DOCKET FILE COPY ORIGINAL

GARDNER, CARTON & DOUGLAS
1301 K STREET, N.W.
SUITE 900, EAST TOWER
WASHINGTON, D.C. 20005
(202) 408-7100
FAX: (202) 289-1504
INTERNET: gcdlawdc@gcd.com

CHICAGO, ILLINOIS

WRITER'S DIRECT DIAL NUMBER
M. Scott Johnson
(202) 408-7122

August 2, 1999

RECEIVED
AUG 2 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
12th Street Lobby at TW-A325
Washington, D.C. 20554

Re: Low Power Radio Service
MM Docket No. 99-25
RM No. 9208
RM No. 9242

Dear Ms. Salas:

Transmitted herewith, on behalf of Alabama Broadcasters Association, are an original and nine (9) copies of its comments in the above-referenced proceeding.

Should any questions arise, please contact the undersigned.

Sincerely,

M. Scott Johnson
Counsel for the
Alabama Broadcasters Association

MSJ/mmb
Enclosure
38055.1

No. of Copies rec'd 0+9
List ABCDE

310595.1

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

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

RECEIVED
AUG 2 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF ALABAMA BROADCASTERS ASSOCIATION

The Alabama Broadcasters Association ("ABA"), by its attorneys and pursuant to §1.415 of the Rules and Regulation of the Federal Communications Commission ("FCC" or "Commission"), hereby submits its comments in response to the FCC's *Notice of Proposed Rule Making* (*"Notice"*) issued in the above-referenced docket.[1] The *Notice* seeks comment on the FCC's proposal to adopt rules authorizing the creation of a new low-power FM ("LPFM") radio service. For the reasons discussed in greater detail herein, the ABA is opposed to the creation of an LPFM service and urges the Commission not to authorize such a service.

I. INTRODUCTION

The ABA is a non-profit incorporated association of radio and television licensees located in Alabama. ABA's membership includes stations in communities of all sizes, from small to large, encompassing stand-alone stations as well as combined operations. As such, it is appropriate for the ABA to voice its concerns with respect to a proposal which, if implemented, would dramatically impact the radio industry generally and Alabama broadcasters in particular.

---

1 *Creation of a Low Power Radio Service*, 14 FCC Rcd 2471 (1999).

II. BACKGROUND

The Commission proposes authorizing two additional classes (primary and secondary) of LPFM radio stations to operate in the existing FM band. The Commission is also seeking comment on possible establishment of a third "microradio" class of FM stations. In order to accomplish its goals, the Commission has proposed the relaxation or amendment of current FM interference standards. More specifically, the Commission has proposed for comment establishing the new LPFM service without any second or third adjacent channel protection standards.

The first new class proposed for adoption, designated as "LP1000," would be a primary service class including stations operating with an effective radiated power (ERP) from 500 watts up to 1,000 watts, and a maximum antenna height above average terrain of 60 meters or 197 feet. Such facilities could provide a service contour of 8.8 miles. The proposed secondary class of LPFM service would be designated as "LP100" stations. These stations would operate with a minimum of 50 watts ERP up to 100 watts ERP, and an antenna height above average terrain of 30 meters or 98 feet. LP100 facilities would likely provide a 3.5 mile service contour. Finally, microradio stations would operate with between 1 to 10 watts ERP and antenna height above average terrain of a maximum of 30 meters or 98 feet. Such stations could have a service contour of 1-2 miles.

Using the relaxed interference standards proposed in the *Notice*, LP1000 stations would provide and receive interference protection from full-power stations. LP100 stations would be required to provide interference protection to LP1000 stations and full-service FM stations but would not receive reciprocal protection. Microradio 1-10 watt stations, operating as a secondary service, would protect all broadcast services and would receive no interference protection.

With respect to ownership and eligibility criteria, the *Notice* proposes excluding LPFM applicants having an attributable interest in a full-power broadcast station. Joint sales, time brokerage and local marketing agreements with full-power stations also would be prohibited. No local residency requirements or involvement of owners in operations would be mandated, although foreign ownership would be prohibited. The *Notice* tentatively concludes that auction requirements generally applicable to FCC procedures for selecting among mutually exclusive broadcast applicants would not be applicable to the new low-power FM service.

The Commission seeks comment as to whether local origination requirements should be imposed on LPFM; whether the FCC should adopt a prohibition on translator-status or operation; and, whether all LPFM stations should be limited to non-commercial operation and to only qualified non-commercial applicants. The *Notice* proposes that LP1000 stations follow FCC Part 73 Rules, but that such rules be relaxed for LP100 stations (except for main studio and public file rules), and that they not be applicable at all for microradio stations. Part 73 public interest programming requirements would apply to LP1000 stations but not to LP100 or microradio stations. Similarly, applicability of Emergency Alert System ("EAS") rules is proposed only for LP1000 stations.

III. DISCUSSION

A. The ABA Opposes Relaxation of Existing Technical Standards

Adoption of the FCC's proposal form would wreak havoc upon the existing FM band and adversely affect reception of FM service by the public. As set forth, the LPFM service proposal is premised upon the elimination or alteration of existing FM interference protection standards. Indeed, the Commission's LPFM proposal is based on the premise that without relaxed

standards, i.e., removal of second and third adjacent channel protection, sufficient LPFM channels may not be available. In the final analysis, the LPFM proposal pits protection of existing full-power station service against development of the new LPFM service.

The ABA submits that the existing FM interference criteria, carefully crafted over the past decades for the purpose of protecting the integrity of the FM spectrum and insuring reliable FM radio service to the public, are no less important today than when adopted. To insert a new class of low-power broadcasters into an already crowded FM spectrum occupied by a mature industry will create a multitude of interference problems and impair service that the public has learned to rely upon, appreciate and expect. In addition, the public interest benefits of many new full power FM allotments would be lost, as well as with the benefits derived from modification or improvement of existing stations, many of which would be precluded.

It is absolutely vital that the Commission gives priority to consideration of the adverse effect on existing FM service which would result from eliminating second as well as third adjacent channel protections. The ABA is alarmed by the Commission's tentative conclusion that it should drop well-established adjacent channel separation interference protections which is driven by the recognition that there would be few if any LPFM licenses available in major markets unless adjacent channel protections are eliminated. *Notice*, ¶50. This approach effectively relegates interference concerns as secondary to maximizing the number of low power FM stations from the outset. Inevitable further erosion of FM technical quality is also inherent in the related suggestions, such as, for example, that the Commission consider reduced station separations and contour protections in combination. *Notice*, ¶41.

The potential adverse impact of the Commission's LPFM proposal on in-band digital radio service ("IBOC") is also of major concern to the ABA. The *Notice* in paragraph 49 acknowledges the need for analysis of the effect of LPFM on IBOC technology and FM digital development. This concern is more than theoretical. The television industry is already well underway to digital transformation. Terrestrial radio stations, including those in Alabama, must follow to remain competitive in the digital world. Internet radio, satellite radio services, and advances in multiple delivery systems mandate that terrestrial radio keep pace. The Commission must not permit LPFM to impede the digital transition of full-power radio stations.

B. Existing Full-Power Radio Stations Provide Essential Service Which Should Be Protected.

Broadcast stations in Alabama, like those in other states, provide an essential local service to their communities and surrounding service areas. Alabama residents depend upon full-power radio stations for local and regional news, for messages from community leaders, for school information, as well as to keep up with events and day-to-day happenings in their communities. Emergency weather reports and information related to emergencies are widely communicated in Alabama by local radio stations. Lives are saved and injuries averted by such broadcasts. One need only remember the severe hurricanes, floods and tornadoes in the last few years in Alabama to recognize the importance of interference-free reception of local radio stations. Support to communities provided by local full-power radio stations through local public service announcements, charitable promotions, charitable fund raising cannot be overemphasized. Community groups throughout Alabama depend upon and look to Alabama radio stations for support and a means to communicate their message to area residents on a regular basis.

Impairment of local FM radio station service would clearly be contrary to the public interest and must be given primary consideration by the Commission. The Commission must consider that local programming service of existing full-power FM radio stations would be adversely affected by a proliferation of low-power FM stations. It is an understatement to say that the number of new low power FM stations the Commission is considering allowing is significant. The magnitude of the increase is breathtaking. The *Notice* states in Appendix D, for example, that nine LP1000 stations and as many as twenty-four LP100 stations would be possible in Montgomery, Alabama, by dropping second and third adjacent channel interference protections. The city of Mobile could accommodate ten LP1000 and some thirty-three LP100 stations.[2] Many, many more microradio stations could exist both in Montgomery and Mobile. Results similar to these are examples are expected throughout Alabama.

As the Commission is well aware, many local AM and FM radio stations are under economic stress and have been for years. The adverse experience of the allocation of hundreds of stations through Docket 80-90 in the 1980s is well within memory, if an example is needed as to likely consequences which will occur from adoption of the LPFM service. The Commission is defying reality if it assumes that existing local radio stations in Alabama or elsewhere can continue to provide quality local news, local area emergency, and other local programming in the face of diminished audience and revenues due to interference to reception and market fragmentation from multiple LPFM stations entering their service areas.

---

[2] Footnote 132, p. 2525 of Appendix D of the *Notice* also states the Commission's analysis may "significantly understate" the number of low-power stations to be assigned "if they were permitted to receive interference."

The ABA also respectfully disagrees with the Commission's basic underlying assumption that significant public interest benefits will follow from authorizing the proposed new low power FM service. Rather than new benefits, the result will be degradation and lessening of existing service. The *Notice* essentially posits a need for greater diversity, rather than looking to the record of the diversity of existing full-power service and probable loss of such service if LPFM is adopted. Based on experience, Alabama stations direct their attention to local needs and interests and must do so to remain viable. For this reason, as well as an established history of dedication and commitment to local community needs, Alabama broadcasters have an excellent track record of service in meeting diverse local requirements in small and large communities throughout the State in all 67 counties. Service provided by Alabama stations includes important local news, information, and critical emergency information, as well as a diversity of formats and programming designed to attract and maintain listeners. The Commission should preserve and protect that service.

C. A New LPFM Service Will Not Accomplish The Goals Sought.

The Commission's stated goals for the new low-power FM service reflect an assumption that a plethora of new diverse voices will appear to use the service and that such uses will provide unheard viewpoints and programming to meet needs not currently addressed. The ABA questions whether the Commission can adopt any standards which will withstand court challenge to dictate who shall obtain the new licenses or how they shall use or program the stations. Indeed, it appears to the ABA that such LPFM stations, if allowed to exist, will be unbridled and will simply result in a proliferation of stations without the weighty benefits sought by the Commission.

The stated goal of new service to specific urban areas and neighborhoods is likewise subject to doubt, as docket comments suggest only limited LPFM operations would be possible in many urban areas. Appendix D to the *Notice* shows that New York City, for example, would get not a single LP1000 or LP100 station, while Los Angeles and Chicago would accommodate only one LP1000 station apiece. The result of proceeding with the Commission's proposal would thus appear to be a phenomenal increase in numbers of stations in markets where the impact on existing full-power stations would be most severe. Also in certain rural areas, LPFM would be unnecessary, in any event, as existing full-power frequencies are more readily available. Further, as a low-power service, LPFM is ill suited for rural populations disbursed over wide areas and, by definition, not concentrated. It should not be expected, therefore, that the Commission's proposal will accomplish the basic goals stated in the *Notice*.

The unfulfilled goals of Docket 80-90 in the 1980s again come to mind. A stated goal in the Docket 80-90 proceeding was to increase ownership by women and minorities. Hindsight reflects little or no success from that experiment. Moreover, low-power FM stations have little hope of economic viability. Service areas will be limited (in the case of microradio, to perhaps a mile or less) and advertising and commercial support will be correspondingly difficult to obtain. Alabama broadcasters are well aware of the challenges of operating stations day-in and day-out. This experience suggests that the viability of low-power FM stations is doubtful at best.

Given the havoc likely to occur from adoption of a low-power FM service, and the speculative, contrary-to-experience assumptions that such a service will accomplish the goals set forth in the *Notice*, use of spectrum in the manner suggested would be inefficient and contrary to the public interest.

IV. CONCLUSION

The ABA urges the Commission to fully and carefully consider the critical issues relating to implementation of a low-power FM radio service as outlined in the *Notice*, particularly the adverse effects on the technical integrity of the FM band which will flow from compromising existing interference standards and impact upon the existing FM radio serrvice. The locally oriented tradition of full-power radio service in the Nation dictates no less. That radio service, past and present, is the envy of the world. The ABA submits that the *Notice* constitutes a real threat to continuation of that service and respectfully urges the Commission, for the reasons set forth above, to decline establishment of the low-power FM radio service. While there may well be other avenues to achieve the Commission's goals, the proposals in the *Notice* are contrary to the public interest.

Respectfully submitted,

ALABAMA BROADCASTERS ASSOCIATION

By: _____
M. Scott Johnson

By: _____
Francis E. Fletcher, Jr.

Its Attorneys

GARDNER, CARTON & DOUGLAS
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
(202) 408-7100

Dated: August 2, 1999
DC01/256978.4