

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

PETITION 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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Summary

The Commission's low power radio service is one of the most important initiatives it has ever taken to promote local self-expression and expand access to diverse viewpoints in the marketplace of ideas. In a proceeding of this complexity, there are, inevitably, some errors and ambiguities. This reconsideration petition addresses these minor shortcomings.

First, UCC et al. ask that the Commission reverse its decision not to impose a public file obligation or ownership reports on low power licensees. Public files and ownership reports have long been the primary means for citizens to learn about Commission broadcast licensees. After the first two years of the service, low power licensees are not subject to any local service characteristics or obligations different from the obligations of all broadcasters. Thus, the Commission has not justified differing treatment.

Second, UCC et al. request that the Commission extend the period of time under which licensees will be required to meet the localism requirement and the period of time in which licensees will be limited to only one license. It is unlikely that all organizations that might be able to provide a highly localized service will emerge within two years. Two years is an unreasonably short time, particularly for the small nonprofit organizations that the Commission foresees as the primary beneficiaries of this service. It undermines the value and purpose of a low power radio service to open up ownership of low power stations beyond a single station limit. In addition, this time limit leaves no opportunity for the "second-wave" of potential licensees to learn from the first low power licensees.

Third, UCC et al. ask that the Commission further liberalize its interference protection standards to make room for additional low power stations. *UCC et al.'s Reply Comments* in this

docket, based on a technical study performed by the nationally-prominent radio propagation engineer Dr. Theodore Rappaport of Virginia Tech, demonstrated that both second and third adjacent interference protection could safely be lifted for stations of 100 watts or fewer. By failing to lift second adjacent protection, the Commission needlessly reduced the number of low power stations that will be authorized. There would have been room for 626 100 watt stations in the top 60 markets with both second and third adjacent protection relaxed. With second adjacent retained, there is room for only 247. Most important, UCC *et al.* demonstrate herein that the parties opposed to low power radio could find nothing substantively wrong with Dr. Rappaport's analysis.

To ensure that the new low power radio service remains true to its goals of promoting new voices and local service, and to ensure the service is available to as many applicants as possible, the FCC must modify its low power radio service.

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**PETITION FOR RECONSIDERATION OF
UNITED CHURCH OF CHRIST, OFFICE OF COMMUNICATION, INC. *et al.***

United Church of Christ, Office of Communication, Inc., *et al.* ("UCC *et al.*") applaud the Commission's *Low Power Radio Report and Order*, FCC 00-19, MM Docket 99-25 (rel. Jan. 27, 2000) ("*Order*"). The Commission's low power radio service is one of the most important initiatives it has ever taken to promote local self-expression and expand access to diverse viewpoints in the marketplace of ideas. UCC *et al.* specifically praise the Commission for increasing the likelihood that low power radio licensees will be locally-based, will produce local programming, and for rewarding licensees for sharing scarce resources.

In a proceeding of this complexity, however, there are inevitably some errors and ambiguities. This reconsideration petition addresses these minor shortcomings.

UCC *et al.* present here several issues for the Commission to review. First, UCC *et al.* ask that the Commission reverse its decision not to impose a public file obligation or ownership reports on low power licensees. Second, UCC *et al.* request that the Commission extend the period of time under which licensees will be required to be meet the localism requirement and the period of time in which licensees will be limited to only one license. Third, UCC *et al.* ask that the Commission further liberalize its interference protection standards to make room for additional low power stations. UCC

et al. made a strong technical case that second adjacent, in addition to third adjacent, protection could safely be lifted.

I. Like Other Radio Licensees, Low Power Radio Licensees Should Be Required to Maintain a Public File and Submit Ownership Reports.

The FCC concluded that it should not impose public file or ownership reporting requirements on low power radio licensees. *Order* at ¶185. *UCC et al.* strongly contest this decision. Public files and ownership reports have long been the primary means for citizens to learn about Commission broadcast licensees. Low power licensees, like full power licensees, must serve the public interest under Title III of the Communications Act. Fulfilling this obligation is facilitated by maintenance of a public file and ownership reporting. A citizen may learn about the programming of a station, its ownership, and its compliance with Commission rules by viewing the public file and through ownership reports.

The FCC's conclusion that "the nature of this service will ensure these stations are responsive to their communities," *Order* at ¶ 185, is not valid. Although initially licensees must have their headquarters, campus, or 75 percent of their boards within the service area, this ceases to be a requirement after two years have elapsed. *Order* at ¶ 33. After that time, a low power applicant need not demonstrate any local ties or programming. Therefore, after the first two years of the service, low power licensees are not subject to any local service characteristics different from the obligations of all broadcasters. If full power broadcasters must maintain a public file and submit ownership reports to fulfill their public interest obligations, what distinguishes low power stations in most circumstances?

The FCC's selection criteria for mutually exclusive applicants, two of which favor locally-

based applicants, will not affect all licensees. *See Order* at ¶ 136. Although they will ensure that some low power licensees are more likely to be linked to their communities than other licensees, these criteria are no guarantee that single applicants for a license will serve the local community.

Disclosure not only enhances compliance, it encourages citizens to interact directly with broadcasters to resolve complaints and concerns, rather than involving the Commission. In the event that citizens and broadcasters cannot resolve their disputes, however, public disclosure is the only way citizens may acquire information sufficient to obtain redress at the Commission. Since its *Radio Deregulation* decisions, the Commission has relied extensively on citizen participation for the enforcement of its rules.

Further, the Commission's conclusion that maintaining a public file will be unduly burdensome, *Order* at ¶185, is inconsistent with the decision that low power licensees must maintain political files, *Order* at ¶175. If a licensee must already maintain a political file available to the public, the addition of the few additional public file items is not a significant burden.

Moreover, the nature of low power licensee may very well support the need for a public file and ownership reports, when compared with full-power broadcasters. Hopefully, the information and issues on some low power stations will be more relevant, more important, and possibly more controversial to many listeners, than programming which appears on full power stations. Thus, members of the public may very well be more interested in low power stations' public file information than they are with respect to full power stations.

II. The Commission Should Retain its Local Eligibility Criterion and its Single-Station Ownership Cap for More than Two Years.

The Commission erroneously made two decisions based on the assumption that, a few short

years after the service is introduced, no unallocated low power radio stations should remain. Thus, rather than maintaining the uniquely local and uniquely independent character of low power radio stations, the Commission chose to relax certain requirements in as little as two years after the service begins.

The Commission decided that, to be eligible, low power applicants must demonstrate that they meet a local criterion, but only for the two years after the first application window is opened. *Order* at ¶33. *UCC et al.* believe that the local eligibility requirement should not expire, and if it does expire, that it should not expire until at least 5 years have passed.

As the Commission found, the essence of a low power radio service is that it will produce "highly local stations strongly grounded in their communities." *Order* at ¶3. Allowing an organization that has no ties to the community will do nothing to serve that end. While the Commission engaged in significant and thoughtful analysis explaining why knowledge of local interests is important in a intensely local service such as low power radio, and thus justified a localism criterion, it chose to end that preference within two years, saying only: "[i]f no local entities come forward, ... we do not want the spectrum to go unused." *Order* at ¶33.

It is unlikely that all organizations that might be able to provide a highly localized service will emerge within two years. Two years is an unreasonably short time, particularly among the organizations that the Commission foresees as the primary beneficiaries of this service, community based schools, churches and civic organizations. *See Order* at ¶5. The Commission provides no explanation for why it believes that all issues or groups — such as underrepresented ethnic groups — should have mobilized and organized the resources to operate a radio station by the year 2002. What about the new immigrant groups who may arrive on America's shores in the future? What

about a new public health hazard or unforeseen collaborations that may appear just a few years down the road? What about the populations that are just beginning to bridge the digital divide and which may require additional time to organize and prepare to operate a radio station? It has taken them years to achieve the success they have at this time, but the Commission decided, without reason, that two years should be sufficient to learn of the opportunity, organize volunteers, raise funds, develop a programming vision, and apply for a Commission license.

For the same reasons, the Commission should not have lifted the ownership cap of a single station only two years after the first filing windows are open. *See Order* at ¶39. The Commission found that where there is not "immediate" interest, multiple ownership will be allowed. *Id.* The Commission states that the higher caps will allow national noncommercial educational entities the opportunity to obtain additional local outlets, even as the Commission created a special exception for local chapters of national organizations. *Order* at ¶40. National entities do not, by definition, have the experience and connections with a tiny, 3 or 7 mile area of a neighborhood necessary to serve that neighborhood. National entities are not the entities the Commission envisions as benefitting from this service. *Order* at ¶5. Local chapters of national entities will not be limited by the cap, *see Order* at ¶50, and therefore the justification for lifting the cap is inconsistent with the stated rationale. It simply bankrupts the value and purpose of a low power radio service to open up ownership of low power stations beyond a single station limit.

This time limit is actually shorter than it might appear. It is unlikely that the Commission will open more than one window for any applicant during the initial two-year period. The Commission will open the first filing window in May 2000, only a few short months after the service was adopted. Thus, most applicants must apply within three months. During the next application window non-local

entities and entities that already own low power radio licenses will be able to obtain a license. That time limit is ridiculously short. This leaves no opportunity for the "second-wave" of potential licensees to learn from the first low power licensees.

Small organizations have been denied access to the airwaves by Commission policies for 20 years, only to be told that they must come forward within a two year time frame or forgo their opportunity indefinitely.

III. The Commission Should Lift Second-Adjacent, in Addition to Third-Adjacent, Interference Protection.

The Commission decided to retain second adjacent interference protection while removing second adjacent protection for the purpose of authorizing the new low power radio service. *Order* at ¶104. The Commission could safely have gone further to relax second adjacent protection for stations of 100 watts and fewer.

UCC *et al.*'s Reply Comments in this docket, based on a technical study performed by the nationally-prominent radio propagation engineer Dr. Theodore Rappaport of Virginia Tech, demonstrated that both second and third adjacent interference protection could safely be lifted for stations of 100 watts or fewer. The receiver study submitted by the National Lawyers Guild and performed by Broadcast Signal Labs showed that most radio receivers responses varied little between second adjacent and fourth adjacent signals. These technical studies make clear that the Commission may safely lift both second and third adjacent protection. UCC *et al.* will not re-submit the reams of technical data already available to the Commission, but will briefly highlight the evidence already before the Commission.

Most of the objections to altering second and third adjacent protection submitted by

broadcasters in this docket were focused on the interference caused by 1000 watt stations. *UCC et al.* agreed that 1000 watt stations required full second and third adjacent protection. For stations of 100 watts or less, however, such high levels of protection are not required. Such stations will add a minuscule amount of power to the airwaves. They are simply incapable of adding signals harmful to current broadcasts.

Moreover, by failing to lift second adjacent protection, the Commission drastically undercut the number of low power stations that will be authorized. According to *UCC et al.*'s technical analysis, in the top 60 markets, there would have been room for 626 stations with both second and third adjacent protection relaxed. Rappaport Study at App. D. With only third adjacent relaxed, there is room for only 247 stations in the top sixty markets. This reduces by approximately 2/3 the number of stations available. Similar ratios are found for 10 watt and 1 watt stations. *Id.* (reducing the number of 10 watt stations in the top sixty markets from 766 to 336 and the number of 1 watt stations from 797 to 359).

UCC et al. submitted a significant technical review of the information on the record at the Commission. The parties opposed to low power radio could find nothing substantively wrong with Dr. Rappaport's analysis. The NAB filed *Further Comments* on January 5, 2000, which responded to Dr. Rappaport's analysis. The NAB's *Further Comments* incorporated a technical response by Dr. Raymond L. Pickholtz and Dr. Charles L. Jackson ("*Pickholtz/Jackson Response*"). Their inability to refute *UCC et al.*'s technical analysis demonstrates the Commission was able to adopt Dr. Rappaport's recommendations and relax second adjacent protection.

Pickholtz and Jackson did not respond to the core point in Dr. Rappaport's analysis: the FCC spacing ratios have nothing to do with radio performance, and thus the radio receiver analysis did

little to demonstrate why the FCC's rules could not be changed to accommodate LPFM.

UCC *et al.* filed a response to the Pickholtz and Jackson's analysis shortly before the Commission completed its consideration of the Low Power Order. UCC *et al.* reviews them here to demonstrate forcefully that no technical response refuted Dr. Rappaport's findings:

- Many of Pickholtz's and Jackson's criticisms make no sense and are not even technical. For example, they criticize Dr. Rappaport for taking a position on LPFM and for criticizing the NAB and CEMA studies, but not the FCC and OET studies. *Pickholtz/Jackson Response* at 2. Dr. Rappaport's position is no different from that of Pickholtz and Jackson themselves.
- Other criticisms blow hypoberic smoke, but state nothing. Pickholtz and Jackson point out that, although the CEMA sample of radios was flawed, *some* conclusions about radio performance could be drawn from the study. While this is true, Pickholtz and Jackson could not point to anything about the CEMA study that counters Dr. Rappaport's conclusions. *Pickholtz/Jackson Response* at 3-4.
- Some criticisms are simply incorrect:
 - Dr. Rappaport's study extensively considered second and third adjacent interference. He calculated the possible interference under every possible condition -- considering full protection, relaxed protection, and partially relaxed protection for 10, 100, and 1000 watt stations. *See UCC Technical Analysis*, App. D at 1-29.
 - Contrary to Pickholtz and Jackson's claim, *Pickholtz/Jackson Study* at 7, Dr. Rappaport properly calculated the *ratios* of people who gain service and who may potentially experience interference. Dr. Rappaport used the procedures in Part 73 to calculate average population densities over the *area* of a propagation region.
- Dr. Rappaport criticized the NAB Mapping study for excluding car radios from its analysis. Rappaport, Pickholtz, and Jackson agree that car radios and home radios operate differently, but Pickholtz and Jackson have not explained why the FCC should ignore the high performance of the radio that most listeners use for the most hours. *Pickholtz/Jackson Response* at 3. In fact, because of the unique needs of a radio that moves at high speeds, a car radio must be much better at rejecting interference than household radios. Thus, listeners in cars are *less* likely to experience interference from the introduction of LPFM.
- Pickholtz and Jackson fundamentally misrepresent Dr. Rappaport's criticism of the NAB's performance standards. First, Pickholtz and Jackson do not explain why fifty percent of the radios the NAB tested could not meet their standard of performance in the *absence* of interference. Clearly the 1977 standard referenced by Pickholtz and Jackson is irrelevant to

most consumers. *Pickholtz/Jackson Study* at 4. In addition, Dr. Rappaport criticized the NAB study for using two measures of performance, not for using a relative measure of performance. *See Pickholtz/Jackson Study* at 5. Dr. Rappaport praised the OET study for using a relative measure of performance. *UCC Technical Analysis* at 35.

The opponents of low power radio produced nothing undermining the technical feasibility of low power radio or of relaxing second adjacent protection.

Moreover, the concerns raised below with respect to second adjacent interference and the transition to digital radio are unfounded. As *UCC et al.* explained in its reply comments, the concerns about second adjacent channel interference submitted by USADR concerned digital radio transmissions *outside* a station's protected contour. *UCC et al. Comments* at 24; *Rappaport Study* at 70-71. Licensees may only expect the Commission to protect the service contour guaranteed to them under the Commission's rules. Thus, the Commission was unreasonable when it paid heed to those concerns.

Finally, the Commission, as it acknowledges, *Order* at ¶74, has significant experience with radio stations that operate on second and third adjacent channels in the "short-spaced" markets. Consumers are not deprived of adequate radio service in these markets. This real-world experience should be enough to calm the fears that the extensive study performed in this record is not a sufficient substitute for real-world experience.

The Commission should not have short-changed the new low power radio service by adopting an unnecessarily cautious approach to interference protection. We ask the Commission to reconsider this decision.

Conclusion

To ensure that the new low power radio service remains true to its goals of promoting new

voices and local service, and to ensure the service is available to as many applicants as possible, UCC *et al.* request that the Commission take the actions described above.

Respectfully submitted,

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