

Before the
Federal Communications Commission
Washington, D.C. 20554

ORIGINAL

In the Matter of)
Petition for)
Rule Making to Create an)
Indoor Sports and Entertainment)
Radio Service: Amendment of Rules)
to Create New Radio Service)

RM-9682

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

I. INTRODUCTION

The National Association of Broadcasters ("NAB")¹ submits the following Comments in response to the above-captioned *Petition for Rule Making* ("*Petition*")² in accordance with Section 1.405 of the Commission's Rules. NAB believes the National Hockey League's ("*NHL*") *Petition* should be denied for several reasons.

First, existing FCC regulations are sufficient to permit indoor event broadcasting without the creation of a new service. Second, if the NHL's request for a special license is granted, a flood of similar requests will result, forcing the Commission to reallocate already scarce licensing and enforcement resources. Third, the technical information and methodology underlying the *Report of the National Hockey League* ("*Report*")³ were inadequate to support the report's conclusions. Finally, event broadcasting was included in the RM-9246 petitions and the

¹ NAB is a nonprofit, incorporated association of radio and television broadcast stations and networks which serves and represents the American broadcasting industry.

² In the Matter of Indoor Sports and Entertainment Radio Service, RM-9682, (filed Apr. 2, 1999) [hereinafter *Petition*].

³ *Report of the National Hockey League*, In the Matter of The National Hockey League: Experimental Station WN2XHL, File No. BPEX-980526MD (filed Sept. 1, 1998) [hereinafter *Report*].

Commission declined to move forward on event broadcasting in its recent *Notice of Proposed Rule Making* on Low Power FM.⁴ The Commission should not open a rule making proceeding to establish a new Indoor Sports and Entertainment Radio Service, as the instant *Petition* requests.

II. THE NHL PETITION

The NHL filed its *Petition* with the Commission on April 2, 1999. The *Petition* requests the adoption of rules to create a new Indoor Sports and Entertainment Radio Service. The new service would provide regulations and allot licenses to indoor facilities that are used for sport and entertainment purposes.

The NHL claims that the creation of such a service would “significantly enhance the experience of a NHL game.”⁵ In support of its proposal the NHL received permission from the FCC, on June 2, 1998, to operate an experimental broadcast station to test the viability of indoor radio broadcasts in NHL arenas. The results of the tests are contained in the NHL’s *Report*. The *Report* forms the factual basis of the NHL’s *Petition* currently before the Commission.

The *Petition* concludes that an uncertain range of power between 1.5 and 10 Watts would be required to broadcast in an effective manner in the 24 domestic NHL arenas.⁶ Finally, the *Petition* recommends a streamlined licensing system to assuage concerns regarding the expense of an Indoor Sports and Entertainment Service.⁷

⁴ See *In the Matter of Creation of a Low Power Radio Service*, MM Docket No. 99-25, 64 Fed. Reg. 7577 (adopted Jan. 28, 1999).

⁵ *Petition* ¶ 8.

⁶ See *id.* ¶ 9.

⁷ See *id.* ¶ 16. The proposed licensing system has three components: “(a) providing advance notice to the FCC of the precise location and the specific frequencies of the proposed new or

III. THE COMMISSION SHOULD DENY THE PETITION FOR RULE MAKING

The NHL's *Petition* identifies three reasons for why the Commission needs to create an Indoor Sports and Entertainment Service. For each reason, the NHL's *Petition* does not adequately prove that the establishment of a new indoor broadcast service is the only means to address the concerns.

First, the NHL asserts that hockey fans require a new radio service to provide instructional information pertaining to game play.⁸ However, enhanced instructional information on game play can currently be communicated through non-radio methods. For instance, information for the novice fan on game rules and play may be delivered through a better-edited and lower-priced printed game program. Also, hockey clubs could utilize the abundant commercial space within their arenas for the construction of better electronic and video information signage. These simple steps could remedy the NHL's informational concerns without establishing an indoor radio service.

Second, the *Petition* states that some fans do not have access to radio broadcasts in their "first language" or in a format that can accommodate an existing handicap.⁹ Language and disability access is a laudable goal for any organization. However, the NHL has not presented any studies, surveys, or reports that show an indoor radio service as the best solution for access concerns.

The NHL could implement multi-language announcing through its public address announcers, similar to that used at international competitions. Additionally, important notices

modified operation; (b) the filing of measurements with the Commission – like those contained in the NHL Report . . . ; and (c) renewability of the license." *Id.*

⁸ *See id.* ¶ 5.

⁹ *Id.*

and game play information could be delivered through secondary language printed game programs. Also, as noted below, the Part 15 rules could be implemented in a manner to address their access concerns.

Finally, the NHL's *Petition* attempts to remedy the difficulty licensed broadcast signals have penetrating the concrete and steel of arenas by establishing the new service. However, the affected broadcaster under existing Commission rules can address any such difficulty that may exist in any particular arena. AM stations may deploy carrier current, leaky coaxial cable, or other low power AM transmission devices inside the arena using the provisions in Part 15 of the Commission's rules.¹⁰ FM stations may deploy translators or boosters inside the arena using the provisions in Part 74 of the Commission's rules.¹¹ Addressing the difficulty that some broadcast signals may have when it comes to penetrating sports arenas should be left to the affected broadcasters, not the NHL.

A. No New Regulations Are Needed

The NHL's *Petition* for the creation of a new radio service would have the FCC impose unnecessary regulation. A new service is not necessary because an indoor sports service can already be attained and regulated by the existing Part 15 rules.

Part 15 allows individuals to broadcast without a license at very low power so long as the "[o]peration of an intentional . . . radiator is subject to the conditions that no harmful interference is caused. . . ."¹² Harmful interference is described as "[a]ny emission, radiation or induction that endangers the functioning of a radio navigation service or of other safety services or *seriously*

¹⁰ 47 C.F.R. § 15.219 and § 15.221 (1999).

¹¹ 47 C.F.R. § 74.1231 (1998).

¹² 47 C.F.R. § 15.5(b) (1998).

degrades, obstructs or repeatedly interrupts a radiocommunications service. . . ."13 These already-existing guidelines could be sufficient to allow arena-only broadcasting. The NHL's own arguments stress the limited nature of its proposed indoor radio service. Surely the Petitioner is describing what it considers to be a non-serious interruption of licensed radio service when it states its intention to transmit signals "designed to stay within [a privately-owned] building"¹⁴ and to "limit the proposed new radio service to 'sports and entertainment' activities as another means of controlling the potential for interference."¹⁵

The NHL wants to establish an indoor radio service because of the "desirability of using inexpensive conventional radio receivers and proven inexpensive transmission equipment. . . ."16 This could be accomplished using multiple Part 15 devices within each arena. The NHL could then transmit any programming it desires. Conventional radios would still be used to receive the signals, and the Part 15 transmitters are inexpensive.

Additionally, the organization could also contract with existing licensed stations in order to bring radio coverage to fans both inside and outside the hockey arena. The NHL notes that "[t]he signals of the radio and TV stations that have been granted the rights to broadcast the NHL games typically do not penetrate the arena at all, or at best very poorly."¹⁷ But under existing regulations, FM stations could install boosters within the arena to bring outside hockey game

¹³ 47 C.F.R. § 15.3(m) (1998) (emphasis added).

¹⁴ Petition ¶ 13.

¹⁵ Petition ¶ 19.

¹⁶ Petition ¶ 16.

¹⁷ Petition ¶ 4.

broadcasts to fans inside an arena.¹⁸ Also, Part 15 transmitters could be used within the closed arena to retransmit the signals of either AM or FM stations that are already providing play-by-play of the games.¹⁹

B. The Petitioner's Proposed Indoor Sports and Entertainment Service Could Result in Thousands of New Licensees That Would Add To Enforcement and Regulatory Burdens.

The *Petition's* optimism concerning an Indoor Sports and Entertainment Service presupposes few licensees and a minor regulatory cost. Accordingly, the NHL wrongfully assumes that a streamlined honor-based system of licensing is sufficient for the regulation of a new indoor service.

The Petitioner's proposed Indoor Sports and Entertainment Service could not be limited to the NHL nor its 24 domestic arenas. For a relatively small financial investment, local, regional, and national sport teams could also want licenses for their indoor facilities through the proposed service.²⁰ Consequently, large high school gymnasiums, municipal hockey rinks, collegiate athletic facilities, NFL domed stadiums as well as indoor tennis pavilions would all be eligible for a license under the NHL's proposal. The low cost of indoor broadcast equipment combined with the vast number of eligible indoor sport facilities could lead to thousands of licenses that would require FCC policing.

¹⁸ See 47 C.F.R. § 74.1231 (1998). Current regulations do not allow boosters to be used for AM stations, however the Commission has the option of revising regulations in such a way that would allow an AM broadcast of a game to be boosted within an arena rather than establish a new service. See 47 C.F.R. § 73.3540 (1998).

¹⁹ This option would require retransmission consent from the licensed FM or AM station.

²⁰ As evidenced by the pirate radio problem, it is easy to take a transmitter and start a radio station cheaply.

The Petitioner's proposed service also includes indoor facilities that host entertainment events. Consequently, theaters, auditoriums, and concert halls, if used for entertainment purposes, would be eligible for a license from the new service.²¹ Additionally, once implemented similar NHL-like arguments could logically be made to expand the proposed service to include indoor shopping malls and parking garages.

The explosion of new 10-Watt indoor licenses would require a shifting of budget priorities in order to finance the regulation of the new service. The Commission would need to redirect current resources in order to process the new applications, allot frequencies, assign licenses, and enforce regulations against the new licensees.

The NHL's proposed streamlined licensing system is an inadequate attempt to dispose of regulation and enforcement resource concerns. The NHL recommends that licensees be required to regularly evaluate and report to the FCC the logistics of broadcast signal operation.²² The Petitioner's proposal calls for self-regulation and policing by the new licensees so as to "not . . . unduly strain . . . [the FCC's] fixed resources."²³

Contrary to the NHL's conclusion, because of the expense required to police small, local, regional, and inexperienced licensees, the cost of implementing the Indoor Sports and Entertainment Service would far exceed any inconsequential level. Self-regulation is an elusive goal because of the new licensee's relatively low financial interest, inexperience with broadcast regulation, and the expense associated with legal and technical reporting. The NHL's proposal

²¹ See Petition ¶ 19.

²² See *id.* ¶ 17.

²³ *Id.* ¶ 15.

would require vigorous and costly regulation and enforcement to ensure compliance and that no interference to existing stations results.

Further, the NHL is requesting a special broadcast license, which would create two classes of broadcasters. The NHL's broadcaster class would engage in essentially self-regulation. However, non-arena broadcasters would still be required to follow regulatory requirements. NAB questions the authority of the FCC to create a new indoor sports service in the FM band without any regulatory control.

C. The NHL's *Petition And Report* Lack Essential Technical Information.

The NHL does not provide the Commission with adequate technical information with which to analyze the proposed service. The NHL *Report* summarizes the organization's four experimental broadcasts at games, testing the management of an indoor arena broadcast, the antenna placement during a broadcast, signal strength field measurements, and public reaction to the broadcasts.²⁴ Three of these experiments—management, antenna placement and public reaction—were admitted to be either non-scientific or non-technical.²⁵ The remaining test conducted field test measurements outside only one arena, but failed to provide adequate field strength measurements of the adjacent signals. The examination of potential interference to licensed broadcasters consisted of tuning into the adjacent channel station at various locations, and noting if interference was present.²⁶ This method only determines perceptible interference on that particular radio to the person listening. As demonstrated by NAB's receiver study in

²⁴ Report, at 3-4.

²⁵ See *id.* at 6, 8, 11.

²⁶ See *id.* at 10.

MM Docket 99-25 receivers perform differently. Thus, further field strength testing must be conducted using objective criteria before any conclusions regarding interference can be made.

Of further concern was the lack of multiple testing, because each study examined only one aspect of inside-arena broadcasts at a single location. For example, the study of field measurements analyzed only the conditions at the MCI Center in Washington, D.C.,²⁷ while the testing of antenna placement and structure impact was only performed at the Joe Louis Arena in Detroit, Michigan.²⁸ Additionally, no other arenas were tested for interference. It is unclear whether the test results from the MCI and Joe Lewis Arenas accurately represent interference scenarios at other NHL arenas.

D. Event Broadcasting Was Part Of The Petition In RM-9246 That The Commission Declined To Consider In Its Recent NPRM On LPFM.

The NHL's proposed radio service should be rejected because the Commission has declined previous opportunities to consider similar low power services. Specifically, Web SportsNet, and later, Gregory D. Deieso, proposed low power "event broadcast stations" which would operate for brief periods, with a targeted audience of attendees at local events, including sporting events.²⁹ In its proposal for a rule making concerning low power FM stations earlier this year, the Commission concluded that event broadcasting was "sufficiently different" so as not to be included in its initiative with the goals of "increasing broadcast diversity, fostering localism, and expanding opportunities for new entrants."³⁰ Because the Commission so recently

²⁷ *See id.*

²⁸ *See id.* at 8.

²⁹ In the Matter of Creation of a Low Power Radio Service, MM Docket No. 99-25, 64 Fed. Reg. 7577, n.3 (adopted Jan. 28, 1999) (quoting Public Notice (RM-9246)).

³⁰ *Id.*

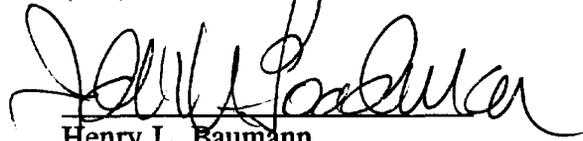
did not see a need to address proposed licensing of low-power broadcasts of sporting events, it appears even less likely that the FCC would be willing to commit the resources the NHL calls for to police its Indoor Sports and Entertainment Radio Service.³¹

IV. CONCLUSION

For the reasons stated herein, the National Association of Broadcasters requests that the Commission deny the NHL's *Petition*.

Respectfully Submitted,

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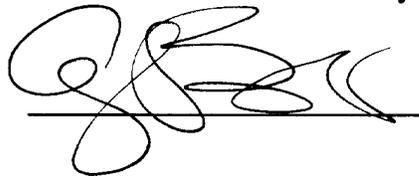
³¹ See *Petition* ¶¶ 15-17. Also note that the NAB in RM 9246 stated that an event broadcasting service is not necessary because existing FCC rules are adequate without creating new administrative burdens. See Comments of NAB, In the Matter of Amendment of Part 73 of the Rules and Regulations to Establish Event Broadcasting Stations, RM-9246, (filed Apr. 27 1998) at 30.

CERTIFICATE OF SERVICE

I, Angela Barber, Legal Secretary for the National Association of Broadcasters, hereby certifies that a true and correct copy of the foregoing Comments of the National Association of Broadcasters was sent this 9th day of August, 1999, by first-class mail, postage prepaid, to the following:

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