

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

In the Matter of	)	
	)	MM Docket No. 99-25
Creation of a Low	)	
Power Radio Service	)	RM-9208
	)	RM-9242

**OPPOSITION AND RESPONSE TO PETITIONS FOR RECONSIDERATION OF**

**UNITED CHURCH OF CHRIST, OFFICE OF COMMUNICATION, INC.;**

**NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE USA,  
COMMUNICATION COMMISSION;**

**GENERAL BOARD OF GLOBAL MINISTRIES OF  
THE UNITED METHODIST CHURCH;**

**DEPARTMENT FOR COMMUNICATION OF THE  
EVANGELICAL LUTHERAN CHURCH IN AMERICA;**

**CIVIL RIGHTS FORUM;**

**LIBRARIES FOR THE FUTURE;**

**AND**

**CONSUMERS UNION**

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**OPPOSITION AND RESPONSE TO PETITIONS FOR RECONSIDERATION**

**Introduction**

United Church of Christ, Office of Communication, *et al.* ("UCC *et al.*") oppose, in large part, National Public Radio's ("NPR's") Petition for Reconsideration and several other Petitions seeking additional relaxation of the Commission's ownership limits for low power radio ("LPFM") adopted in the Commission's Low Power Radio Report and Order, FCC 00-19 (rel. Jan. 27, 2000) ("*Order*"). UCC *et al.* support portions of the Petitions for Reconsideration submitted by representatives of student radio stations at the University of Arizona and University of Wisconsin.

**I. NPR's Petition Should Not Be Granted.**

NPR asserts that it supports low power radio, while at the same time putting forward technical suggestions that will debilitate it. NPR's position does not appear consistent with its claim that it supports diversity of viewpoints and service to underserved communities. Through its stance, NPR joins forces with the commercial broadcast industry's vitriolic, irrational opposition to low power radio.

**A. NPR's Technical Requests are Not Reasonable and Will Debilitate Low Power Radio.**

NPR takes issue with the Commission's decision to lift third adjacent protection for incumbent

broadcasters. NPR asserts that, in coming to this conclusion, the Commission ignored laboratory tests and technical analysis that demonstrated a likelihood of interference and relied on its own analysis. NPR Pet. at 4. NPR is simply incorrect. The National Lawyer's Guild commissioned a laboratory test of radio receivers, performed by Broadcast Signal Labs, that supported the Commission's findings. In addition, UCC *et al.* commissioned a detailed third-party review of all the laboratory tests by Dr. Theodore Rappaport, which not only supported the Commission's analysis, but concluded that the Commission could have lifted second *and* third adjacent protection. In fact, although NPR claims that the Commission ignored the results of NPR's and the NAB's tests, the Commission did, in fact, find that, although the *standards and conclusions* applied by the engineers conducting those tests were inadequate, the *data* produced by those tests supported the Commission's findings. *Order* at ¶100.

Perversely, NPR then criticizes the Commission for not including any so-called "category I" table radios in its own test, NPR Pet. at ¶4, *when NPR's study also excluded those radios*. NPR Comments, Attachment D, Engineering Statement at 1 (filed Aug. 2, 1999); *see also* UCC Reply Comments, Technical Appendix at 28 (filed Nov. 15, 1999) (critiquing the omission of less expensive radios). Moreover, other laboratory tests submitted to the Commission tested these radios. *See* NAB Comments, vol. 2, Exb. B, App. A, at A-1 (filed Aug. 2, 1999); NLG Comments, Technical Attachment, App. F (filed Aug. 2, 1999). It is unclear why NPR does not believe the Commission can rely on the data submitted to it in these tests.

Moreover, the Commission expressly found that, as Dr. Rappaport concluded, most consumers expect a trade-off between radio performance and price. *Order* at ¶ 98. Thus, the Commission found it unreasonable to conclude, as NPR and NAB suggested, that consumers would

be dissatisfied if their inexpensive radios did not perform as well as expensive high fidelity sound systems. The Commission based this finding on the fact -- undisputed by either NPR or NAB -- that most inexpensive radios do not meet the quality performance levels adopted by NPR and NAB in their laboratory tests. *Order* at ¶ 97.

NPR critiques the Commission for failing to establish a benchmark for performance of radio receivers. NPR Pet. at 4. The Commission has wisely allowed the marketplace to determine performance standards for radios. The Commission, having allowed radio manufacturers to identify and meet consumers needs through the rigor of the marketplace, then relied upon purchasing patterns to determine what level of performance most consumers find to be acceptable. Although it appears that NPR would prefer the Commission to adopt a performance standard, surely many radio manufacturers and others would rise in vociferous opposition to a new Federal regulation to govern a fully-functioning competitive market.

**B. NPR's Claim that the Commission Ignored the More Tightly Packed Noncommercial Spectrum is Specious.**

Notwithstanding the fact that the Commission's final rules will not allow as many low power radio stations to be licensed in more congested portions of the spectrum, NPR claims that public radio will be harmed more than commercial radio because stations are more closely spaced in the noncommercial portion of the spectrum. NPR Pet. at 9. In many areas noncommercial are placed closer together because of different licensing requirements for those stations. The Commission took this into account by *allowing fewer low power radio stations where stations are more closely spaced*. In other words, because the noncommercial band is more tightly packed, fewer low power radio stations will fit in the reserved band. Therefore, noncommercial stations have *less* to fear from

the new low power stations than do commercial broadcasters.

Similarly, NPR claims that the Commission is exacerbating congestion caused by Channel 6 television transmissions, which occur next to the reserved portion of the FM band. NPR Pet. at 11. The presence of Channel 6 transmission means that there is less room for low power radio stations in those areas. Moreover, the Commission recently announced that it would make it easier for noncommercial stations to reserve additional spectrum in areas where there are Channel 6 transmissions. *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, FCC 00-120 at ¶¶114-115 (rel. April 24, 2000).

**C. The Commission Adopted a Reasonable Balance Between Implementing the Statutory Directive Favoring Original Local Service and Protecting Service Provided Via Translators.**

NPR acknowledges the importance of "establishing origination services" but provides no justification for its contention that new originating stations should be secondary to both existing and future translators. NPR Pet. at 20. Translators can be an important means of providing service to communities that do not receive adequate service because they do not have a local broadcast service by extending one community's service into another area. But the Communications Act has always stood for the proposition that broadcasting is a unique medium because it is local. The Commission's decision recognizes that low power radio stations will produce new, local programming, taking guidance from its authorizing statute.

NPR does not justify its stance that applications subject to a PTFP grant should automatically trump a LPFM application. This proposal neither recognizes the supremacy of locally-originated programming nor accounts for the fact that the NTIA PTFP criteria precede the creation of LPFM. An NTIA determination that a community would benefit from a translator service in no way implies

that the same community would not benefit from a low power station.

NPR asks for special protection for translator input signals that are broadcast. NPR Pet. at 21. Any conflicts between low power stations and translator input signals that are broadcast will be handled on a case-by-case basis.

These preferences, however, are not justified if the low power station is not providing local programming. In those instances, the Commission may well want to consider a different balancing between low power and translator signals.

**D. Although a Streamlined Complaint Process May Benefit All Parties, NPR's Proposal Minimizes the Importance of Low Power Stations.**

NPR does not want to accept that low power radio is a full-fledged broadcasting service. NPR suggests process procedures that were designed for secondary services, such as translators. NPR Pet. at 12. As explained above, while a secondary service is justifiably subject to these procedures, the new low power radio stations deserve more protection to the extent that they provide local programming.

The Commission should not adopt procedures that make it easy for antagonistic broadcasters to attack low power applications before they even get off the ground. *UCC et al.* would support a complaint process that will quickly and efficiently settle any interference disputes. In particular, such a process must take into account the disparity in resources between likely complainants, full power broadcasters and low power broadcasters.

**E. NPR's New-Found Concern for Protecting Radio Reading Services is in Contrast With Its Actions and in Contrast with Low Power Radio Supporters' Long-Held Recognition of these Services' Importance.**

NPR did not raise the issue of radio reading services during the comment period in this

proceeding. Moreover, NPR hypocritically criticizes the Commission for failing to include SCA radio reading services in its laboratory test, when NPR itself did not include those receivers in its own laboratory test. *See* NPR Comments, Attachment D, Engineering Statement at 1 (filed Aug. 2, 1999).

Possibly NPR's engineers concluded, as it appears the Commission's engineers concluded, that subcarrier services for the visually impaired are similar enough to other services that the existing laboratory tests were sufficient to evaluate low power radio's impact on these services.

NPR's concern for these services would seem in good faith if it had taken steps to collect specific data demonstrating the harm to these services during the extensive comment period provided for technical analysis. The Commission extended the deadline for submitting comments several times to provide ample time for a complete technical record. Instead, NPR waited until the Commission's decision was complete before it criticized the Commission for this supposedly important omission. The contradiction between NPR's position and its behavior leads one to wonder whether NPR's goal really is to assist radio reading services or whether it is to manufacture reasons why the service it supposedly supports cannot be adopted.

UCC *et al.* has always encouraged the Commission to adopt a low power radio service compatible with radio reading services and maintains that position. UCC *et al.* Reply Comments at 12 (filed Nov. 15, 1999). UCC *et al.* support full protection of all radio reading services. As UCC *et al.* stated in its Reply Comments, UCC *et al.* is prepared to accept fewer low power radio stations in exchange for protecting these services. UCC *et al.* Reply Comments at 13. Because, as UCC *et al.* has explained above, there is unlikely to be much room in the reserved band of the spectrum for low power radio stations where virtually all radio reading services broadcast, the instances possible conflict will be few. UCC *et al.* are confident that if the current protection standards are insufficient

to protect these services in a few anomalous situations, the Commission can address this quickly and easily, and encourage the Commission to do so.

**F. Amazingly, NPR Continues to Claim Digital Audio Broadcasting May Be Threatened by Low Power Radio, Even When the Corporations Responsible for Developing DAB Technology Do Not.**

Although the companies that have invested in the development of digital audio radio participated actively in this proceeding, not one has submitted a petition for reconsideration in this proceeding. NPR, however, has done so. With this frivolous complaint, NPR demonstrates that its claims to support low power radio are not in good faith. The Commission retained second adjacent protection primarily because of concerns about digital radio. *Order* at ¶ 93. Both USADR and Lucent Digital Radio stated in this proceeding that they did not oppose lifting third adjacent protection. *See* Lucent Digital Radio Reply Comments at 3 (filed Nov. 16, 1999) ("Lucent has concluded that 3d adjacent operations will have minimal effect, if any, upon an IBOC signal."); UCC *et al.* Reply Comments, Technical Appendix at 66 (citing the lack of concern in USADR's comments about lifting third adjacent protection). NPR should consult with the corporations developing digital technology before it wastes the Commission's time with groundless requests.

**II. With Limited Exception, the Commission should Not Relax LPFM's Ownership Limits.**

**A. Most Requests to Relax the Commission's Ownership Limits are Not Justified.**

Several petitioners ask the Commission to relax its ownership limits for certain entities. *See* National Translator Association Pet. at 2 (translator licensees); Lawson/Langford Pet. at 3 ("independent" AM licensees); NYS Thruway Authority at 4 (government, transportation, and public safety entities). UCC *et al.* oppose these requests. As detailed in UCC *et al.*'s Petition for Reconsideration and in its Comments and Reply Comments in the proceeding, ownership restrictions

are at the heart of the benefits of this new service, and should be strengthened, not weakened. The Commission will undermine the benefits of the service if it begins to adopt exceptions to the ownership rules. Given that so few stations will be available, the Commission wisely decided to distribute those stations as widely as possible. Public safety and other government entities will be free to obtain several licenses after the first two year licensing period. If other organizations have not come forward, these entities will be able to acquire many licenses.

**B. Requests that Student-Run Radio Stations Receive an Exception to Ownership Rules Should Be Given Careful Consideration.**

Two representatives of student-run radio stations request that student organizations at universities with broadcast licenses be allowed to obtain a LPFM license when the full power license is not student-operated. *See* Camarillo Pet. at 1-2; Black Pet. at 1-2. Unlike the requests described above, these requests ask for assistance to grant a low power license to those will otherwise be unable to obtain a broadcast license. Student-run radio stations, particularly at state-sponsored universities, are an important means to train future broadcast professionals. Widely available training in broadcasting, when implemented properly, can open doors to many individuals who would not otherwise receive that training. Unlike AM broadcasters, students at universities that operate radio stations that are not student run do not have a broadcast voice to use.

Although no specific language has been proposed to implement this exception, UCC *et al.* caution the Commission to be very careful in adopting any exceptions to the ownership rules. Exceptions should place very strict limits on what constitutes a "student-run" station. This exception should not become a loophole allowing university licensees to obtain low power licenses in

contravention of the purpose of LPFM ownership limits. On the other hand, this exception should not be fashioned so that it limits university support of the student-run low power station. For example, any exception for student-run licensees should provide incentives to the university licensees to include students in the operation and programming of the full power station and should encourage the full power station to provide training and resources to the student-run low power station.

### **Conclusion**

The Commission has adopted a largely successful service. As evidenced by the bulk of Petitions for Reconsideration, the changes necessary to the service are few. Requests that will eviscerate the service should be rejected.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Opposition and Response to Petitions for Reconsideration were served by mail on the following parties:

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