

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

In the Matter of)	
)	
Amendment to Parts 73 and 90)	
of the Commission's Rules)	File No. RM-9719
to Authorize the Transmission)	
of Emergency Signals on)	
Channel 200)	

To: The Commission

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

Introduction

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 on the above-referenced petition for rulemaking to establish a new radio broadcasting service ("ERDS") to operate nationwide on FM band channel 200 (87.5 MHz) currently reserved for noncommercial educational use.¹

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 are significant producers 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.

¹ See Public Notice, Report No. 2361, File No. RM-9719, August 2, 1999 [hereinafter "Petition"].

Channel 200 has been reserved for noncommercial educational use, but the proposed service would not constitute a noncommercial educational service and Petitioner has not justified a dereservation of the spectrum. While not part of the original reservation of FM spectrum for noncommercial educational use, Channel 200 was specifically reserved for noncommercial educational use by Class D stations in 1978.² Thus, whether technically considered part of the traditional FM band for purposes of international treaty obligations or otherwise, Channel 200 is a reserved noncommercial educational channel.³

Under the Commission's Rules, an applicant for frequencies reserved for noncommercial educational use must demonstrate its basic qualifications to utilize the reserved spectrum. First, the applicant must be an educational institution or organization.⁴ Second, educational organizations -- i.e., those entities not proposing to operate a noncommercial educational FM station in a community in which they operate a bona fide full-time school -- must further demonstrate that they have an educational goal and are committed to the advancement of an educational program.⁵

² See Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations, 69 F.C.C.2d 240, ¶¶ 3-5, 26 (1978).

³ In reserving the spectrum, the Commission recounted that the "frequency is not part of the band which has been set aside for educational FM use" and actually "is part of the frequency band of 82-88 MHz which has been assigned to television Channel 6." Id. at ¶ 51. Nonetheless, the Commission sought to determine the degree to which the frequency could be used given interference considerations "and to explore whether the frequency 87.9 MHz should be utilized in certain areas of the conterminous United States for noncommercial educational FM purposes." Id. Indeed, "[n]o use other than a noncommercial one was contemplated." Id.

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

⁵ 43 Fed. Reg. at 30,845.

The Petitioner makes no attempt to meet the foregoing requirements. While a municipality or other public entity can meet the first condition of eligibility,⁶ it must demonstrate an educational purpose and program to obtain a license to use reserved spectrum, and it must use the spectrum for noncommercial educational purposes. In this case, however important public safety information may be in a given circumstance, it plainly does not constitute an educational use of the frequency under the Commission's rules. Accordingly, because the Petition proposes use of a reserved FM frequency other than for noncommercial educational purposes, it should be denied.

To the extent Petitioner is implicitly seeking the nationwide dereservation of spectrum dedicated to noncommercial educational use, it has not met the heavy burden the Commission has previously imposed for the dereservation of spectrum even in individual communities.

The Commission has repeatedly denied requests to delete reserved channels, citing as a principal reason for doing so the need to preserve the future availability of the channels. The Commission has maintained this view even where dereservation was sought by an incumbent noncommercial licensee which represented that it would go dark absent grant of its dereservation request.⁷

The Commission has likewise denied a request for dereservation "where the request involved a vacant channel and thus would not have resulted in the withdrawal of existing noncommercial service and despite a history of failed attempts to provide noncommercial service on the reserved channel."⁸ Indeed, we are not aware of any instance in which spectrum reserved for

⁶ See 47 U.S.C. § 397(6).

⁷ Deletion of Noncommercial Reservation of Channel *16, 482-488 MHZ, Pittsburgh, Pennsylvania, 11 FCC Rcd 11700, ¶ 18 (citing Amendment of Section 73.606, Table of Assignments, Television Broadcast Stations (Ogden, Utah), 26 F.C.C.2d 142 (1970), recon. denied, 28 F.C.C.2d 705 (1971)).

⁸ Id. (citing Amendment of Section 73.606, Table of Assignments, Television Broadcast

noncommercial educational television or radio use has been dereserved. Given this precedent, borne of a long-standing Commission and Congressional commitment to public broadcasting, a wholesale dereservation of Channel 200 is inappropriate and unjustified.

While we do not diminish the important service provided by police, fire, and other public safety agencies and officials, the Petition cites the human and economic costs associated with weather and traffic-related events without providing any correlation to the proposed emergency alerting service. While “more effective warnings as to road, traffic and dangerous weather conditions” may improve safety, all Petitioner offers is conjecture. In addition, it is unclear to what degree the proposed service will provide more effective warnings than the existing and emerging means discussed below.⁹

By contrast, the continued availability of Channel 200 for Class D stations is important both to assure the continuation of Class D station operations and to anticipate the long-term spectrum needs of full service public radio stations using the other reserved frequencies. As the Commission is well aware, Channel 200 was specifically reserved for Class D purposes to accommodate the exponential growth in demand for noncommercial educational facilities and spectrum.¹⁰ That accommodation, among other changes associated with the reservation of

Stations, (Ogden, Utah), 45 RR 2d 768, 774 (Broadcast Bureau, 1979) ("The Commission's commitment to noncommercial broadcasting has remained intact, and there is a heavy burden of persuasion on petitioners who seek to remove such frequencies from the reserved list.")).

⁹ See pages 6-10, infra.

¹⁰ See 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, at ¶ 59 n.110 (1998) (noting that "whereas there were 314 authorized NCE FM stations in 1966, when the issue of what to do with Class D stations first arose, see Notice of Inquiry in Docket 14185, 5 F.C.C.2d 587, 588-89 (1966), there are now 1,947 authorized NCE FM stations.") [hereinafter "Radio Technical Streamlining NPRM"].

Channel 200, "ha[s] fostered a more efficient use of the NCE FM spectrum."¹¹ No matter how many Class D stations currently utilize Channel 200, therefore, the availability of that Channel for such stations is necessary to permit the continued growth of noncommercial educational radio in the near and long-term future.

Petitioner has not demonstrated that the proposed service will operate on an interference-free basis to adjacent channel FM band stations. In the case of interference between an ERDS service and adjacent channel FM band stations, Petitioner's technical analysis is apparently limited to "laboratory testing of two ERDS receivers conducted at Federal Signal in mid June 1999."¹² However useful and important it is to consider the reception characteristics of ERDS receiver equipment, the more relevant testing would be to examine the performance of commonly deployed consumer receiver equipment. In addition, even this testing is no substitute for an interference prediction analysis¹³ and field testing under a broad range of real world conditions. This is particularly the case here because, while the spectrum would be reallocated on a nationwide basis, it would be licensed locally to individual public safety organizations that would utilize mobile and/or stationary transmitters and broadcast intermittently in response to particular traffic, weather, and other public safety events.

¹¹ Id. at ¶ 59.

¹² Petition, Exhibit E, at 6.

¹³ The Commission has proposed to revise its standard interference prediction methodology. See Radio Technical Streamlining NPRM, 13 FCC Rcd 14849, ¶¶ 29-35. The Commission has yet to act on that matter, see First Report and Order, MM Docket No. 98-93 (rel. Mar. 30, 1999) at ¶ 1 & n.1, and any decision to pursue the proposed service properly should await the adoption of a definitive standard.

Absent comprehensive engineering analysis and testing, the Commission simply cannot assume that the proposal is technically appropriate in light of incumbent users and uses of adjacent spectrum. To the contrary, even based on its very limited testing, Petitioner *concedes* that the proposed ERDS Service would interfere with the many full service broadcast stations operating on Channels 201 and 202.¹⁴

The proposed ERDS service threatens the ability of stations operating on Channels 201 and 202 to transition to digital audio broadcasting (“DAB”). The Commission has consistently voiced its strong support for the conversion of analog radio stations to DAB.¹⁵ Most recently, the Commission stated both its intention to commence an in-band/on-channel (“IBOC”) DAB rulemaking proceeding in the coming weeks¹⁶ and that it would not pursue other proposed spectrum uses in any way that would impair the transition to digital radio broadcasting.¹⁷ Because adoption of the ERDS proposal could undermine the DAB transition for the many stations operating on adjacent Channels 201 and 202, the Commission should, at a minimum, defer consideration of the proposal until the transition to digital radio is assured.¹⁸

¹⁴ Petition, Exhibit E, at 7. See <http://www.fcc.gov/fcc-bin/fmq=fre=88.1>; <http://www.fcc.gov/fcc-bin/fmq=fre=81.3>.

¹⁵ 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, ¶ 47 (rel. Feb. 3, 1999) [hereinafter “LPFM NPRM”].

¹⁶ The Commission expects to adopt DAB notice of proposed rulemaking on October 21, 1999. In the Matter of Creation of a Low Power Radio Service, MM Docket No. 99-25, at ¶ 7 (rel. Sept. 17, 1999) (Order Granting Extension of Time).

¹⁷ See LPFM NPRM at ¶ 49.

¹⁸ While IBOC digital radio systems are still in the testing and development phase, laboratory and preliminary on-air test results of the competing IBOC systems are expected by December 15, 1999.

Even putting aside interference considerations, the proponents of this new broadcast service have not demonstrated the need for the proposed. As an initial matter, many full service AM and FM stations currently offer traffic and other public safety information of the sort promised by Petitioner. Since the greatest radio listening occurs during morning and evening commuting, existing stations already have a significant incentive to provide useful and timely information. In addition, AM and FM stations participate in the Emergency Alert System (“EAS”) to assure timely and widespread dissemination of essential public safety information.¹⁹

Moreover, existing AM-band Traveler Information Services (“TIS”) are specifically directed to the dissemination of traffic and other public safety information. As the Commission has previously found: "Our experience with TIS operation in the AM band has been very satisfactory."²⁰ To the extent existing TIS services can and should be improved, there are emerging options that do not require the use of scarce radio frequency spectrum.

Thus, the Federal Highway Administration ("FHA") is devoting considerable resources to developing radio technology to address our Nation's traffic problems. Moreover, the Intelligent Transportation Society of America ("ITS America") is a public-private partnership dedicated to making the United States surface transportation system safer and more effective by accelerating the development, integration, acceptance, and deployment of advanced technology.²¹ The use of

¹⁹ Nowhere does Petitioner propose to participate in the EAS, but presumably such participation would be an essential element of the proposed ERDS service.

²⁰ Review of the Technical Assignment Criteria for the AM Broadcast Service, 6 FCC Rcd. 6273, ¶ 200 (1991).

²¹ ITS America’s members are stakeholders in the application of new technology and have worked to analyze and coordinate capabilities for in-vehicle traffic information systems.

high-speed data technology through existing radio stations, as these initiatives are exploring, is a way to provide traffic information on a regional, state or national basis in more efficient and practical ways. Networks of new stationary and mobile transmitters, raising frequency coordination²² and interference issues, would not be necessary, and the coverage would mirror that of existing stations.

NPR and its member stations have also played a leading role in the deployment of Radio Broadcast Data Systems ("RBDS") in the United States.²³ One of the features of RBDS is the ability to provide traffic announcements ("TA") and emergency ("PTY31") alerts. The traffic program code turns on a front-panel "flag," or visual indicator, alerting the driver that the tuned radio station transmits traffic announcements. In the event of an announcement, the driver may override a CD or audio cassette player or radio station programming in order to receive traffic information. Since RBDS technology enables an FM station to transmit text separately from its audio signal, existing full service FM stations can already utilize that technology to alert motorists to weather, traffic, or other important developments or refer them to an existing AM-band TIS frequency. The proposed service, which is simply a reconfiguration of the existing RBDS technology, unnecessarily sacrifices reception of existing stations operating on Channel 201 and 202 in pursuit of speculative improvement in the dissemination of public safety information.²⁴

²² At minimum, Petitioner concedes that the use of Channel 200 would require coordination to assure compliance with United States treaty obligations. See Petition at 7 n.10.

²³ Indeed, a number of NPR Member stations were among the very first to deploy the technology. See "I Want My 'Smart' Radio," PR Newswire, Financial News, June 27, 1994; Communications Daily, June 17, 1994, at 7. A listing of the hundreds of stations that now offer RBDS services can be found at <http://www.cemacity.org/rds/>.

²⁴ The recent evacuation of large areas of Florida in anticipation of Hurricane Floyd validates the adequacy of existing means of communicating essential public safety information. See Sue

Thus, because the putative public interest benefits associated with the proposal may be achieved at least as efficiently and effectively through other existing and emerging means, Petitioner has not justified the establishment of its proposed service.

The "regulatory scheme" proposed by Petitioner is wholly inadequate to address the service issues that would likely arise. With all due respect to Petitioner, the "regulatory scheme" which it proposes for adoption is limited to (1) dereserving Channel 200 and (2) licensing any interested public safety licensees.²⁵ As noted above,²⁶ Petitioner fails to address such issues as whether and to what extent ERDS licensees would participate in the EAS system. Just as importantly, the Petition fails to propose measures to avoid even the more obvious forms of abuse that are likely to occur.

By abuse, we do not mean to suggest, as some have, that public safety officials will use the ERDS service other than in cases of clear need,²⁷ although the Petitioner has not even attempted to define what might be appropriate parameters for the use of the ERDS service. Rather, we are concerned that, for instance, unlicensed broadcasters will take advantage of the re-tuning capabilities of the proposed receivers to instantly create captive audiences while utilizing the mobility of the transmission equipment to avoid detection.

What bootlegger or terrorist could resist the temptation to park on a mountaintop and transmit a signal that would capture the vast majority of car radios in a major

Anne Pressley, "Hurricane was a Moving Experience: Officials Say Coastal Evacuation, Largest in U.S. History, Was a Success Overall," Washington Post, Sept. 17, 1999, at A1.

²⁵ See Petition at 7-8.

²⁶ See note 19, supra.

²⁷ See REC Network's Reply to Statement made by Federal Signal, MM Docket 99-25, RM-9208, RM-9242, RM-9719, filed Sept. 24, 1999, at 3.

city? This system, despite its good intentions, could quickly become an attractive nuisance²⁸

It may be impossible to address all of the intended and unintended consequences that may flow from establishing the proposed service, but the Petition has barely made an attempt.

Conclusion

For the foregoing reasons, the Commission should deny the Petition.

Respectfully Submitted,

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²⁸ See "87.9 MHz Proposed As A Nationwide 'Emergency Radio Data System'," The CGC Communicator, Sept. 27, 1999, available at <http://216.24.35.148/cgc/>.

CERTIFICATE OF SERVICE

I, Gregory A. Lewis, hereby certify that a copy of the foregoing Statement of National Public Radio, Inc. was sent this 14th day of October, 1999, by first class mail, postage prepaid to the following:

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