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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

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OFFICE OF THE SECRETARY

To: The Commission

COMMENTS
OF
UNIVERSITY OF DAYTON

The **UNIVERSITY OF DAYTON** ("University"), 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, University submits the following:

1. University is the licensee of FM Translator Station W258AI at Dayton, Ohio, and has an application pending before the Commission for a voluntary time-share of Radio Station WGXM-FM at Dayton, Ohio. University is an educational broadcaster, and strongly believes that educational broadcasters provide an enormous public service to the community not only with quality programming but also providing a real-life radio broadcasting work environment to its students --- the future broadcasters of America.

2. As will be shown herein, University believes there is substantial merit to the creation of a new low power radio service. However, University

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believes that these matters must be carefully addressed, and 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. University believes that the NPRM proposes to relax the technical protection standards between stations more than is prudent, but that the Commission can still institute a modest new low power radio service by maintaining significant first and second adjacency protection standards. University would like to take this opportunity to provide comments on this, and other, aspects of the NPRM.

3. At the outset, University 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. University 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./[1] Although many

[1] Although the current FM translator service has a "secondary status" vis-a-vis full power radio stations, if the Commission implements low power radio service then all current FM translator licensees or permittees should be afforded "primary status" vis-a-vis the new low power radio stations so that no FM translator licensee or permittee is displaced or terminated as the result of the

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 current FM translator or booster operators were forced off-air as the result of retroactive application of new rules. University -- and many others -- have invested thousands of dollars in the FM translator services and the Commission should not now deprive these broadcasters from continuing the valuable radio services that they have provided.

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. University 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/[2], but that LP100 (and any LPFM stations below 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.

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implementation of new low power radio service.

[2] For example, LP1000 stations should be required to maintain a properly located Main Studio, maintain a Public File, file FCC ownership reports and compile Quarterly Issues-Programs Lists -- to name just a few.

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. University 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 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 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. 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.

8. 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." University 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./[3]

9. 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, University believes that second-adjacency protection standards should be maintained, and that a contour overlap methodology should likewise be retained. While the NPRM

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[3] 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 implemented.

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./[4]

10. Ownership and Eligibility: University 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. First, in certain circumstances a LP1000 station would provide better service than some full power AM or FM stations currently provide. Therefore, an 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. Second, current broadcasters should be permitted to apply for LPFM stations in areas outside their current broadcast market(s). While University understands that Commission's concern that certain persons or entities could monopolize or unduly control a certain market with a combination of full service broadcast stations and LPFM stations, there should be a distance-buffer established by which current broadcasters could apply for LPFM stations. For example, an LPFM application could require a certification question whereby the applicant certifies that it holds no attributable ownership interest in any full power broadcast license or

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[4] University 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.

construction permit within 75 or 100 miles of its proposed transmitting site./[5]

11. 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. University 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.

12. Although the Commission questions whether there is a need for a national ownership cap on LPFM stations, University 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 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, University believes there is merit to a national ownership cap on LPFM stations, whereby one person or

[5] The Commission proposes that no person or entity could own more than one LPFM station within the same community or market. However, these terms are ambiguous and subject to inequality. The Los Angeles, California market is much larger than the Dayton, Ohio market, and it could be possible for the same person or entity to own two LPFM stations within the Los Angeles market, with those stations more than 75 miles apart point-to-point. Also, a distance ownership criteria would be easier to implement and subject to less interpretative controversy.

entity could not own more than a certain number of LPFM stations./[6] A mileage distance-buffer rule combined with a national ownership cap would be a reasonable compromise so that this new low power service is implemented in accord with the fundamental principles of due process.

13. 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. University does not believe such a requirement is prudent. All broadcasters must remain responsive to the interests and needs of the local community for their stations to succeed. There are many broadcast stations owned by non-locals that provide exceptional service to their communities of license. Besides, the courts have already struck down this type of requirement for full power stations, and there is no documented justification for doing anything different here. *See, Bechtel v. FCC, 957 F.2d 873 (D.C. Cir. 1992).*

14. With respect to alien ownership, University 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./[7]

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[6] University also believes that a person or entity should not be permitted to own more than one LPFM station within a certain geographically defined area.

[7] University 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.

15. Service characteristics: In paragraph number 68 of the NPRM, the Commission questions whether there should be a minimum local origination requirement imposed upon LPFM broadcasters. University does not believe that the Commission should intrude upon the editorial judgment of LPFM broadcasters. Rather, the Commission should impose the same basic programming requirements that full power broadcasters face -- namely, LPFM broadcasters should be required to prepare Quarterly Issues-Programs Lists, which would serve as their "track record" at time of license renewal. If the Commission were to impose a quantitative programming requirement upon LPFM broadcasters, then the Commission would be required to allocate the requisite staff to oversee this new service. Such a scenario seems contrary to the simplistic, hands-off goal this new service is supposed to embody.

16. Preferences: University is very proud of the fact that it is a noncommercial, educational broadcaster and provides an opportunity for future broadcasters of America to become responsible citizens and learn a possible trade, as well. Accordingly, University believes that the Commission should award application preferences to parties, such as University, that are certified educators and have a track record of incorporating their broadcast stations into an educational curriculum.

17. Miscellaneous regulations: University 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. University believes that all LPFM stations should be required to broadcast regular station identifications.

18. The Application Process: Although the Commission's NPRM generally suggests that the application process for LPFM be simple and expedient, University 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.

19. University is not opposed to a filing window system that permits only a few days for the filing of applications so long as the filing window itself is announced at least 30 days ahead of the opening of the window. Most applicants need at least 30 days to secure a transmitter site and prepare the requisite engineering statement. If the Commission were to announce surprise filing windows with little opportunity for an applicant to prepare its application, then the Commission will be faced with many applications that specify impermissible sites, or theoretically permissible sites but nonetheless not available to that applicant. it would seem that the last thing the Commission wants to do here is rush the application filing process, only to see hundreds of post-grant modification applications to "clean-up" rushed applications. If the Commission has learned anything from its past, the requirement of substantially complete applications works to everyone's benefit.

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

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

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

Respectfully submitted,

UNIVERSITY OF DAYTON

By: _____
Cary S. Tepper

Its Attorney

Booth, Freret, Imlay & Tepper, P.C.
5101 Wisconsin Avenue, N.W.
Suite 307
Washington, D.C. 20016-4120

(202) 686-9600

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