

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Creation of a)
Low Power Radio Service)

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MM Docket No. 99-25
RM-9208
RM-9242

To: The Commission

REPLY OF NATIONAL PUBLIC RADIO

Introduction

National Public Radio, Inc. ("NPR") hereby submits its Reply to the Opposition¹ filed in response to NPR's Petition for Reconsideration² of the Report and Order.³

In its Petition For Reconsideration, NPR demonstrated that fundamental flaws in the Commission's decision fatally undermined the Commission's twin conclusions that interference resulting from LPFM stations will be insignificant and that the benefits of the new service outweigh any interference that does result. NPR therefore proposed several reasonable revisions to the Report and Order to assure what should be co-equal objectives: the initiation of new low power service and the protection of existing services.

¹ Opposition of United Church of Christ, Office of Communication, Inc; National Council of Churches of Christ in the USA, Communication Commission; General Board of Global Ministries of the United Methodist Church; Department for Communication of the Evangelical Lutheran Church in America; Civil Rights Forum; Libraries for the Future; and Consumers Union, MM Docket No. 99-25 (filed Apr. 24, 2000) [hereinafter "MAP Opposition"].

² Petition for Reconsideration of National Public Radio, Inc., MM Docket No. 99-25 (filed Mar. 16, 2000) [hereinafter "NPR Petition"].

³ Creation of Low Power Radio Service, Report and Order, MM Docket 99-25, RM-9208, RM-9242, 65 Fed. Reg. 7616 (Feb. 15, 2000) [hereinafter "Report and Order"].

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I. Significantly, the MAP Opposition Supports Critical Elements Of The NPR Petition

In several significant respects, the MAP Opposition expressly supports the relief NPR has sought. Thus, the MAP Opposition affirmatively supports "a complaint process that quickly and efficiently settle[s] any interference disputes."⁴ NPR has advocated such a process since its first public comments on the Report and Order.⁵ However belated, we welcome MAP's endorsement.

In addition, the MAP Opposition concedes that an LPFM station, although an origination service, may not serve the public as well as a translator station.⁶ The conclusion it then draws -- "the Commission may well want to consider a different balancing between low power and translator signals"⁷ -- fails to address the practical issue of comparing low power and translator services in a given instance. Nonetheless, the MAP Opposition supports NPR's position that the categorical preference accorded LPFM stations over translator service is untenable.

Finally, the MAP Opposition joins NPR in seeking additional protections for radio reading services.⁸ Thus, it states, it "is prepared to accept fewer low power radio stations in exchange for protecting these services."⁹ As in the case of translator service, we appreciate this

⁴ MAP Opposition at 5.

⁵ See Telecommunications Trade & Consumer Protection Hearing: A Review of the FCC's Spectrum Management Responsibilities in addition to H.R. 3439, the Radio Broadcasting Preservation Act, 106th Cong., 2d Sess. (Feb. 17, 2000) (statement of Kevin Klose, President and CEO of National Public Radio).

⁶ MAP Opposition at 5.

⁷ Id. at 5.

⁸ Id. at 6.

⁹ Id.

endorsement of radio reading services and the need to protect them. We believe, however, that the time to fix the flaws in the Report and Order is now, before the new service is inaugurated, not after LPFM stations are established and disrupting translator and radio reading services.

II. MAP's Opposition Otherwise Is Without Foundation

While supporting critical elements of the NPR Petition, the MAP Opposition otherwise attempts a three-prong strategy to blunt the force of NPR's challenge to the Report and Order. Its principal tack is to disparage NPR and its motives and intentions in seeking to protect existing public telecommunications services, including radio reading services. It then seeks, ineffectually, to rebut some of the bases for the Petition, while simply ignoring others.

A. Reconsideration Is Required To Correct The Flaws In The Report and Order And The Underlying Administrative Record

In seeking to resuscitate the Commission's decision to eliminate the 3rd adjacency protection, the MAP Opposition contends that the Commission need not have relied on its own technical analysis because of the testing conducted by the Broadcast Signal Labs ("BSL") and the analysis of MAP's consultant. As we demonstrated previously, however, the BSL study was fatally flawed by methodological and other significant defects.¹⁰ Likewise, we established in our Opposition to the MAP Petition -- to the extent it was not otherwise self-evident -- that the MAP consultant's analysis was neither balanced nor a technical analysis.¹¹

The MAP Opposition next seeks to divert attention from the Commission's failure to test Category I receivers -- small, inexpensive receivers with internal antennas -- on the purported

¹⁰ Opposition to Petitions for Reconsideration, MM Docket No. 99-25, at 4 n.9 (filed Apr. 24, 2000) [hereinafter "NPR Opposition"]; Reply Comments of National Public Radio, MM Docket No. 99-25, at 8-10 (filed Sept. 17, 1999) [hereinafter "NPR Reply Comments"].

¹¹ NPR Opposition at 4 n.9.

grounds that "NPR's study also excluded those radios."¹² In fact, the NPR study included table and other inexpensive radios.¹³ This basic miscomprehension of the NPR test report does not, of course, alter the fact that it is the Commission, as the expert agency, that is responsible for regulating radio broadcasting in the public interest.¹⁴

The MAP Opposition also seeks to divert attention from the admitted inadequacies of the Commission's self-styled "interim" study by asserting the Commission might have relied on the studies conducted by others -- remarkably, including that of the National Association of Broadcasters ("NAB"), which found a significant likelihood of interference harm -- in lieu of its own. As we demonstrated in our Reply Comments, however, significant variations in the conditions under which the various tests were conducted were only reconcilable through a further round of testing under a common set of conditions.¹⁵

Finally, in attempting to address the Commission's failure to establish any benchmark of reception quality against which to measure harmful interference, the MAP Opposition posits the astounding thesis that any amount of interference is acceptable so long as consumer electronics manufacturers continue to manufacture and consumers purchase radio receivers.¹⁶ Even the Commission has not gone so far as to suggest that the marketplace should determine the location

¹² MAP Opposition at 2 (emphasis omitted).

¹³ See Comments of National Public Radio, MM Docket No. 99-25, Attachment C, Test A at 3 (filed Aug. 2, 1999) (Laboratory Calibration and Receiver Characterization).

¹⁴ 47 U.S.C. § 303.

¹⁵ NPR Reply Comments at 3, 12.

¹⁶ MAP Opposition at 2-3.

and number of radio services. Frankly, given MAP's advocacy in favor of strict ownership limits and other forms of direct governmental regulation,¹⁷ we are surprised that it now advocates reliance on the free flow of market forces.

Consistency aside, the flaw in the MAP marketplace theory of spectrum allocation is illustrated by the FCC's efforts to authorize ever increasing numbers of AM band stations. No one, other than perhaps MAP and its consultant, can seriously dispute the material difference in technical quality between the AM and FM bands. Indeed, the Report and Order expressly concluded that "significant interference and degraded reception" precluded the licensing of any AM band LPFM stations.¹⁸ Rather than relying on market forces, it is incumbent on the Commission to maintain the integrity of the spectrum and avoid the "AM-ization" of the FM band.

B. The Harm To Reserved Band Stations Remains

In seeking reconsideration of the Report and Order, NPR demonstrated the particular likelihood of harm to noncommercial radio stations operating on the reserved portion of the FM band. The MAP Opposition apparently does not seriously dispute this showing because it offers only a perfunctory challenge to two of the five grounds set forth in NPR's Petition.

First, while recognizing that the reserved FM-band spectrum is more tightly "packed," the MAP Opposition argues that the congestion will result in fewer opportunities to site low power FM stations.¹⁹ True as that may be, it assumes, incorrectly, that low power stations can be sited in the vicinity of existing broadcast stations, including on 3rd adjacent channels, without causing

¹⁷ See id. at 7-8

¹⁸ See Report and Order at ¶ 56; Creation of Low Power Radio Service, Notice of Proposed Rulemaking, MM Docket 99-25, 14 FCC Rcd. 2471, at ¶¶ 15, 17 (rel. Feb. 3, 1999).

¹⁹ MAP Opposition at 3-4.

potentially significant interference. In reality, the more tightly "packed" reserved FM spectrum means there are more full power stations likely to suffer interference from low power stations.

Second, the MAP Opposition contends that the requirement that reserved FM-band stations protect adjacent television channel 6 stations means there is less room for LPFM stations in channel 6 markets.²⁰ While this too may be true, it does not address the vulnerability of reserved FM-band stations in channel 6 markets. Such stations often employ directional antennas or operate with reduced facilities to avoid interference to the adjacent television channel 6 station. As a result, they are less able to overcome the presence of interfering signals.

Public radio stations are also particularly affected by the prospect of 3rd adjacent low power stations for reasons not addressed by MAP. Thus, the signals of public radio stations are "lightly processed" to preserve the natural dynamic range of the program material, and lightly processed signals are especially vulnerable to interference. Statewide networks, common in public radio, are typically configured to achieved maximum signal coverage to the maximum population based on the actual receipt of a quality signal rather than predicted signal coverage. Finally, the Report and Order expressly affords protection only to a full power station's 3.16 m/Vm (70 dBu) contour, which, in the case of a public radio station, may not even cover its community of license.

C. MAP's Opposition Does Not Alter The Need To Protect Translator Service

While the MAP Opposition recognizes that "[t]ranslators can be an important means of providing service to communities," it questions why the proposed low power stations should be secondary to translator stations.²¹ It further questions why the Commission's rules should take

²⁰ Id. at 4.

²¹ Id.

into account a decision by the Executive Branch to underwrite the cost of establishing translator service to extend service to rural and other underserved areas.²² Finally, it questions why the Commission's rules should protect a translator's ability to receive a quality signal even though the Report and Order protects the output signals of existing translator stations.²³

It is clear that MAP does not understand or fully accept the important role of translator stations in providing otherwise unavailable news, information, and cultural programming to rural and other sparsely populated areas. MAP apparently also misunderstands the relief NPR sought.

The NPR Petition sought to ensure that translator service is afforded greater protection than the Report and Order provides. Such service is vulnerable, notwithstanding the grandfathering of existing translator stations, because translators are frequently displaced by new or newly modified full power stations. In the case of a displaced translator, we proposed a reasonable process to assure that existing translator service may be preserved, notwithstanding the intervening establishment of low power stations.

NPR also urged the Commission to afford greater respect to the will of the Executive and Legislative Branches, represented in determinations by the National Telecommunications Information Administration ("NTIA") to provide Public Telecommunications Facilities Program ("PTFP") grants to subsidize the construction of new translator stations. The suggestion that NTIA is incapable of assessing a given community's need for translator service betrays a bias in favor of low power service regardless of the actual interests of the public.

Finally, the assertion that the Commission not accord explicit protection for translator

²² Id.

²³ See id.

input signals is indefensible. Having provided blanket protection for all existing translator stations, it would make no sense for the Commission to permit the disruption of a "grandfathered" translator through interference to the translator's reception of a quality signal.

D. The Protection of Radio Reading Services Must Be Assured

In yet another attempt at diverting attention from the serious interference problems posed by the Report and Order, the MAP Opposition contends that NPR really has no interest in radio reading services.²⁴ While irrelevant to the merits, NPR did challenge the Commission's proposed LPFM rules during the comment period because of the harm to radio reading services they were likely to cause and because NPR's member stations are the principal means by which radio reading services are broadcast to the blind and print-impaired.²⁵ That NPR's laboratory testing did not include SCA receivers was simply a function of having to arrange the testing under the artificially constrained time frame set forth in the LPFM NPRM. Particularly given the Commission's failure to conduct any testing prior to the issuance of the proposed rules, the public interest would have been better served by an initial lengthy period for laboratory testing instead of relatively short comment periods that the Commission then had to extend.

We are nonetheless delighted to learn of MAP's willingness to accept fewer low power stations than the Report and Order authorizes in the interest of protecting radio reading services.²⁶

²⁴ Id. at 5.

²⁵ See NPR Reply Comments at 13.

²⁶ It is not entirely clear how MAP reconciles this interest with its petition seeking the categorical elimination of the 2nd adjacent interference protection. See Petition for Reconsideration of United Church of Christ, Office of Communication, Inc; National Council of Churches of Christ in the USA, Communication Commission; General Board of Global Ministries of the United Methodist Church; Department for Communication of the Evangelical

NPR is proud of its Member stations and the important public service they have long provided to the blind and print-handicapped. Radio reading services are an essential source of basic news and information upon which millions depend, and they must be protected.

E. The Report and Order Jeopardizes Digital Audio Broadcasting ("DAB")

The MAP Opposition asserts that LPFM poses no threat to the transition to digital radio because the entities responsible for "[d]eveloping DAB" allegedly are satisfied with the Report and Order.²⁷ As an initial matter, it is presumptuous of MAP to speak for Lucent Digital Radio ("Lucent") and USA Digital Radio ("USADR") regarding the Report and Order. As we have previously demonstrated, moreover, the comments of those entities demonstrated a far greater concern with the relaxation of 3rd adjacency protections than MAP is willing to admit.²⁸ Given MAP's efforts to eliminate the 2nd adjacency protection, its deference to what it claims are the views of Lucent and USADR is also open to question.²⁹

Beyond the record in this proceeding, the Commission has clearly recognized that In-band, On-channel ("IBOC") technology is not synonymous with DAB.³⁰ Indeed, neither IBOC

Lutheran Church in America; Civil Rights Forum; Libraries for the Future; and Consumers Union, MM Docket No. 99-25 (filed Mar. 16, 2000).

²⁷ Id.

²⁸ See Comments of USA Digital Radio, MM Docket No. 99-25, at 4-7 (filed Aug. 2, 1999); Reply Comments of USA Digital Radio, MM Docket No. 99-25, at 2 (filed Nov. 15, 1999); Comments of Lucent Technologies, Inc., MM Docket No. 99-25, at 10-11 (filed Aug. 2, 1999); Reply Comments of Lucent Technologies, Inc., MM Docket No. 99-25, at 6 (filed Nov. 16, 1999).

²⁹ See note ²⁶, supra.

³⁰ In the Matter of Digital Audio Broadcasting Systems And Their Impact On the Terrestrial Radio Broadcast Service, Notice of Proposed Rulemaking, MM Docket 99-325, at ¶ 19 (rel. Nov. 1, 1999) ("[T]his *Notice* should not be construed as the start of an IBOC rulemaking.").

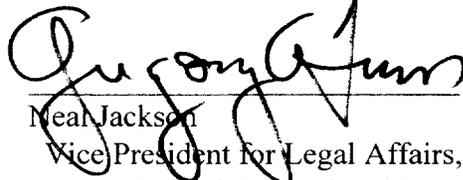
system has undergone independent and field tests to date and neither has demonstrated on-air performance in a manner that preserves all subcarriers. If IBOC is not demonstrated to offer an appropriate DAB solution, the Commission can only pursue a new spectrum DAB approach, and that alternative will be significantly compromised by the presence of an entire new service of 100 watt and 10 watt stations. Thus, the Report and Order's potential adverse consequences for DAB are anything but frivolous concerns.³¹

Conclusion

The Commission should reconsider and revise its Report and Order in the manner set forth in the NPR Petition for Reconsideration.

Respectfully submitted,

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³¹ But see MAP Opposition at 7.

CERTIFICATE OF SERVICE

I, Gregory A. Lewis, hereby certify that a copy of the foregoing Reply of National Public Radio, Inc. to Opposition to the NPR Petition for Reconsideration, was sent this 9th day of May, 2000, by first class mail, postage prepaid to the following:

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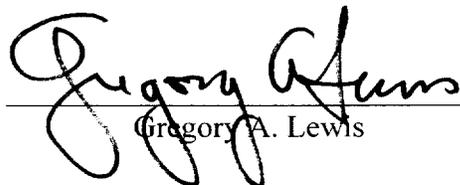
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