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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
	)	
Petition for a Microstation Radio Broadcasting Service	)	RM-9208
	)	
Proposal for Creation of the Low Power FM (LPFM) Broadcast Service	)	RM-9242

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To: The Commission

COMMENTS OF KM COMMUNICATIONS, INC.

KM Communications, Inc. ("KM"), pursuant to Section 1.405(a) of the Commission's Rules, 47 C.F.R. § 1.405(a), respectfully submits these Comments in response to the petitions for rulemaking filed in the above-captioned proceedings.[1]

1. KM is the licensee of four low power television ("LPTV") stations, is the permittee or its principal has interests in the permittee (or anticipates holding interests in such permittees under settlements pending before the Commission) for several new full power commercial television and commercial radio stations, and has several more applications pending

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[1] See Petition for a Microstation Radio Broadcasting Service, RM-9208, filed July 7, 1997, by Nickolaus E. Leggett *etal.* (the "Leggett Petition"); Proposal for Creation of the Low Power FM (LPFM) Broadcast Service, RM-9242, Petition for Rulemaking, filed February 20, 1998, by TRA Communications Consultants, Inc. (the "TRA Petition"). Statements in support or opposition to the petitions may be filed on or before April 27, 1998. See Microstation Radio Broadcast Service, RM-9208, Order Extending Time, DA 98-437 (Policy and Rules Division, released March 5, 1998); Public Notice, Erratum Report No. 2262 (released March 12, 1998). Therefore, these comments are timely filed.

for additional new full power commercial television and commercial radio stations. KM, as a small, woman-owned and minority-owned corporation, has encountered -- and has had some success overcoming -- many of the obstacles new entrants face when entering the broadcasting industry. KM currently provides programming on its LPTV stations targeted toward ethnic and minority populations, including foreign language programming, as well as other alternative programming.

2. Based on these experiences, KM supports the petitioners' proposals for new low power (or "microbroadcasting") radio services, in many respects. However, KM is concerned that any rules ultimately adopted are crafted in a manner that does not preclude smaller, women-owned and minority-owned broadcasters that have recently entered the broadcast industry, such as KM, from being eligible for such new licenses. Indeed, entities such as KM may be in a better position to provide new, alternative broadcast services that serve the local community than entities with no broadcast experience at all.

3. KM agrees with petitioners that it is difficult for new entities to enter the broadcasting industry, particularly smaller, women-owned and/or minority-owned businesses, in the face of several recent statutory and regulatory changes. The consolidation occurring among larger broadcasters has made it difficult for new entrants to acquire existing stations, and have dimmed the economic prospects for entrants that seek to construct new stations. The approximately five year freeze on the processing of new radio and TV applications, in light of the Bechtel[2] decision; the 90 day settlement window in 1995 and more recent 6 month settlement window that ended February 1, 1998; and the expected auctions to resolve pending

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[2] Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993).

broadcast applications; have all combined to make the prospects bleak for new entrants seeking to develop new broadcast stations. By imposing a high premium just to acquire the construction permit necessary to get started, these changes have raised the market-entry barriers even for businesses, such as KM, that had sufficient resources to invest in pursuing new broadcast stations under the former regulatory process. As such, KM would welcome the opportunity that a new alternative low power radio service may present to further serve the ethnic and minority populations in its local communities.

4. KM particularly supports the proposal for a new low power FM radio service that would have primary status, dubbed an "LPFM-1" license, with a minimum power level of 50 watts up to a maximum power level of 3 kilowatts, at a maximum antenna height of 100 meters (or 328 feet).[3] Based on the potential losses that may occur to its LPTV station business during the digital television ("DTV") transition, KM would not be very interested in investing in a low power FM station with secondary status, and therefore will focus its comments on the proposed primary LPFM-1 service.[4] KM believes that a properly structured primary LPFM-1 service would serve the Commission's goals of localism and diversity of ownership, and would provide an alternative source of programming for local communities that are not well served by larger broadcasters offering programming to attract the broadest and most homogeneous market possible. KM also agrees with petitioners that an LPFM-1 service would provide an advertising outlet for small businesses (especially small businesses owned by women and minorities) that are

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[3] See TRA Petition at 10-11.

[4] KM also has no interest in a "special events" broadcasting service at this time, and therefore has no comments to offer on that proposal.

unable to afford advertising on existing stations or, more often now, consolidated groups of existing stations.

5. KM agrees that the rules for a new primary LPFM-1 service should be structured to exclude larger existing broadcasters and group owners, and be targeted toward ownership by persons in the local communities. First and foremost, KM believes that any person that holds any equity interest (voting or non-voting) or a position as an officer, director or manager (hereinafter, an "interest") in any existing full power primary broadcast station licensee in the market should not be eligible to hold any such interest in the proposed LPFM-1 licensee. KM would define "market" based on contour overlap between the existing full power station and the proposed LPFM-1 station, and would treat any future ownership rights or interests as if fully exercised. KM proposes to permit debt financing between such entities, but would not permit joint sales agreements, time brokerage agreements, local marketing or management agreements, or similar arrangements, between such entities in the same market.

6. KM would oppose any strict prohibition on ownership of other full power primary broadcast stations that are not in the same market (i.e., that do not have contour overlap) with a proposed LPFM-1 station. KM suggests that a more moderate restriction on ownership, such as a limit on the number of full power broadcast stations in which the proposed LPFM-1 licensee may have an interest, would be more appropriate. KM agrees that the ownership restrictions should apply only to interests in full power primary broadcast stations, and not to interests in secondary broadcast stations, such as LPTV stations, since secondary stations are subject to displacement by full power stations.[5]

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[5] See TRA Petition at 22.

7. In addition to restrictions on ownership of full power stations in the same market, KM supports limiting eligibility for a LPFM-1 license to entities that do not hold an interest in other mass media in the same market, including newspaper and cable television systems. Permitting ownership of LPFM-1 stations by persons with such other mass media interests in the market would defeat the goal of promoting a diversity of voices and opinions in the market.

8. KM agrees with petitioners that there should be some fixed limit on the total number of LPFM-1 stations in which a person may have an interest, but prefers the limit of five (5) stations total proposed by Leggett, as opposed to the limit of three (3) stations total proposed by TRA.[6] Accordingly, KM opposes the limit of one LPFM-1 station per Metropolitan Statistical Area ("MSA") proposed by TRA,[7] since in many larger metropolitan areas persons may only satisfy the proposed 50 mile residency requirement (discussed separately below) for one LPFM-1 station if there is a one-station-per-MSA restriction. KM believes that it would be inappropriate to use MSAs as a geographical limit for ownership restrictions, to the great variance in size among MSAs. KM believes that a contour overlap restriction between LPFM-1 stations, together with the proposed 50 mile residency requirement and a limit on the total number of LPFM-1 stations in which a person may hold an interest, should be adequate to prevent consolidation of ownership of LPFM-1 stations and still promote localism and diversity.

9. TRA proposes that all owners of an LPFM-1 station should be required to live within 50 miles of the proposed antenna site.[8] Although KM supports the concept of the

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[6] See Leggett Petition at 7; compare TRA Petition at 22.

[7] See TRA Petition at 22.

[8] See TRA Petition at 22.

proposed 50 mile rule, and recognizes the role such a restriction would play in promoting localism, KM is concerned that such a rule may be impractical if ownership by more than one person is necessary to support an LPFM-1 station in some communities.[9] As an alternative, KM suggests a requirement that a simple majority of the owners, rather than all of the owners, be required to live within 50 miles of the site. The Commission would also need to consider the effect if an owner moves beyond the 50 mile limit after acquiring the license; if the license is subject to return, a residency rule for a majority of the ownership may lessen the potential turnover and loss of service that may otherwise occur. Since KM supports the 50 mile residency requirement proposed by TRA, KM opposes Leggett's proposal that individuals may have interests in more than one low power radio station if they are located more than 50 miles apart.[10]

10. KM agrees with Chairman Kennard's statement in a speech at the recent National Association of Broadcasters' convention that the proposed low power radio stations should not be equated with illegal or "pirate" stations. The central purpose of the proposed rulemaking is to provide an alternative media voice in local markets in a manner that is legal, with adequate regulations to prevent the potential for interference which legitimately concerns existing broadcasters. KM supports appropriate measures to prevent interference by new LPFM-1 stations to existing broadcasters, such as the use of interference studies and type-accepted equipment. Although such measures may add some expense to operating an LPFM station, such

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[9] For example, if four persons each living 5 miles apart from one another wanted to jointly own and operate an LPFM-1 station, the choice of sites that would satisfy the 50 mile rule with respect to each of the owners may unnecessarily limit the potential sites for the station.

[10] See Leggett Petition at 7.

measures are a necessary part of responsible broadcasting, and will distinguish the proposed low power radio service from the illegal "pirate" broadcaster.

Wherefore, the above-premises being considered, KM respectfully requests that the Commission adopt a Notice for Proposed Rulemaking proposing rules for a new low power radio broadcasting service or services, specifically including a primary low power FM broadcast service, consistent with the comments of KM expressed herein.

Respectfully submitted,

KM COMMUNICATIONS, INC.

By: _____
Myoung Hwa Bae
President

KM Communications, Inc.
3654 West Jarvis Avenue
Skokie, Illinois 60076

(847) 674-0864

April 27, 1998

CERTIFICATE OF SERVICE

I, Myoung Hwa Bae, hereby certify that on or before this 27th day of April, 1998, copies of the foregoing "Comments of KM Communications, Inc." have been served by first-class United States mail, postage prepaid, upon the following:

Nickolaus E. Leggett
1432 Northgate Square, #2A
Reston, Virginia 20190-3748

J. Rodger Skinner, Jr., President
TRA Communications Consultants, Inc.
6431 NW 65th Terrace
Pompano Beach, Florida 33067-1546

Myoung Hwa Bae