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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
)	

To: The Commission

COMMENTS

Submitted on behalf of the Group of 7

(Christian Broadcasting, Inc.
Connecticut College Broadcasting
Association, Inc.
Faith Academy, d/b/a WFEN
Media Services Group, Inc.
Sound of Life, Inc.
Spirit of America, Inc.
Straus Media Group, Inc.)

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TABLE OF CONTENTS

SUMMARY	i
I. The Goals of the <u>NPRM</u> Are in Conflict with the Liberalization of the Commission's Broadcast Ownership Rules and the Mandate of Congress, As Expressed in the Telecommunications Act of 1999.	1
II. There Is No Evidence in the <u>NPRM</u> that Low Power FM Will Fulfill the Commission's Stated Goals for Such a Service.	4
A) The <u>NPRM</u> Offers No Evidence that Low Power Stations Can Be Viable and the Experience of <u>Broadcasters Indicates that they Will Not Be.</u>	4
B) The <u>NPRM</u> Contains No Basis for Concluding that Low Power <u>Stations Will Produce Community-Oriented Programming.</u>	10
C) The Reduction LPFM Will Cause in the Coverage of Existing FM Stations Will Reduce the Amount of <u>Community-Oriented Programming that Is Broadcast.</u>	12
III. Superior Alternatives Exist to Address the Desires of the Parties Who Have Told the Commission that they Want to Become Broadcasters.	13
IV. Translators and Boosters Are a Better Low Power Use of FM Spectrum.	15
V. The <u>NPRM</u> Has Not Justified Its Apparent Decision to Consider the Wishes of Would-Be Broadcasters Over the Far Greater Number of Radio <u>Listeners</u> in the United States.	16
VI. The Commission Has Not Explained How It Intends to Regulate LPFM.	18
VII. Conclusion	19

SUMMARY

A complete response to the technical issues raised in the Notice of Proposed Rule Making (“NPRM”) would require an engineering study beyond the means of the parties who have sponsored these Comments. It is expected that these issues will be fully explored in studies submitted by larger entities, such as the National Association of Broadcasters. However, the circumstances of this proceeding indicate that sound principles of spectrum management are being ignored in the false hope of achieving a certain non-technical policy objective. It is remarkable that the NPRM proposes to cast aside rules such as second and third adjacent interference protection standards and those that govern acceptable levels of received interference in order to effectuate its low power FM plan. If these were generally sound concepts, one would think that they would have already been proposed for the existing full power service. Yet recent proposals for amendments to the technical rules have notably omitted the radical changes under consideration to make low power FM possible. See, e.g., Notice of Proposed Rule Making and Order in MM Docket 98-93, 63 Fed. Reg. 33892 (1998). The introduction of high levels of interference and the reduction in the effective coverage areas of full power FM stations will bring the problems currently experienced by AM broadcasters to the FM band and will be most harmful to the already most vulnerable remaining stand-alone Class A FM stations.

The NPRM fails to provide support for the LPFM service necessary to justify the damage that will be done to the existing FM service. First of all, the NPRM offers only speculation in support of its hope that low power FM will meet its stated purposes of

increasing community-oriented programming, new broadcast ownership and diversity in radio voices and program services. Attached to these Comments is the Declaration of a broadcaster who recently spent two years attempting to successfully operate a 3kw FM station in a prosperous radio market. Despite many advantages that this broadcaster enjoyed and that would not be available to low power FM operators, she never operated at a profit and incurred losses totalling approximately \$150,000. This “real world” testimony is concrete evidence of the fact, obvious to any experienced broadcaster, that the proposed LPFM service is not economically viable. If they cannot survive, low power stations cannot reach the goals set forth in the NPRM. Moreover, there are no other forces, either regulatory or economic, to suggest that community-oriented programming would be provided by any low power stations that might otherwise survive. To the contrary, because of the damage that LPFM will cause to existing broadcasters, the level of such programming will actually be reduced. These Comments explain that the existing provision for translators and boosters under Part 74 of the Rules better utilize the opportunities for low power broadcasting.

There are also several legal obstacles that the NPRM fails to overcome. First, the NPRM announces that its goal is to reverse the trend toward consolidation of ownership in the broadcast industry that was brought into being by the Telecommunications Act of 1996. Yet, it fails to reconcile its low power FM initiative with the contrary policy and intent that Congress has previously expressed. The NPRM also fails to fully examine the effect of the proposed low power service on radio listeners (as opposed to aspiring broadcasters), and thus fails to justify LPFM under Sections 302a and 307 of the Communications Act of 1934.

A practical issue is the NPRM's failure to explain how the Commission will shoulder the huge increase in its regulatory obligations that will be created by the expected deluge of applications, and the subsequent operation of thousands of new stations by inexperienced new broadcasters. These Comments also examine the many alternatives available by which to address the wishes of those parties who have expressed an interest in low power FM. Among others, the Commission should be mindful of the new frequencies that will become available under some of the recent and the still pending changes proposed to the technical rules in MM Docket No. 98-93, especially in the noncommercial band. These alternatives should be fully utilized before wreaking havoc upon the current FM radio service, which continues to serve the nation well.

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The Group of 7 (Christian Broadcasting, Inc., Connecticut College Broadcasting Association, Inc., Faith Academy, d/b/a WFEN, Media Services Group, Inc., Sound of Life, Inc., Spirit of America, Inc. and Straus Media Group, Inc.), by counsel and pursuant to the Notice of Proposed Rule Making in MM Docket No. 99-25, 14 FCC Rcd 2471 (released February 3, 1999) (hereinafter, "NPRM"), hereby submits its comments in the above-captioned proceeding.

I. The Goals of the NPRM Are in Conflict with the Liberalization of the Commission's Broadcast Ownership Rules and the Mandate of Congress, As Expressed in the Telecommunications Act of 1999.

The NPRM correctly acknowledges that the passage of the Telecommunications Act of 1996 ("96 Act") and the liberalization by the Commission of its broadcast ownership rules have caused the ownership of FM radio stations to be transferred into the hands of a declining number of group owners.¹ The NPRM posits that this consolidation, together with

¹ 14 FCC Rcd 2476 at ¶ 10; citing Notice of Inquiry in MM Docket No. 98-35, 13 FCC Rcd 11276, 11281-83 (1998).

the increase in radio station prices that may have resulted from it, has made it more difficult for new broadcasters to enter the field and to survive in it. Id. The authorization of numerous low power FM stations (referred to in some instances hereinafter as “LPFM”) is intended to reverse this trend.² 14 FCC Rcd 2476-77 at ¶ 12.

The above-described sequence raises an obvious contradiction. The NPRM argues that that the trend toward consolidation of ownership in the broadcast industry must be reversed. Yet, the trend was created in the first instance by Congress (in the ‘96 Act) and reflected its perception of the public interest.

The closest that the NPRM comes to dealing with this conflict is in Paragraph 59, where it considers what ownership limitations should affect any possible low power service. It dismisses the contradictory provisions of Section 202(b) of the ‘96 Act (“which permits significant local multiple ownership” of radio stations) by asserting that Section 202 “would not apply to a service that did not exist in 1996.” 14 FCC Rcd at 2494. Later in that same paragraph, the NPRM claims that “Congress’s intent, to enhance commercial efficiencies in the radio broadcast industry, does not sufficiently apply to the new classes of service we are contemplating.”

Yet, despite the fact that the proposed lower-powered FM stations would be “new,” the NPRM offered no reason to think that the policy underlying Section 202 of the ‘96 Act would not apply to them. They will certainly become part of the same radio broadcasting

² General references to low power FM stations in these comments are also intended to encompass what the NPRM refers to at ¶¶ 34-37 as “microradio” stations.

industry that is governed by the '96 Act. Section 202 applies to 100kw FM stations, and it applies equally to 3 and 6kw stations. A 3 or 6kw station arguably has more in common with a 1kw or 100 watt station than it does with a 100 kw station operating at 600 meters above average terrain.

As an administrative agency, the Commission is not empowered to circumvent the will of Congress through its own regulatory initiatives.³ Chevron v. National Resources Defense Council, 467 U.S. 837, 842-43 (1985). Even if it is argued that the will of Congress cannot be discerned, the Commission's policy must be a "reasonable" one in light of the '96 Act. Id. at 845. The mere supposition that the Congressional intent underlying Section 202 "would not apply" to LPFM is not reasonable, in view of the obvious reasons to infer that it would apply. Likewise, the Commission may not reverse its own policy in this area without providing a clear justification for doing so. DirecTV v. FCC, 110 F. 3d 816, 826 (D.C. Cir. 1998). If the Commission believes that Congress was wrong to enact the '96 Act, then it should lobby Congress for a change in this legislation. But until it reconciles the LPFM initiative both with the instructions it has already received from Congress and with its own prior actions, the Commission lacks authority to impose this radical alteration of the current system of FM broadcasting.

³ Members of Congress have recently begun to object more strenuously to this tendency on the Commission's part. See, e.g., "FCC in direct line of fire from Hill", Broadcasting & Cable, March 15, 1999 at p. 19.

II. There Is No Evidence in the NPRM that Low Power FM Will Fulfill the Commission's Stated Goals for Such a Service.

In paragraph 1 of the NPRM, the Commission recites the following goals that it hopes to fulfill by the creation of a new LPFM service: "... to address unmet needs for community-oriented radio broadcasting, foster opportunities for new radio broadcast ownership, and promote additional diversity in radio voices and program services." 14 FCC Rcd at 2471. However, the Administrative Procedure Act⁴ requires the Commission to follow a process of reasoned decisionmaking. This process requires that there be a demonstrated logical connection between the regulatory choice that is made and the factual findings upon which they are based. Koch Gateway Pipeline Co. v. FERC, 136 F.3d 810, 814 (D.C. Cir. 1998). From the goals it sets forth, one might infer that the NPRM is based upon the "facts" that FM broadcasting has an insufficient amount of diversity, new entrants and localized programming. But the NPRM makes no logical connection between these alleged facts and the proposed imposition of a low power service. Indeed, both the available facts and the conclusions that logically flow from them suggest that LPFM will not achieve the goals set for it, and will more likely worsen the perceived problems that they are intended to address.

A) The NPRM Offers No Evidence that Low Power Stations Can Be Viable and the Past Experience of Broadcasters Indicates that they Will Not Be.

If LPFM stations are not economically viable, then they will originate no programming whatever, community-oriented or otherwise, nor will they offer opportunities

⁴ 5 U.S.C.A. §706(2).

for diversity in broadcast ownership or program services. Yet the NPRM scarcely addresses this issue, despite its fundamental importance. The realities of the market make it quite clear that most, if not all, low power commercial FM stations could not be operated profitably, nor could noncommercial stations cover their costs. In neither case would they have the resources to generate their own programming.

Not only does the NPRM fail to make findings about the viability of low power FM radio, aside from one question in Paragraph 24, it even fails to seek comment on the issue. Rather, it makes only a few passing suppositions, such as the one in Paragraph 13, that higher powered LPFM stations “would be more likely to attract more listeners” and that, as primary stations, they “could ... obtain necessary funding” to equip the stations and “could secure the resources” to provide live coverage of community events. 14 FCC Rcd at 2477. The NPRM later offers the unsupported hope in Paragraph 30 that the proposed low power service would be “affordable.” The history of the broadcast marketplace suggests otherwise.

Business has never been easy for small radio stations, but the industry particularly recalls the extreme difficulties faced by commercial Class A FM operators in the late 1980's and early 1990's. The Commission has estimated that at least 1,300 new allocations were created pursuant to Docket 80-90. Report and Order in Gen. Docket 90-357, 10 FCC Rcd 2310, 2313 (1995)(“Establishment of Digital Audio Radio Services”). This mass infusion of new allocations oversaturated many markets.

The financial distress of small and stand-alone FM stations was a principal reason for the subsequent relaxation of constraints on LMA's and in the rules on broadcast ownership.

See, e.g., Memorandum Opinion and Order and Further Notice of Proposed Rule Making in MM Docket No. 91-140 7 FCC Rcd 6387, 6388 (1992)(“Revision of Radio Rules and Policies”). It was also a principal reason the Commission decided to increase the maximum power allowed for Class A FM stations to 6 kw. Second Report and Order in MM Docket 88-375, 4 FCC Rcd 6375, 6380 (1989).

The hardships borne by 3kw and 6kw FM operators were a substantial cause of the legislative and regulatory reform that led to the consolidation that is now bemoaned in the NPRM. Yet, the NPRM proposes to recreate these hardships to an even greater degree for low power FM operators. There are certain minimum expenses faced by any broadcaster. Operating at a lower power may reduce a station’s utility bill to some degree, but the NPRM offered no justification for its assumption that 100 and 1000 watt stations are significantly less expensive to operate in other respects. Although their costs will be comparable, low power stations will be at a severe disadvantage in generating revenue. The NPRM contains no findings of fact to support its assumption that LPFM stations will be able to generate a signal with a radius large enough to enable it to draw a sufficient percentage of the listeners in its market to compete with the existing full power stations and generate revenue. Moreover, the NPRM proposes (at ¶ 57)⁵ that LPFM stations be limited to one station per owner in each market. The financial problems for LPFM would be magnified where its

⁵ 14 FCC Rcd at 2494.

competitors enjoy the additional efficiencies and economies of scale that result from multiple ownership in the same market.

Attached to these comments is the Declaration of one of the broadcasters who has recently attempted (and failed) to build and operate a new, stand-alone Class A station. The declarant, Michelle E. Hulse, was President of WNTC, Inc., the licensee of WNTC(FM), a 3kw station⁶ licensed to Chandler, Indiana, and which, despite its low power, placed a signal over the prosperous Evansville, Indiana market. Ms. Hulse describes two years of hard work in which she drew no salary, obtained hundreds of hours of services from two experienced broadcast consultants, and operated with a viable commercial format. Despite her efforts to keep expenses to a minimum, she lost money in every month that she owned the station. By the time she sold it, she had contributed savings and incurred debt totaling approximately \$150,000. In addition to her inexpensive operation, good format and expert advice, Ms. Hulse enjoyed at least four additional advantages that should be sobering to the starry-eyed prospective LPFM operators from whom the Commission has heard in the past couple of years.

First, Ms. Hulse notes that, through her contacts among experienced broadcasters and engineers, she was able to build her station entirely from reliable used equipment and to save dramatically on the cost of installation. Her rock-bottom construction cost of \$15,000 and commensurately low and operating costs were no greater than those that most LPFM

⁶ Short-spacing to other stations precluded an upgrade to 6kw.

operators would face, despite the fact that she was financing a full-power station. Second, she operated her station between 1994 and 1996, before the strongest wave of consolidation that has most recently hit the industry and which has made it so much more difficult for small broadcasters to compete. Third, Ms. Hulse used a syndicated music format and saved on the high cost of generating original programming. If LPFM is to fulfill the Commission's goals (by originating locally-oriented programming), then these stations will have much higher operating costs than did Ms. Hulse, who was already unable to pay the expenses at her station. Finally, WNTC operated with 3 kw at 100 meters HAAT, well above the levels proposed for low power FM.

Despite all of the foregoing advantages -- none of which would be available to low power operators -- Ms. Hulse was utterly unsuccessful in her effort to build an audience and attract advertisers. She never came close to generating revenues equal to her monthly expenses. For what reason, then, does the Commission blithely presume that LPFM operators can manage at much lower power levels?⁷ The only hint was provided in the supposition at Paragraph 13 of the NPRM that:

...with a relatively small operating budget and a relatively small coverage area, such LPFM stations might be able to offer very localized exposure attractive to local businesses that could not otherwise afford radio advertising."

Upon this delicate and unsubstantiated reed of hope rest the crushing weight of expectation from the FCC and hundreds of unsuspecting, would-be LPFM broadcasters.

⁷ For example, at ¶ 30 of the NPRM, low power radio was characterized as "affordable," yet no data or other justification was offered to support this notion.

As explained in her Declaration, Ms. Hulse lowered her advertising rates to as low as \$1.00 per 30-second spot, while the other stations in her market charged up to \$ 75.00. If it were true that advertisers are attracted to radio regardless of Arbitron numbers simply on the basis of relatively cheap rates, than Ms. Hulse would have prospered. But this was not the case for Ms. Hulse, nor is it true generally. 1 kw FM stations are not commercially viable, and 100-watt (or lower) stations will simply be a cruel joke played by the Commission upon their unsuspecting new owners. As Ms. Hulse puts it, “[t]he only persons who would be involved in this sort of an enterprise would be those who would essentially volunteer their time and pay expenses out of their own pockets.”⁸

The NPRM asks at several junctures (e.g., ¶¶ 19 and 69) whether low power FM stations should be limited to the noncommercial band. The Commission may be tempted into this position because it might be seen as a way to make it more likely that low power stations, relieved of the need to function as normal, profit making companies, would attract only those interested in “public interest” programming of the kind that one associates with noncommercial radio. Also, since LPFM will clearly reduce the coverage (and, therefore, both the operating income and the value) of existing FM stations, it might be presumed that less damage would be caused to existing broadcasters if LPFM were restricted to the

⁸ Accordingly, in answer to the question in Paragraph 24 of the NPRM, it is quite clear that the population in the service area of LPFM stations would not be large enough to sustain an advertising base.

noncommercial band. But low power FM is no less an injustice and a prescription for catastrophe if it is limited to the noncommercial band.

Existing noncommercial operators that operate with low power or in sparsely-populated markets generally manage to survive in one of two ways. They may obtain main-studio waivers to operate as “satellite stations” (rebroadcasting programming that is originated from a distant main studio at a station operated by the same entity). Alternatively, they operate almost exclusively as rebroadcasters of syndicated programming. In either event, these stations originate none of their own programming. Yet the expressed goal of LPFM is that it increase “community-oriented” programming and “diversity of radio voices and program services.” Noncommercial LPFM stations cannot provide these services if they cannot survive. However, if a few of them manage to survive only by using the measures described above, they will not achieve the goals which supposedly justify the proposed new service. In either case, the goals of the NPRM will not be met.

B) The NPRM Contains No Basis for Concluding that Low Power Stations Will Produce Community-Oriented Programming.

The NPRM contains no proposed requirement that low power stations must meet unmet needs for community-oriented programming. It also declines to try to achieve this result through the more indirect means of minimum local origination requirements or limitations on the amount of network programming that will be allowed. 14 FCC Rcd 2498 at ¶ 68. The only proposed requirement upon low power stations is that they should not simply act as translators, i.e., rebroadcasters of other stations’ signals. Id. Yet, there is

nothing to prevent LPFM stations from becoming rebroadcasters of syndicated programming, which is just as far from the goal of generating more new, community-oriented programming and increased diversity in radio voices. The NPRM's proposals not to impose residency and integration requirements (§§ 61-62) or to permit group ownership (§ 60), all decrease the likelihood of local citizen involvement, and further reduce the likelihood that LPFM stations will generate the kind of programming the NPRM seeks.⁹

The only assurance the NPRM offers that the programming it hopes for will result from a low power service is the "expectation" that a significant amount of programming will be locally-produced "as a matter of course."¹⁰ 14 FCC Rcd 2498 at ¶ 68. Aside from this sort of vague surmise, the NPRM contains no basis upon which to conclude that, even if they could succeed on either a commercial or a noncommercial basis, the programming goals for low power FM would be met.

Finally, even if one accepts the proposition that the "marketplace" will provide incentives for low power stations to generate community-oriented programming, and the far more dubious proposition that there remains an unmet need for such programming despite

⁹ This is not to suggest that LPFM could be redeemed by such measures, or that they are otherwise appropriate elements in the general scheme of broadcast regulation.

¹⁰ But at ¶ 60 (14 FCC Rcd 2495), the NPRM suggests that it would be wise to allow ownership of five or ten stations nationally "to attain efficiencies of operation." The principal available efficiency, of course, is the use of identical programming on all stations. It is patently impossible to create locally oriented programming that is going out to ten different localities at the same time.

the existence of such incentives,¹¹ then these incentives will not affect low power stations unless they are economically viable (and, therefore, subject to the forces of the marketplace). As shown in the preceding subsection, neither the NPRM nor any circumstance in the real world competition between broadcasters today suggests that they would be.

C) The Reduction LPFM Will Cause in the Coverage of Existing FM Stations Will Reduce the Community-Oriented Programming that Currently Exists.

The technical issues in the NPRM can only be addressed by an extensive engineering study, the cost of which exceeds the resources of the parties who have filed the instant Comments. However, by proposing the elimination of second and third-adjacent channel protection, and by allowing lower powered stations to be “shoehorned” into the gaps that currently exist between full power stations, it is patently clear that the effective coverage of nearly every existing full power station in the country will be reduced.¹² Any curtailment of a station’s effective coverage area (even if that coverage is outside its minimally-protected service contour), will reduce the potential audience for that station. A reduction in audience will be especially damaging to Class A stations, which already have the greatest difficulty

¹¹ If the market is a sufficient incentive to create community-oriented programs, it is logical to assume that existing broadcasters, who have every economic reason to give their listeners what they want, would already be providing all that the market demands.

¹² Without conclusive proof of non-interference, there should not be any relaxation of second and third adjacent channel protection. However, it is beyond debate that, where LPFM transmitters are located within the protected contours of existing stations, “blanketing” interference will occur for some distance from those transmitter sites. The Commission has a duty to precisely quantify this level of interference.

in reaching the minimum number of persons necessary to operate profitably, or, in the case of noncommercial stations, to cover their costs.

Of course, “community-oriented” programming requires additional staff (e.g., producers, reporters, studio engineers) and, therefore, is much more expensive to produce than a simple music format, which can be downloaded from a satellite. Since interference caused by LPFM will reduce the coverage, and, hence, the audience for full-power stations, the proposed LPFM service will make it more difficult for existing stations, both commercial and noncommercial, to produce the kind of programming the NPRM states that it wishes to foster. Accordingly, the proposed LPFM service not only fails to offer a viable means by which new community-oriented broadcasting may be created, it will make it more difficult for existing broadcasters to continue their efforts in this regard, and is more likely to actually reduce the total amount of such programming that is offered.

III. Superior Alternatives Exist to Address the Desires of the Parties Who Have Told the Commission that they Want to Become Broadcasters.

It is in the context of the economic realities that have been discussed above that the alternative venues for would-be broadcasters discussed in the NPRM at Paragraph 12 should be considered. Not every constituency, interest or obsession can appeal to a sufficiently wide audience to justify the creation of a responsive full-time radio format. Any party who can appeal to such an audience should purchase one of the more than 12,500 radio stations

that already exist in this country¹³, or apply for one of the innumerable commercial or noncommercial frequencies upon which a construction permit has not already been granted. Fortunately, however, noncommercial educational groups which feel themselves excluded from broadcasting will be offered many new opportunities by the recently proposed changes in the Commission's technical rules, which should make it possible for many more new noncommercial stations to be licensed than is possible under the current rules.¹⁴

If the prospective audience is not large enough to support a new station, then there are stations in most markets, especially on the noncommercial and AM bands, that lease time for a set price per half-hour or hour. This expedient would certainly be far less expensive than financing a full-time LPFM radio operation. Finally, although access to the Internet is not yet easily achieved from an automobile, this medium is an extremely inexpensive and low-risk way for individuals or groups with a small prospective audience to offer their views. Accordingly, it is clear that the alternative means for communicating ideas discussed in Paragraph 12 of the NPRM are not inadequate. The operation of a radio station is not feasible or reasonable for every person or entity in America who thinks that it might be an interesting thing to do. The Commission would be wrong to indulge any such assumption, especially when it will do serious harm to the existing FM radio service in the process.

¹³ See, FCC Public Notices, "Broadcast Station Totals," released July 19, 1999.

¹⁴ Notice of Proposed Rule Making and Order in MM Docket 98-93, 63 Fed. Reg. 33892 (1998)("Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules").

IV. Translators and Boosters Are a Better Low Power Use of FM Spectrum.

At Paragraphs 29 and 33, the NPRM requests comment on the interaction of the proposed LPFM service with the existing translator and booster service. For the reasons set forth in Section III., the Group of 7 believes that secondary translators and boosters are the most rational way to use the interstices of the spectrum that might lie between full power FM stations. Program origination is not feasible for a low power service, and translators and boosters are prudently designed to provide service otherwise unavailable to a community by retransmitting existing signals at a very low cost. Accordingly, the existing regulatory framework should not be altered, and translators and boosters should continue to be authorized instead of the ill-advised LPFM service.

In the unfortunate event some sort of LPFM service should come into being, existing translators should certainly be “grandfathered” vis-a-vis any new LPFM station. It is true that any translator station licensee knows that its facility is subject to being pushed off the air by any new or improved full-service station. However, it is also true that, until quite recently, no translator licensee was aware of the threat posed by a possible low power service when it expended funds on the construction of its facility. Furthermore, many translators have been carefully placed by their owners in spots on the spectrum and at transmitter locations that protect them from displacement by full-power stations. In view of the good-faith investment made by the owners of existing translators under the existing rules, it would be most unjust to push any translator off the air in favor of a new LPFM station.

V. The NPRM Has Not Justified Its Apparent Decision to Consider the Wishes of Would-Be Broadcasters Over the Far Greater Number of Radio Listeners in the United States.

LPFM is going to make it impossible for millions of people to continue to listen to their favorite full-power FM stations. These people, who may live well beyond the protected contour of the full-power stations in question, nevertheless enjoy the programming that they receive from these full-power stations. Except for the most remote areas that currently receive no service whatever, the Commission's idea of a new low power service contains within it the implicit presupposition that LPFM stations will offer programming that will be preferred by the people who currently listen to the full-power stations that the low power stations will displace.¹⁵

The NPRM offers no reasoning or data to back up this assumption. Common sense suggests a contrary conclusion, since it is more likely that a full-service station would be operated more professionally and have the budget to provide a better programming product than could a low-power competitor. Furthermore, there are no surveys or other data to support the speculation that underlies the enthusiasm some hold for low power FM. The NPRM commits the error of confusing the wishes of would-be broadcasters for the wishes of their unsuspecting future listeners. Although some aspiring LPFM operators may have submitted comments in this proceeding, there has been no corresponding expression of assent from the millions of listeners who will be affected by LPFM. In fact, LPFM has been

¹⁵ In the case of such unserved areas, one may ask why the prospective LPFM operator would not apply for at least a Class A full-service construction permit.

an issue known almost exclusively to broadcast insiders, and has received very little notice in the mainstream media. Even to the extent that it has been discussed (e.g., the July 6 installment of “The Diane Rehm Show,” aired on WAMU, Washington and other selected NPR stations), the fact that LPFM stations will displace existing program options has never been explained to the members of the general public.

Radio listeners know nothing about “protected contours” and care less. They only know what they want to listen to. The Commission appears to have no concern about the outcry that will result when millions of listeners across the country find that their favorite radio stations have been replaced by inexperienced and underfunded LPFM operators. Persons listening to programs in their cars will find that they can travel much smaller distances before those programs are interfered with by LPFM signals that have been newly wedged into the existing spectrum.

LPFM will result in the “Balkanization” of the FM band into a far greater number of signals that cover a much smaller area and cause interference to one another far in excess of current levels. Therefore, not only will LPFM stations themselves serve a very small area, but they will severely curtail the effective coverage area of existing full-power FM stations.

But this is not simply a “political” problem for the FCC. Section 302(a) of the Communications Act of 1934, as amended, allows the Commission to make “reasonable regulations” that are “consistent with the public interest, convenience and necessity....” 47 U.S.C.S. § 302a(a). The NPRM reflexively presumes that the “public,” whose interest, convenience and necessity limits the Commission’s regulatory power, consists not of the

millions of people who depend upon broadcast radio for news, information and entertainment, but of the hundreds or even thousands who may have a wish to get into broadcasting, and think that they cannot do so by conventional means. The record of this rule making must be able to establish that new LPFM stations will further the interest of the radio-listening public in the United States. Thus far, it does not.

Section 307(b) of the Communications Act of 1934 requires that “the Commission shall make such distribution of licenses, frequencies, hours of operation and of power ... as to provide a fair, efficient and equitable distribution of radio service....” 47 U.S.C.A. §307(b)(emphasis added). Because of the clear damage that LPFM will cause to the “listenability” of the entire FM band, because of the massive displacement of the signals of full-power stations by those of low power stations, and because of the economic harm that will be caused to existing FM stations (especially smaller ones in non-urban areas, which are already the most vulnerable), the NPRM does not indicate that the proposed low power service will provide a fair and efficient distribution of radio service or otherwise further the interests of radio listeners.

VI. The Commission Has Not Explained How It Intends to Regulate LPFM.

The Commission acknowledges in the NPRM that perhaps thousands of persons and entities have expressed preliminary interest in becoming LPFM owners and may file applications for LPFM stations when and if they are authorized. What it has not acknowledged, however, is the extreme regulatory burden that will be placed on the agency

by the need to select among applications (per §§ 104 and 108)¹⁶, process them, issue authorizations and police the actions of thousands of new licensees. How will its already overburdened staff deal with this crushing additional volume of work? And how will current FM broadcasters deal with the problems created by a flood of inexperienced, essentially amateur, broadcasters who either do not understand or who simply ignore their duties as broadcasters? How long will the Commission take to correct problems caused by low power stations operating at power levels in excess of the levels listed in their construction permits, overmodulating, or even operating on incorrect frequencies? The problems could be severe, yet the NPRM does not indicate how the Commission will discharge the huge increase in its responsibilities that will result from the creation of a low power FM service.

VII. Conclusion

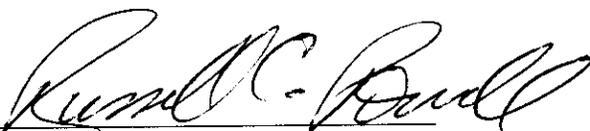
WHEREFORE, for the foregoing reasons, the Group of 7 states its opposition to the proposal to create a new low power FM service as expressed in the Notice of Proposed Rule Making in Docket No. 99-25.

¹⁶ 14 FCC Rcd 2507-09.

Respectfully Submitted,

THE GROUP OF 7

(Christian Broadcasting, Inc.
Connecticut College Broadcasting
Association, Inc.
Faith Academy, d/b/a WFEN
Media Services Group, Inc.
Sound of Life, Inc.
Spirit of America, Inc.
Straus Media Group, Inc.)

By: 
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Its Attorney

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August 2, 1999

DECLARATION

I, Michelle E. Hulse, hereby swear under penalty of perjury under the laws of the State of Indiana that the following statements are true and correct to the best of my knowledge, information and belief.

I was the President of WNTC, Inc., which was the licensee of WNTC(FM), Chandler (near Evansville), Indiana between May of 1994 and March of 1996. WNTC was a Class A FM station that was limited to operating at an effective radiated power of three kilowatts at 300 feet above average terrain. I am no longer involved in the ownership or operation of any broadcast station; however, I feel that my experience in operating a small, stand-alone FM radio station is very relevant to the determination as to whether the Federal Communications Commission should create a low power radio service.

I built my station at a relatively low cost because I was actually given a transmitter and STL, as well as tape recorders, CD players, etc. Otherwise, I purchased only used equipment, leased studio and tower space and was aided in the installation of that equipment by a friend of mine who was an engineer. These measures allowed me to construct my station for the almost unbelievably inexpensive amount of \$15,000. The only equipment used or useful in the operation of a 1 kw or 100 watt station that might cost less than the corresponding item at a 3 kw station would be the transmitter. Savings might also be realized in the cost of transmission line, if it is assumed that low power stations would operate from somewhat lower antenna heights. However, because I built my station so inexpensively, it is doubtful that any 1 kw station could be built for less. Although the electrical bill at a 1 kw or 100 watt station would be marginally lower than the ones I incurred at my 3 kw station, the costs of operation would be substantially the same.

I worked, on average, 10 hours per day at my station, 7 days per week. I paid myself nothing. I hired only one full-time sales person, and one studio employee, yet I could never get my monthly costs below \$6,000 per month. WNTC's average monthly

expenses were \$10,000 per month. If I had more fully staffed my station, my costs would have risen even higher above the level of my revenues. Our city grade signal covered Evansville, a very prosperous city that is the main commerce center of southwestern Indiana. Yet, despite this excellent signal coverage, despite our viable format (70's and 80's classic rock) and despite the fact that I received hundreds of hours of assistance from two experienced broadcast consultants, my Arbitron ratings were so low that I could not afford and had no incentive to purchase the Arbitron "book" for my area. I could get no national advertising on my station. Even the Indiana state lottery refused to purchase time on my station.

To compensate for our low numbers, we tried every reasonable promotional tactic to get the station's name around the city. We made an appearance at every local fair and festival, and advertised on (inexpensive) billboards and the local cable access television channel. We also tried charging less than the already low rate appropriate for our small station and low rating. The established stations in our market charged between \$35 and \$75 per spot; we charged no more than \$6.00, with packages as low as \$1.00 per spot. But nothing worked, and WNTC always operated at a loss. Indeed, at the time I sold the station in 1996, I had mortgaged my home and borrowed to the limits of my credit. My investment in the station reached \$150,000, and yet WNTC was still losing money. I simply could not compete in the marketplace against the other stations in the Evansville market, all of which were either part of a station group or had significantly greater power and coverage than did WNTC.

These competitive circumstances are the same ones that any new 1kw or 100 watt low power station would face. But they would have even less chance at success than I had. Since the Commission is seeking new and inexperienced broadcasters to own these stations, they would probably not have the contacts that allowed me to build and operate my station so cheaply and through which I obtained much expert advice. Furthermore, the consolidation in the broadcast industry has only increased since I got out of the business. Accordingly, the competition faced by any low power operator would be even

greater than the competition that I fought without success. Yet, in addition to having more formidable competition, low power station operators would have a substantially smaller signal coverage area. With less coverage, they would be significantly less able to attract advertisers than I was with WNTC. Lacking advertising revenue, these low power stations would be unable to pay the costs of originating local programming. I certainly could not afford to produce local, "community- oriented" programming. Because I had a full-power station, I was able to sell the station to another local broadcaster and recoup my losses. LPFM operators will have no such opportunity. The only persons who could be involved in this sort of an enterprise on a commercial basis are those who would essentially volunteer their time and pay expenses out of their own pockets.

Dated: July 19, 1999



Michelle E. Hulse