BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re	)	
	)	
CREATION OF A LOW	)	MM Docket No. 99-25
POWER RADIO SERVICE	)	RM-9208
	)	RM-9242
	)	

To: The Commission

COMMENTS

M&M Broadcasters, Ltd. (*M&M*) hereby files its Comments in response to the Notice of Proposed Rule Making (*NPRM*) in this proceeding.

1. M&M is the licensee of radio station KCLE(AM), 1120 kHz, Cleburne, Texas. The station is licensed for daytime operation only, and it is the only station licensed to a community in Johnson County, Texas, which has a 1990 Census population of 97, 165 persons. KCLE has served the population of Johnson County faithfully for decades, albeit with the limited (250-watt) daytime-only parameters for which it is licensed.

2. M&M believes it would be highly inequitable to award Low-Power FM licenses to newcomers, including many who have taken the law into their own hands by setting up pirate radio stations, without first awarding FM broadcast privileges to the AM daytimers for whom continued existence is a struggle, and in which class of broadcast outlet the highest percentage of minority and small-business ownership exists. For many daytimers, the prospect of having to compete against new 100-watt or 1000-watt FM outlets is one of dire risk, and likely failure.

3. The stated rationale for creating this proposed new service is to promote

additional diversity in radio voices and program services. However, this country is already blessed with more than 10,000 radio stations, and there are few populated areas that do not receive at least several aural -- let alone visual -- services. In developed urban areas, it is common for listeners to be able to choose from among forty or fifty or more radio services, in addition to broadcast television, cable, and internet feeds.

4. The Commission's proposal is said to be impelled in part by the consolidation of broadcast ownership. However, in the November 1994 Second Memorandum Opinion and Order in MM Docket 91-140, the Commission noted that higher levels of concentration can actually increase diversity, especially in small markets. Second MO&O at para. 22. The Commission also noted that "...multiple ownership may well encourage program content diversity because a firm owning several competing local stations has a strong incentive to program those stations with different formats in order to compete for different segments of the audience." That rationale was as accurate in late 1994 as it is today. There has been no decrease in diversity of programming available to the American people such that creation of thousands and thousands of new radio stations is appropriate. Indeed, the availability of inexpensive audio streaming technology has allowed anyone to create a virtual radio station, just as cable operators have created virtual TV stations, such as the all-news Channel 8 in the Washington, D.C. area.

5. Proponents of Low Power FM will no doubt quickly point out that one needs a computer to receive internet radio stations and that such services are unavailable to those in cars, on foot, etc. (those who would use mobile or portable receivers. However, the service areas of the lower-power and lowest-power of the proposed low-power stations are too small for meaningful mobile and transient audiences.

6. Furthermore, the idea of creating a low-power radio service is counter to well-established principles of spectral efficiency. The FCC decided in 1978 not to accept any more applications for ten-watt Class D educational stations. See First Report and Order in Docket 20735, 68 FCC 2d 998 (1978). The Second Report and Order, 69 FCC 2d 240 (1978) required Class D stations to increase power to retain a place in the reserved portion of the band. The theory for this action was that low-power operation is spectrally inefficient because it results in proportionally more interference created as compared to useful service. The same theme reappeared in the course of the revision of the FM translator rules in MM Docket No. 88-140. Certain parties argued for program-origination authority for FM translators, but the Commission rejected that idea for, among other reasons, the inherent spectral inefficiency of low-power operation. This principle, too, based on the law of physics, has not changed.

7. Indeed, the following, from para. 49 the Report and Order in MM Docket 88-140, 5 FCC Rcd 7212 (1990), recons., 6 FCC 2334 (1991), is all that needs to be said about this matter:

> [W]e believe that allowing low-cost translators to operate essentially as FM radio broadcast stations, without subjecting the translators to the requirements imposed on the radio broadcast stations, would undermine our preference to provide service through more efficient primary service.

and

> We have reaffirmed that the FM translator service should facilitate the reception of radio signals to areas deprived of such service due to distance and intervening terrain obstructions. We continue to believe that this is the proper role of FM translators and that our scheme of classifying FM and standard broadcast stations should not be subverted by the creation of a new broadcast service.

Id. at para. 50. There are no changed circumstances now that could rationally support a different

conclusion on the merits.

8. Furthermore, licensing low-power radio stations will simply create administrative burdens while not solving the basic problem posed by pirate broadcasters. Were the Commission misguided enough to start licensing low-power stations, those who feel no inhibitions in pirating today will feel no inhibitions when a licensing structure is in place. Call to mind the difficulties the Commission encountered in trying to manage the CB Radio Service in the 1970s, when individual licenses were still required. The wider availability of low-power FM hardware marketed especially for FCC low-power licensees will make a pirate's job of getting on the air that much all the easier.

9. While M&M understands the Commission's desire to provide yet more local outlets of expression, M&M must point out that the thousands of public radio stations (often built with grants of tax dollars) and the thousands of commercial stations already in existence provide a legion of outlets. Adding innumerable more low-power sources of rf will raise the general r.f. noise floor -- already rising from the flood of Part 15 consumer electronic devices in the hands of consumers -- all for the sake of creating tiny, isolated pockets of service that are inadequate in terms of the critical mass of audience needed to sustain a broadcast operation. Creating a low-power FM radio service is the wrong idea at the wrong time in the wrong place. But if the Commission does proceed with this notion, it must first accord to AM daytimers a first chance to obtain such spectrum, much as the Commission did in MM Docket 84-231.

CONCLUSION

Based on the foregoing, Foxcom, Inc. respectfully asks the FCC not to create a Low Power FM radio service. BK's proposal.

Respectfully submitted,

M&M BROADCASTERS, LTD.

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