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

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In the Matter of	)	
	)	
Petition for a Micro Station Broadcasting	)	
Service and Proposal for Creation of the	)	RM-9208
Low Power FM (LPFM) Broadcast	)	RM-9242
Service	)	

TO: The Full Commission

COMMENTS AND COUNTERPROPOSAL OF
ZILLAH SCHOOL DISTRICT #205

Zillah School District #205 ("Zillah" or "School District"), by its attorney, hereby respectfully comments upon the above petitions for rule making and submits a counterproposal as follows:[1]

1. By Public Notice, released March 10, 1998, the Commission has requested public comment on the above-described proposals, each of which contemplates the licensing of low power FM stations.

2. Zillah School District #205 is the legal entity which administers all of the schools,

[1]Zillah is aware that there is an additional rule making proposal, dealing with the creation of a low power service to cover public events (RM-9246). The "event broadcast" proposal appears to be only tangentially related to the matters which are the subject of these comments. Therefore, Zillah takes no position with respect to the "event" rule making.

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pre-school through high school, in the city of Zillah, Washington. Zillah is a small community of 1911 persons, situated about 15 miles from Yakima and about 50 miles from the tri-cities of Kennewick, Richland and Pasco. For a long time the School District has desired to implement a non-commercial educational FM broadcast station to serve as a teaching tool for students and as a general service to the community. However, because of frequency congestion resulting from the proximity of Zillah to the above-described cities, it is not easy to find a suitable frequency.

3. The "Micro Power" and LPFM proposals clearly address an important public problem. The FCC receives many letters annually from people who want to own an LPFM station as an outlet for self-expression. Finding that a license for such a station is not readily available, many of these people simply go on the air without a license, creating interference to legitimate commercial broadcasters and even to public safety services. To the extent that the proposals in this proceeding seek to address this problem, they are welcome proposals.

4. Unfortunately, neither proposal takes into account the requirements of the Balanced Budget Act of 1997. That Act added a new section to the Communications Act, i.e., §309(j)(1), 47 U.S.C. §309(j)(1). That section provides that, "If . . . mutually exclusive applications are accepted for any initial license or construction permit then, except as provided in paragraph (2), the Commission shall grant the license or permit through a system of competitive bidding . . .". Section 309(j)(2) exempts from competitive bidding applications by state and local governments in the public safety radio services; initial licenses or construction permits for digital television stations given to existing terrestrial broadcasting licenses to replace their analog licenses; and stations described in Section 397(6) of the Communications Act.

5. Section 397(6) of the Act contains a definition of the terms "non-commercial

educational broadcast station" and "public broadcast station". The section reads as follows:

> "(6) The terms 'noncommercial educational broadcast station' and 'public broadcast station' mean a television or radio broadcast station which --
>
> (A) under the rules and regulations of the Commission in effect on the effective date of this paragraph, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or
>
> (B) is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes."

6. Both of the petitions in this proceeding recognize that there may be more than one applicant for a Low Power or Micro Power radio station, and that it may be necessary to have a mechanism for resolving conflicts. Both petitions suggest the possibility of using a lottery or a random selection system to resolve such conflicts. However, §309(i)(5), enacted as a result of the Balanced Budget Act of 1997, terminated the Commission's authority to use lotteries, except for stations described in §397(6) of the Act, i.e., non-commercial educational stations. It is rather clear, therefore, that any LPFM licenses must be issued to entities which are eligible to receive licenses for non-commercial educational FM broadcast stations. If licenses are issued to persons who intend to use them for commercial purposes or who are not eligible to receive licenses in the non-commercial educational FM service, any conflicts between applications must be resolved by holding an auction. In that auction, commercial broadcasters would clearly overwhelm the resources of everyone else; large broadcasting companies would buy up everything in sight.

7. Fortunately, there is a simple solution to these problems and one that does not require any new complex regulations. Until 1978, the Commission's Rules provided for a category

of non-commercial educational FM stations ("NCE's"), known as Class D stations. These were stations operating with no more than 10 watts transmitter power, which could be allocated in both the reserved band and the non-reserved band.

8. Effective October 13, 1978, however, the FCC amended its rules to adopt a new section, §73.512. Report, 43 FR 39704. Section 73.512(c), which is still on the books, effectively eliminated the licensing of new Class D stations, except in Alaska. What the School District proposes is simply to delete §73.512(c). That will have the effect of once again authorizing the licensing of Class D stations.

9. The advantages of the School District's proposal over other proposals for LPFM stations are several:

> (a) The School District's proposal is legal under existing law. Where there are competing applications, grants can be awarded by random selection, pursuant to the provisions of §397(6) of the Communications Act. There is no need to go back to Congress for any additional legislation.
>
> (b) No new application forms need to be constructed. The existing application forms, applicable to NCE stations, are sufficient.
>
> (c) Because of the need to meet specific eligibility requirements, set forth in the Commission's Rules and sanctioned by the Congress when it enacted §397(6), the Commission will not be confronted with a deluge of applications. Yet, the regulations are broad enough to allow the establishment of new Class D stations by community groups, as well as schools.
>
> (d) No new technical requirements need to be adopted. Adequate regulations are already on the books. See 47 C.F.R. §73.509(b)
>
> (e) By requiring Class D stations to operate non-commercially, LPFM stations established pursuant to the School District's proposal will present no threat to the existing system of free commercial broadcasting which, obviously, needs to be preserved.

10. In short, the School District's proposal is legal; it is simple; and it can be adopted without the need for any complex rule changes. Yet, it meets the apparent need, reflected by the other rule making proponents and by the many inquiries which the Commission receives each year for an LPFM service.

WHEREFORE, the School District respectfully requests the Commission to issue a Notice of Proposed Rule Making, proposing to once again license Class D Non-Commercial Educational FM Broadcast Stations in the Continental United States and Hawaii.

Respectfully submitted,

ZILLAH SCHOOL DISTRICT #205

By: _____
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April 21, 1998

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CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 23rd day of April, 1998, to the following:

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