁷

The Commission has long recognized that efficient use of the spectrum is one of its paramount statutory obligations.⁸ Indeed, the Commission recognized this statutory mandate in its Notice of Proposed Rulemaking in this proceeding: "Ensuring the effective and efficient use of the spectrum is one of the fundamental responsibilities of the Commission."⁹ As the Commission has recently noted:

Spectrum is a valuable and finite public resource that must be allocated and assigned in a manner that will provide the greatest possible benefit to the American public. At the same time, it is important to encourage the development and deployment of new, more efficient technologies that will increase the amount of information that can be transmitted in a given amount of bandwidth."¹⁰

Given the importance placed by Congress in directing the most efficient use of the spectrum and the Commission's acknowledgement of this statutory directive, it does not appear that the Commission's articulated reason in the Low Power FM Order for forbidding directionalized

⁶ See also Exhibit A to the Thruway's Comments in this proceeding, which contains an engineering design and diagram of a potential LPFM station for the Thruway employing a directional antenna pattern.

⁷ See Comments of the Port Authority of New York and New Jersey; Comments of Texas Department of Transportation; Ex Parte Comments of Kansas Turnpike Authority.

⁸ In the Matter of Rulemaking To Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency and, To Reallocate the 29.5-30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services Petitions for Reconsideration of the Denial of Applications for Waiver of the Commission's Common Carrier Point-to-Point Microwave Radio Service, Suite 12 Group Petition for Pioneer Preference (Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking), 12 FCC Rcd 12545 at ¶176 (1997).

⁹ In the Matter of Creation of a Low Power Radio Service (Notice of Proposed Rulemaking), 14 FCC Rcd 2471, _____ at ¶ 21 (1999).

antennas--simplifying application requirements--can withstand scrutiny. Although the Commission is employing minimum distance separation methodology, use of directionalized antennas to ensure the integrity of such minimum separations is not inconsistent with such a methodology. Moreover, directionalized facilities are subject to strict antenna installation and pattern requirements,¹¹ careful engineering of facilities will be necessary for all low power FM stations, directional or not, in order to prevent harmful interference. Directional antennas should not be viewed as a significant impediment to potential low power FM broadcasters.

Permitting the use of directionalized antennas strengthens the Commission's contention that in adopting a low power FM service, it has not threatened the integrity of its existing radio broadcasting spectrum allocations. Simultaneously, the use of such antennas can increase the amount of spectrum available for LPFM stations. Accordingly, the Commission should reconsider the Low Power FM Order to authorize use of directional antennas for LPFM stations.

The Commission Should Eliminate National Restrictions On Ownership Of Multiple Low Power FM Facilities.

In the Low Power FM Order, the Commission concluded that LPFM licensees will be prohibited from owning more than 10 LPFM stations nationally. NYSTA requests that the Commission eliminate this national cap on LPFM stations ownership for government, public safety and transportation entity like NYSTA. The special needs of such entities to disseminate public safety and emergency information over a geographically large area merits an exception to the 10-station limitations.

¹⁰ Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millenium (Policy Statement), 14 FCC Rcd ____ (FCC 99-354, released. Nov. 22, 1999, at p. 7).

¹¹ 47 C.F.R. § 73.316.

As NYSTA noted in its Comments, a restriction on national LPFM station ownership is inconsistent with the Telecommunications Act of 1996,¹² wherein Congress eliminated national ownership restrictions altogether. The language in the statute is plain: “The Commission shall modify section 73.3555 of its regulations ... by eliminating any provisions limiting the number of AM or FM broadcast stations which may be owned nor controlled by one entity nationally.”¹³ Congress did not distinguish between commercial and noncommercial stations.¹⁴ Nor does Section 73.3555 of the Commission’s Rules make any such distinction.¹⁵ Additionally, it is significant that there is no restriction whatsoever on national ownership of noncommercial educational radio facilities.

NYSTA supports the Commission’s limitation on for limited LPFM license eligibility to noncommercial entities. This policy decision eliminates concerns about competition that in the commercial sphere. In a noncommercial context, there are no “antitrust” or market share considerations necessitating a national ownership cap. Indeed, in a noncommercial context there would be no economic incentive for licensees to acquire too many stations because of their inability to support stations through the sale of advertising. So, for this reason, too, there is no need to have a national limitation on the ownership of LPFM facilities.

This limitation fails to address the needs of certain public service and government entities like the Thruway which serve the public over a large, geographically dispersed area. For example, the Thruway is a 641-mile superhighway crossing New York State, the longest toll superhighway system in the United States. The Kansas Turnpike Authority, another highway authority supporting

¹² Pub. L. No. 104-104, 110 Stat. 56 § 202.

¹³ Id.

¹⁴ See also Conference Report on Telecommunications Act of 1996, Report No. 104-230, at 161.

¹⁵ 47 C.F.R. § 73.3555(a).

the adoption of the LPFM service, is a 236-mile long superhighway system (Kansas Turnpike Ex Parte Comments, p. 2). Although NYSTA has no plans to cover the entire Thruway with LPFM stations, NYSTA does want to convert its TIS facilities in several, geographically dispersed clusters, including Buffalo, Syracuse, Albany and, hopefully, metropolitan New York City. A limitation of 10 stations would render it impossible to substitute all its existing AM band TIS facilities with new, higher quality LPFM stations.

The Commission Should Waive The 2-Year Limit On Holding Multiple LPFM Station Licenses

NYSTA requests that the Commission also reconsider its decision to place a 2-year moratorium on acquisition of more than one LPFM license and the subsequent phase-in of additional LPFM stations. (Low Power FM Order at ¶39). At a minimum this restriction should be waived for government, public safety and transportation entities. Simply put, this phase-in is a practical constraint that might eliminate any benefit that public safety entities, especially road and transportation agencies like the Thruway, might expect to obtain from conversion of their existing TIS facilities from the AM band to the FM band.

The Commission contends that its staged multiple ownership rule will permit “efficiencies that can be achieved by multiple ownership...” Low Power FM Order at ¶ 39. In fact, this will actually prevent public safety and transportation entities like NYSTA from achieving such efficiencies in disseminating safety and emergency information and might preclude altogether its being able to move from the AM band to the LPFM frequencies because of the inefficiencies that this might cause.

Government, public safety and transportation agencies have separate and distinct needs from the other local organizations that might seek to obtain LPFM licenses. The Commission has already in one sense recognized this distinction by concluding that “local” for public safety radio service providers like NYSTA is the entire “area over which it has jurisdiction.” Low Power FM Order at ¶ 33. This local area for many such entities is quite large. NYSTA’s “local” area is the right-of-way along 641 miles of the Thruway system. The “audience” in the local community that NYSTA is targeting is comprised of the motorists traveling along that highway system. The public safety information that NYSTA seeks to disseminate is dispersed across a distance much greater than the 7-mile diameter of the coverage area of the typical LPFM station. This need of NYSTA and similarly situated entities requires that the Commission approach this issue of both national ownership and the “phase-in” of multiple ownership with greater flexibility for entities like the Thruway.

The Commission has demonstrated flexibility in addressing the needs of local chapters of national organizations by providing a “safe harbor” for local community-based chapters. Low Power FM Order at ¶¶ 40, 50. This results from the FCC’s recognition of the special needs of local organizations, including their local purposes (such as their distinct, local message) and membership, which otherwise would be penalized by an overly rigid attribution of national organizations.

Similarly, the Commission must approach with flexibility the national caps and phase-in of multiple ownership for government, transportation and public safety entities to address their special needs. The Commission must recognize the special mission of public safety and transportation entities, which requires them to disseminate of emergency and public safety information over a larger area than other kinds of local organizations which will typically seek LPFM authorizations. To do otherwise and retain the phased-in ownership restrictions might preclude deployment of TIS

facilities on the FM band altogether. The practical aspects of the problem caused by the phase-in of multiple ownership can be seen in how the Thruway delivers information simultaneously to motorists and how that would be negatively affected by the phase-in of multiple station ownership.

NYSTA's engineering staff has developed a precision synchronous oscillator system which has allowed it to broadcast emergency and other traveler advisories on a "simulcast" basis throughout each vision's (i.e., Buffalo, Syracuse, Albany and metro New York City) multiple AM station TIS system. If NYSTA can only operate one LPFM station, this synchronization will be broken and the Thruway will be forced to operate within the same Division stations on different bands.

Therefore, from the perspective of the Thruway motorist trying to obtain TIS highway safety and emergency information, it would be very disruptive to have to switch from the AM band to the FM band in order to be able to receive such information on a continuous basis. Elimination of the phase-in on multiple ownership of stations would allow the Thruway to convert entire divisions of the TIS system simultaneously from the AM band to the FM band. Accordingly, the Commission should reconsider the phased-in approach to multiple ownership of LPFM stations.

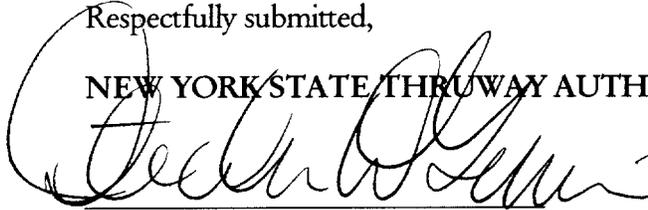
CONCLUSION

The Commission's decision to adopt a Low Power FM service is to be commended. However, certain of the restrictions imposed by the Low Power FM Order will make it a less practical, or even impractical, alternative to existing TIS facilities on the AM band for highway authorities like NYSTA. Accordingly, the Commission should reconsider the Low Power FM Order consistent with the Thruway's suggested modifications above so that the public interest benefits of LPFM stations can be extended to the motoring public.

WHEREFORE, in light of the foregoing, NYSTA respectfully urges that the Commission reconsider portions of its Low Power FM Order in a manner consistent with that requested by NYSTA.

Respectfully submitted,

NEW YORK STATE THRUWAY AUTHORITY

A handwritten signature in black ink, appearing to read "Stephen Díaz Gavin", written over a horizontal line.

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Dated: March 17, 2000