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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

RM-9242

Petition for Rulemaking Number  
9242 filed by Roger Skinner to  
Amend Part 73 of the Rules and  
establish three classes of Low  
Power FM Broadcast Stations

COMMENTS DUE BY: April 27, 1998

COMMENTS ON THE NOTICE OF PROPOSED RULE MAKING

COMMENTS OF:

WMTA AM 1380, Inc.  
ONE WMTA DRIVE  
CENTRAL CITY, KY 42330-0973  
502-754-1380

AND

Bryan Smeathers, its owner

Submitted to the FCC  
April 24, 1998

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INTRODUCTION

Petitioner Roger Skinner, himself a well qualified and knowledgeable individual in the field of broadcast engineering has brought out in his petition many points on which I agree with one hundred percent, particularly in regards to the effects deregulation has had since the enactment of the Telecom Act of 1996 and the rapid state of consolidation in the broadcast industry with the removal of the ownership limits which had been in place at least sixty-four (64) years prior to implimentation of the Telecom Act of 1996, and I might add, served this country well.

I like Petitioner Skinner are concerned with the increasing problem we are having with diversity in radio as well as participation of minorities in radio, and more specifically minorities in ownership of radio properties. Although this problem is not new to the industry, it has been allowed to accelarate at a more rapid pace as a result of the deregulation provided by the Telecom act of 1996 which has allowed fewer than twenty-five (25) companies initiate various forms of "creative" financing in the form of bond issues, stock issues, mergers, debt assumption, etc., and to use the proceeds of this debt to go throughout the United States on a buying spree; buying as many radio stations has they have money to buy. As the FCC's own Executive summary for 1997 indicates, there are 2.5% more radio stations two years after enactment of the Telecom Act of 1996 WITH 11.5% FEWER OWNERS. This one finding

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which the FCC already is using is proof sufficient to see why there is a growing problem with diversity in radio.

If in the first two years of the Telecom Act of 1996 the number of stations has increased and the number of owners decreased by 11.5%, what will the numbers reflect in the two years, four years, five years? How can fewer owners in radio be promoting diversity?

1. AMENDMENT TO THE PETITION FILED BY SKINNER PROPOSING PIRATE AMNESTY:

I oppose this and the FCC should oppose any method of amnesty for illegal pirate broadcasters. Pirate broadcasters have violated the laws of the land which thousands of other individuals and companies have lived by for years in providing quality broadcast services throughout the nation. The petitioner's amendment to his petition proposing amnesty for pirates should be a heads up for the FCC as to the caliber of people who will be the potential benefactors of the creation of low power FM service. Similar to inviting the bank robber back to the bank to work as a teller. Is this the type of diversity that the petitioner is proposing? How could amnesty for the pirates serve the public interest? How could this be fair to the thousands of existing broadcasters who have made large investments in time, money, training and personnel to comply with the FCC rules and regulations and other laws of the land? THERE SHOULD NEVER BE AMNESTY FOR ANY ILLEGAL BROADCASTERS. IN FACT THE FCC SHOULD AT LEAST MAKE AN EFFORT TO IDENTIFY ALL KNOWN PIRATES IN EXISTANCE AT THIS TIME AND CREATE A DATA

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BASE OF ALL PIRATE BROADCASTERS TO BE CROSS-CHECKED WITH ALL APPLICATIONS FOR NEW STATIONS, SALES AND TRANSFERS, APPLICATIONS FOR CONSTRUCTION PERMITS, ETC., Knowing that the FCC doesn't have enough manpower to close each and every pirate station, the creation of a data base of known pirates would serve the FCC in identifying the pirates and ensuring that the pirates are forever prohibited from receiving a FCC license; the same as any felon, drug abuser, etc. In view of the fact that the FCC doesn't have sufficient manpower to close the pirates, the FCC could consult with the Department of Justice and seek the assistance of the resources of the DOJ in shutting down the pirates in mass. The suggestion of amnesty for pirates combined with this petition should be grounds enough to dismiss this petition.

2. NEED FOR DIVERSITY IN RADIO:

As stated in the introduction, the petition adequately identifies the need for more diversity in radio, however, his proposal for low power FM is not the solution when we have thousands of AM radio stations in the same small communities the petitioner cites as examples for his low power FM service, who if given the opportunity use FM translators as fill-in service they could provide fulltime coverage to their communities 24 hours a day. SUCH A PETITION FOR RULE MAKING WAS SUBMITTED TO THE FCC AUGUST 13, 1997, SOME EIGHT MONTHS AHEAD OF THE SKINNER PETITION (RM 9242) BY THE AMERICAN COMMUNITY BROADCASTERS ASSOCIATION, INC., OF WHICH I AM THE PRESIDENT., ALTHOUGH THE FCC has still failed to

release that petition for public comment when this would have been the appropriate time since it does relate in some ways to RM 9242 to which I am commenting.

### 3. EFFECTS OF TELECOM ACT OF 1996:

The effects of the telecom Act during its first two years have been nothing less than amazing. We have witnessed a rapid movement toward consolidation, with fewer than twenty-five media conglomerates garnering the top 100 markets. In the next few years we will continue to see this trend continue down to the smallest of markets. As this trend continues so goes diversity in radio as according the FCC's own Executive Summary for 1997 indicates a rapid reduction in the number of owners while the number of stations actually increase. If the Skinner proposal is allowed and enacted and the creation of low power FM starts the FCC would in effect be creating two different classes of broadcasters- the rich and the poor. The poor being the low power FM broadcasters. This will also open the door even wider for the major media conglomerates to take over more and more of the remaining full service AM and FM stations in all markets as if the existing full-service stations are forced to compete with the new low power stations, their bottom lines may be substantially affected to the point it may no longer be profitable for them to operate. This would be especially true with small town AM radio stations, many of which go off the air at sundown while the low power FM continues to operate through the night. The RM 9245 will not create diversity, rather chaos

and confusion. If the FCC is truly concerned with radio diversity in ownership then they should reinstate ownership limits.

4. ADVERSE EFFECTS ON AM STATIONS:

If the FCC establishes a low power service such as proposed in RM 9242 the effects on existing daytime radio stations would be substantial and negative. How can the FCC justify creating a new low power FM service to compete with small town AM radio stations, most of which must go off the air at sundown or operate at a ridiculously low power level with a coverage area much less than that proposed in RM 9242 for the new low power FM's. This would not be fair to these broadcasters which have been struggling for the most part just to exist since the advent of Docket 80-90 proceedings which was also enacted to "promote radio diversity". AM radios are declining in number more each year as the FCC as the FCC is aware. Enactment of low power FM will ensure the AM's signoff permanently. Many AM broadcasters are minority broadcasters and they will be severely impacted by the creation of low power FM.

5. RM 9242 OWNERSHIP REQUIREMENTS CONSTITUTIONALITY QUESTIONABLE.

Petitioner Skinner, himself currently a owner/operator of at least one LPTV and at times more than one, has stated his distain with his LPTV station being displaced by DTV and has used that as his motivating facort in creating RM 9242. This has nothing at all to do with LPTV or the displacement of LPTV stations. Petitioner Skinner has stated his desire to be in radio and In encourage him

to enter radio as its is a great public service and encourage Mr. Skinner to use his resources from the sale of his LPTV stations to purchase an existing full service radio station rather than propose such nonsense as low power FM. The petitioner has proposed some ownership restrictions which appear to violate several aspects of the US Constitution by specifying where an owner may live, this is ridiculous. This also violates free trade and commerce laws, rules, statutes on the federal level as well as state levels. His proposal that a owner of a full service facility whose signal overlaps that of the LPFM would be eneligble also smacks as questionable in view of the fact this is totally contrary to what was intended by the Telecom Act of 1996. And the petitioner's proposal on the sale of a LPFM are in a word, UNAMERICAN. If someone was successful in obtaining a CP and subsequent license for a LPFM and after having made the necessary investment to construct and operate the LPFM how can they prevented from selling it at a profit as the petitioner wants to prevent? This is contrary to the American way of live and the free enterprise system. If such restrictions are placed on who is eligible for LPFM and where they must live and when, how and for how much they can sale their station then this ruling will certainly be before the Courts.

Petitioner Skinner's proposals for radio ownership and more specifically LPFM is at best unsound and appears to be of the position that anyone wanting to own and operate a radio station should be allowed to do so which is his chief justification for submitting RM 9242.

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petitioner's theory is flawed and incorrect. First, radio spectrum is limited and is not an infinite product for everyone to use. Second, the broadcasting industry is just that an industry which is regulated by the Federal government just as many other industries in this country. The petitioner is aware of this, having been a licensee of several LPTV stations in Florida. The petitioner, Mr. Skinner; should know that the spectrum is a limited item and simply because the federal government regulates this very limited resource to prevent chaos on the airwaves, this does not make ownership of a broadcast station a right for every citizen in the nation. Sure it takes money to enter and stay in this industry and just because someone has the desire to own a broadcast station but who has no money is no justification for considering, much less enacting the proposals contained in RM 9242. This is not a government subsidized industry, the FCC itself is not even operating with tax money from the citizens.

I agree that the vast consolidation in the radio is hampering diversity in the industry, and again state that the creation of a low power radio service is not the appropriate solution. The only solution is the re-establishment of ownership limits in radio. How that can be done now after the amount of stations which have been consolidated is unknown as the question of divestiture comes into play and certainly would be a matter for the Courts to sort out. Adding hundreds, perhaps thousands of LPFM stations is simply a temporary fix to a very major problem whose full impact has yet to be witnessed. The petitioner

state's the intend purpose of the ownership rules he proposes is to " assure that small businesses and individuals would have a fair chance of acquiring a LPFM". Why should companies or individuals no matter how "big" or "small" have preferential set of government regulations in this nation where free enterprise reins? RM 92-42 is more of a proposal for a socialist country and if allowed will have commerical radio sounding like a Citizens Band (CB) radio.

6. LIMIT OF ONE LPFM PER METROPOLITAN STATISTICAL AREA (MSA).

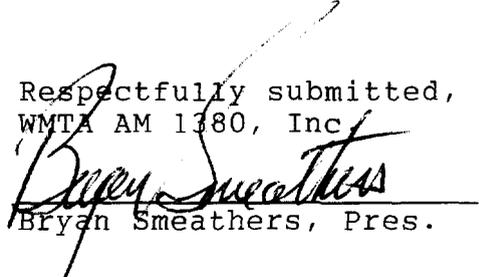
Now if I were a supporter of LPFM I would have to say that this proposal is totally ridiculous and in fact would prohibit the intended use of LPFM. The petitioner has greatly contradicted his entire pleading with the restriction one LPFM per MSA. The area in square miles covered by most MSA's is in the high hundreds to several thousand <sup>OF MILES</sup> and incorporate several cities with populations totalling in the millions with many of the small communities the petitioner has claimed need LPFM surrounding them. These larger cities in the MSA's are where most of the concentration of the larger FM and AM stations are situated. So how can there be one LPFM per MSA to meet the objective proposed in this RM 9242 ? And often you will find the jurisdictional boundaries of a MSA take in more than one state. The petitioner fails to specify how this problem could be addressed to the satisfaction of all involved. And once again the petitioner cites restrictions on one LPFM owner buying another LPFM owner.

This simply is not workable and probably against the Constitution of the United States and probably in violation of various state laws regarding commerce and free trade.

#### CONCLUSIONS

The FCC should deny the Petition 9242 without delay. RM 9242 will not serve the public interest. To the contrary, it will create confusion and chaos and clutter the radio dial to the point that eventually the FM band will sound similar to a CB radio. Furthermore, the LPFM's will naturally attempt to garner advertisers to support themselves and as the RM 9242 states those clients would most likely come from their local community which in effect is the very same community that most AM radio stations which have a long history of providing quality radio service but have been beaten with regular FM stations, rely upon for their financial bottom line. LPFM will have negative effect on existing AM stations which have been pleading for changes in the current rules for sometime now to no avail. As a legally licensed broadcast station owner I am truly amazed and astonished that the petitioner has amended his petition seeking amnesty for pirate broadcasters. This indicates to me exactly who RM 9242 was written for and who it is intended to benefit. This is wrong and the FCC should recognize this and dismiss RM 9242 and consider the entire proposal as moot.

Respectfully submitted,  
WMTA AM 1380, Inc

  
Bryan Smeathers, Pres.

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