RECEIVED

JUL 24 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

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

In the Matter of	)	
	)	
Petition for a Microstation Radio Broadcasting Service	)	RM No. 9208
	)	
Proposal for Creation of the Low Power FM (LPFM) Broadcast Service	)	RM No. 9242
	)	
Amendment of Part 73 of the Rules and Regulations to Establish Event Broadcast Stations	)	RM No. 9246
	)	

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, N.W.
Washington, D.C. 20036
(202) 429-5430

Henry L. Baumann
Jack N. Goodman
Lori J. Holy

David E. Wilson
Manager, Technical Regulatory Affairs
NAB Science and Technology

Jennifer Merrill
Parul Desai
Kristina Bohn-Elia
Brooke O'Reilly
NAB Law Interns

July 24, 1998

TABLE OF CONTENTS

EXECUTIVE SUMMARY i

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS 1

I. INTRODUCTION 2

II. ANY MICRO- OR LOW POWER RADIO SERVICE WOULD WREAK HAVOC ON THE RADIO INDUSTRY 3

- A. The Reasons Given for Establishing a New Service Do Not Justify the End Result for the Industry. 3
- B. Technical Boundaries that Preserve Efficient Spectrum Use Cannot Be Established. 4
- C. The Future of IBOC Depends on the Current Rules 7
- D. The Adjacent Channel Separation Criteria Cannot Be Modified. 8
- E. The Part 15 Emissions Limits For Non-Licensed AM- And FM-Band Transmitters Should Not Be Increased 11
- F. The Regulatory Decisions of Other Countries Have No Relevance. 12
- G. Administrative Burdens Will Likely Create an Unworkable Situation. 14

III. CONCLUSION 17

APPENDICES

EXECUTIVE SUMMARY

The National Association of Broadcasters ("NAB") remains opposed to the establishment of any low power radio service. NAB believes that the petitions requesting a rulemaking proceeding must be denied.

Allowing any interested citizen to have his or her own radio station – no matter how small - would cause chaos and impair broadcasting as an effective means of communication. The Commission must continue to maintain the technical integrity of the broadcast spectrum. Any proposals for power levels below 100 watts are an inefficient use of spectrum, and any proposals for stations above 100 watts already are provided for under existing FCC regulations.

Most importantly, a low power service would adversely affect the implementation of in-band, on-channel ("IBOC") digital radio. Any change in the separation criteria would prevent a successful transition to digital technology. The Commission is a longtime supporter of digital radio and it should not jeopardize broadcasters' chances of providing digital service by implementing a low power service. Also, any changes to the separation criteria or to Part 15 emission limits would increase interference to existing broadcasters. Any unnecessary interference is unacceptable.

In addition, the regulations of other countries have no relevance to this issue in the United States. For example, Canada's system allows for low power stations. However, Canada has less than 1000 stations – both full and low power – as compared to the 12,000+ U.S. stations. Thus, there is a greater risk of congestion and interference in the United States than in Canada. Italy also allows for "community radio." While there are thousands of FM stations operating in Italy, reception conditions are "critical" due to the large amounts of interference. The Commission

must continue to enforce the current allocation scheme, which allows a large number of stations to reach a large number of people with virtually no interference.

Establishing a low power service would overwhelm the Commission's resources. Any new service would have to be licensed by the Commission and the Commission should be the only regulatory agency for all broadcasters. Finally, the NAB believes that the Commission should not give out low power radio as a prize to pirate broadcasters.

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

In the Matter of	)	
	)	
Petition for a Microstation Radio Broadcasting Service	)	RM No. 9208
	)	
	)	
Proposal for Creation of the Low Power FM (LPFM) Broadcast Service	)	RM No. 9242
	)	
	)	
Amendment of Part 73 of the Rules and Regulations to Establish Event Broadcast Stations	)	RM No. 9246
	)	

REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] submits the following reply comments in connection with the above-captioned *Petition for a Microstation Radio Broadcasting Service* ("Leggett petition"),[2] *Proposal for Creation of the Low Power FM (LPFM) Broadcast Service* ("Skinner petition").[3] After review of the initial comments, NAB remains opposed to any establishment of a micro- or low power FM ("LPFM") service. The petitions should be dismissed due to the fact that the establishment of such a service would not serve the public interest.

---

[1] NAB is a non-profit, incorporated association of radio and television stations and broadcast networks which serves and represents the American broadcasting industry.

[2] *Petition for a Microstation Radio Broadcasting Service,* RM No. 9208 (June 26, 1997), placed on Public Notice on February 5, 1998 [hereinafter *Leggett petition*].

[3] *Proposal for Creation of the Low Power FM (LPFM) Broadcast Service*, RM No. 9242 (February 20, 1998), placed on Public Notice on March 10, 1998 [hereinafter *Skinner petition*].

I. INTRODUCTION

It is clear from the comments filed by the proponents that it is highly unlikely that the Commission could establish a service that would result in a "win-win" situation, as claimed by the Skinner petition.[4] Most proponents fail to consider the impact such a service would have on the broadcast industry from a technical standpoint. They simply support any proposal that would potentially provide them with a bit of spectrum without regard to how it would affect the whole picture.[5] Those who understand the current technical limitations claim that the FCC rules can be amended to squeeze together the spectrum allocations to provide for hundreds or thousands of new small stations.[6] As shown in NAB's initial comments, any changes to the spacing requirements to increase the potential number of stations is unacceptable due to the current congestion problems in both the FM and AM bands.[7] More importantly, broadcasters will face significant constraints on the development of in-band, on-channel ("IBOC") digital radio if the Commission would establish a low power radio service.

It is abundantly clear from the comments that there will never be any consensus among the proponents of a low power service on what power levels would be sufficient. In many cases, proponents request power levels that would exceed the minimum power level of 100 watts applicable to full-power stations.[8] Some proponents cite to other countries and their broadcast

---

[4] Skinner petition at 8, ¶ 15.

[5] NAB comments at 13.

[6] Skinner petition at 15, ¶ 36. The petition proposes the elimination of the 2nd and 3rd adjacent channel spacing restrictions as unduly restrictive and unnecessary.

[7] NAB comments at 20.

[8] *See e.g.,*. Skinner petition at 11, ¶ 23 (suggesting power levels up to 3000 watts); Community Radio Coalition petition at 2 (attached as appendix A to Comments of Thomas Desmond, filed February 27, 1998) (suggesting maximum of 250 watts); Reply comments of Thomas Desmond, filed May 16, 1998, at 4 (suggesting establishment of power limit of 250 watts). It is apparent

allocation rules as examples of how the FCC should institute a low power service.[9] These individuals do not understand the extreme differences between the regulatory schemes that makes any analogy to another country completely irrelevant. Additionally, establishment of a low power service would unnecessarily tax the Commission's resources, and result in a reduction of service to the public.

II. ANY MICRO- OR LOW POWER RADIO SERVICE WOULD WREAK HAVOC ON THE RADIO INDUSTRY.

A. The Reasons Given for Establishing a New Service Do Not Justify the End Result for the Industry.

NAB agrees with the Joint Comments of the Named State Broadcasters Associations that the petitioners or proponents have not made an adequate showing that justifies the creation of a low power service which would provide for thousands of new small stations.[10] As pointed out by the State Broadcasters Associations, what it boils down to is that the proponents are seeking to establish a new service in order to provide personal radio stations to amateur radio hobbyists.[11] Clearly, this is not proper use of the broadcast spectrum. The National Lawyers Guild goes so far as to claim that "[t]here is no reason why tens or even hundreds of thousands [of people] should not have at least some level of direct access to this medium."[12]

---

that these parties simply wish to be relieved of the licensing requirement the Communications Act imposes on all spectrum users.

[9] Reply Comments of Douglas E. Smith at 1, filed April 27, 1998; Comments of Ronnie V. Miller at 9, filed April 20, 1998.

[10] Joint Statement of the Named State Broadcasters Associations ("State Broadcasters"), filed April 27, 1998, at 6.

[11] State Broadcasters at 10.

[12] Comments of the National Lawyers Guild at 9.

Common sense dictates that it is not possible for every person to have a radio station if they want one – no matter how small the station. There simply is not enough spectrum allocated to broadcasting to provide individual access for hundreds of thousands of people in the form of a micro- or low power service and still maintain any technical integrity of the spectrum. The National Lawyers Guild decries the "injustice" that so many individuals do not have the "legal right to use the most effective means of communication available."[13] One of the reasons why broadcasting has become such an effective means of communication is because it has been strictly allocated based on reasonable criteria so that thousands of people can receive signals without interference. The National Lawyers Guild would open the floodgates and take the industry back to the 1920's, before any regulations existed, when interference and chaos over the airwaves threatened to undermine the great potential that broadcasting offered to the public. As so aptly analogized in the comments of Greater Media, the FCC should not take further action on any low power petitions because it will cause the "CB-ization" of the radio industry.[14]

B. Technical Boundaries that Preserve Efficient Spectrum Use Cannot Be Established.

Many of the comments were focused on what power and antenna parameters would be appropriate for a low power service. Proponents either request power levels that currently are available under existing FCC rules for full-power stations or power levels that are an inefficient use of spectrum. Shure Brothers, Incorporated, a manufacturer of wireless microphones, proposes that power levels of 3 to 10 watts be permitted, with antenna heights above ground level of up to 50 feet.[15] Thomas Desmond proposes that the Commission consider the petition

---

[13] Comments of the National Lawyers Guild at 9.

[14] Comments of Greater Media, Inc. at 8.

[15] Shure Brothers comments at 3.

for a low power FM service that was filed by the Community Radio Coalition ("CRC") as a guide for a LPFM service.[16] The CRC petition provides for power levels of 5 to 250 watts with antenna heights above average terrain of up to 328 feet.[17] Nickolaus and Judith Leggett and Donald Schellhardt suggest that the 1 watt power limit proposed in their petition may be too low, and they ask that the Commission now consider a power limit of 50 to 100 watts.[18] The National Lawyers Guild proposes that maximum power levels be established at 50 watts for urban areas and 100 watts for rural areas.[19] Harold Ort believes that many areas may be able to have LPFM stations that operate at 500 to 1200 watts.[20]

Rodger Skinner argues that the power levels proposed in his petition are "the minimum needed to assure the success of this new broadcast service."[21] Skinner goes on to say that "the cruelest form of torture would be to give minorities and others of limited financial means a channel that they have wished for their entire life only to find that the power level authorized does not allow them to succeed financially."[22] He argues that "low power" FM stations must be permitted to have coverage areas with 15 to 20-mile radii.[23]

Skinner's position in both his petition and in his comments is simply absurd. He is proposing that a "low power" FM radio service be instituted in which "low power" stations have

---

[16] Desmond comments at 3.

[17] Desmond comments at Appendix A, ¶ 5.

[18] Leggett/Schellhardt comments, filed March 4, 1998, at 8.

[19] Comments of the National Lawyers Guild at 2.

[20] Comments of Harold Ort at 1.

[21] Addendum & Comments of Rodger Skinner, filed April 27, 1998, at ¶ 75.

[22] *Id.*

[23] *Id.* Skinner believes that LPFM stations deserve the same coverage areas as low power television stations.

coverage areas with up to 20 mile radii. However, the protected contour of a *full power, full service* Class A FM radio station has a radius of only 28 kilometers (17 miles),[24] which is *smaller* than the coverage area of a "low power" station under Skinner's proposal. Clearly, the type of service that Skinner proposes already exists and there is therefore no need for the Commission to modify its rules to make it available.

Several commenters have noted the inappropriateness of Skinner's proposed service. For example, Thomas Desmond says about the Skinner petition that "the combination of relatively high power (3 kW ERP/100 meters HAAT is equal to many Class A FM stations) ... would result in a "me too" service which would end up being very similar to existing full powered stations."[25] And the Leggett/Schellhardt comments say that "[Skinner's] 3,000 watt macro microstation probably merits a license ... but it should be licensed as part of the smallest tier of the larger stations – not the largest tier of the microstations."[26] NAB agrees. If Skinner, or any one else, wants to operate an FM radio station that covers a 15 to 20-mile radius, he or she can apply for a Class A license. As stated in our comments, any power level above 100 watts must be allocated under existing FCC rules.[27]

Other proponents request that the FCC re-institute Class D FM station authorizations.[28] As noted above, for the majority of proponents, 10 watts would not be adequate in their view. Nonetheless, with regard to any other, actual low power station proposals, we reiterate here the statements we made in our comments: the Commission has reasonably determined that

---

[24] 47 CFR § 73.211(b) (1997).

[25] Desmond comments at Section V.

[26] Leggett/Schellhardt comments, filed March 4, 1998, at 9.

[27] NAB comments at 5.

[28] Comments of Philip E. Galasso, filed April 16, 1998, at 2.

operations below 100 watts are an inefficient and wasteful use of spectrum.[29] The Commission must maintain the technical integrity of the spectrum through reasonable rules regarding power limits. The concept of spectrum efficiency is thwarted if the Commission would allow small, low power stations to "squeeze" into the spectrum where other full-power stations may be precluded.[30] The efficient use of the spectrum results from interference-free, full-power broadcast service to a large number of individuals.

C. The Future of IBOC Depends on the Current Rules.

Introduction of a low power service would prevent the implementation of in-band, on-channel (IBOC) digital audio broadcasting.[31] In addition to NAB, USA Digital Radio ("USADR") also addressed the impact of a new low power radio service on the implementation of IBOC DAB. USADR has been working on the development and testing of IBOC DAB for seven years. We are unaware of any organization that has more experience with this technology. In its comments, USADR said that it "opposes the introduction of new sources of interference caused by low power radio in the AM and FM band [because] these new low power interferers may eliminate or delay the introduction of digital broadcasting in the United States."[32] NAB strongly agrees with this statement. Existing broadcasters must be given the opportunity to advance into the digital age without unnecessary delays. The Commission has been a longtime

---

[29] NAB comments at 4-12 (citing *Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations*, 69 FCC 2d 240 (1987)).

[30] Thomas Desmond reply comments at 4; Skinner reply comments, filed May 23, 1998, at 10-11.

[31] NAB comments at 13-25.

[32] USA Digital Radio comments at 5.

advocate of the development of digital radio.[33] NAB asks that the Commission not jeopardize full-service broadcasters' chances to convert to digital technology by taking further steps to establish a new low power radio service.

D. The Adjacent Channel Separation Criteria Cannot Be Modified.

A number of commenters have referred to the Commission's action in MM Docket 96-120, where the Commission provided some antenna siting flexibility to grandfathered short-spaced second and third adjacent channel FM stations.[34] These commenters believe that, because there are certain FM frequencies in certain parts of the country where levels of interference in excess of current standards have been allowed to continue, all FM frequencies in all parts of the country should be subjected to similar levels of interference. Clearly, this would not serve the public interest. The Commission, itself, already recognized this in the *Report and Order* in MM Docket 96-120 when it said that it has "no intention of relaxing

---

[33] *See Notice of Proposed Rule Making and Further Notice of Inquiry* in Gen. Docket No. 90-357, 7 FCC Rcd 7776, 7780 (1992)("... we are committed to continuing our work with the broadcast industry to ensure that broadcasters are able to promptly implement terrestrial DARS."); *Report and Order* in Gen. Docket No. 90-357, 10 FCC Rcd 2310, 2315 (1995)("We fully support these developments, and we see great promise in these innovations for providing improved services to consumers. These innovations will also help promote the future viability of our terrestrial broadcasting system, which provides local news and public affairs programming."); Separate Statement of Commissioner Susan Ness, *Re: Establishment of Rules and Policies for the Digital Audio Radio Satellite Service*, June 15, 1995 ("I am enthusiastic about the potential for in-band, on-channel digital AM and FM systems to better enable terrestrial broadcasters to compete in a digital world. I will do what I can to move it along as rapidly as possible."); Statement of Roy Stewart, Chief, Mass Media Bureau, Before the Subcommittee on Communications, U.S. Senate, May 19, 1998 ("The Bureau has been working closely with IBOC developers and has granted several experimental licenses to permit equipment and system testing.").

[34] "Grandfathered short-spaced stations" are FM stations that began broadcasting prior to November 16, 1964, and which have never met the separation requirements that went into effect at that time. These stations cause more interference to one another than do stations that meet the separation criteria in 47 CFR § 73.207.

second-adjacent-channel and third-adjacent-channel spacing requirements as allotment and assignment criteria for any group except pre-1964 grandfathered stations."[35]

In our comments we thoroughly described how eliminating the adjacent channel separation criteria would affect the future of IBOC DAB.[36] Clearly, eliminating the adjacent channel separation requirements would jeopardize the radio broadcasting industry's chances for successfully transitioning to digital technology – and this is reason enough to reject the proposals that these requirements be eliminated.

The impact on IBOC DAB notwithstanding, the arguments presented by low power radio proponents in favor of eliminating the second and third adjacent channel separation criteria are clearly invalid. For example, Edward Czelada argues that low power radio stations should be allowed to locate within the protected contours of full service second and third adjacent channel stations provided that "the LPFM serves 100 times more persons than it interferes with."[37] As the Commission is well aware, a radio station's F(50,10) interfering contour covers a wider area than its F(50,50) coverage contour. Furthermore, the smaller F(50,50) contour is completely encompassed by the larger F(50,10) contour. So, it is simply not possible for a station's F(50,50) signal to reach more people than its F(50,10) interfering signal. In the hypothetical situation described by Czelada, the distances to the 115 dBu F(50,50) contour and the 115 dBu F(50,10) contour are essentially the same because these contours are so close to the transmitter. However, even in this case, as in all cases, the number of people within the interfering contour of the low power station is no less than the number of people within its coverage contour. The deficiencies

---

[35] *See Report and Order*, MM Docket 96-120, FCC 97-276, 12 FCC Rcd 11840, at ¶ 29.

[36] NAB comments at 13-25.

[37] Czelada comments at 1.

in Czelada's arguments aside, *any* plan that would increase interference to full service radio stations is completely unacceptable.

In his reply comments Skinner says, "no commenters in this proceeding have provided any evidence whatsoever to contradict our engineering information showing that LPFM stations operating on 2nd and 3rd adjacent channels to full-power FM stations would cause no harmful interference."[38] In reality, however, Skinner himself provides just the contradictory information in which he is looking. He provides an example of the type of LPFM service he envisions in his reply comments and calculates the radius around an LPFM station where interference would be caused to a full-service FM station. The radius he comes up with for this one example is 0.55 km.[39] So he, himself, has provided the evidence to show that LPFM stations operating in violation of the Commission's 2nd and 3rd adjacent channel separation criteria *would* cause interference to full service stations. Again, any unnecessary interference is unacceptable.

It is important to note here that recent laboratory testing of modern radio receivers shows that, while automobile radios appear to generally comply with the assumptions embodied in the Commission's 2nd and 3rd adjacent channels separation criteria (*i.e.* they perform satisfactorily in the presence of a 2nd adjacent channel interfering signal that is 40 dB stronger than the desired signal), the same cannot be said for portable radios and home stereos.[40] The latter equipment, in general, is negatively impacted by the adjacent channel interfering signals at levels much lower

---

[38] Skinner reply comments at paragraph 12.

[39] Skinner reply comments at paragraph 6.

[40] A detailed report on the impact that adjacent channel interference has on modern radio receivers was provided by NAB in our reply comments in MM Docket 96-120 at Appendix II. In the *Report and Order* in that docket, which was released less than a year ago, the Commission said in response to this receiver data that it has "no intention of relaxing second-adjacent-channel and third-adjacent channel spacing requirements as allotment and application criteria." (*Report and Order*, MM Docket 96-120, 12 FCC Rcd 11840 (1997), at paragraph 25).

than the +40 dB threshold. This fact is particularly relevant when considering the various proposals for microradio broadcasting because the small coverage areas of microradio stations would make them less attractive to mobile listeners (who would pass through the coverage area very quickly) and more attractive to stationary listeners located within their coverage areas. So, microradio stations located within the protected contours of full service 2nd and 3rd adjacent channel stations would not only cause unacceptable interference to the full service stations, but they themselves would suffer greatly from the higher powered full service signals, particularly in the portable radios and home stereos that would most likely be used to receive them.

E. The Part 15 Emissions Limits For Non-Licensed AM- And FM-Band Transmitters Should Not Be Increased.

Frank Patka asks the Commission to raise the emission limits for Part 15 non-licensed transmitters in the radio broadcast bands to 800 mW transmitter power output (TPO) for the AM band, and 400 mW TPO for the FM band.[41] Shure Brothers asks the Commission to raise the Part 15 limits in the FM band to 10 mW TPO.[42]

Part 15 of the Commission's rules permits the operation of very low power transmitters for generally personal use. Operators of Part 15 transmitters may not cause interference to licensed services, and they must accept any interference they receive from licensed, or other non-licensed, transmitters.[43] With the exception of AM-band transmitters operated on the grounds of educational institutions, and AM-band carrier current and leaky coaxial cable transmission systems,[44] the Part 15 emission limits are intended to ensure that the operator of an

---

[41] Patka comments at 2.

[42] Shure Brothers comments at 9.

[43] 47 CFR § 15.5 (1997).

[44] 47 CFR § 15.221 (1997).

AM- or FM-band Part 15 transmitter will not cause interference to a neighbor's radio reception. Increasing the Part 15 limits as proposed by Patka and Shure Brothers would dramatically increase the amount of interference that non-licensed transmitters cause to the licensed radio services. The limits that they propose would cause the emissions from AM- and FM-band transmitters to interfere with receivers well beyond the limited number of receivers under the transmitter operator's control.

F. The Regulatory Decisions of Other Countries Have No Relevance.

Several commenters attempt to persuade the Commission that other countries allow some sort of low power broadcasting, and thus the United States should do the same. Unfortunately, these commenters fail to realize that other countries do not have as many full-power stations operating as the United States and their analogy fails to account for different licensing policies.

For example, in Canada, there are 342 AM licensees and 594 FM licensees.[45] Low power FM stations are permitted to have effective radiated power limitations of 50 watts in any direction, and service cannot extend beyond eight kilometers in any direction from the antenna site.[46] Additionally, Canadian regulations allow for very low power FM stations with an ERP of 10 watts or less.[47] These very low power FM stations can only exist in communities that are outside the major urban/suburban areas and where there is not a complete range of Canadian broadcasting services.[48] While it is true that our Northern neighbors have provided for the existence of low power FM and AM stations, comparing the two countries is like comparing

---

[45] Canadian Radio-Television Telecommunication Commission (CRTC) Secretariat, 9 June 1998. These numbers include all licensed full-power and low-power stations.

[46] CRTC Broadcasting Procedures and Rules, Part III, Section E, page 1 (1991).

[47] *Id.* at Section F, page 1.

[48] *Id.*

apples to oranges. The U.S. has over 13 times the number of radio stations, and virtually all of the licensed U.S. stations are full-power stations. The risk of congestion and interference are far greater in the U.S. Thus, the Canadian regulatory scheme cannot lend any support to the establishment of low power radio in the U.S.

Italy is another country where some form of "community radio" exists. Currently in Italy, thousands of FM stations and a few private national networks operate legally.[49] Due to the large number of stations operating, reception conditions are "critical," where nearly 100 different stations can be found on a standard receiver in the greater Milan area.[50] The Italian situation is referred to as the "frequency jungle" by foreign observers when it is compared to the "cleaner situation in other countries."[51] The interference problems could be resolved with a frequency allocation plan and the elimination of a large number of stations.[52] This situation is obviously undesirable as it exists in Italy and should be considered by the Commission only as an "example" of what should *not* be allowed in the U.S.

As stated in our comments, the FCC has established a regulatory allocation scheme that provides for a large number of stations.[53] At the same time, the Commission has made sure that

---

[49] "IRRS- Globe Radio Milan: 1979-1998 English Broadcasts on FM in Milano, Italy: FM Radio in Milano" at http://www.nexus.org/NEXUS-IBA/FM/FM-in-Milano.html. Attached as Appendix A.

[50] *Id.* Stations frequently operate on the same channel from locations just a few miles apart with the separation being just 50 kHz (or less).

[51] *Id.*

[52] *Id.* The Italian government has not provided frequency and power coordination for private broadcasting.

[53] NAB comments at 7; *see also* Broadcast Station Totals as of May 31, 1998, News Release, June 19, 1998. There are currently 12,322 licensed radio stations.

a large number of people can listen to these stations virtually interference-free. It would be difficult to find another country that provides the same, and the FCC must continue to ensure that it does not harm the quality and integrity of the broadcast band – to do so would be against the public interest.

G. Administrative Burdens Will Likely Create an Unworkable Situation.

NAB has previously outlined how the Commission has been significantly scaled back in terms of both field offices and staff.[54] It is clear that if any low power service were established, the Commission's resources would be overwhelmed. Here again, any undertaking to establish a new service will impose upon the Commission the burden of establishing allocation criteria and regulatory rules. If and when a new service is finally established, the burden remains on the Commission to maintain and enforce those regulations. In this instance, the FCC does not have the ability to properly monitor hundreds or thousands of new stations for compliance.[55]

The National Lawyers Guild proposes a simple "registration" procedure for low power broadcasters with oversight by a voluntary body to ensure compliance with the rules, with the FCC as the "forum of last resort."[56] Clearly, a "registration" process does not ensure compliance with any regulations from the beginning, nor does it impose any incentive to follow regulations after broadcasting begins. The risks of interference are greater and the burden of enforcement is higher where there are no licensing requirements. It would be unacceptable only to require the

---

[54] NAB comments at 36-37.

[55] NAB comments at 38; State Broadcasters comments at 12-13; Radio One comments at 5-6.

[56] National Lawyers Guild comments at 2.

"registration" of low power broadcasters where full-power licensed broadcasters are required to file detailed information regarding the operation of their stations before they even construct a station. Current licensing procedures provide the pertinent information to avoid interference before it can occur. A "registration" procedure would not provide the same, thus the Commission would have the extra burden of monitoring for interference.

Further, Skinner cites the Commission's proceeding regarding the streamlining of applications as a solution to the resource problem, with an "official observer" – much like the amateur radio service – who would monitor and provide "informal" notices of violations.[57] While NAB has supported the concept of electronic filing of applications in the FCC's proceeding,[58] we have also pointed out many problems with the proposed plan.[59]

The idea that an "official observer" or voluntary regulatory body is sufficient to oversee any newly established low power service is not sound. The petitions are not proposing a new service that will not have any effect on any existing services. The petitions propose to insert hundreds, or even thousands, of new radio stations among the 12,000+ radio stations already in existence. This is not a small task, nor is it one that should be handled by anyone other than the agency that is chartered to regulate the spectrum. Although the FCC has provided for informal station inspections by the state broadcasting associations, it has not delegated any of its authority to enforce the regulations. Any action against a broadcast station – no matter the size – will affect the rest of the stations. Thus, there should be only one agency with that authority.

---

[57] Skinner reply comments at 21, ¶ 9.

[58] *1998 Biennial Review – Streamlining of Mass Media Applications, Rules and Processes*, MM Docket No. 98-43, ___ FCC Rcd ____ (1998).

[59] *See* NAB comments in *1998 Biennial Review – Streamlining of Mass Media Applications, Rules and Processes*, MM Docket No. 98-43, filed June 16, 1998.

Further, it is not mere speculation that the Commission would have the burden of enforcing rules for licensed low power broadcasters and unlicensed pirate broadcasters as some commenters suggest.[60] Although Chairman Kennard has asked the pirate broadcasters to stop their illegal activities and work with the Commission,[61] it is clear from Internet postings that some pirates do not have any intention of stopping their illegal activity, and are only increasing their efforts.[62] Low power radio service should not be given out as a prize that rewards pirates for illegal activity.

---

[60] *See* Skinner reply comments at 27; Leggett comments at 8, filed June 22, 1998; Martin D. Wade comments at 2, filed April 7, 1998; Rhode Island Public Radio at 1, filed March 2, 1998; Harold A. Ort at 2, filed April 21, 1998; Christopher DiPaola at 1-2, filed April 27, 1998; James A. Fizzell & Associates at 1, filed April 27, 1998.

[61] *See Statement of FCC Chairman William Kennard on District Court Upholding Radio Licensing Requirement in Dunifer Pirate Radio Case*, FCC News, June 17, 1998.

[62] *See* MRN: F**k the FCC, Chuck0 (July 19, 1998) ("I don't mind the efforts by some people to try and reform the system, but that is inadequate for my needs. I think we should stop playing ball on the FCC's court and make them play on ours. I think we should work on helping more people start their own stations and keeping ours on the air."); Re: MRN: F**k the FCC, Stephen Dunifer (July 19, 1998) ("This is the time to raise the level of engagement, not reduce it. Yes, we can comment on the proposals and be very clear about what is acceptable and what is not, realizing full well that they will never agree to what we propose." "We need to up the ante by putting more stations on the air and defending them when necessary."). Copies of these comments are attached as Appendix B.

III. CONCLUSION

For the reasons stated above, NAB respectfully requests that the Commission dismiss all petitions for any low power or microradio service. The requests for a *Notice of Proposed Rule Making* or *Notice of Inquiry* must be denied.

Respectfully Submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, N.W.
Washington, D.C. 20036
(202) 429-5430

Henry L. Baumann

Jack N. Goodman

Lori J. Holy

David E. Wilson
NAB Science and Technology

Jennifer Merrill
Parul Desai
Kristina Bohn-Elia
Brooke O'Reilly
NAB Law Interns

July 24, 1998

CERTIFICATE OF SERVICE

I, Angela Barber, Legal Secretary for the National Association of Broadcasters, hereby certifies that a true and correct copy of the foregoing Reply Comments of the National Association of Broadcasters was sent this 24th day of July, 1998, by first-class mail, postage prepaid, to the following:

Mr. Nickolaus E. Leggett
Ms. Judith F. Leggett
1432 Northgate Square, #2A
Reston, VA 20190-3748

Donald J. Schellhardt, Esq.
45 Bracewood Road
Waterbury, CT 06706

J. Rodger Skinner, Jr. / President
TRA Communications Consultants, Inc.
6431 NW 65th Terrace
Pompano Beach, FL 33067-15464

Howard K. McCombs, Jr.
Duncan, Weinberg, Miller & Pembroke, P.C.
1615 M Street, N.W. – Suite 800
Washington, D.C. 20036
*Counsel for Gregory D. Deieso

Richard R. Zaragoza
David D. Oxenford
Fisher Wayland Cooper Leader & Zaragoza, L.L.P.
2001 Pennsylvania Ave., N.W., Suite 400
Washington, D.C. 20006-1851
*Counsel for State Broadcasters Associations

Philip Tymon
Peter Franck
Committee on Democratic Communications
National Lawyers Guild
558 Capp Street
San Francisco, CA 94110

Fred Compton
Community Radio Coalition
P.O. Box 146
Falls City, OR 97344

Thomas Desmond
3216 Verbena Drive
Plano, TX 75075

Douglas E. Smith
1385 Old Clarksville Pike
Pleasant View, TN 37146-8098

Ronnie V. Miller
17841 South St. Hwy. 123
Seguin, TX 78155-0851

Malcolm G. Stevenson
Schwartz, Woods & Miller
Suite 300, Dupont Circle Building
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036
*Counsel for Greater Media, Inc.

Edgar C. Reihl, P.E.
Principal Engineer
Shure Brothers Incorporated
222 Hartrey Avenue
Evanston, IL 60202-3696

Harold A. Ort, N2RLL
18 Highland Avenue
Red Bank, NJ 07701

Philip E. Galasso
131 Stafford Forge Road
West Creek, NJ 08092-9329

Robert A. Mazer
Albert Shuldiner
Vinson & Elkins, L.L.P.
1455 Pennsylvania Ave., N.W.
Washington, D.C. 20004-1008
*Counsel for USA Digital Radio, L.P.

Edward Czelada / President
Superior Communications
*Service not provided because address unknown

Frank Patka
Helixing Inc.
1302 McCameron
Lockport, Ill. 60441

Linda J. Eckard
Radio One, Inc.
5900 Princess Garden Parkway
Lanham, MD 20706

Martin D. Wade
P.O. Box 2222
Galliano, LA 70354

Law Office of Dan J. Alpert
2120 N. 21st Rd., Suite 400
Arlington, VA 22201
*Counsel for Christopher Dipaola

James A. Fizzell & Associates, Ltd.
P.O. Box 46
Park Ridge, Illinois 60068

Angela Barber

APPENDIX A

WELCOME TO

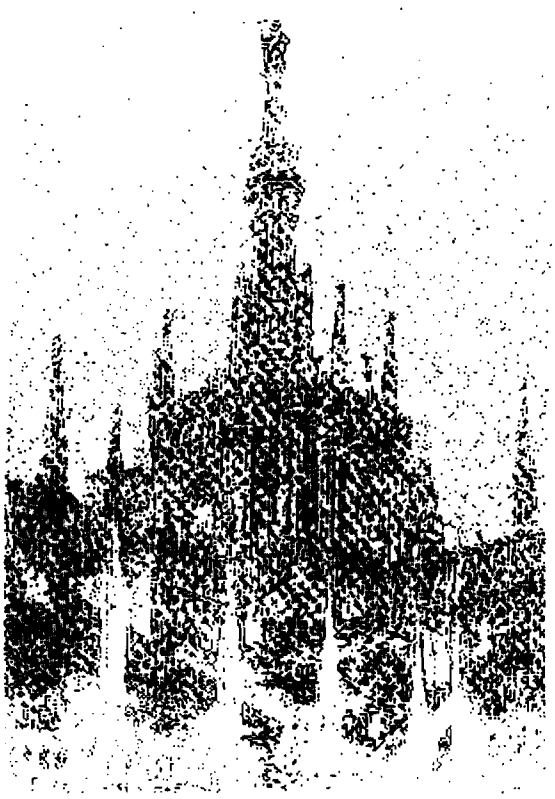
NEXUS-IBA

THE HOME OF INTERNATIONAL RADIO

IRRS-Globe Radio Milan: 1979-1998 English Broadcasts on FM in Milano, Italy

FM Radio in Milano

Like most of other radio listeners in Europe, the Italians listen almost exclusively to hi-fi (stereo) programs aired on the FM band, rather than Medium Wave (AM) or Shortwave. There are obvious advantages in receiving FM vs. Mediumwave or Shortwave in terms of audio fidelity. Mediumwave broadcasts - manly RAI's, the national state controlled radio network -,



however, had a revival lately due to heavy mutual interference of the thousands of FM signals on the Italian peninsula. Today together with the newly introduced Radio Data System (RDS) on FM. Mediumwave/AM is the only option to remain tuned to the same station when distances above 10-15 miles are traveled by car. Mediumwave, although lacking in fidelity, provides a much wider coverage than FM due to the lack of co-channel interference, and it is often used for example to tune into the news service offered by RAI.

It must be noted that Italy has been pioneering private FM broadcasting since as early as 1975, when, in addition to the already established three national state owned RAI channels (also on AM/Medium Wave) a number of small and aggressive FM stations went on the air. Today thousands of FM stations and a few private national networks operate legally in the country. But very often reception conditions are quite critical, especially in large towns.

Even today, in fact, driving around the greater Milano nearly one-hundred different stations can be found on a standard receiver. Very often stations operate on the same channel from locations just a few miles apart; more often the separation is just 50 kHz (or less). This situation has been sometimes depicted as a *"frequency jungle"* by several foreign observers who compare this very competitive market to the cleaner situation in other countries. Clearly, for most stations coverage is a problem especially in a large urban areas. But the situation should be solved only when a frequency allocation plan and the elimination of a large number of stations. After years since a law first attempted to regulate private broadcasting (1990) no frequency allocation plan has been approved yet.

The Legal Situation

Although legally established, all private FM and TV stations in Italy still lack frequency and power coordination from the Italian PTT Ministry. The first Broadcasting Act which was approved in August, 1990, after many aborted attempts to rule the Italian frequency spectrum, set a term of two years (expiring in August 1992) for the PTT Ministry to publish frequency allocation plans for both TV and radio stations in the country, and assign formal licenses to only some of the existing operations. To this date, however, we are still in the same situation as of 1990, as far as frequency occupancy and interference, especially in larger towns. The only for of "coordination" and elimination of interferences has been put in place by larger networks who started buying off frequencies from the smaller broadcasters, thus attempting to clear