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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition for Rulemaking to Establish	)	RM-9208
A Microstation Radio Broadcasting Service	)	
	)	
Proposal for Creation of the	)	RM-9242
Low Power FM (LPFM) Broadcast Service	)	

To: The Commission

REPLY COMMENTS OF MEDIA ACCESS PROJECT AND THE CENTER FOR MEDIA EDUCATION

Gigi B. Sohn
Andrew Jay Schwartzman
Cheryl A. Leanza

MEDIA ACCESS PROJECT
1707 L Street, NW
Suite 400
Washington, DC 20036
202-232-4300

Counsel for MAP/CME

Law Student Intern:

Alyze Lowen
Harvard Law School

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REPLY COMMENTS OF MEDIA ACCESS PROJECT AND AND THE CENTER FOR MEDIA EDUCATION

Media Access Project and the Center For Media Education ("MAP/CME") respectfully submit this reply to various comments filed in response to the above-referenced petitions for rulemaking. The petitions contain various proposals for the establishment of a low power radio service.

INTRODUCTION AND SUMMARY

The only reason not to initiate a microradio service would be to protect incumbent broadcasters against legitimate competition. It is now technically feasible to create low power, intensely local radio stations. There are numerous applicants willing to serve millions of Americans who have been deemed demographically unattractive by existing broadcasters. The Commission should favor these needs over the lobbying efforts of entrenched broadcasters by taking the necessary steps to authorize a microradio service.

The vast changes that have taken place in the radio industry over the past two years provide good cause for the Commission to reassess its prohibition on low power radio service. In an era of greatly increased consolidation, reduced diversity of viewpoints, and changing technology, it is no longer appropriate for the Commission to adhere to a regulatory approach

that protects full power stations from any and all interference, or allows the principle of efficient use of spectrum to override all other values when allocating frequencies.

Microradio can begin to address shortcomings in the present system. Various proposals before the Commission for the implementation of a low power radio service present the agency with an opportunity to rethink its narrow vision of spectrum allocation. As ownership of radio stations aggregates into fewer and fewer hands pursuant to the Telecommunications Act of 1996 ("1996 Act"), microradio stations serving niche communities can help to ameliorate the consequent loss of diversity and locally-oriented programming. This is not to say that microradio is the best solution to this problem - it is far from it. The Commission must continue to ensure diversity in the full power radio service by, *inter alia*, retaining the local ownership limits and prohibitions on crossownership, and by scrutinizing license transfers' effects on diversity, even when they do not exceed the numerical limits set by the 1996 Act.

The Commission should therefore reject the self-interested opposition of full power radio broadcasters and accept applications for low power radio. The Commission need not adopt any of the particular allocation schemes proposed here. A properly designed plan need not create what the NAB fears - "thousands" of new stations causing untenable interference with full power stations. Nor should the Commission accept broadcasters' argument that microradio is better suited for the Internet. The two media are vastly different - unlike the Internet, broadcasting is free, universal, local and is a "push" technology. As such, broadcasting is a far superior technology for the type of programming microradio broadcasters propose - extremely local niche programming for underserved communities.

While MAP/CME do not support any particular microradio proposal submitted to the

Commission, they urge the agency to adopt certain requirements for microradio broadcasters to ensure that its diversity and localism goals are met. At a minimum, applicants for microradio stations must:

- have no attributable ownership interest of any kind in another broadcast property, including another microradio station. This would include Local Marketing Agreements (LMAs) or other unauthorized transfers of control.
- provide programming that is at least 50 per cent locally originated.
- live within the community of license and be directly involved in the day-to-day management of the station.
- not sell the station, or in the alternative, not sell it for five years after receiving a license.

Importantly, microradio stations should be subject to many of the same public interest obligations as full power radio stations, including: reasonable access for federal candidates, equal opportunities for candidates, the personal attack and political editorial rules, the sponsorship identification rules and the public file requirement. Legal use of the public airwaves comes with certain responsibilities. Microradio broadcasters may not obtain this legitimacy and at the same time operate as anarchistic "pirates" who are free of the core obligations of all broadcasters.

I. THE BROADCASTING INDUSTRY HAS ATTEMPTED TO AVOID CORE ISSUES IN THE MICRORADIO DEBATE BY DISREGARDING THE CHANGING STRUCTURE OF THE RADIO INDUSTRY AND MISCHARACTERIZING DIFFERING PROPOSALS FOR MICRORADIO REGULATION.

For many years, the Commission has taken a singular approach to licensing radio stations: full power stations were protected from interference regardless of the merits of other proposed services. These protections, however, were afforded prior to the passage of the 1996 Act, which permits unprecedented concentration of ownership of full power stations both on a national and local level. These changes argue for a new paradigm that will help minimize the resulting

diminution in diversity and localism. The Commission has already signalled a willingness to permit some interference to promote the larger public interest. *See 1998 Biennial Regulatory Review*, FCC No. 98-117 (released June 15, 1998)

In light of these changed conditions, incumbent radio broadcasters' reliance on pre-1996 Commission decisions restricting low power stations is invalid. So, too, is their disingenuous insistence that a microradio service will necessarily and inevitably result in "thousands" of new stations causing interference and spectrum inefficiency. Seizing upon claimed defects of ***one*** proposal, it attributes these flaws to ***every*** microradio proposal. The Commission need not adopt any particular proposed microradio system and can license these stations to minimize interference and maximize efficiency, while also promoting diversity and localism. Moreover, the Commission should not refuse to license microradio stations based on the vague possibility that this may one day interfere with a proposed, but as yet unbuilt, and unauthorized, full power terrestrial digital radio system, the timing and marketplace acceptance of which is a matter of speculation. Should interference be a real concern, the Commission can license microradio stations prior to the conversion, and later mandate low cost access for microradio stations on the full power stations' new expanded digital capacity.

A. The Commission's Prior Cases Limiting Low Power Radio are Invalid in Light of Vast Changes in the Radio Industry.

In opposing microradio service, the NAB relies on pre-1996 FCC decisions refusing to license 10 watt stations on efficiency and interference grounds. NAB Comments at 5-6 found at http://www.hallikainen.com/lpfm/comments/NAB.html; *see also* NPR Comments at 6. The NAB argues that "the Commission made a reasonable decision to establish minimum power levels in order to provide the most efficient use of the spectrum." *Id.* For similar support, the NAB

also cites a 1990 FCC decision denying FM translator stations program origination authority. NAB Comments at 6 citing *Amendment of part 64 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212, 7219 (1990).

But much has changed in the radio industry since the Commission last visited the issue. The same technological and structural changes that motivated the industry's demand for relaxed radio duopoly and milage separation rules should permit creation of a substantial number of new low power FM stations. Moreover, as discussed in great detail in Section II, *infra,* vast consolidation of media control has reduced diversity of voices in a manner not envisioned by the Commission even as late as 1995, when it denied Stephen Dunifer permission to apply for a 10 watt station. *See Stephen Paul Dunifer*, 11 FCC Rcd 718 (1995). For example, at the time, radio ownership was limited to 2 AM and 2 FM commercial stations in radio markets with 15 or more commercial radio stations. 47 CFR §73.3555(a)(1)(ii) (1995). In those same markets today, one entity can own between 6 and 8 stations in one market. 1996 Act §202(b)(1), 110 Stat. 110[1] This represents an increase in consolidation of between 50 and 100 per cent.

These dramatic changes necessitate a consequent change in the Commission's approach to licensing low power stations. Now that viewpoint diversity and localism have been greatly diminished, there are compelling reasons for the Commission to reconsider its protectionist approach to full power radio.

In fact, the Commission is apparently rethinking how it handles interference and efficiency

[1]Ownership of up to eight radio stations is permitted in markets with 45 or more commercial radio stations, 7 in markets with between 30 and 44 stations (not more than 4 of which are in the same service), and 6 in markets with between 15 and 29 stations (not more of than 4 of which are in the same service. *Id.*

matters in the radio band. In its recent proposal to permit negotiated interference agreements between FM radio stations for the first time, the Commission said:

> There are additional reasons to reconsider these policies at this time. The financial and management sophistication of the radio broadcast industry has grown dramatically in recent years, spurred by fundamental changes in local ownership and the elimination of national ownership restrictions. Moreover, both Congress and the Commission are committed to relying to the greatest extent possible on competitive communications markets rather than resource-intensive regulatory policies to safeguard the public interest. The idea that the Commission must stand ready to protect stations 'from their own economic folly' may not reflect either the realities of the radio industry or the Commission's current regulatory paradigm.

1998 Biennial Regulatory Review, FCC No. 98-117 at ¶19 (released June 15, 1998).

Thus, the Commission has recognized that changes in radio ownership necessitate a new look at whether interference to the protected service contours of full power stations should be the primary consideration for licensing radio stations. It should take a similar approach in this docket.

B. The Commission Need Not Take an "All or Nothing" Approach to Microradio.

The NAB paints with a self-servingly broad brush. It regards all requests for the implementation of microradio stations as synonymous with the Leggett petition for rulemaking[2] and attributes problems of spectrum interference and spectrum efficiency that arise with the so-called Leggett proposal to microradio in general. Adoption of the Leggett proposal, the NAB claims, would result in "thousands" of new stations, creating "small islands of usable coverage in an ocean of interference....[t]hese small islands of usable coverage, when added together,

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[2]Leggett asks, *inter alia*, that the Commission designate one AM and one FM channel for the microradio service, with one microradio station per geographic "cell." Leggett Petition at 5 found at www.radiodiversity.com/leggettprm.html.

would only provide service to 19% of the geographic area served by the typical full-service broadcaster that would be displaced." NAB Comments at 8. The NAB then concludes that a low power radio service "would result in the preclusion of full-power station authorizations." *Id.* at 8.

Even assuming, *arguendo*, that the NAB were correct that the Leggett proposal would cause unacceptable interference, nothing requires the Commission to adopt the Leggett proposal as opposed to one that would not result in interference or displacement of full power stations. The Commission should reject this "all or nothing" approach. Using its engineering expertise, the Commission can fashion a microradio system that will both promote diversity and avoid unreasonable levels of interference. This may mean that some communities have more stations than others, but the Commission need not reject the entire idea based on the possible flaws of one proposal.

C. The Possible Emergence of Digital Radio Should Not Prevent Licensing of Microradio Stations.

Several commenters claim that licensing of microradio stations "may eliminate or delay" full power radio broadcasters' transition to a digital transmission format. USA Digital Radio Comments at 3, found at www.hallikanen.com/lpfm/comments/USADR.html; *see* NAB Comments at 9-11. Even though the transition to digital radio will be accomplished with in-band, on-channel technology (IBOC), these parties claim that the radio spectrum is too crowded to permit both low power radio and the IBOC system, which requires radio broadcasters to use an FCC defined "emissions mask" in the spectrum around their existing analog transmissions.

Nothing in the broadcasters' comments demonstrates that the licensing of microradio stations will inevitably interfere with IBOC technology. Placing reliance on a "worst case"

scenario of "thousands" of new microradio stations, USA Digital Radio can say no more than microradio "***may*** eliminate or delay the introduction of digital broadcasting in the United States." USA Digital Comments at 3 (emphasis added). Similarly, the NAB guesses that "tampering with these allocation criteria at this point ***could*** severely jeopardize the viability of IBOC digital radio." NAB Comments at 11 (emphasis added). Indeed, the rollout of digital radio is so speculative that the industry can do nothing more than surmise about the impact microradio might have. Not only is the system unbuilt, it has not been authorized by the FCC, and it is unclear when and whether there will be widespread consumer acceptance of digital technology.

This is not to say that the FCC should not consider and study the impact on IBOC technology when considering whether and how to license microradio broadcasters. But it should not simply rely on the broadcasters' vague conjectures. To the extent that the Commission does find that a microradio service would cause serious interference problems with IBOC technology, the Commission can diminish that problem and also give a voice to microradio broadcasters. For the period prior to the transition to digital, the Commission could license microradio stations as they would any other broadcaster.[3] If there remain insurmountable interference problems after the FCC authorizes digital service and the transition is completed, the Commission could then require full power radio broadcasters to reserve a portion of their digital capacity for low cost use by microradio broadcasters.[4] The capacity necessary to broadcast a maximum 10 watt signal

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[3]The Commission has not as yet commenced any rulemaking proceedings governing the transition to digital radio. If digital TV is a model here, it may be years before radio broadcasters receive authorization to convert.

[4]Like digital television, digital radio transmission provides an opportunity for radio broadcasters to provide multiple program services over a digitally transmitted bit stream. The suggestion here is that one of those streams should be dedicated, if necessary, to a displaced microradio

would be quite minimal.

II. LICENSING MICRORADIO STATIONS WOULD PROMOTE THE PUBLIC'S FIRST AMENDMENT RIGHT TO A DIVERSITY OF VIEWPOINTS.

The public's First Amendment right to receive diverse viewpoints from diverse sources has long been recognized by the Supreme Court, Congress, and the Commission. Licensing microradio stations can promote this right, as well as partially offset the consolidation of radio station ownership brought on by the 1996 Act.

These diversity concerns will not be satisfied, as the incumbent broadcasters argue, by limiting microradio broadcasters to other broadcast outlets and the Internet. *E.g.*, NAB Comments at 18; NPR Comments 9. Few full power broadcasters would be willing to provide low cost access to these oftentimes out-of-the-mainstream programmers. Moreover, the Internet, which requires a user to find (not always successfully) the information they want, is no substitute for free, universal and local broadcasting, which is the ultimate in "push" technology. See discussion at Section II C, *infra*.

A. The Supreme Court, Congress, and the Commission Have Repeatedly Recognized the Importance of Promoting the Diversification of Viewpoints in Broadcasting.

The Supreme Court, Congress and the Commission have long recognized the public's First Amendment right of access to diverse viewpoints from diverse sources of information. Over the last fifty years, the Supreme Court has repeatedly reaffirmed this critical right. *See, e.g.*, *Turner Broadcasting, Inc. v. FCC*, 114 S.Ct. 2445, 2470 (1994) ("Assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it

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broadcaster.

promotes values central to the First Amendment."); *Red Lion Broadcasting Co. v. FCC*, 395 US 367 (1969); *Associated Press v. United States*, 65 S. Ct. 1416, 1424-5 (1945) ("That [the first] Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources it essential to the welfare of the public.") Moreover, the Court has recognized the connection between diversity of ownership and diversity of viewpoint. *See Metro Broadcasting v. FCC*, 110 S. Ct. 2997 (1990). Finally, the Court has specifically noted the Commission's duty to encourage the diversification of media in its licensing procedures. *FCC v. NCCB*, 436 U.S. 775, 780 (1978) ("In setting its licensing policies, the Commission has long acted on the theory that diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints.")

Congress has also repeatedly reaffirmed the importance of the diversification of the broadcast media. For example, in the 1992 Cable Act, Congress justified, *inter alia*, "must carry" for television stations and program access laws on the premise that "[t]here is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media." 1992 Cable Act §2(a)(6). Even when Congress relaxed media ownership policies in the 1996 Act, it recognized the importance of promoting "a diversity of media voices." 47 USC §257(b). The decisions of the Commission have long been in accord with these views. *E.g.*, *Multiple Ownership Rules, Second Report and Order*, 50 FCC2d (1975) *recon. granted* 53 FCC 2d 589 *aff'd FCC v. NCCB*, 436 U.S. 775 (1978).

The public's right to a diversity of viewpoints is satisfied only if the public has access to diverse sources of information. There is no legitimacy to the claim that one owner controlling multiple program feeds in a locality can provide genuine diversity in the marketplace of ideas.

"More channels" is not synonymous with "more separately controlled channels." Indeed, the Commission has found that:

> if a city has 60 different frequencies available but they are licensed to only 50 different licensees, the number of sources for ideas would not be maximized. It might be the 51st licensee that would become the communication channel for a solution to a severe local crisis. No one can say that present licensees are broadcasting everything worthwhile that can be communicated.

Multiple Ownership of Standard, FM and TV Broadcast Stations, 22 FCC 2d 306, 311 (1970), *recon. granted in part*, 28 FCC2d 662 (1971).

B. Licensing Microradio Stations Would Offset the Loss of Diversity Brought on By Greatly Increased Consolidation of Ownership in the Radio Industry

The 1996 Act lifted all limits on national ownership of radio stations and greatly relaxed the limits on local ownership.[5] After an in-depth analysis of station ownership, USA TODAY concluded that "radio is undergoing an unprecedented wave of consolidation, taking it from a kitchen-table culture of mom-and-pop business to one at home in the boardrooms of the nation's largest companies." Anthony DeBarros, "Amid consolidation, fear of less diversity, choice," *USA TODAY* at 1A (July 7, 1998). This has resulted in greatly increased concentration of ownership and a consequent loss of viewpoint diversity. *Id.*

Since the passage of the 1996 Act, the number of individual radio station owners has declined by 700 and nearly 50 percent of these are part of a "duopoly-plus" configuration. DeBarros, *supra*, at 2A, John Merli, "BIA Study Tracks Decrease of Ownership Diversity,"

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[5]Section 202, *inter alia*, enables a single entity to purchase up to 8 radio stations in a radio market with 45 or more stations. 1996 Act, §202(b)(1)(A), 110 Stat. 110. This section has effectively given single entities the capacity to dominate entire markets. For example, Section 202(b)(1)(C) permits a party to operate up to 6 commercial radio stations in a market with only 15 total stations, essentially permitting one entity to control nearly half of all the programming in a single market.

Broadcasting and Cable, at 40 (June 8, 1998). The result is that from March 1996 to February 1998, the number of owners dropped 14 percent even as the number of stations grew 3 percent. DeBarros, *supra*. The trend is further illustrated by the fact that "an average of six group owners in each of the top 100 markets control 92 per cent of the advertising revenue and 87 percent of the listening audience." Kofi Asiedu Ofori, *et al.*, Blackout? Media Ownership Concentration and the Future of Black Radio, Impacts of the Telecommunications Act of 1996 at 26 (1998). *Accord*, DeBarros, *supra* ("it's common for two or three companies to won 80% to 90% of the radio ad revenue in a market").

The structure of the radio industry is likely to become even more concentrated in the future as market trends have made entry into the industry nearly impossible by driving up the value of existing stations by at least 20 per cent over the last two years. Peter Kaplan, "Wave of Mega Mergers Signals Changes Across Radio Dial: Critics Fear Less Diversity, More Expensive Ads: New Giants Emphasize Efficiency, Experimentation," *The Washington Times* at D12 (Aug. 4, 1997). At the present rate of consolidation, some experts predict that by the year 2005, "ten companies [will] own almost three-quarters of the nation's radio stations." Ofori, *et al.*, *supra*, at 64.

The premise of consolidation is that large group owners operate more efficiently by sharing operating costs and staff. However, as large media companies have begun to control groups of stations in a single market, they have also turned to contractors for services such as news and traffic reporting, reducing diversity. One such company, Metro Networks Inc., handles traffic and news for dozens of Washington D.C. stations, providing traffic reports to 28 Washington stations from its Bethesda center alone. *See* Kaplan, *supra*, at 5. The increasing

reliance on such companies for information is reflected in the fact that Metro has been ranked by Businessweek as one of the fastest growing companies of 1998. *Id.*

This consolidation has had several negative effects on the public. First, as discussed below, there are now fewer opportunities for new and different voices to gain access to the airwaves. Second, as discussed in Section III, *infra*, the consolidation has led to less local programming which is in direct violation of Section 307(b) of the Communications Act. 47 USC §307(b).

The difficulties that accompany entry into the industry has perpetuated, and even exacerbated, the underrepresentation of minority ownership of the media. Minorities "lack access to the capital necessary to develop broadcasting business,...changes in industry policies and government regulations have increased station prices, reduced ownership diversity, increased the challenges faced by minority commercial station owners in competing for advertising revenues...and, ultimately, increased concentration of media ownership." *Minority Commercial Broadcast Ownership in the United States: A Report of the Minority Telecommunications Development Program, National Telecommunications and Information Administration* (NTIA), United States Department of Commerce at 1 (August 1997).[6]

NTIA's survey found that as of 1997, minorities owned a mere 322 of 11,475 commercial broadcast stations, representing a mere 2.8% of total commercial ownership. *Id.* More significantly, minorities owned 28 less stations in 1997 than they did prior to the passage of the 1996

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[6]This report discusses a recent study of over 7,000 broadcast stations released by the California Institute of Technology. The results of this study indicate that "increasing the number of minority-owned broadcast stations increases the amount of information programs that serve the overall interests of minority audiences." *Id.* at 2.

Act, a drop of 9%. *Id.* There is every reason to believe this trend has, if anything, accelerated since the NTIA issued this report.

The licensing of microradio stations can increase the number of individuals with access to the airwaves. More specifically, microradio stations could enable more minority broadcast ownership, which, in turn, enhances the diversity of viewpoints. *Id.* Because several factors (most especially cost), have made it increasingly difficult for minorities to gain access to the radio industry via traditional full power stations, a low cost microradio service promises traditionally underrepresented groups a chance to have their voices heard.[7] Microradio provides an opportunity to increase both the number of individuals who are able to participate in the marketplace of ideas and the diversity of information that the public is able to receive.

C. There are Few, If Any, Alternative Outlets for the Kind of Local Programming Microradio Stations Can Provide.

All too predictably, the NAB disclaims any responsibility to meet the needs of citizens it deems demographically uninteresting. Instead, it adopts a "Let George Do It" posture, arguing that individuals can lease time, or apply for non-commercial frequencies and that "the Internet is a perfect example of a resource that is available for diverse viewpoints to be heard." NAB Comments at 18. Similarly, National Public Radio argues that the "benefits associated with [microradio] may be better realized through...the Internet [which]...connects individuals with distinct interests whether those individuals reside within the same town or on opposite sides of

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[7]Creation of a microradio service would not absolve the Commission of its duty to ensure diversity of ownership of full power stations, especially ownership by minorities. The Commission must continue to ensure diversity in the full power radio service by, *inter alia*, retaining the local ownership limits and prohibitions on crossownership, and by scrutinizing license transfers' effects on diversity, even when they do not exceed the numerical limits set by the 1996 Telecommunications Act.

the planet, and because it offers a variety of communications capabilities...." NPR Comments at 9.

However, as the NAB knows, broadcast licensees (especially commercial licensees) are rarely willing to provide inexpensive access for programming that is often far from the mainstream. The suggestion that its members will "lease" time to those able to afford it is especially flawed. First, the very point of microradio is that it addresses very small geographically concentrated audience. Forcing programmers to pay a full power station to reach a tiny segment of its service area is inherently inefficient and economically unworkable. Moreover, as the NAB may from time to time forget, in a "lease" situation, the licensee is responsible for and controls the program content. Given the goals of microradio, existing licensees will not tolerate what microradio stations will want to carry.

The argument that the Internet is an adequate outlet for the type of programming microradio stations would provide ignores the unique characteristic of the broadcast industry as the only ***universal*** source of ***local*** news and information. In stark contrast to the Internet, broadcasting is the quintessential "push" technology - the listener does not have to search (often unsuccessfully) to find what the information he or she wants.[8] Moreover, even though the Internet has grown in popularity as a source of communication, it is by no means as pervasive as the broadcast media,[9] and is more a national than a local medium.

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[8]NPR recently reported predictions that it is unlikely that Internet will ever attract the kind of advertising revenue that broadcasting does because it is a "pull" technology that does not command the same type of captive audience. John McChesney, "Investment in 'Portals'" *National Public Radio's Morning Edition*, July 6, 1998.

[9]For instance, while nearly every home in the United States has a television set and a cable television is enjoyed by 67% of homes, only 23% of homes are connected on-line. Moreover,

III. THE LICENSING OF MICRORADIO STATIONS WOULD OFFSET LOSSES IN LOCAL RADIO PROGRAMMING.

Throughout its existence, the Commission has remained committed to the statutorily mandated goal of localism in broadcasting. See 47 USC §307(b)("In considering applications for licenses and modifications and renewals thereof...the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.") Even as it deregulated the radio industry in the early 1980s, the Commission has held fast to the requirement that broadcasters serve their local communities with both locally originated and locally oriented programming. "[L]ocalism has been, and continues to be, an important interest in serving the public interest....What is important is that broadcasters present programming relevant to public issues both of the community at large or...relevant primarily to the specialized interests of its own listenership." *1981 Deregulation Order*, 84 FCC2d 968, 997 (1981).

The NAB and other broadcasters claim that microradio stations are unnecessary because current full power stations already provide local programming. *See, e.g.*, NAB Comments at 16; North Cascades Broadcasting Comments at 1; WQLV Comments at 1. But the mere fact that there is a grassroots drive to create microradio stations suggests otherwise. The NAB even argues that "the increase in efficiencies that results from common ownership could allow stations

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consumers of the Internet are a fairly homogenous population, unrepresentative of the majority of the population. For instance, 43% of adult users have a college degree or higher, a percentage well above the 31% share of all adults in the United States. Furthermore, the income of average web user, approximately $55,000 per year, is more than double the average US individual income of $25,000. *See* Thomas Weber, "Who, What, Where: Putting the Internet in Perspective," *Wall Street Journal* at B12 (April 16, 1998).

to offer new and distinct niche programming that was otherwise unavailable prior to consolidation." NAB Comments at 16. Experience, however, is to the contrary. Although the industry has regularly made this promise each time it has asked the Commission and Congress for relaxation of the ownership limits, common ownership has generated uniformity, not diversity. The increased consolidation of the radio industry in recent years has been characterized by a wholesale abandonment of local programming, especially news and local programming, and towards satellite delivered regional and national programming. *See* Kaplan, *supra*; DeBarros, *supra.*[10]

Combined with a requirement that a certain percentage of its programming be locally originated, see discussion at Section IV C, *infra*, microradio stations can help to alleviate this trend away from local programming. The proposals before the Commission all seek to create a service directed at the needs of small niche communities - perhaps a housing project, a suburban subdivision, or a small municipality. *See* Leggett Petition at 2 ("A microstation would serve an area of one to several square miles, making it ideal for coverage of a single small municipality or even a small neighborhood of a larger municipality); Skinner Petition at 7("there is a need for stations to serve very 'small communities' or very small areas within large communities.") By virtue of the reach of these low-watt stations, they will likely not survive unless they provide the programming that is of particular interest to those small communities. Leggett Petition at 2 ("survival for microstations will require attentiveness to 'niche' markets and community concerns.")

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[10]This trend has been aided by the decision in *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993), which rejected consideration of a broadcast applicant's ties to its local community in comparative hearings.

IV. THE COMMISSION SHOULD LICENSE MICRORADIO STATIONS IN A MANNER THAT PROMOTES DIVERSITY AND LOCALISM.

While MAP/CME have argued that - in theory - licensing microradio stations would be in the public interest, implementation raises procedural questions, not theoretical ones. As with any allocation of spectrum, the "devil is in the details." The Commission must ensure that whatever licensing and regulatory scheme it creates for microradio stations results in increased diversity of views and increased local programming.

First and foremost, the Commission should ensure that microradio broadcasters are subject to the obligations that are at the heart of the public interest standard, including the political broadcasting rules, the sponsorship identification rules, the personal attack and political editorial rules and modified public file requirements. These are similar to the type of obligations placed upon low power TV stations. While such requirements can and should be tailored to the needs and resources of tiny microradio operators, microbroadcasters must understand that trusteeship responsibilities come with legal use of the airwaves - and that they are not absolved of those responsibilities because of their size.

To achieve the goals of increased diversity and localism while simultaneously ensuring that the Commission does not face greatly increased administrative burdens, MAP/CME urges the Commission to grant microradio licenses on a first come, first served basis provided that the applicant:

- has no attributable ownership interest in another broadcast property, including another microradio station. "Attribution" must be broadly defined to include any arrangement in which program control is vested in any party for all or part of a day.

- provides programming that is at least 50 percent locally originated.

- lives within the community of license and is directly involved in the day to day management of the station.

- may not sell or "lease out" the station, or otherwise convey control. Alternatively, the applicant may not sell it or otherwise divest control for five years after receiving a license. If it is sold, the new owner must meet the requirements set out above.

Contrary to the claims of the NAB and NPR, the licensing of microradio stations need not result in severe administrative burdens for the Commission. *See* NAB Comments at 19-20;[11] NPR Comments at 8. The low power television application procedures provide an excellent model for simple application procedures for microradio stations. *See generally* 47 CFR §§74.701-784; FCC Form 346. A low-power television applicant selects a channel that is "not likely to cause interference" and submits engineering data to demonstrate the technical parameters of its proposal. 47 CFR § 74.702(a); FCC Form 346, Section II. In addition, the applicant responds to a series of yes/no certifications with respect to the applicant's legal qualifications to operate a low power television station. FCC Form 346, Section III. MAP/CME's proposed qualifications for operating a microradio station could be verified with yes/no certifications. Further, in light of the Commission's proposal to streamline broadcast applications by implementing electronic filing procedures, an applicant could likely apply for a microradio station electronically - thus simplifying the application procedure even further. *See 1998 Biennial Review, Streamlining of Mass Media Applications,* FCC 98-57 (released Apr. 3, 1998).

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[11]NAB's argument is especially ill-taken, given its advocacy for extremely burdensome procedures it says are necessary to allocate additional spectrum to incumbent television broadcasters for digital transmission.

A. Microradio Stations Should be Subject to the Same Public Interest Obligations as Full Power Stations.

Although Radio Free Berkeley (RFB) quite properly points to the public's paramount First Amendment right to receive information, it inexplicably argues at the same time that the Commission should not impose any public service obligations on microradio licensees. RFB Comments at 3, found at www.radio4all.org/news/rm9208.html. This kneejerk reaction most likely stems from RFB's history as an illegal "pirate" broadcaster. But the legitimation of low power radio brings with it responsibilities that cannot be shunned by microbroadcasters simply because of their size or prior history as scofflaws. As voluntary trustees of the valuable public airwaves, microradio stations must be subject to many of the same public interest regulations as full power licensees.

MAP/CME agree with the NAB that the Commission must concern itself with the character of applicants, and that "[t]he Commission should not establish an entirely new service to placate people who are flagrantly violating the law as it exists today." NAB Comments at 18. Microradio should be established to promote diversity and localism, not to provide a safe haven for those who have disclaimed lawful procedures for unlawful self-help. In that regard, MAP/CME oppose any suggestion of amnesty for pirate broadcasters, and encourage the Commission to continue to shut down unlicensed radio operations.

Low power TV stations serve as an apt analogy for determining the proper scope of microradio's public interest obligations. With some modifications to take into account their needs and resources, these licensees are subject to most of the obligations imposed on full power TV stations. These regulations include *inter alia*, the requirement to provide reasonable access to federal candidates for public office, the requirement to provide equal opportunities to candidates

for public office, the sponsorship identification requirement, and a requirement to keep a modified public file. 47 CFR §74.780 *See Low Power Television Stations*, 51 RR2d 476, 519 (1982). MAP/CME urge the Commission to require that microradio stations comply, at a minimum, with the above laws and regulations and the personal attack and political editorial rules, in addition to any other structural, technical and content regulations the Commission deems appropriate.

B. Ownership of Microradio Stations Should Be Limited To One Per Individual or Entity.

MAP/CME urge the Commission to limit ownership of microradio stations to one per individual or entity. Limiting the number of stations a licensee can own would prevent the accumulation of multiple stations by any one entity, which would promote the Commission's diversity goals and the First Amendment rights of the public. It would also provide greater opportunity for minorities and other groups who have traditionally been excluded from the airwaves. This limitation is especially important given that the allocation plan the FCC adopts may only permit a few stations in a market.[12]

Importantly, limiting attributable ownership to one license would preclude local marketing agreements (LMAs) and similar schemes, because at least for radio, the entity programming another station pursuant to an LMA is attributed ownership of that station. *Radio Rules and Policies*, 7 FCC Rcd 2755, 2788 (1992). In the event that the Commission permits ownership of more than one microradio station, it should prohibit LMAs and all similar devices. These

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[12]The Leggett Petition proposes a five station national limit to "allow entrepreneurs to be motivated by the prospect of genuine wealth." Leggett Petition at 5, found at www.radiodiversity.com/leggettprm.html. Permitting such multiple ownership, however, would ensure that some stations would be neither owned nor operated by a licensee who lives in the community of license. *See* discussion at Section III, *supra*.

arrangements violate the Communications Act's prohibition on unauthorized transfer of control, 47 USC §310(d), and do nothing to promote the Commission's diversity and localism goals.

NPR argues that any limit on national ownership of microradio stations would run contrary to Section 202(a) of the Telecommunications Act of 1996. NPR Comments at 5 citing 1996 Act, §202(a), 110 Stat. 110. Section 202(a) lifts the numerical ownership limits for AM and FM stations. But Section 202(a) is no barrier to MAP/CME's proposal. The plain language of the 1996 statute requires the Commission to "revise section 73.3555(a) of its regulations" to provide for the applicable ownership limits. The Commission long ago fulfilled that directive. The provision in no way precludes the Commission from adopting new rules of any kind, and most certainly does not address rules the Commission might adopt for a service which did not (and in still does not) exist. Thus, the FCC could reasonably adopt a separate set of ownership regulations for low power radio stations. *See Chevron v. NRDC,* 467 U.S. 837 (1984).

C. At Least 50% of Programming Must Be Locally Originated.

The Commission should establish a requirement that at least half of a microradio program day should be locally originated. This requirement would ensure that microradio stations meet the programming needs of the local community. While the 50 percent minimum for locally originated programming would guarantee that broadcasters present issues relevant to the community, permitting stations also to purchase some regional and national programming would not only promote more creative programming but also enable the station to expose its community of license to other issues that affect issues being debated in the community.