

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

In the Matter of)
)
Amendment of Rules to Create New) File No. RM-9682
Indoor Sports and Entertainment)
Radio Service)

To: The Commission

**STATEMENT OF
NATIONAL PUBLIC RADIO, INC.**

Pursuant to Section 1.405 of the Commission's rules, 47 C.F.R. § 1.405, National Public Radio, Inc. ("NPR") hereby submits its Statement regarding the above-referenced petition for rulemaking filed by the National Hockey League ("NHL") to establish a new indoor sports and entertainment radio service. See Public Notice, DA 99-137, File No. RM-9682, July 8, 1999 (hereinafter "Petition").

NPR is a non-profit membership corporation that produces and distributes noncommercial educational programming through more than 600 public radio stations nationwide. In addition to broadcasting award-winning NPR programming, including *All Things Considered*[®], *Morning Edition*[®], *Talk of the Nation*[®], and *Performance Today*[®], NPR's member stations originate significant amounts of news, informational and cultural programming. NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its member station licensees.

NPR opposes the Petition because the proposed service would create interference with existing and future full-service radio and FM translator stations. NPR also is

concerned that the proposed service would have a negative impact upon digital audio broadcasting signals. Moreover, the costs of administering this new service would be substantial. In any event, the proposed licensees of indoor sports and entertainment radio stations would not qualify for noncommercial educational broadcast licenses and, accordingly, must be excluded from the reserved band. If, despite these concerns, the Commission grants the Petition and subsequently authorizes the proposed service, it should adopt procedures to protect full-service and FM translator stations from interference. Furthermore, it should adopt content and other regulatory requirements for the proposed service similar to those applicable to other users of the same spectrum.

I. The Proposed Service Poses A Serious Risk Of Interference To Full-Service Radio And FM Translator Stations, Both Outside And Inside Of An Arena

The Petition raises significant concerns about potential interference in the already-crowded FM band. First, the NHL conducted only minimal testing to support its claim that the proposed indoor sports and entertainment radio service would not create undesirable interference. It did not conduct tests at power levels above 5 watts, nor any successful tests above 2 watts. It did not test varied antenna designs, placements or shielding, which it acknowledges are important for minimizing interference. It also did not conduct any testing in the reserved noncommercial FM band. Yet, the NHL proposes a service consisting of stations with, it appears, up to 10 watts of power on any frequency in the radio band.

Second, the NHL does not provide any measurements to demonstrate that the proposed service would not interfere with the reception of radio signals *within* an arena. It merely observes that there was no noticeable interference with any adjacent radio

frequency detected inside the arena. A demonstration of non-interference is critical because sports fans should be able to continue listening to their radio station of choice inside an arena, whether for news and information or entertainment purposes.

Third, the Petition fails to take into consideration the impact of the proposal on the reception of FM translator stations. FM translators are often essential for the delivery of public radio programming to the public. More than 9 million Americans receive public radio service via auxiliary translator and booster facilities.¹ While public radio auxiliary broadcast facilities typically serve sparsely populated areas, they are also used to provide fill-in service in more populated areas. To protect against significant disruption of public radio programming, the proposed service must be prohibited from causing harmful interference to FM translator signals as well as full-service radio station signals.

Fourth, if the Commission authorizes the proposed service on the reserved FM band, it is likely to increase television channel 6-to-reserved FM band radio interference, particularly in the case of DTV channel 6 stations. NPR commissioned a laboratory analysis concerning this interference and submitted the resulting test report in the Advanced Television Proceeding.² That report details the potential for increased interference between noncommercial FM stations and new channel 6 digital television stations (DTV). While there has been an effort to minimize channel 6 DTV assignments, the ability of existing analog Channel 6 stations to return to their Channel 6 assignments

¹ See Comments of National Public Radio, Inc., MM Docket No. 99-25, RM-9208, RM-9242, at 23 & n.75, filed Aug. 2, 1999.

² DTV Channel 6 Interference To FM Band Reception, Final Report, Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, filed Oct. 20, 1998 (“DTV Channel 6 Interference Study”).

after the DTV conversion could affect as many as 60 markets.³ According to the DTV Channel 6 Interference to FM Band Reception Report, the mask density of a DTV signal presents an even greater risk of interference to noncommercial FM stations sharing the lower FM channels.⁴ Adding a new service to the reserved band is likely to increase the interference potential among FM stations, and between analog TV/DTV and noncommercial FM stations. The Commission has already proposed adding LPFM stations to the reserved band; addition of the proposed indoor sports and entertainment radio service would further exacerbate this problem.

Finally, given the current uncertainty regarding interference measurement standards, now is not the time to consider adding a new source of potential interference to the radio band. The testing conducted by the NHL used the existing contour prediction methodology for measuring interference with existing radio stations. However, in the Commission proceeding concerning the streamlining of its technical rules, the Commission proposed adopting a point-to-point contour prediction methodology.⁵ Several participants

³ See Reconsideration of Sixth Report and Order, Appendix B (Table of DTV Allotments); 47 C.F.R. § 73.606 (Table of NTSC allotments); Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order, MM Docket No. 87-268, 13 FCC Rcd 6860, at ¶45 (1998) (requiring the return of one of the two 6 MHz channels at the end of the DTV transition).

⁴ DTV Channel 6 Interference Study, Section 1.2.3 DTV Emission Mask; Figure 18, Section 4, Undesired Signal Emission Levels; Appendix A, Narrowband Noise Sensitivity Test Results.

⁵ See In the Matter of 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules, Notice of Proposed Rulemaking, MM Docket No. 98-93, 13 FCC Rcd 14849 (1998). The Commission has not yet taken any action on this proposal. See First Report and Order, MM Docket No. 98-93 (rel. Mar. 30, 1999) at ¶ 1 & n.1.

in the technical streamlining proceeding, including NPR, argued that the Longley-Rice methodology is the most appropriate contour prediction approach.⁶ Until the Commission adopts a definitive standard, any assessment of the level of interference created by an indoor sports and entertainment radio service is premature.

II. The Proposed Service Could Create Harmful Interference To Digital Audio Broadcasting Signals

NPR is further concerned that adoption of the NHL's proposal could result in harmful interference with digital audio broadcasting ("DAB") signals. The Commission has voiced its support for the conversion to digital radio⁷ and, in the low power FM proceeding, has expressed its desire to avoid impairing the transition to digital radio broadcasting.⁸ It should strive to protect the transition to digital radio in its consideration of the Petition as well.

In-band/on-channel ("IBOC") digital radio systems are still in the testing and development phase. Further analysis of the interference created by each IBOC system proponent, as well as other DAB transmission standard proponents, remains necessary. The Commission has stated that it will initiate an IBOC rulemaking proceeding this

⁶ See Comments of National Public Radio, Inc., MM Docket No. 98-93, at 8, filed Oct. 20, 1998; Reply Comments of National Public Radio, Inc., MM Docket No. 98-93, at 6, filed Dec. 4, 1998; Comments of the Association of Federal Communications Consulting Engineers, MM Docket No. 98-93, at 4, filed Oct. 20, 1998; Comments of du Treil, Lundin & Rackley, MM Docket No. 98-93, at 5-6, filed Oct. 20, 1998.

⁷ See In the Matter of Creation of a Low Power Radio Service, Notice of Proposed Rulemaking, MM Docket No. 99-25, RM-9208, RM-9242, 14 FCC Rcd 2471, at ¶ 47 (rel. Feb. 3, 1999).

⁸ See id. at ¶ 49.

summer.⁹ However, laboratory and preliminary on-air test results of the competing IBOC systems are not due until December 15, 1999. It is entirely possible that the results of that field testing will not assure the compatibility of IBOC operations with existing broadcast stations under current interference protection criteria. The Commission cannot adequately examine the potential interference to digital radio signals created by the proposed service until an IBOC standard is determined.

III. The Costs Of Administering An Indoor Sports And Entertainment Radio Service Would Be Substantial

Although the NHL proposes a streamlined licensing system for the indoor sports and entertainment radio service, the administrative costs of enforcing even the most fundamental rules is likely to be substantial. As discussed above, the service poses a challenge to the Commission's ability to prevent harmful interference to full-service broadcast stations. Moreover, significant costs would be associated with enforcing the Commission's content regulations.¹⁰ These substantial costs – in addition to the serious threats of interference to existing broadcasters – outweigh any public interest benefits claimed in the Petition.

IV. The Proposed Service Does Not Qualify For Placement In The Reserved Noncommercial FM Band

The NHL does not specify frequencies for the proposed indoor sports and entertainment radio service, but simply proposes operation in the “conventional radio broadcast spectrum.”¹¹ Whether or not the Commission grants this Petition, the proposed

⁹ See In the Matter of Creation of a Low Power Radio Service, MM Docket No. 99-25, at ¶ 6 (rel. May 20, 1999) (Order Granting Extension of Time).

¹⁰ See infra Section V.

¹¹ Petition at 7.

service must be excluded from the reserved noncommercial FM band (Channels 201-220), where many (though not all) noncommercial educational FM radio stations are located.

In addition to the likelihood of interference in the reserved FM band described above, the proposed licensees of indoor sports and entertainment radio stations – NHL member clubs or arena owners – do not meet the basic qualifications necessary to use the reserved spectrum. Pursuant to Section 73.503 of the Commission’s rules, an applicant for a reserved frequency must be an educational institution or organization.¹² Educational organizations must further demonstrate that they have an educational goal and are committed to the advancement of an educational program.¹³ Since NHL member clubs and arena owners are neither educational institutions nor educational organizations, they fail to qualify for licenses in the reserved band.

Moreover, the NHL “envisions the Indoor Sports and Entertainment Radio Service as a commercially supported operation.”¹⁴ However, licensees in the reserved band are required to furnish a nonprofit and noncommercial broadcast service.¹⁵

The exclusive reservation of frequencies in the FM band for noncommercial educational use made the current system of nationwide, locally-oriented public radio stations possible.¹⁶ Since the initial reservation of frequencies, the Commission has

¹² See 47 C.F.R. § 73.503, 43 Fed. Reg. 30,842, 30,844-45 (July 18, 1978) (Appendix).

¹³ See 43 Fed. Reg. at 30,845.

¹⁴ Petition at 9.

¹⁵ See 47 C.F.R. § 73.503(d).

¹⁶ See Changes in the Rules Relating to Noncommercial Educational FM Broadcast

consistently sought to encourage the development of public radio service.¹⁷ To that end, the Commission has resisted efforts to dilute the concept of noncommercial educational broadcasting by permitting other uses of reserved channels.¹⁸ The Commission should once again refuse to permit a commercial use of the reserved spectrum and, accordingly, exclude the proposed service, if authorized at all, from the reserved noncommercial FM band.

V. If The Commission Grants The Petition, It Must Assure The Protection Of Existing Broadcast Stations And Impose The Same Content Restrictions That Apply To Full-Service Broadcast Stations

If the Commission decides, in spite of the above concerns, to grant the Petition and ultimately to authorize this new service, it must adopt rules to protect against harmful interference to full-service and FM translator stations, both outside and inside of an arena. The safeguards proposed by the NHL – requiring licensees to file measurements with the FCC, take measurements before the commencement of service and at the beginning of each season, and serve affected full-service radio stations with a proof of performance – are alone insufficient.¹⁹ In addition to mandating these steps with respect to *both* full-service and FM translator stations, the Commission should require any indoor sports and entertainment radio licensees to monitor interference whenever there are any new

Stations, 69 F.C.C.2d 240, 240-241 (1978).

¹⁷ See, e.g., Amendment of Part 74 of the Commission's Rules to Provide for Satellite and Terrestrial Microwave Feeds to Noncommercial Educational FM Translators, 71 R.R.2d 160, 162 (1992).

¹⁸ See Revision of FM Broadcast Rules, Particularly as to Allocation and Technical Standards, 33 F.C.C. 309, 333-34 (1962); see also Deletion of Noncommercial Reservation of *16, 11 FCC Rcd 11700 (1996).

¹⁹ See Petition at 7-8.

assignments of full-service or FM translator stations, and to cease broadcasting immediately in the event that these signals create any undesired interference. Moreover, any indoor sports and entertainment radio stations should have secondary status with respect to both full-service and FM translator facilities, so as not to preclude any future full-service and translator stations.

In addition, any indoor sports and entertainment service licensees should be subject to the same content regulations applicable to full-service radio stations. For instance, lottery and political broadcasting rules would be just as relevant to the proposed service as to existing broadcast licensees. Unless the Commission is prepared to reassess the continuing relevance of its existing content regulations, there is no basis for selectively applying those regulations to some broadcast services and not others.

IV. Conclusion

For the foregoing reasons, NPR urges the Commission to deny the Petition or, in the alternative, adopt requirements sufficient to protect full-service and auxiliary stations in the manner described above.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Michelle M. Shanahan, hereby certify that a copy of the foregoing Statement of National Public Radio, Inc. was sent this 9th day of August, 1999, by first-class U.S. mail, postage prepaid, to the following:

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