

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Proposal for a Low-Power (LPFM))
Broadcast Service)

RM No. _____
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PETITION FOR RULEMAKING

Submitted by:

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1.0 Introduction

Americans for Radio Diversity (ARD) is a nonprofit organization, composed of concerned radio listeners and consumers, dedicated to promoting community orientated public and commercial broadcasting. In this petition for rulemaking, ARD intends to present the need for a Low Power FM (LPFM) service and our recommendations on how to implement such a service.

2.0 Background

Authors Robert McChesney and Ben Bagdikian are among many who have accurately described our nation's radio broadcasting service as a cartel. This was only intensified by the passage of the Telecommunications Act of 1996 which did away with the consumer and diversity protections of the original 1934 act. Under the current structure, local communities and businesses have been effectively excluded from the airwaves by national radio conglomerates and advertisers. Only a year after the passage of the 1996 act, a reported 4,000 of the nation's 11,000 stations had changed hands and 1,000 radio company mergers had occurred.¹ As a result, most decisions about radio programming have ended up being supervised by out-of-state executives who have no interest in diverse community voices or quality. Instead, they seek to reduce competition and attract advertising dollars by servicing only the most profitable demographics. The media moguls could not make their motives any clearer with public statements such as: "We're not in the business of being preoccupied with an agenda to advance a certain type of music or a political bent; that's just folly. We're here to return profits to our shareholders." (Gabe Hobbs, Jacor Broadcasting)² and "I am committed to working with Chancellor's Board of Directors during the next several weeks to recruit a world-class CEO. That individual will work with the Company's excellent management team...to execute our strategy in order to achieve the next plateau of growth in the rapidly consolidating media industry." (Thomas O. Hicks, Chancellor Media)³. Then FCC Chairman, Newton Minow summed up the situation best in a 1961 speech to the National Association of Broadcasters (NAB) when he made the statement that NAB operated a "vast wasteland" and were "squandering the public airwaves," and warned, "there is nothing permanent

¹David Johnston, "U.S. Acts to Bar Chancellor Media's L.I. Radio Deal," The New York Times, Nov. 7, 1997, p. C10

²Doug Reece, "KREV Fans Rally for Radio Diversity," Billboard Magazine, April 4, 1998

³Chancellor Media, "Company Press Release: Thomas O. Hicks, Chairman of Chancellor Media, Named Interim President and CEO ...", April 14, 1998, http://biz.yahoo.com/bw/980414/chancellor_1.html

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or sacred about a broadcast license."⁴ This quote takes on even more meaning considering it was made thirty five years prior to the devastating effects of the Telecommunications Act of 1996.

ARD is of the belief that a system of community based LPFM would be a major step in having the FCC serve under their original charter of protecting the broadcast spectrum as a public trust, thus returning the airwaves back to the people. Under ARD's proposed LPFM system, choices would be made on a local basis and would reflect the diverse interests, tastes, backgrounds, and creative talents of the target community.

3.0 Proposed LPFM Broadcast Service

3.1 Licensing

ARD proposes a provision to limit ownership to one station per applicant. By limiting ownership, diverse voices would be given the opportunity to be heard and community focus better achieved. Allowing multiple licenses per owner would only serve to limit the number of people that could enter radio broadcasting.

Licensing fees should be kept at a minimum, covering only administrative costs. This would reduce possible economic barriers and provide opportunities for more people to enter LPFM broadcasting.

The allocation of licenses should be first come, first served. Applicants would file within a specified time period each year. Having the filing window would serve to reduce administrative cost for the FCC thus help in keeping licensing fees low. Applications must be complete and meet minimum requirements as specified in section 3.2 of this proposal. If applicants file on the same day for the same frequency, one will be moved to another open frequency. If there are no other open frequencies, a lottery will be used to determine who will be issued the license.

In the event that a low power service is established ARD believes that granting only one or two stations in each area would be an inadequate implementation. As many low power licenses should be issued in a given area as the spectrum can accommodate without interfering with other stations.

3.2 Restrictions and Requirements

ARD proposes a license holder live within twenty five miles of the transmitter. In rural areas, where the pool of potential broadcasters may be smaller, the residential requirement may be expanded up to fifty miles. A residential requirement would prevent people with little or no knowledge of the community from operating a station without that communities' interest in mind.

LPFM stations should be limited to 100 watts (ERP) and a five mile coverage radius in metropolitan areas. The LPFM station would be allowed to use a power level (ERP) and antenna height (HAAT) combination of their choice to achieve the coverage area limit. An applicant for a LPFM license would specify the proposed combination in their application. In rural areas, where the spectrum is less dense and the pool of potential listeners is lower, the radius would be increased to 10 miles.

ARD proposes type-certified equipment be employed in the operation of the LPFM stations. This would reduce concerns of possible interference and/or bleed over. During the application process, the applicant would provide a list of equipment they plan to use. LPFM stations would be allowed to operate as a for-profit business but license holders would be

⁴Ben H. Bagdikian, "The Media Monopoly, 5th edition", Boston: Beacon Press, 1997, p. xxxiii

required to meet the small business requirements as defined by the Small Business Administration. Allowing for profit stations would allow small "mom and pop" businesses to afford radio advertising which they currently can not with today's inflated advertising costs⁵. This, in turn, would help strengthen communities. Also, this would provide a source of revenue for LPFM broadcasters so that they can maintain a high level of signal and broadcast content quality. This, in actuality, would not be any different than the small number of non-profit community stations that currently exist, where funds acquired from underwriting are used to maintain equipment and to employ a small paid staff. In this case the license holder / owner would be considered a member of the paid staff.

All LPFM stations licenses shall be non-transferable. This would eliminate the situation which we have now where prices for broadcast properties become artificially inflated. It would also promote the notion that the airwaves are public and not something that one can purchase. An owner no longer able or willing to broadcast would simply notify the FCC, vacate the frequency and sell their equipment. Anyone would then be eligible to go through the application process to fill the open frequency.

No LPFM station shall devote more than 15% of its daily programming to non-locally produced (i.e. "canned", syndicated, or satellite fed) material. This would help insure that the programming of these LPFM stations was locally produced.

3.3 Oversight

ARD supports Stephen Dunifer's idea of a body of micro-broadcasters being used to oversee the LPFM stations⁶. This would help reduce administrative costs for the FCC and allow decision to be made on a local basis. To avoid conflicts of interest and remove possible barriers to entry, ARD proposes that the FCC would still be responsible for licensing the LPFM stations. The micro-broadcast body would be responsible for overseeing other technical details such as signal quality, interference, and broadcast content. The FCC would be seen as a "court of last resort" if these issues could not be resolved on the community level.

4.0 Summary

ARD strongly believes that if the FCC implements the proposed LPFM broadcast service detailed in section 3.0 of this document, they will be taking the first step in returning the airwaves to the American public.

ARD welcomes any comments or questions regarding this proposal.

Finally, ARD makes the suggestion that the FCC pick communities for LPFM pilot programs. Communities already involved in the micro-broadcast movement such as the San Francisco Bay Area, Minneapolis, Philadelphia, and Southern Florida would be ideal initial locations.

Respectfully Submitted,

Americans for Radio Diversity

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⁵ "The price of radio is accelerating about triple the rate of inflation now." Matthew Schriffin, Forbes, June 1, 1998.

⁶ Stephen Dunifer Legal Defense Team, "Broadcasting the Constitution and Democracy", position paper: April 6 1998

Appendix A

ARD Comments Regarding RM9208 and RM9242

**Before the Federal Communications Commission, Washington, D.C. 20554
In the Matter Of: RM-9208 and RM-9242**

Office of the Secretary
Room 222
1919 M Street NW
Washington DC 20554

CC: Nickolaus E. Leggett
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Reston, VA 20190-3748

CC: Rodger Skinner
TRA Communications Consultant, Inc.
6431 NW 65th Terrace
Pompano Beach, Florida 33067-1546

Comments on Proposals for LPPM: RM-9208 and RM-9242

Filed by: Americans for Radio Diversity
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Roseville, MN 55113

Date: April 10th, 1998

Americans for Radio Diversity (ARD) is a non-profit Minneapolis based organization, comprised of concerned radio listeners and consumers, dedicated to promoting community orientated radio broadcasting. In support of this cause we are writing to file our comments in regard to the two current proposals for Low-Power FM (LPPM) currently on file with the FCC: RM-9208 (Leggett) and RM-9242 (Skinner)

ARD is in agreement with both petitioners reasoning for wanting LPPM implemented. In this post-Telecom Act of '96 environment that we live in, it is more important than ever to provide for diverse community voices. The FCC is supposed to treat the airwaves as a public trust and now is a good time to show that the FCC really has that in mind. Below are comments ARD would like to file based on the contents of RM-9208 and RM-9242.

1) The 1 watt restriction of RM-9208 may not allow for sufficient coverage area for some target communities. Additional comments filed by the RM-9208 petitioners backs up this notion. However, the 3000 watt limit put forth in RM-9242 proposal may be too high for most metro areas. Power levels should not be allowed to crowd out smaller stations. The objective should be increased participation, not a few additional stations imitating their bigger brothers. Therefore, it would make sense to set the limit for LPPM stations at 100 watts or below, which the FCC has no provisions for at this time.

2) ARD supports RM-9242's notion of residential requirements for ownership. However, we suggest shrinking the stated 50 mile requirement. ARD has doubts someone living 50 miles from our different neighborhoods truly knows the community needs of those neighborhoods. ARD suggests that a 25 mile requirement may be better suited to maintaining community interests. In rural areas where the pool of potential broadcasters is much smaller, the 50 mile requirement may be appropriate.

3) ARD would like to see a provision to have a limit of one station per owner. The goal should be diverse voices and community focus, and this would help achieve that goal. Allowing multiple licenses only would serve to limit the number of people that could enter into radio broadcasting.

4) Equipment used should have to meet minimum specs in respect to such things as stability, filtering, and modulation control. This would ease some of the FCC concern about interference and bleed over.

5) If or when TV goes digital, ARD suggests opening up the FM band by including VHF TV channel six at the left of the dial. This would widen the FM broadcast band allowing for more participants to enter the market.

6) ARD supports the idea that these LPFM stations could be for profit. This would help small "mom and pop" business to be able to afford radio advertising which they currently can not with today's inflated advertising costs. This, in turn, would help strengthen communities. Also, this would provide a source of revenue for LPFM broadcasters so that they can maintain a high level of signal and broadcast content quality. ARD is opposed to any license holder utilizing a station solely to promote and advertise a business in which they are vested.

7) ARD supports the notion that all broadcasters should meet a minimum number of broadcast hours or forfeit the license. This would insure that bandwidth is not being wasted. Perhaps a "time-share" program could be set up to help with this problem.

8) ARD believes a minimum requirement for locally produced content should also be strongly considered. This would insure that the station is benefiting the community by covering local issues, playing local music, and providing an outlet for community members to participate in radio broadcasting.

9) A body of micro-broadcasters could be set-up to oversee the micro-power stations. This would help reduce administrative costs for the FCC. Self regulatory systems have been shown to work in other arenas such as Ham radio. To avoid conflicts of interest, the FCC would still be responsible for licensing the LPFM stations, but the micro-broadcast body would be responsible for overseeing other technical details such as signal quality, interference, and broadcast content. The FCC would be seen as a "court of last resort" if these issues could not be solved on the community level.

10) If the FCC is not sure how a LPFM system would work, ARD suggests that the FCC pick a community as a proving ground to try out ideas for a LPFM system. Communities already involved in the micro-broadcast movement such as the San Francisco Bay Area, Minneapolis, and Southern Florida would be ideal to start out with.

ARD welcomes any comments or questions. ARD strongly encourages the FCC to take this to the next step whether that be issuing a Notice of Proposed Rule Making (NPRM) or a Notice of Inquiry (NOI).

Signed:

ARD Members

Appendix B

ARD Reply Comments Regarding RM9208, RM9242, and RM9246

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

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

**REPLY TO COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS
BY AMERICANS FOR RADIO DIVERSITY**

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INTRODUCTION

Americans for Radio Diversity¹ (ARD) files the following reply to comments made by the

Americans for Radio Diversity is a non-profit incorporated organization of radio listeners concerned about industry consolidation and the lack of diverse programming and ownership in the radio market. Its members do not have a monetary or financial interest in the industry, and it does not operate or intend to operate a low power radio station.

National Association of Broadcasters. ARD advocates the creation of a regulatory structure for low power FM broadcast similar to those proposed by the above petitions. ARD's minor differences with those petitions are addressed in separate comments filed with the FCC as well as our own petition for rule making. This reply is limited to specific comments filed by the NAB.

L. AMERICANS FOR RADIO DIVERSITY DISAGREES WITH NAB'S CLAIM THAT LOW-POWER BROADCASTING IS AN INEFFICIENT USE OF SPECTRUM.

The NAB claims that micro- or low-power radio is an inefficient use of spectrum in general² and specifically that the Leggett proposal's plan to clear two channels for micro-power stations is infeasible.³ ARD disagrees with their general claim because we believe there is currently unused space on the FM band that could be used to add low-power stations that would not interfere with current broadcasting. Furthermore, in regards to the Leggett proposal, NAB undermines their own claim when they state, "This [clearing two channels] is clearly not feasible because in highly populated areas, particularly along the east and west coasts of the continental United States, there are no available channels to which the displaced full-service broadcasters could relocate."⁴ This implies that the spectrum in many places has room for no more full power stations and while that may cast doubts on the Leggett plan to free up a particular channel it only strengthens the argument for low power radio in general. If the spectrum is "too full" to add another full power station yet has any space at all available for low-power stations (even if only a single station) clearly the most efficient use of the spectrum is to add the low power station(s). Trading a single full-power station for a single low-power station is of course inefficient, but so is

NAB Comments Sec. III A.

Id. at III A. 3.

Id.

a market with 25 full-power stations compared to one with 25 full-power and one low-power. In standard economic analysis adding the single low-power station results in a Pareto superior allocation of goods--no consumer is made worse off and at least one is made better off. Contrary to NAB's contention, *not* allowing low-power radio is an inefficient use of the spectrum.

NAB also claims that a micro- or low-power service would result in the preclusion of full-power station authorizations.⁵ ARD does not agree with this contention (since there are many areas where a low-power station would fit in the spectrum but a full-power station would not) but even if we accept this as true it is not the indictment of low-power radio that the NAB claims it to be. The NAB goes to great lengths in their comments to claim that one large station (the kind their members operate) better serves the public than several low-power stations would.⁶ But is this really the case?

Consider the geography of the typical metropolitan area. It consists of many smaller neighborhoods often distinguished along racial or ethnic lines; e.g. Hispanic, Native American, Asian, African American, and the ubiquitous Chinatowns and Little Italies. Each of these communities, some with a high percentage of non-English speaking residents, would benefit from a local low-power station that served their community, in some cases in their native language. Such stations would also be available for advertising from small businesses and local merchants for whom full-power stations are impractical. Certainly the NAB would not contend that these disparate communities would be better served instead by the addition of yet one more full-power station aimed at the white middle-class, the favorite demographic of the advertisers who support the NAB owned stations.

In any case, since there does not appear to be any great clamoring on the NAB's part for the

Id. at Sec. III A. 4.

Id at Sec. III A. 3 and Figure 1.

addition of full-power stations their preclusion argument seems to be a bit of a red herring. It becomes apparent that the most efficient use of the radio spectrum is a mix of both full- and low-power stations.

II. THE CURRENT BROADCAST SERVICE LACKS SUFFICIENT DIVERSITY.

NAB's further contention that "there is no need for a micro- or low power radio service" because "current radio broadcast services serve virtually every need"⁷, if it is indeed being made with a straight face, takes little refutation. If every need is being filled why are there some 1000 unlicensed micro-broadcasters operating? If every need is being filled why is radio listenership at a 17 year low?⁸ Are all the needs of minority communities being met when the number of black and Hispanic owned radio stations has dropped 10% since the passage of the 1996 Telecom Act?⁹ If all needs are being met why did an FCC Commissioner recently state, "There are still far more citizens who want to speak over the public airways than can be accommodated"?¹⁰

The NAB comments that "there is evidence that the diversity of formats has not decreased" due to the consolidation of ownership¹¹ yet doesn't actually present that evidence. In a document with over 100 footnotes one assumes that if that evidence really did exist it could have been squeezed in. The NAB then speculates that "the increase in efficiencies that results from common ownership *could* [emphasis added] allow stations to offer new and distinct niche

Id. at III. C. 1.

"Corporate Radio Still Sucks", Rolling Stone #785, April 30, 1998, p. 27.

"Cable's hold on America", The Economist, January 24, 1998, p.61.

Speech by Commissioner Gloria Tristani to the Federal Communications Bar Association, May 21, 1998.

NAB Comments Sec. III. C. 1.

programming that was otherwise unavailable prior to consolidation."¹² Leaving aside the fact that this contradicts their thesis that all needs are already being met, ARD notes that for two years the NAB has been saying that this *could* happen yet there is no evidence that it *has* happened or ever *will* happen.¹³

III. THE NAB MISINTERPRETS ECONOMICS AND THE PUBLIC INTEREST.

The NAB further claims that adding a new service would likely decrease the overall service to the public. Supporting this claim the NAB laments the adding of 2277 new FM stations between 1983 and 1991 noting that the industry was saved from "severe economic and financial stress" only by the loosening of ownership rules in 1996.¹⁴

Every first year economics student knows that free market capitalism is premised on a large number of small producers competing to provide consumers with products they want. The NAB turns the capitalist system on its head by claiming that the market works better with a small number of firms in control.

What the NAB is really talking about here is protection from new competition which is made clear in their summation stating, "The moral of this story is that the Commission needs to consider the impact on existing radio stations before authorizing a new service..." The short answer to that contention is, No it doesn't. The FCC's job is not to protect the market share of existing stations, or the financial status of companies currently in the business, or even to protect the interests of advertisers who want access to listeners. The FCC's job is to ensure that the

Id.

NAB ends this paragraph by taking a shot at the petitioners for advocating a service that "only a handful of people...want to hear." This begs the question, How do a handful of people differ from a niche market?

NAB Comments Sec. III. C. 2.

public has access to diverse information and entertainment over the nation's airwaves. While there are certainly fine points to debate about how that should best be done, to imply that the FCC's duty is to anyone other than the listening public is a fundamental misinterpretation of both case law and the Constitution. In ARD's view the NAB's line of argument here is too concerned with protecting their financial interests at the expense of the public's interest. That public interest would be best served by the licensing of low-power radio stations.

IV. THE ALTERNATIVES TO LOW-POWER BROADCASTING ARE INSUFFICIENT.

The NAB's contention that there are other outlets available without resorting to establishing a new service is flawed as well, and their suggestion of the internet as a solution is especially cynical considering that only twelve pages earlier they argued against low-power broadcasting because people would be unable to receive it in their cars.¹⁵ They cite the case of Alan Fried, a long-time "pirate"[NAB's term] who found a traditional outlet for his programming by leasing time on Children's Broadcasting Corporation (CBC) stations and found time for his show on a non-commercial station in Minneapolis. But in Mr. Fried's case a four hour show once a week on a non-commercial station is a far cry from the 24/7 he broadcast on his own and the arrangement with CBC is only temporary.¹⁶ Meanwhile, his old frequency sits empty. The efficient solution would be to grant Mr. Fried a license for his former, non-interfering, low-power broadcast and free up time on both CBC and the non-commercial station for other broadcasts.

V. NAB'S FEAR THAT THE ADMINISTRATION OF A LOW-POWER SERVICE WOULD BE TOO DIFFICULT IS UNFOUNDED.

NAB Comments Sec. III. A. 1. Of course low-power stations *can* be received in a car or on a walkman or on a portable radio. The internet is not nearly so portable, at least not without huge cellular phone bills.

Personal communication.

As for the NAB's claim that administrative difficulties would burden the Commission¹⁷ ARD believes that the FCC is more than capable of handling the task and that expenses incurred would be offset by avoiding the numerous enforcement actions and legal challenges involved in the current handling of the low-power broadcast question.

CONCLUSION

All parties in this debate are well acquainted with the US Supreme Court's holding in *Red Lion* but it bares repeating nevertheless:

It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market...It is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences which is crucial here.¹⁸

It is the FCC's duty to serve the listening public and it can do this by increasing access to the radio spectrum through the authorization of low-power broadcasting by and for individuals who are not at present adequately served by the radio industry. The FCC should therefore reject the arguments of the NAB and establish a regulatory system for low-power radio broadcasting.

Respectfully submitted,

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NAB Comments, Sec. III. D.

Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367, 389-90 (1969).