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Before the
Federal Communications Commission
Washington, DC

In the Matter of Amendment of Part 73, Subpart B To Authorize a Low Power FM Broadcast Service. To: The Commission	RM Docket No. 9242

Comments in Support of Establishing a Low-Power FM Broadcast Service

I, Jerry Szoka of Grid Radio Inc., (the petitioner) hereby respectfully request that the rules for FM Broadcast Stations be amended to authorize a Low Power FM (LPFM) Service on both the commercial and noncommercial portions of the FM broadcast spectrum.

1. BACKGROUND

1 As a result of the Telecommunications Reform Act of 1996, ownership of existing classes of AM and FM broadcast stations has been increasingly concentrated in a limited number of hands, with a resultant loss in the diversity of ownership, including a loss in the number of minority owners. Authorization of LPFM with strict ownership limits and limited operating power would provide a mechanism by which to accommodate ownership diversity without impacting the financial integrity of existing broadcast stations.

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2. Furthermore, the escalating value of existing classes of broadcast stations has increasingly resulted in outlying stations shifting their focus toward nearby metropolitan areas, often at the expense of the communities these stations were originally intended to serve. Authorization of LPFM could return local broadcast service to many of these communities, furthering the goal of fair and equitable distribution of service outlined in Section 307(b) of the Communications Act.

3. This petitioner believes that a properly regulated LPFM service could address these concerns while limiting the potential for interference to existing broadcast services. This petitioner also believes that offering such a service will provide a mechanism for controlling the spread of unlicensed radio stations, which are inherently unregulated. The outline for such a service is proposed as follows:

II TECHNICAL RULES AND INTERFERENCE CONSIDERATIONS FOR LPFM SERVICE

4. The petitioner advocates that LPFM stations be allocated on a first-come first serve "demand" basis (i.e., no requirement to petition to amend the FM Table of Allotments prior to filing an application for a construction permit).

5. LPFM stations should be permitted to operate with a maximum ERP of 250 watts at 100 meters maximum HAAT, or any equivalent combination of ERP and antenna HAAT. Minimum ERP should be 5.0 watts, with no minimum antenna HAAT. These power levels will provide coverage areas comparable to those currently achieved by FM translators and are intended to allow LPFM stations to fill a variety of niches (such as serving small towns, portions of a larger urban area, or even a

neighborhood within a larger city) without competing directly against full powered FM stations.

6. Current FM receiver technology employs such steep response skins outside the desired IF passband that second and third adjacent signals are almost totally rejected outside of their own blanketing contours. The result for the consumer is that FM receivers are so sensitive and selective that a typical car radio can follow an FM station well beyond its protected service contour, often to the point where the limiting factor becomes co-channel and first-adjacent signals that are fully spaced under the Commission's rules, rather than the diminished signal strength at the deep fringe signal area. In the absence of co-channel or first adjacent signals, an FM station is typically quite listenable on today's receivers at the 34 to 40 dBu Signal level. As a practical matter today, only the absence of adequate signal, or strong co-channel or first adjacent interference, or blanketing interference, can deter listening to a station on today' s FM radio sets. It is this party's experience, that second & third adjacent channel protection can be eliminated and I feel that this is warranted to insure that LPFM stations be allowed to operate in larger urban areas, especially in view of the fact that the FCC has previously determined that second and third adjacent channel short spacing poses a "small risk of interference" when permitted or grandfathered short-spaced FM stations (see paragraph 29 of Report & Order on "Grandfathered Short-Spaced FM stations" adapted August 8, 1997, MM Docket No. 96120, RM-7651) operating at much higher power levels than proposed for the LPFM service.

7. Prohibited contour overlaps should be allowed where it can be demonstrated by the applicant that no actual interference will occur due to intervening terrain, the overlap occurring over a body of water, or such other factors as may be applicable. Prohibited contour overlap should also be allowed where an agreement has been reached between the LPFM and the station(s) affected agreeing to the overlap, if the FCC determines that allowing the overlap is in the public interest.

8. A proposed LPFM station and allotment would be considered acceptable if it complies with the spacing requirements specified above based on the proposed station' s ERP and antenna HAAT. The use of directional antennas and power levels below the LPFM class maximum shall be acceptable to meet these requirements.

9. The petitioner proposes that LPFM stations be allowed to operate as either commercial or noncommercial stations, on any open channel.

III. PROPOSED OWNERSHIP RESTRICTIONS

10. To insure that LPFM remain a service geared toward providing local community service and increasing the diversity of ownership voices, this petition proposes that ownership of LPFM stations be limited to one per entity.

11. The petitioner further proposes that applicants, permittees, and owners of LPFM stations be required to meet the Small Business Administration definition of a small business for radio stations, modified to impose $1,000,000 limit (baseline in the current year of 1998 and adjusted for inflation on an annual basis) on gross revenues from all broadcast related activities including existing AM and FM stations, LPTV,

cable television, and the LPFM station. This limit is proposed for both commercial and noncommercial LPFM stations. The petitioner feels that the only appropriate exception to this rule should be if the preponderance of this revenue (90% or greater) comes from the LPFM station. In the event that the owner of a LPFM station ceases to meet this rule, a reasonable period (perhaps one year) should be allowed to either divest the LPFM station or make whatever changes are necessary to return the station into compliance with the ownership rules as outlined for a LPFM station.

12. The petitioner also proposes that the owner of a LPFM station or proposed LPFM station be required to maintain primary residence within 80 kilometers of the transmitter site of the proposed station, and to have lived in that location for a reasonable period of time so as to insure his familiarity with the community for which he proposes to serve prior to the application, such as one year minimum. If the owner is a partnership or corporation, we propose the local ownership rule apply to all cognizable owners, members of the board, and shareholders of record. In the event that the owner(s) of a LPFM station moves to a primary residence outside this 80 kilometer zone, a reasonable period (perhaps one year) should be allowed for the owner to divest the station or bring it into compliance with the above mentioned rules.

13. The above proposed restrictions (paragraphs 9, 10, and 11) should limit the number of applications received by the FCC, reducing the likelihood of this service getting bogged down by an excessive number of applications, as happened in the early days of the LPTV service. Hopefully, this will allow for speedier implementation of the new LPFM service for the public.

14. This petitioner believes that it is important to discourage speculation and trafficking in LPFM construction permits. To avoid trafficking, this petition proposes that the sale or transfer of LPFM construction permits be prohibited.

15. However, this petitioner proposes that the sale of on-air LPFM stations be allowed, provided that the buyer meets all the requirements for owning such a station. To restrict speculation, the petitioner suggests that a rule similar to the commissions previous anti-trafficking regulations be imposed on LPFM transactions. Allowing sales will promote continuity of service in the event that the LPFM operator is no longer able (or chooses not) to continue with ownership of the station for any reason. The anti-trafficking guidelines would discourage station speculation and promote responsible operation of LPFM stations.

16. This petitioner proposes that to further insure that LPFM stations be locally oriented, they be prohibited from simulcasting or re-broadcasting the signal of another broadcast station of any service, including other LPFM stations, except in case of shared urgency, such as impending severe weather or other urgent, non-entertainment programming. Furthermore, it is proposed that ownership of LPFM stations be prohibited in common with any other broadcast station(s) whose protected contour would overlap the protected contour of the LPFM station.

IV. RULES FOR GRANTING LPFM CONSTRUCTION PERMITS.

17. This petitioner desires that LPFM stations be allocated on a "first come, first serve" basis without a requiring a prior petition to amend the FM Table of

Allotments. Implementing such a "demand" allocation scheme would result in applicants being able to provide speedy implementation of new local services to their communities. It would also provide a simple and relatively inexpensive application system for applicants, many of whom may have limited financial means. I feel that this system would be preferable to the use of a lottery for granting LPFM applications, as was used in the past for LPTV grants.

18. In the event that two or more mutually exclusive applications are received on the same day, this petitioner proposes that the permit be granted to the application received earliest in the day, if that application is otherwise valid.

V. PRIMARY STATUS FOR LPFM SERVICE

19. Unlike FM translators, LPFM stations will have a significant investment in equipment to originate local programming, which means that the secondary status currently conferred upon translators would be inappropriate for the proposed new service. I believe s that LPFM stations should be accorded primary status similar (but not identical) to that of existing full powered commercial and noncommercial FM stations. Specifically, this petition proposes that a LPFM station:

(a) Could be required to change frequency and/or modify facilities to accommodate a rule making request for a full powered station, but could not be required to leave the air to accommodate such a rulemaking.

(b) LPFM stations would be compensated by the proponents of such a rulemaking for all reasonable costs associated with the frequency and/or facilities change, including any engineering or other studies needed to implement such a change.

(c) Such changes would only be ordered if the changes to the facilities of the LPFM station would not result in a loss of coverage to more than 5% of the population within the LPFM station's previous protected contour.

(d) LPFM applications would not be granted in situations where such grant would require existing LPFM or full powered stations to change frequency, alter facilities, or incur interference from the proposed LPFM allocation.

(e) LPFM stations and applications will take precedence over existing or proposed translator stations. An LPFM station may displace an existing translator without compensation to the translator owner/operator, just as full powered stations are currently allowed to do. This petitioner believes that in most instances the public benefit of the new local service from a LPFM station would outweigh the loss of service from a translator importing a non-local signal.

20. This petitioner believes that one step upgrades from LPFM status to any Full powered FM station class (A, B, B1, C, C1, C2, or C3) should not be permitted. Since the proposed rules for LPFM stations are significantly different from those currently in place for full powered stations, allowing one step upgrades between the two services could have the effect of encouraging some applicants to use LPFM stations as a back door to obtaining a full powered station.

VI. PUBLIC SERVICE AND LOCAL ORIGINATION REQUIREMENTS

21. Since spectrum auctions are not being proposed for LPFM applicants, this petitioner feels that it is reasonable that these stations be required to meet some public service requirements in return for their licenses. This petition proposes a requirement that a minimum of 10 hours of each LPFM station's weekly broadcast time between 6:00 AM and Midnight Monday through Friday and 9:00 AM and Midnight on Saturday and Sunday be dedicated to locally originated non-entertainment public service programming. Stations should, however, be granted the flexibility to meet this requirement through either long form or short form programming, or a combination of both.

22. One of the major goals of the proposed service is to provide locally oriented broadcast services. This petitioner therefore proposes that LPFM stations be required to operate a main studio within the protected contour of the station and to originate a minimum of 90% of their broadcast day between 6 AM and Midnight from this studio or other locations within the protected contour of the station. However, this petitioner believes that stations should be given flexibility in meeting this requirement with live, delayed, or automated programming, as long as this programming is locally originated. This flexibility would give the stations the ability to best serve the public interest of their local communities with locally responsive programming while operating within the strict financial constraints that would likely exist at many of these stations. However, LPFM stations should not be allowed to circumvent their local

origination requirements by airing long form programming which is originated, controlled, or produced elsewhere, but played back at a local studio. This includes programming delivered via satellite, recorded media, air, wire or cable, and/or the use of play lists, music logs or rotations provided by an outside entity or entities. This does not apply to the use of locally selected, prerecorded musical selections. Exceptions to the local origination requirement should include the airing of urgent news and/or emergency programming including weather alerts, in any instance where public health or safety is at risk. Commercial LPFM stations should be restricted from airing advertising during these types of broadcasts. These restrictions are not designed to limit programming options. They are included as a mechanism to help ensure that the proposed service remains locally focused and is not converted into a non-local service by virtue of having programming supplied by outside entities. Additionally, this section does not attempt to limit the type of programming aired on an LPFM station, merely the source of said programming. There is already precedent for regulating programming source in the Commission's FM translator regulations, which prohibit any local origination beyond a thirty second announcement once per hour. Travelers Advisory Radio (TIS) is also restricted in the type and source of its programming. The petitioner is concerned that without strict ownership and program origination restrictions, the new service may usurped by non-local entities, thus defeating its intended purpose as a vehicle to provide local broadcast service.

VII. FEE STRUCTURE

23. This petitioner believes that it is important that a LPFM service be kept affordable to applicants, meaning that fees associated with the application process should be kept to a minimum. Fees under $200.00 would be reasonable.

VIII. GENERAL INSIGHT INTO LPFM

24. Established broadcast interests have lobbied against the threat of new competition by warning of the "AM-ization of the FM band. This is a clever but specious argument, and one with little merit. AM lost audience share to FM because FM raised the bar for undistorted, interference free stereophonic transmission, not because there are too many small signals. In order that the Commission's decision-making be effective at carrying out its mission in the real world, this writer believes the Commission must avoid an inclination toward isolation in an "ivory tower." In this proceeding, the public interest will best be served by the Commission's decision-making process fully recognizing and acknowledging the real factors that will come into play in the foreseeable future as broadcast licensees and those seeking a license determine their programming and the community they wish to reach.

25. Today, the concept of "community license" has little significance for the vast majority of stations, except perhaps in the middle of a Sunday night when a public affairs show may be broadcast specifically to that community (even though few citizens are awake and interested at that hour) and when the station buries the name of that community next to the identity of the broader market with which it believes it must identify in order to compete effectively in that market.

26. Most individual licensees and nearly all group operators make their operating decisions based on a desire to maximize sales, profits, and return-on-investment, within the established rules. If the station reaches a significant pan of a market surveyed by Arbitron, then in order to maximize promability and the value of the broadcast property they hold and in which they have significantly invested, the licensee faces compelling reasons to compete in that larger market with its program format and sales effort. The writer suggests that the Commission recognize the fact that the community must be served first. For it is the community at large that is listening and has no interest in the profitability of any particular station, but only in weather any given station is providing them with a needed service.

27. Let us examine a hypothetical medium market. Examples have been written in the trade press about how in 1978, "Market A" had four licensees who owned six stations between them. Each station enjoyed about a 1 0-20% share of the market, and each licensee prospered with a 20-30% share of market revenue and profit. This is a matter of record, because in 1978 these figures were reported annually to the Commission.

28. In 1998, there are twelve stations in this hypothetical market, plus six rim shots. ("Rim shots" are defined as stations licensed to smaller outlying communities but with usable signals in the market.) The rim shots have carefully and strategically situated their antenna sites for the best possible coverage of the larger overall market. X % of the stations in the market are owned by one of three groups. Though each station has no more than a 3-9% share, each group licensee has a respectable share of

revenue and profit, and thereby does at least as well by today's standards as each of the four owners did in 1978. Consider other changes that have taken place in this hypothetical market:

a. Music formats have proliferated. so the public has more choice. There are one or two stations in each of the following leading popular formats: Country, Syndicated Talk, Hot A/C, A/C, Soft A/C, Oldies, AOR, Active Rock, Urban, Hispanic, Syndicated Sports, etc. There is a heritage full-service AM, and several other struggling AMs who may be running satellite, or Ethnic/Foreign, or Religion or Gospel, etc. "Persons Using Radio" (i.e.. listening levels) are comparable to 1978 or slightly down. Arguably, the listening public as well as local merchants and advertisers are better served by radio than in 1978 because more Format choices are available, and the music forms are more clearly defined.

b. The programmings are standardized based on research, and are heard in many other markets in nearly identical form. Few risks are taken to program beyond the middle of a bell-shaped curve of researched listener preferences. In what ways is the public served, and yet dis-served, by this trend? Although The Commission does not take a position on broadcast content, certainly it can see how mundane the airwaves have become from city to city by the simple fact that there are so few locally owned and locally programmed stations anymore.

c. Local news has all but disappeared from most every station. Meaningful discussions of local public affairs on the radio are difficult to find." News staffs have been fired en masse.

d. Most licensees are no longer local residents. And few if any are minority-controlled. Individuals representing minorities, as well as the traditional citizen-broadcaster, have either been squeezed out, or have sold out at a handsome profit. Hence, licensee sensitivity to minority and other local issues and interests have diminished considerably. In fact, licensee interest in anything but that which is essential to earning money has all but vanished. The investors, have every right to expect great results to be reported on a quarterly basis. We're in a boom market, and many of the shareholders are baby-boomers looking toward hopefully comfortable retirement. They demand instant returns, and seem to be getting them. But when it is at the expense of the public, no-one should have that power. The Giant Corporations that have bought up many of the stations across the country have in essence sold out the public for the almighty dollar. Money must never come between a persons ability to exercise his free speech via the radio spectrum, nor should unreasonable laws be created to prevent the average citizen from obtaining a license to broadcast over radio frequencies.

e. One of our hypothetical market's heading group operators has consolidated hundreds of stations in most every major market. Hundreds of staff members have been terminated and operating expenses have been cut dramatically, all to the benefit the bottom line and the value of the company's stock. This writer poses a hypothetical question that bears on the question of the public interest: "What 's wrong with this picture?" It seems that the financial interests of radio's shareholders have largely

supplanted the interests of the general public; radio listeners whose interests the Commission is responsible to protect & promote

f. There are now three FM translators that cover the market fairly well. One is a satellite-fed rebroadcast of a fundamentalist religious station two thousand miles away. Another is operated by an individual who is a friend of the owner of a "rock station" 60 miles away that he rebroadcasts. There is no identifiable business or family relationship, hence the arrangement is legal. The third rebroadcasts the heavily-shadowed signal of a rim shot, and keeps to within the primary station's theoretical service contour, so that station appears at two places on the dial.

g. Several local maverick entrepreneurs have figured out how to put FM transmitters at "quiet spots" on the dial, and are running enough power to cover significant population. They have predictable schedules for their broadcasts, and each has attracted a following: One features a Hispanic music format and even takes phone calls expressing opinion within the Hispanic community. Another takes a similar approach in serving a growing community of Haitian immigrants and is a galvanizing and empowering force within that community. A third sees its mission as presenting an "alternative to the mainstream," It offers alternative music not otherwise heard on radio, and features political and philosophical talk and call-in shows. These "micro-broadcasters" operate in violation of the Commission's Rules, however, are sincere in their efforts to serve the needs of a previously unserved constituency. Each is respectful of its audience whose interests it apparently assigns a higher priority than

the notion of adherence to FCC rules it believes are not reasonable and only sporadically enforced.

h. The commercial operators in the market have noticed the "pirate" broadcasts, and even heard commercials for local businesses. The commercial broadcasters adhere to the rules and resent the unfair, unlicensed competition. The State Broadcast Association has officially taken a position against the "pirates." However, the decision to do so was not reached unanimously. During the Association Board's discussion of the issue, dissenting and sympathetic points of view were expressed by one or two board members whose interests are unaffected by the unlicensed stations. One of the dissenting voices is a committed community broadcaster of long and good standing who laments the direction taken by "profiteers" in an industry that is loved.

29. The creation of an LPFM service, if properly enacted by the Commission, could go a long way toward restoring and improving the valuable, but lost service that radio broadcasting can provide to the general public. An LPFM service would again encourage local owner-operators to operate stations. It would also re-diversify ownership of broadcast facilities. It would realistically foster minority ownership of broadcast stations by bringing the cost of ownership within reach of smaller operators with lesser financial resources. This would enable the creation and broadcast of programming addressed to the presently unserved needs and interests of many minorities.

30. LPFM would also allow for a proliferation of differing and diverse points of view to which the general public is not presently exposed to.

31. It could foster discussion and public debate. It could even encourage live coverage of public meetings, thereby broadening public participation in the process of the political process. Such programming is rarely of interest to broad-market commercial stations.

32. Establishment of an LPFM service would eliminate any excuses for operation in violation of the Commissions Rules, and eliminate any actual harmful interference by implementing bona fide technical standards. Needless to say, a legitimate LPFM service would also provide an outlet for competent broadcasters who would like to see the public and operate within the rules, but who cannot afford full power stations at today's prices.

33. Because significant minority populations are under served or entirely unserved by existing stations, it makes sense to loosen or eliminate protection requirements to second and third adjacent channels. Here, when the interests of LPFM are in conflict with those of full power stations. the Commission should bear in mind the extent to which each type of service can meet the test of serving the public interest. In many instances, LPFM may actually come out ahead.

34. The Commission should not allow "the almighty dollar" to enter the picture in settlement of mutually excessive LPFM proposals. To do so would be inconsistent with rules intended to foster a new community-based low power FM

service as a partial resolve of public interest ground lost to the financially-driven direction in which the radio broadcast industry appears to be permanently headed.

35. Given the state of receiver technology today and in the future an LPFM service could be established with no new real-world interference to the protected contours of existing stations.

36. For a new LPFM service to achieve its greatest potential for serving the public interest, the Commission must facilitate the maximum number of new facilities both by realistic technical rules and ease of application and grant, while retaining high standards for LPFM transmission.

37. Establishing a new LPFM service would further many of the Commission's stated public interest goals. Such a new service would most certainly lead to considerably greater diversity of ownership, and readmit disenfranchised minorities to the ranks of broadcast ownership. It would vastly increase the diversity of programming available to the public, and increase public access to minority points of view. By this is meant both 1) the perspectives of minority ethnic groups as cultures, and 2) the dissemination of ideas held by a minority of individuals, irrespective of ethnicity. An LPFM service could significantly enhance public dialogue on community, regional, and national issues. It could also solve a number of growing regulatory, enforcement, and even credibility issues faced by the Commission as the agency charged with regulating the broadcast spectrum in the public interest, with that interest considered in the broadest sense.

Respectfully submitted,

Grid Radio Inc.

Date: 7-24-98

By: _____

Jerry Szoka-President

CERTIFICATE OF SERVICE

I, Hans Bader, hereby certify that copies of the foregoing COMMENTS IN SUPPORT OF ESTABLISHING A LOW-POWER FM BROADCAST SERVICE were served via hand delivery by me on this 24th day of July, 1998, on the following:

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