

Before the  
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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In the Matter of )  
Creation of a Low )  
Power Radio Service )

MM Docket No. 99-25

RM-9208

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To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

COMMENTS  
OF  
MID-AMERICA BROADCASTING COMPANY, INC.

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**MID-AMERICA BROADCASTING COMPANY, INC.** ("Mid-America"), by Counsel, pursuant to the *Notice of Proposed Rule Making ("NPRM")*, FCC 99-6 (released February 3, 1999), hereby submits these Comments in the above-captioned rule making proceeding regarding the proposal to create a new low power radio service. In support hereof, Mid-America submits the following:

1. Mid-America is the licensee of Radio Stations WGVM-AM and WDMS-FM at Greenville, Mississippi.

2. As will be shown herein, Mid-America believes there is little merit to the creation of a new commercial low power radio service and that these matters must be carefully addressed so that the integrity of the broadcast signals of all current full power radio stations (as well as any associated FM translator stations) should not be compromised. Mid-America believes that the NPRM proposal to relax the technical protection standards between stations is both foolish and dangerous -- the Commission can still institute a modest new noncommercial low power radio service by maintaining significant first and second adjacency protection standards. Mid-America would like to take this opportunity to provide comments on this, and other, aspects of the NPRM.

3. At the outset, Mid-America recognizes that the Commission is trying to afford more broadcast opportunities to those persons and entities that are currently precluded from broadcasting for financial, spectrum scarcity and other reasons. However, the Commission must balance these goals with its historic responsibility of maintaining adequate technical protection to existing service but not precluding additional allotments or assignments by protecting vast areas not actually served. *See, FM Broadcast Stations, 66 RR 2d 338 (1989).*

4. Spectrum Considerations: The Commission's stated decision not to designate a particular FM frequency or frequencies for one or more low power services is prudent. Mid-America strongly believes that no current full service broadcast licensee or permittee, or FM translator or booster licensee or permittee should be forced off-air or displaced to a new frequency as the result of the institution of any new low power radio service. Although many current secondary radio service providers assumed certain regulatory risks in applying for, and then constructing, their new facilities, it would be patently unfair -- and a violation of due process -- if any current broadcaster were forced off-air as the result of retroactive application of new rules.

5. The Commission's NPRM seeks comment on the kind of status that should be afforded any new low power radio service that is authorized in this rule making proceeding. The Commission proposes to authorize both 1,000 watt stations and 100 watt stations, otherwise referred to as LP1000 and LP100. Mid-America believes that LP1000 stations should be afforded primary status and be required to comply with all day-to-day regulations now imposed upon full service broadcasters/<sup>1</sup>, but that LP100 (and any LPFM stations below

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<sup>1</sup> For example, LP1000 stations should be required to maintain a properly located Main Studio, maintain a Public File, file FCC ownership reports and

100 watts) should only be afforded secondary status with minimal day-to-day regulatory requirements. The Commission should not lose sight of its goals with respect to low power radio service -- to afford currently deprived persons and entities the opportunity to provide *localized* radio service. If small LP100 and microradio stations are overly burdened with government regulations, it will be difficult (if not impossible) for these stations to survive. However, Mid-America believes that the Commission should take steps to require LPFM stations to provide local, issues-oriented programming or risk the loss of their FCC license.<sup>2</sup>

6. LPFM should be a noncommercial service: Paragraph number 24 of the NPRM questions whether LPFM should be restricted to noncommercial applicants, be open to commercial service, or both. The only fair way for educators, small groups and minorities to be afforded an opportunity to commence LPFM service would be for the service to be noncommercial. There would be no auction fees to chill applicants, or regular regulatory fees to burden the financial well-being of these small-time broadcasters. And, there would be more emphasis on community-oriented programming rather than commercial enterprise programming. Mid-America believes that, if the Commission truly wants to create new broadcast opportunities for persons or entities now deprived from providing broadcast service, it must avoid the chilling effect that the commercial service, auction selection process would invariably create. As

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compile Quarterly Issues-Programs Lists. LP100 stations should also be required to maintain a Public File and compile Quarterly Issues-Programs Lists.

<sup>2</sup> Mid-America believes that LPFM stations should be required to submit periodic program summary reports so that the Commission, as well as the general public, can verify the localized performance of all LPFM stations. Since the Commission wants to institute this new low power radio service to foster local programming, it must take steps to enforce its stated goals.

the result of the commencement of the auction selection process for new full service broadcast opportunities, educators, small businesses and minorities are likely to be shut out of most such opportunities. While the Commission has not yet finalized its auction rules for full service commercial broadcast opportunities, it is a reasonable assumption that deep-pocketed parties will out bid smaller businesses, educators and minorities on most opportunities. Money should not dictate who is going to provide noncommercial LPFM service. The Commission should not repeat the regulatory mistakes that now pervade full service broadcasting, with several deep-pocketed companies owning and operating hundreds of broadcast stations, thereby resulting in the Commission and the Department of Justice instituting more and more inquiries with respect to market dominance and unfair competition.

7. Equipment certification: In paragraph number 35 of the NPRM, the Commission questions whether there should be an FCC transmitter certification requirement for LPFM and microradio service. The answer must be "yes." Mid-America believes that all low power radio service providers must be subject to strict type-accepted equipment requirements and concomitant FCC-inspection requirements to maintain the integrity of the broadcast business. The mere fact that the Commission is proposing some relaxation of the technical protection standards in this proceeding further warrants the need of type-accepted equipment to minimize as much as possible the threat of technical interference to current broadcasters./<sup>3</sup>

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<sup>3</sup> The Commission must remain mindful of the fact that current FM translator and booster stations must operate in strict compliance with various technical rules and requirements, or they face the wrath of other broadcasters who can request the Commission shut them down. With respect to LPFM, the Commission must maintain the regulatory authority to shut these new stations down if their operations are non-compliant and/or cause electrical interference with other full power and low power broadcasters. If the Commission is not ready to "police" this new broadcast service, then it should not be

8. Interference Protection Criteria: In paragraphs numbered 38-50 of the NPRM, the Commission offers several ideas regarding interference protection criteria that could be implemented for LPFM. The Commission acknowledges that there is likely to be a large volume of LPFM applications, and that in and of itself requires the Commission to closely consider what it should do in this proceeding and not err on the side of convenience for the sake of rushing this new service to market. While the Commission proposes to eliminate second and third adjacency protection standards, Mid-America believes that second-adjacency protection standards should be maintained, and that a contour overlap methodology should likewise be retained. While the NPRM indicates that a contour overlap methodology is resource intensive, the Commission owes it to the integrity of the broadcasting business to carefully initiate this new radio service. Broadcasters throughout the country have collectively invested billions of dollars in the construction and operation of their radio stations -- the Commission cannot jeopardize these businesses for the sake of convenience and expediency.<sup>4</sup>

9. Ownership and Eligibility: Mid-America agrees with the Commission's proposal not to permit LPFM opportunities to be open to persons or entities with an attributable interest in any full power broadcast station. If the Commission wishes to bring this new low power radio service to many new and currently-license deprived persons and entities, there must be a mechanism in place to ensure that current broadcasters do not dominate this new service and deprive certain citizen, civic or church group from becoming LPFM  

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implemented.

<sup>4</sup> Mid-America agrees that the elimination of third-adjacency protection standards poses little risk to broadcasters since the areas of potential interference is very small and would occur within very close proximity of the LPFM transmission facility.

broadcasters. However, Mid-America takes issue with the Commission's proposal not to permit LPFM opportunities to be open to persons or entities with an attributable interest in any full power broadcast station. Mid-America strongly believes that AM-Daytimers should be afforded the highest preference possible to receive an LPFM license if there is an LPFM frequency available in the same market, and if the LPFM service would improve that broadcaster's nighttime service to its market.<sup>5</sup> In other circumstances, where a LP1000 station would provide better service than some full power AM or FM stations currently provide, those current broadcasters should receive a preference in obtaining the LPFM station. Therefore, in these situation, the existing broadcaster should be permitted to apply for a LPFM station in the same area if that broadcaster promises to divest its current station prior to commencing operations on the LPFM station.

10. Cross-ownership regulations: In paragraph numbered 58 of the NPRM, The Commission asks whether newspapers, cable systems or other mass media should be permitted to own LPFM stations. Mid-America believes that the Commission should enforce its cross-ownership rules consistently with those that apply to full service broadcast stations. Inasmuch as those regulations are currently under review, the scope of these regulations should include equal treatment for LPFM stations.

11. Although the Commission questions whether there is a need for a national ownership cap on LPFM stations, Mid-America believes such a cap is necessary so that the LPFM service is not overwhelmed by the same companies that went into a buying frenzy after implementation of the 1996

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<sup>5</sup> AM-Daytimers should be afforded an automatic right to swap their AM frequency for an LPFM frequency in situations where an available LPFM frequency would provide better coverage to the community than the AM frequency.

Telecommunications Act -- an act that simply accentuated the need for LPFM service since full service broadcasting is quickly becoming an exclusive club that small businesses and minorities cannot afford to join. The Commission should not make the same mistake again. And, Mid-America believes there is merit to a national ownership cap on LPFM stations, whereby one person or entity could not own more than a certain number of LPFM stations./<sup>6</sup>

12. Licensing Criteria: In paragraphs numbered 61 and 62 of the NPRM, the Commission questions whether LPFM operators should be required to be residents of the communities that they propose to serve. Mid-America believes that the Commission must impose a strict local residency requirement for both LP1000 and LP100 applicants and licensees. Such a local residency requirement would truly ensure that LPFM service will be responsive to local issues and needs, and available to the local minority and church groups that are now being deprived of affordable broadcast opportunities. Likewise, keeping all LPFM service noncommercial will also facilitate the affordability of this new broadcast service to minorities and church groups.

13. With respect to alien ownership, Mid-America believes that all LPFM stations should be subject to the statutory restrictions on alien ownership that are enumerated in Section 310(b) of the Communications Act. Likewise, the character qualifications requirements currently imposed on all full power broadcasters should apply to LPFM broadcasters, as well./<sup>7</sup>

14. Service characteristics: In paragraph number 68 of the NPRM, the

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<sup>6</sup> Mid-America also believes that a person or entity should not be permitted to own more than one LPFM station within a certain geographically defined area.

<sup>7</sup> Mid-America applauds the Commission in taking the position that any "pirate" radio operators that does not immediately cease and desist its illegal operations will be disqualified from applying for, owning and operating LPFM broadcast stations.

Commission questions whether there should be a minimum local origination requirement imposed upon LPFM broadcasters. Although Mid-America does not usually believe that the Commission should intrude upon the editorial judgment of LPFM broadcasters, in this instance the LPFM service is being touted as the savior of localized broadcasting. As such, there just be a local origination requirement otherwise LPFM broadcasters will simply subscribe to many satellite programming services and other "canned" programming, thereby diluting the localization aspect of this new radio service.

15. Miscellaneous regulations: Mid-America believes that LP1000 stations should be required to broadcast full time, twenty-four hours each day. With respect to LP100 and microradio stations, they should be subject to time-share operations if they are not operated twenty-four hours each day. Since the goal of LPFM is to bring new voices into the marketplace, no LPFM broadcaster should be permitted to warehouse spectrum by operating only part-time. While LP1000 stations should be required to participate in the EAS system, LP100 and microradio stations should not be so required. Mid-America believes that all LPFM stations should be required to broadcast regular station identifications.

16. The Application Process: Although the Commission's NPRM generally suggests that the application process for LPFM be simple and expedient, Mid-America cautions the Commission not to rush this process along in such a manner as to invite sloppy and incomplete applications. If the Commission truly wants to bring this new radio service into market as quickly as possible, it would be prudent to adopt a "hard look" processing standard -- applications must be substantially complete and accurate or risk automatic dismissal with prejudice.

17. Finally, the Commission seeks comments on how to resolve

mutually exclusive applications. If the Commission agrees with Mid-America and implements a noncommercial-only LPFM service, then a lottery or arbitration selection process should be adopted. If a lottery process is adopted, Mid-America believes that preferences should be awarded for applicants that are educators, individual persons or minorities, and for maximization of spectrum using an areas and population comparison of proposed noncommercial service.

WHEREFORE, the foregoing premises considered, Mid-America would welcome the institution of LPFM broadcast service in the manner set forth in these Comments.

Respectfully submitted,

**MID-AMERICA BROADCASTING  
COMPANY, INC.**

By:   
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