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April 26, 1999 EX PARTE OR LATE FILED

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MM Docket No. 99-25

Dear Mr. Chairman,

Thank you again for your participation in NAB '99 in Las Vegas last week. Your attendance and your speech, as well as the contributions of other Commissioners and the FCC's staff, helped make it the most successful convention in NAB's history.

Broadcasters were heartened to hear you say that "One, this FCC is committed to preserving the technical integrity of FM radio. And two, this FCC is committed to a digital future for radio. Low power radio will not change that." These commitments were particularly significant, given the recognition in the Low Power *Notice of Proposed Rulemaking* that "Relaxed interference standards for low power FM stations may be the only way to 'find' sufficient spectrum in medium and larger markets to create any new viable service of 100 watts or more." We understand your remarks in Las Vegas to mean that, if the introduction of low power radio service would result in increased interference to FM service or inhibit the development or success of IBOC digital radio service, then the Commission will not proceed, as the *Notice* suggested, to authorize low power service on the ground that the claimed benefits of the service outweigh the harm to existing radio stations and their listeners.

We also appreciate your call that rhetoric about low power radio be replaced by facts. And broadcasters are working to do that. We have obtained from the Commission's staff the computer program the Commission used to predict possible locations for low power stations, and we are running it for every market in the country. We have begun a study of the interference rejection characteristics of different types of radios now commercially available, and this is not only the most comprehensive study of this type ever undertaken, but the first to systematically examine the ability of radios to reject third adjacent channel stations. Further, we plan to apply the results of that study to predict the amount of interference that existing stations actually would receive from low power stations. Other studies are being done to assess the levels of listening in many markets

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outside FM stations' predicted contours to determine whether increased interference would disrupt established expectations of radio listeners. In addition, the IBOC proponents are taking steps to assess the impact of increased second and third adjacent channel interference on their developing systems. Finally, we understand that the Commission is also undertaking its own tests.

All of these studies will enable the Commission and the radio industry to evaluate the impact which the present low power proposal or other low power proposals would have on existing and future radio service. But, studies of this size and complexity inevitably take time.

As you are aware, NAB submitted an FOIA request to the Commission for any additional background information on low power radio that you have developed. We have been told that the Commission is in the process of completing its response to our request, and that there are FCC records which may be useful in refining our studies. Further, the IBOC proponents' field tests – tests which are the necessary backdrop to any understanding of the impact of additional low power stations – cannot be completed until late in the year. We met with two proponents at NAB '99, and all three have committed to completing not only the field tests necessary for development of their systems, but also evaluation of their resistance to increased interference levels, by December 15. Under the Commission's present schedule, therefore, it will not be possible to replace rhetoric with facts by the current comment deadline since the facts cannot be fully developed in that time.

Further, there may be alternatives to the Commission's current proposal which would make a new low power service possible without creating the risks to existing service that many believe would be the result if the Commission went forward with rules along the lines proposed in the *Notice*. Several were suggested during panels at NAB '99, including such innovative proposals as expanding the FM band upwards as the air navigation services now in that band migrate to using GPS technology, with the resulting frequencies being reserved for new community-based radio stations. Again, these proposals cannot possibly be explored in the time frame now contemplated by the Commission.

Putting these facts together with the commitments you made to ensure the integrity of existing and future radio services and your request that the debate on low power radio rest on facts, we think points out the need for all of us to "take a breather" to ensure that a full evaluation of low power is done before the Commission acts. Thus, Mr. Chairman, we ask that you consider putting off the comment date in this proceeding until all of these ongoing studies – in particular the IBOC field tests – can be completed and their results evaluated. I pledge that broadcasters will work with you and the Commission's staff to make sure that the record needed for the Commission to reach an informed decision is assembled. We would also hope that during that time the Commission could also begin a formal rulemaking proceeding dealing with IBOC. At the very minimum,

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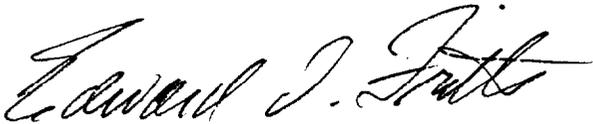
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we ask that the comment period be extended another 60 days to permit at least the non-IBOC studies to be completed, particularly in light of our FOIA request.

Let me be clear: broadcasters have deep reservations about any proposal to add low power stations to the FM band. We disagree with many of the assumptions in the *Notice* about the need for such a service, as well as with expectations that such a service will address any problems the Commission identified. We also believe that the enforcement problems associated with any low power service will be overwhelming. Nothing that I have said in this letter should be interpreted as expressing any doubt about any of those concerns.

Nonetheless, we respect your desire to explore whether adding new types of voices to the radio band could serve the public interest, and we agree that this argument should focus on facts and not theory. To that end, I ask that you join with us in taking the time that a full exploration of this issue needs.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Edward J. Felt".

cc: Commissioners
Roy Stewart
Dale Hatfield