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BEFORE THE

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Federal Communications Commission

WASHINGTON, D.C.

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

RM-9208

RM-9242

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

JOINT COMMENTS OF THE NAMED STATE BROADCASTERS ASSOCIATIONS

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SUMMARY

As the Commission considers the creation of a low power FM radio service, the reality of the present, as well as the lessons of the past, should determine the proper course of action. Presently, the FM radio spectrum is filled with nearly 8,000 stations which serve the public in an admirable fashion. Forcing hundreds, or possibly thousands, of low power FM stations into this crowded spectrum is ill-advised, as it will create interference to existing stations and undermine the broadcasters' public service. Along with greater interference, the addition of numerous new stations will have an adverse economic impact on FM broadcasters and limit their ability to provide quality local programming, especially in smaller markets. Rather than combating ownership consolidation as the Commission hopes, the creation of a low power FM service will cause even greater consolidation within the broadcasting industry, competitively forcing smaller broadcasters to sell into clusters within their own markets. That is the past lesson of Docket 80-90. Further, at a time when the Commission should be looking to the future, the creation of low power FM radio will prevent the transition of FM broadcasting from analog to digital radio technology. Reduced channel protections and increased interference will threaten the ability to provide in-band on-channel ("IBOC") digital radio.

The reality is that the Commission currently lacks adequate resources to support the creation of a low power FM service. Rather than streamlining and redefining the Commission's regulatory role, low power will impose a burden that will harm existing broadcasters and the public, as administration is slowed and the FM band is filled with a cacophony of voices. Low power threatens to overwhelm the Commission and undermine the integrity and vitality of FM radio; therefore, the Commission must accept present reality and refrain from pursuing this inefficient use of radio spectrum.

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To: The Commission

**JOINT COMMENTS OF THE NAMED
STATE BROADCASTERS ASSOCIATIONS**

The Alabama Broadcasters Association, the Alaska Broadcasters Association, the Arizona Broadcasters Association, the California Broadcasters Association, the Colorado Broadcasters Association, the Connecticut Broadcasters Association, the Florida Association of Broadcasters, the Georgia Association of Broadcasters, the Hawaii Association of Broadcasters, the Idaho State Broadcasters Association, the Illinois Broadcasters Association, the Indiana Broadcasters Association, the Iowa Broadcasters Association, the Kansas Association of Broadcasters, the Kentucky Broadcasters Association, the Louisiana Broadcasters Association, the Maine Association of Broadcasters, the Maryland/DC/Delaware Broadcasters Association, the Massachusetts Broadcasters Association, the Michigan Association of Broadcasters, the Minnesota Broadcasters Association, the Mississippi Association of Broadcasters, the Missouri Broadcasters Association, the Montana Broadcasters Association, the Nebraska Broadcasters Association, the Nevada Broadcasters Association, the New Hampshire Association of Broadcasters, the New York State Broadcasters Association, the North Dakota Broadcasters Association, the Ohio Association of Broadcasters, the Oklahoma Association of Broadcasters,

the Oregon Association of Broadcasters, the Pennsylvania Association of Broadcasters, the Radio Broadcasters Association of Puerto Rico, the Rhode Island Broadcasters Association, the South Carolina Broadcasters Association, the South Dakota Broadcasters Association, the Tennessee Association of Broadcasters, the Texas Association of Broadcasters, the Utah Broadcasters Association, the Vermont Association of Broadcasters, the Washington State Association of Broadcasters, the West Virginia Broadcasters Association, the Wisconsin Broadcasters Association, and the Wyoming Association of Broadcasters (collectively, the "Associations"), by their attorneys, and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, hereby submit their joint comments in response to the above-captioned *Notice of Proposed Rule Making* (the "NPRM"), MM Docket No. 99-25, released February 3, 1999. By Orders released March 19, 1999, and May 20, 1999, the comment period in this proceeding was subsequently extended to August 2, 1999; therefore, these comments are timely filed.

I. INTRODUCTION AND SUMMARY

At a time when FCC Chairman William E. Kennard speaks of restructuring and streamlining the Commission's operations,¹ the overwhelming burden that the creation of a new low power FM radio service would cause makes the contemplation of such a service not only ill-advised, but contrary to the agency's mandate to regulate in the public interest. As one member of Congress has articulated, "[t]he policy, political, economic and budgetary ramifications of this

¹"As we re-direct the FCC's focus for a competitive age, the Commission must reform itself. Already, we have taken some initial steps on the road towards re-engineering the FCC. We are re-focusing and consolidating our enforcement and consumer information functions, as well as automating and streamlining our licensing processes across the entire agency." Statement of William E. Kennard before the Subcommittee on Commerce, Justice, State and the Judiciary Committee on Appropriations, April 14, 1999.

undertaking are potentially staggering, and I do not believe that you should proceed with this matter without first presenting to Congress a full explanation and justification in support of this initiative.”²

The Commission states in the NPRM that its goals in this proceeding are “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.”³ While these goals are concededly laudable, attempting to achieve them by creating an unnecessary and problematic new service is contrary to the Commission’s role of regulating the airwaves in the public interest. The Commission should not create an entirely new service at the expense of broadcasters and the public they serve. Low power FM should not be allowed to undermine the integrity of the FM spectrum.

The creation of a low power FM radio service will overwhelm the Commission’s resources and repeat the debacle which followed the addition of hundreds of FM stations in Docket 80-90. The threat of interference to existing broadcasters, the workload involved in establishing a new radio service, and the risk of hindering or preventing the transition to digital radio broadcasting all militate against the creation of a low power service. The addition of hundreds, if not thousands, of low power and/or microradio stations will foster greater

²Letter to Chairman Kennard, filed by Rep. W.J. Billy Tauzin, Chairman Subcommittee on Telecommunications, Trade and Consumer Protection, dated February 10, 1999. Rep. Tauzin’s letter continues, stating that, “it should be made equally clear that many of us serving on the jurisdictional committees in Congress feel very strongly that your actions ...appear to be ill-advised.”

³NPRM at ¶ 1.

consolidation of broadcast ownership and increase the proliferation of pirate radio operators. The creation of this new service will prove detrimental to the continued vitality and public service of the FM band. In addition, the Commission has failed to properly address the public interest showing necessary for the implementation of a low power radio service and it is unclear that such a showing could be made.

II. DISCUSSION

A. **The Creation of Low Power FM Will Undermine Spectrum Integrity by Causing Harmful Interference to Existing FM Stations.**

As the Commission points out in its NPRM, “[e]nsuring the effective and efficient use of the spectrum is one of the fundamental responsibilities of the Commission.”⁴ Forcing a new low power service into the existing FM band, however, threatens to create little more than interference. If the proposed low power stations were to be authorized, they would inevitably create technical problems for the existing broadcast industry, for as former Commissioner James H. Quello once pointed out, “it is axiomatic that for each new service introduced, interference to existing service is also introduced.”⁵ According to the Commission’s most recent numbers, the FM band currently has 7,779 commercial and non-commercial licensed radio stations.⁶ This means not only that there are a large number of FM stations providing diverse programming to the communities across the country, but also that the band is already congested. In contrast, the

⁴NPRM at ¶ 20.

⁵Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments, 94 F.C.C.2d 152, 201 (1983) (dissenting statement of Commissioner James H. Quello).

⁶Broadcast Station Totals as of June 30, 1999, released July 19, 1999.

AM band has 4,781 licensed stations and television has 1,594. The Associations have been informed that the National Association of Broadcasters (“NAB”) will file comments in this proceeding demonstrating that low power will cause interference to existing stations and that few of the radio receivers tested were able to filter out the interference. The Associations support the NAB’s studies, as well as its conclusion that the small number of stations which could potentially be added is not justified by the extensive interference the service will create.

The Commission’s current interference spacing requirements exist to protect the signals of authorized FM channels and ensure that the public is able to clearly receive the station’s programming. A basic tenet of broadcasting is the provision of a strong, quality signal on which the public can rely. This fundamental goal will be threatened by the creation of a new low power service. The addition of hundreds, if not thousands, of new stations to an already crowded spectrum can only serve to degrade the quality of existing signals. The Commission has a responsibility to ensure that the signals of existing full power FM stations, broadcasting in the public interest, are not harmed by the creation of a questionable new service.

Comments already filed by broadcasters in this rule making proceeding support the contention that the addition of low power FM stations will cause greater interference problems.

For example:

- “First off, all of my FM stations are at 3,000 or 6,000, which in itself is almost a version of ‘microradio.’ These stations are already receiving enough interference as it is. The proposed rulemaking would only create more interference to an already crowded FM band.”⁷

⁷Comments, MM Docket No. 99-25, filed by William Lewis Coleman on April 1, 1999, at 1.

- “[W]e feel that the potential for excessive interference is high. In addition, we believe that the establishment of LPFM will put the existing Translator service in jeopardy. Our listeners and members rely on our service, a service that has existed for years.”⁸
- “We have had experience at WXFM, Mt. Zion, Illinois with a low-power pirate radio station presently operating on our second-adjacent channel. The operator has stated on the air that he is operating with 12 watts. His antenna appears to be about 20 feet above the ground. On several occasions we have measured interference to our station within four miles of our tower, caused by the low-power station. We have also received dozens of complaints from listeners -- of interference. ...Our measurement and the complaints of our listeners clearly demonstrate that assigning a low-power station to a second-adjacent channel creates unacceptable interference to listeners.”⁹
- “My fundamental objection to the creation of a Low Power FM Service is the certain interference such a service would create to my station and other stations on the FM band. My market is rural compared to other larger markets. However, even in this “rural” area, there are signals at almost every position of the dial. To alter or drop the Commission’s existing interference protection standards will result in a horrible interference situation with regard to existing signals. This will not serve the public interest. There will be a reduction of service to listeners as a result of the degradation of the FM band caused by this additional interference.”¹⁰

In addition to causing interference to the operations of existing broadcasters, there is a serious potential that low power broadcasters could also cause interference to aviation communications and air navigation signals, threatening the safety of the nation’s aviation system. The creation of low power FM will add a class of novice broadcasters to the airwaves with poor equipment, limited experience, and drastically less financial backing than a professional broadcaster. This will create a liability which the Commission will have to monitor in order to

⁸Comments, MM Docket No. 99-25, filed by Mercer County Community College on March 16, 1999 at 2.

⁹Comments, MM Docket No. 99-25, filed by WXFM, Mt. Zion, Illinois on April 1, 1999 at 1.

¹⁰Comments, MM Docket No. 99-25, filed by Pressly Partnership Productions, Inc. on April 5, 1999 at 2.

ensure that low power broadcasters and their equipment are operating within established parameters and not threatening the public safety.

While full power commercial broadcasters require little policing, no mechanism exists to prevent interference by low power broadcasters. Existing broadcasters invest large amounts of money into an ongoing commercial venture and thus have a strong incentive to avoid causing interference. Low power amateur hobbyists, however, will have the opposite incentive to attempt to expand the reach of their limited signal by pushing the level of interference the station creates. Professional broadcasters have to maintain a reputation for compliance with FCC rules, but a low power broadcaster will not have the same incentive to comply with the Commission's technical and non-technical rules.

Finally, the creation of low power FM and/or microradio will encourage even greater proliferation of pirate radio stations, thereby exacerbating one of the problems this NPRM ostensibly sought to resolve. With hundreds of newly-licensed low power stations entering the airwaves, pirate radio operators will go largely unnoticed. Pirates who do not want to go through the Commission's licensing process, or who were unable to find an open channel, will simply set up shop anyway. This rule making will potentially open the door for every person who wants to get on the airwaves, as the public will assume pirate radio stations are just the newest authorized stations. The Commission's enforcement mechanisms will be greatly strained by the addition of the new stations, effectively encouraging more pirate broadcasting. In order to lend legitimacy to the authorized low power stations, the Commission will have to be even more vigilant in its attack on pirate radios. The creation of low power FM will establish a fertile atmosphere for the increase of pirate radios, as they pop up amidst the numerous newly-licensed stations.

B. The Creation of a Low Power Service Will Prevent the Transition of FM Broadcasting from Analog to Digital Technology.

At a time when the Commission should be ensuring the smooth transition of its analog radio service to digital radio, the contemplation of squeezing a new low power service into the existing FM band is ill-conceived. Looking to the future, broadcasters are in the process of developing technology for the provision of digital radio service to the public.¹¹ To that end, broadcasters are currently working to perfect in-band on-channel (IBOC) technology which will allow FM stations to broadcast a digital signal along with their existing analog signal. By utilizing existing spacing protections and working within the 200 kHz of bandwidth allotted for each FM channel, IBOC technology contemplates the efficient usage of the allotted spectrum. The addition of a digital signal within the bandwidth designated for an analog channel, however, will reduce the frequency separation which provides insulation between adjacent channels. The addition of thousands of new stations, or any changes in the channel spacing regulations, therefore, could make impossible the digital radio technology. As one broadcaster points out:

- “Low Power service would seriously hamper efforts to implement In-Band-on-Channel Digital Audio Broadcasting. The additional signals generated by LPFM would use the spectrum space needed for an effective IBOC DAB system. The Commission would be sending mixed signals by -- on one hand-- actively promoting DTV while --on the other hand-- promoting plans that could effectively kill aural digital service.”¹²

As the NPRM indicates, there are numerous unresolved questions regarding the emerging digital radio service and the extent to which interference protection is needed to ensure that a

¹¹On October 9, 1998, USA Digital Radio Partners, L.P. (“USADR”) filed a petition for rule making with the Commission requesting the initiation of a proceeding to permit digital audio broadcasting in AM and FM radio.

¹²Comments, MM Docket 99-25, filed by Edward J. Helleny on March 30, 1999 at 1.

quality signal is provided to the public.¹³ Whereas the Commission froze the TV Table of Allotments over a decade before the first digital television station came on the air, the Commission has not felt compelled to afford similar protections to radio broadcasters during the transition to digital radio broadcasting.¹⁴ While digital radio does not contemplate the same one-to-one channel swap necessary for the move from NTSC to DTV, the need to ensure adequate space within the band for the anticipated transition is equally pressing. The continued progress toward digital radio should take precedence over the nascent pursuit of a low power service. Given the desirability of digital radio, the ongoing efforts by the broadcast community to develop this technology, and the Commission's stated support for the transition,¹⁵ the Commission should not undertake any actions which could jeopardize or in any way complicate a move to terrestrial digital radio broadcasting.

C. The Creation of Low Power FM Will Undermine the Public Service Programming of Existing Broadcasters.

The creation of low power radio stations will imperil the public service currently provided by the nation's full power broadcast stations. The addition of low power stations will

¹³"We are concerned that our understanding of future IBOC systems is preliminary and that we may not be fully aware of any negative impact or restrictions that authorization of low power radio service would have on the transition to a digital IBOC technology for FM stations. Clearly, we need to better understand the potential impact of second-adjacent channel LPMF protection standards on the successful development of an IBOC system." NPRM at ¶ 49.

¹⁴In instituting the freeze on new television stations in certain metropolitan areas, the Commission stated, "it is necessary to preserve sufficient broadcast spectrum to insure reasonable options relating to spectrum issues for these new technologies." Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, Order, RM-5811, released July 17, 1987.

¹⁵Report and Order, 10 FCC Rcd 2310, 2315 (1995).

create greater economic pressure on existing broadcasters, particularly for smaller stations in smaller markets, as more stations attempt to share a static source of revenue. By adding a class of less experienced, poorly financed broadcasters to the airwaves, the Commission threatens to cause *more consolidation* of ownership within the radio industry. Furthermore, greater interference and lower quality programming from low power stations will hinder the ability of full power stations to clearly reach listeners, as well as undermine the credibility of the programming in the FM band as a whole. One broadcaster has commented:

- “While the Commission has stated that they don’t want to hear about the economic impact, the simple fact of the matter is that the economic viability of Albuquerque radio correlates to the ability of broadcasters to provide services. With potentially 36 new stations... there would be nearly double the amount of signals in our metro area. A recent survey of our members indicates that such a result would translate in the cancellation of several information services the community now takes for granted.”¹⁶

1. The addition of numerous new stations will place increased economic pressure on broadcasters, causing greater consolidation in the broadcast industry.

Part of the impetus behind the Commission’s NPRM is the consolidation of ownership within the radio broadcasting industry. The Commission states that this consolidation is reducing the number of “voices” on the airwaves and therefore diversity in the broadcasting arena.¹⁷ In reaction to this perceived reduction in diversity, the Commission suggests the creation of hundreds, if not thousands, of LP 1000, LP 100, and microradio stations. By creating a new class of smaller stations that are less expensive to own and operate, the Commission seeks to

¹⁶Comments, MM Docket 99-25, filed by Trumper Communications on May 25, 1999, at 1.

¹⁷NPRM at ¶¶ 10-12.

involve numerous new broadcasters who have never before had the opportunity to participate in radio broadcasting. As admirable as this notion sounds, there are a number of flaws to this logic, and in truth, the creation of a low power service will only exacerbate precisely the evil the Commission is attempting to combat.

First, the low power FM stations that the Commission envisions would necessarily compete with existing smaller radio stations for the same listening audience and the same finite sources of advertising dollars. By further diffusing the source of revenue among more and more stations, the Commission will only succeed in creating a greater number of less profitable stations. The large number of existing FM stations currently face competition from emerging technologies as well as an increased number of FM stations. If more stations are introduced, many of the stations surviving on an already narrow profit margin will be faced with economic failure. At a minimum, the stations will have to reduce costs, potentially leading to the loss of valuable community services such as the coverage of local news and sporting events. Faced with economic demise, eventually these smaller stations likely will turn to one of two options: (1) carrying national/syndicated programming; or (2) selling the station to a larger owner of multiple stations. In either case, the FCC's introduction of LPFM will squeeze out existing stations which currently serve the public interest in an admirable fashion. Furthermore, the Docket 80-90 precedent demonstrates that the introduction of numerous new stations will produce exactly this type of consolidation within the broadcast industry.

Second, the NPRM proposes that existing broadcasters be ineligible for the new low power stations.¹⁸ Therefore, while the Commission seeks to include people who have never had an opportunity to own a broadcast station, it will necessarily introduce a class of inexperienced broadcasters to the realm of station ownership. While many of these new broadcasters will undoubtedly thrive and succeed, hopefully gaining valuable experience which can be translated into the full power market, many of these new, inexperienced broadcasters will also fail. Once these broadcasters fail to maintain economic viability, their options will be limited to those mentioned above, sell out to a larger broadcast owner or carry national programming. Once again, the end result is greater consolidation within the broadcast industry or the loss of local programming.

Third, one of the Commission's stated reasons for considering low power is to "provide a low-cost means of serving urban communities and neighborhoods."¹⁹ By its own engineering studies, however, the Commission has determined that depending on the interference protections adopted, very few, if any, low power stations can be added to the FM spectrum in larger cities.²⁰ The engineering reality alone defeats the attempt to reach communities and groups the Commission feels are under-represented in urban broadcasting. Thus, instead of satisfying the perceived need to add to the collection of voices in larger cities where ethnic, social, and economic minorities may lack a voice, the low power service will only be able to add stations in

¹⁸NPRM at ¶ 57.

¹⁹NPRM at ¶ 1.

²⁰NPRM at Appendix D.

the more suburban and rural areas, where a similar rationale does not support the need for LPFM. Once again, the addition of new stations will spread the existing advertising dollars among a greater number of stations and put greater economic pressure on existing broadcasters.

Many broadcasters who have already submitted comments in this rule making indicate that the addition of multiple new stations, especially in rural markets, will devastate the small market radio industry.

- “In my market, the 80/90 disruption created seven new stations *in a city of less than 50,000 people*. Prior to 80/90 there were seven (7) stations, after 80/90 there are now fourteen (14) stations. Prior to 80/90 we had 23 employees with live announcers around-the-clock and a full time news department. After 80/90 and the influx of seven more stations competing for the advertising dollar forced us to reduce our staff to 9 people. We were forced to automate instead of using live announcers, and we were forced to eliminate our news department. [...] Low Power FM will compound the 80/90 problem. It will not create jobs. The influx of more stations, especially in small markets, will cause broadcasters to revert to more automation resulting in the loss of jobs and services. Existing stations will struggle to survive. The very fact that the radio dial is filled with stations will create the impression in the minds of the advertisers that radio in a small market is too fractured to be a good advertising buy. It is very nearly that way now.”²¹
- “Only in the past 4 years have I been able to increase the local news, sport and event coverage that every small town thrives on. If LPFM operators were allowed to compete in this market, I am certain that I would have to reverse course, by cutting staff and localization in order to remain a viable operator.”²²
- “The establishment of LPFM will likely be the death knell for many small and independent full power stations that are struggling to survive in this era of consolidation. LPFM could have an especially devastating impact on an independent station serving a specialized audience such as WPLO. As mentioned above, WPLO broadcasts in Spanish. The Spanish population of the Atlanta metro area is quite small (2.0% according to the 1990 Census) and it is scattered in pockets throughout the region. While small and scattered, this Spanish language population is large enough to support WPLO. However,

²¹Comments, MM Docket 99-25, filed by John King on April 5, 1999 at 2, 3 emphasis in the original.

²²Comments, MM Docket 99-25, filed by Frank R. Hanel, Jr. on April 5, 1999 at 1.

if an LPFM station were to begin broadcasting in Spanish to one of the pockets of concentrated Spanish speaking population in the Atlanta area, such a station could siphon off enough of WPLO's audience and revenue base, to force it out of business as a Spanish language station."²³

Although the Commission cites the increased consolidation of ownership within the broadcast industry as one of the driving factors behind the initiation of this NPRM, Congress determined that lifting the cap on national radio station ownership and relaxing rules on local station ownership was in the public interest.²⁴ Increased group ownership, while providing economies of scale and monetary savings, has not altered the fundamentally local nature of radio broadcasting and the addition of numerous new stations will cause even greater consolidation than exists today.

2. Low power stations will not provide the public with the strong signal and quality programming which currently characterize the FM band.

Low power FM stations, operated by inexperienced broadcasters with inferior equipment, will not be able to provide the public with the quality programming and strong signals on which it has come to rely. The limited range of low power stations, coupled with interference in the FM band and less powerful transmitters, will prevent a low power radio station from duplicating the strong, far-reaching signal of a full power FM station. By definition the low powers will have a substantially smaller coverage area, ranging from eight miles for LP 1000, to one or two miles for microradio. This will virtually preclude reception of a quality low power signal while driving in an automobile, except when traveling within a limited area. The public has come to expect

²³Comments, MM Docket No. 99-25, filed by Teresa Prieto on April 1, 1999 at 2.

²⁴See Pub. L. No. 104-104, 110 Stat. 56, § 202, 110 Stat. 110-111 (1996).

that FM radio stations will be accessible, without static or interruption, for a reasonable distance -- something low power cannot deliver.

Similarly, low power stations will be unable to offer the quality programming that full power FM stations currently provide to the public. Inexperienced broadcasters, operating with a limited budget, will not achieve the level of programming that the public expects on the airwaves. The public does not expect, or deserve, unprofessional announcers, profane or obscene language, or dead air. A low power radio service simply will not maintain the high quality entertainment, information, and local news which characterizes the FM band. As one broadcaster points out in his comments:

- “Low power Broadcasters won’t have the money to provide service to the public. In North Dakota during the floods of the Red River, the tornadoes of Texas or Tennessee or the hurricanes of the Coasts -- it’s Radio that has saved lives with warnings and provided the information after the storm for homes and families to rebuild. Low power stations will not have the expertise to maintain the operating parameters of the transmitters nor the sufficient advertising base to maintain the equipment resulting in degradation of the spectrum.”²⁵

In addition, if the signal quality of FM stations degrades to the point where listeners cannot rely on reception for any period of time, a likely alternative will be satellite Digital Audio Radio Service (“DARS”). The provision of a digital radio signal via satellite will provide an attractive alternative to listeners when faced with frustrating interference in the FM band. DARS has the potential to offer a digital signal nationwide, with a hundred channels of programming to choose from. The congestion in the FM band will coincide with the rise of DARS, and thus encourage many listeners to abandon FM radio for DARS. The programming available via

²⁵Comments, MM Docket 99-25, filed by John A. Goeman (KJAM) received March 18, 1999 at 1-2.

DARS will necessarily be on a national and not local level; therefore, if the public turns to DARS as an alternative, the all-important element of localism in radio broadcasting will be defeated. At a time when the viability of terrestrial radio broadcasting is already questionable in the face of advancing technology and a changing consumer base, the addition of low power will not reinvigorate the FM service, but rather condemn it to the realm of amateur radio.

D. The Commission Does Not Have Adequate Resources to Support the Creation of Low Power FM.

The fact that the Commission is contemplating the creation of a low power radio service demonstrates that the agency has its priorities dangerously out of order. The creation of a new FM service will entail a tremendous amount of work, both at the inception of the service and thereafter for the indefinite future. This costly increase in the Commission's workload contradicts any attempt to maintain or reduce the size of the FCC. The Commission currently lacks the ability to handle the influx of applications and regulatory problems that will necessarily follow the initiation of a new service.

1. Low power will create a tremendous burden on the Commission.

The Commission has acknowledged that it "expect[s] to receive a great number of applications, should the new services be authorized."²⁶ By its estimation at least 13,000 people visited the FCC's website seeking information on low power radio stations in the twelve months prior to the release of the NPRM.²⁷ If this number is representative of the potential number of applicants for the proposed new service, the application process alone will bring the Commission

²⁶NPRM at ¶ 91.

²⁷NPRM at ¶ 11.

to a grinding halt, irrespective of the future regulatory and enforcement burdens the service will put on the agency. Depending on the various interference standards the Commission could adopt, the number of new low power FM stations created by this rule making could be as high as 2,000, *not* including microradio stations.²⁸ If the Commission decides to add smaller microradio stations, the total number of new authorizations could reach several thousand. This staggering number of new stations would completely overwhelm the Commission's current licensing process. The resulting burden on the Commission's resources would prove detrimental to the efficient administration of existing broadcast licenses, and thus detrimental to the public as a whole.

While the NPRM suggests that an interactive computer program could be created to allow applicants to apply for new stations electronically via the Commission's website, thereby reducing the burden on the Commission, the fact of the matter is that such a process is untested and currently nonexistent.²⁹ Indeed, as the NPRM acknowledges, "[w]ithout electronic filing, the Commission lacks the resources to promptly accomplish the necessary data entry for hundreds or thousands of LPFM (and, possibly, microradio) applications."³⁰ The Commission's answer to the daunting avalanche of applications is a pipe dream about a computer system that *could* handle all of the filings if such a thing were ever created.

²⁸NPRM at Appendix D.

²⁹"We may be able to develop a system whereby the application could first be analyzed against existing facilities and, perhaps, even against previously filed applications. Such a system could then promptly inform the filer whether the requested frequency is available and if the application is acceptable for filing based on current data." NPRM at ¶ 95. (emphasis added.)

³⁰NPRM at ¶ 94.

Regardless of whether a computer program actually is developed to handle the initial application process, in order to authorize, regulate, and enforce the new service, the Commission will have to deal with a plethora of additional issues which require time, resources, and money. For example, the Commission will need to verify that engineering and equipment used by low power broadcasters complies with technical requirements in order to prevent interference to existing full power FM stations. Similarly, it is proposed that certification of the transmitters used by all LPFM stations be required in order to ensure compliance with out-of-channel emission requirements.³¹ In addition, the Commission proposes to employ the same character qualification standards and alien ownership rules currently applicable to full power licensees. The NPRM also proposes to treat low power radio stations like full power stations for the purposes of environmental rules, requiring at least a cursory review of the RF radiation at each proposed construction site. Furthermore, for those applications which are mutually exclusive, either an auction or a lottery will likely have to be held in order to select one licensee from a pool of qualified applicants.

Arguably, an auction is required by statute in order to resolve problems of mutual exclusivity that might arise in a new low power service. Section 309(j) of the Communications Act of 1934, as amended, directs that in cases where there are “mutually exclusive applications for any initial license or construction permit, then... the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding.”³² Therefore, the

³¹NPRM at ¶ 51.

³²47 U.S.C. § 309(j).

Commission will need to implement auction procedures to comply with the statutory requirements. However, an auction is a complex and expensive proposition for a potential broadcaster. While the Commission seeks to attract community groups, non-profit corporations, and minorities to low power broadcasting, the necessity for an auction will serve as a tremendous deterrent to small broadcasters. The complexity and high cost of a broadcast auction will deter participation by the very people the Commission is trying to engage.

The issues illustrated above arise only in the initial licensing process; once the station licenses are actually awarded, the Commission will face an additional onslaught of filings requiring constant attention. Facility modifications, requests for Special Temporary Authority, changes in ownership, regulatory fees, etc., the needs attendant to a new broadcast service are endless. Similarly, the broadcast rules regarding political advertisements, obscene and indecent programming, lottery advertising, operating hours, Emergency Alert System (EAS), etc., will have to be established and enforced for low power. The authorization of a new broadcast service will place numerous, on-going demands on Commission resources, the vast majority of which cannot be alleviated by an as-yet-undeveloped computer system.

2. The Commission's precedent in Docket 80-90 demonstrates that it will be unable to handle the regulatory burden of authorizing hundreds of new stations.

The closest, and most recent, parallel to the proposed creation of a new low power FM service comes from the Commission's attempt to implement an expansion of radio stations by allocating 689 new FM channels in Docket 80-90. Even though the number of stations involved in the Docket 80-90 proceeding was far less than the number proposed for LPFM, the Commission was overwhelmed by the deluge of applications. Within the first three years of

Docket 80-90, the Commission experienced a 54% increase in the average number of applications filed with the Commission. Even with the advent of "hard look" processing, the agency quickly developed a backlog of nearly 2,500 applications.³³ The Commission's inability to handle the crush of applications in the 80-90 proceeding does not bode well for the attempt to create an entirely new low power FM service with many times the number of stations involved in Docket 80-90.

Although proponents may contend that the regulatory demands of a low power service will be less severe than the full power stations involved in Docket 80-90, the NPRM indicates that the Commission envisions applying many of the full power regulations to low power FM. But even if full Part 73 regulations are only applied to LP 1000 stations, the Commission still lacks the ability to authorize and regulate the several hundred LP 1000 stations this proceeding would create. Similarly, with the potential of nearly 1,400 LP 100 stations, and many times that number of microradio stations, the burden will be substantial even if full licensing requirements are not applied to the smaller stations. The addition of these low power stations will overwhelm and hinder the Commission as surely as the addition of 689 FM stations did in the Docket 80-90 proceeding.

3. Low power radio will lead to the "CB-ization" of the FM band.

The Citizens' Band radio service (CB) forms yet another important parallel to the proposed low power FM radio service. Initially, users within the CB service were individually

³³See Amendment of Part 73 of the Commission's Rules to Modify Processing Procedure for Commercial FM Broadcast Applications, 6 FCC Rcd 7265 (1991) at ¶ 9.

licensed by the Commission and spectrum management was accomplished by operating rules.³⁴ By 1984, however, the licensing requirements had been suspended and the band was opened to all users meeting a few minimal standards.³⁵ Although the Commission claimed at the time that it was not abandoning the CB service, the citizens' band was plagued by various problems, ranging from interference, to profane and indecent language, to a lack of accountability for violations of Commission rules. Overrun by problems and facing a Congress that could not justify spending even \$361,000 to regulate the service,³⁶ the Citizens' Band quickly faded into a second-class service. By creating a low power FM service, the Commission threatens to invite the same types of problems into radio broadcasting.

The introduction of thousands of novice broadcasters with lower quality equipment will transform the FM band from an established professional service admirably serving the public interest, into an amateur's experiment lacking accountability. The Commission's proposal threatens to reduce the FM band to a second-tier service characterized by interference, lesser quality programming, and unlicensed pirates. Currently, FM broadcasters invest large amounts of money in equipment, engineering, and programming in order to provide the public with reliable information, local news, and high-quality entertainment. Eventually, the public's

³⁴Amendment of Parts 1 and 95 of the Commission's Rules to Eliminate Individual Station Licenses in the Radio Control (R/C) Radio Service and the Citizens Band (CB) Radio Service, 53 RR 2d 1479, ¶5-6 (1983).

³⁵Id. at ¶ 15.

³⁶Id. at ¶ 25-30.

perception of the FM band will change drastically, until the service is regarded as another citizens' band, filled with a cacophony of amateur voices providing little service to the public.

4. LPTV exemplifies the risk involved in creating a "low power" service.

The Commission's experience with low power television ("LPTV") provides an important example of the danger of creating a "low power" service. Once LPTV was created, the quest for parity with full power stations began. Regardless of the intention at the inception of the service, once LPFM is established, the new broadcasters will seek permanency and greater power until low power FM is firmly ensconced as a primary service, with all of the benefits afforded full power stations. Indeed, legislation is currently pending in the House of Representatives to make low power TV stations' licenses permanent.³⁷ The addition of a large number of low power radio stations will potentially become problematic for the Commission as the new broadcasters begin to clamor for more authority and recognition. Presently, it is not the Commission's intention to establish two thousand new full power radio stations; however, LPTV demonstrates that once the service is commissioned the goals and demands of the new broadcasters will shift dramatically.

E. A Public Interest Showing Has Not Been Made Justifying the Need for Low Power FM.

The Commission has been entrusted with the important role of regulating the broadcast spectrum.³⁸ In protecting and allocating this resource, the Commission must utilize the spectrum

³⁷"Low-power TV fights for licenses," Broadcasting & Cable, April 19, 1999, p.19.

³⁸"It quickly became apparent that broadcast frequencies constituted a scarce resource whose use could be regulated and rationalized only by the Government. . . . Consequently the Federal Radio Commission was established to allocate frequencies among competing applicants

as efficiently as possible. To that end, the Commission has not satisfactorily determined that it is in the public interest to create a new FM service, especially in light of the potential interference to existing broadcasters, the pending transition to digital radio, and the negative impact the deluge of applications will have on the Commission. No adequate showing has been made to justify the creation of this new service which threatens to radically change the radio industry and stall the Commission amidst regulatory and enforcement problems. In the past, the Commission has determined that permitting many low power transmitters is a less efficient way to allocate the broadcast spectrum than permitting fewer transmitters broadcasting at a higher power.³⁹ It has also found that full power radio stations are better able to serve the public interest.⁴⁰

Broadcasters continue to meet the needs of their communities in an admirable fashion, through both broadcast and nonbroadcast efforts. Radio broadcasting is inherently a local service, providing local programming such as weather, news, sports, traffic, schedules of community events, severe weather warnings, and school closing information. While proponents of this rule making herald the need for greater community broadcasting, there has been no demonstration of a failure by existing broadcasters to provide local programming responsive to their communities. In addition to programming, broadcasters are involved with their

in a manner responsive to the public convenience, interest, or necessity.” Red Lion Broadcasting v. FCC, 395 U.S. 367 (1969) (internal quotation and citation omitted).

³⁹See Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations, 69 F.C.C.2d 240 (1978).

⁴⁰See, Stephen Paul Dunifer, 11 FCC Rcd 718, 724 (1995).

communities in nonbroadcast efforts, such as fundraising and working with community organizations. The commitment by broadcasters to public service was recently quantified as \$6.85 billion in a single year.⁴¹ Such commitment is long standing and enduring, despite the competitive challenges radio broadcasters have faced.

Beyond the traditional public service role that FM radio stations play, the FM band contains additional services which serve diverse segments of the populace. For example, the National Association of Radio Reading Services (NARSS) has submitted comments in this rule making highlighting the existence of sub-carrier reading services.

- “There are well over a hundred fifty reading services for the blind and visually impaired in the United States. Most are using subcarriers of FM stations. These subcarriers will be negatively impacted should such a plan as the LPFM go through. These stations are already serving a minority group. They serve the community where they exist by helping people who cannot read due to disabling conditions access vital information. ...If the commission allows LPFMs to begin operation on adjacent channels to the NARRS member service, major interference will occur and hundreds of listeners to that service will lose the ability to use the sub-carrier receivers loaned to them for free by the radio reading service.”⁴²

1. By issuing a low power NPRM, the Commission seems to reward the unlawful activity of pirate radios.

The Commission’s initiation of this rule making seems to legitimize the illegal actions of pirate radio operators. Although the Commission, in conjunction with other government agencies, continues to pursue and terminate illegal radio operations, merely the issuance of an NPRM on this topic lends credibility to the activity of pirate radios. By pursuing LPFM, rather

⁴¹Broadcasters: Bringing Community Service Home: A National Report on the Broadcast Industry’s Community Service, at 2 (1998).

⁴²Comments, MM Docket 99-25, filed by The National Association of Radio Reading Services on May 3, 1999 at 1.

than enhancing opportunities for minorities, community based broadcasters, and smaller owners within the existing commercial and non-commercial FM band, the Commission seems to accept the pirate operators' message that there is no room for diversity within the existing legitimate broadcast industry. The Commission's actions imply that full power stations should be left to larger, group owners and that smaller voices should pursue the alternative of a low power station. The Commission reinforces the perception that pirate broadcasters have the right idea to abandon legitimate full power stations and simply throw up a transmitter to reach their audience. By entertaining the creation of low power, the implication is that existing full power broadcasters are somehow deficient in their service to the public, a notion for which there is no support.

2. Better means exist for involving amateur broadcasters, short of creating a low power service.

Although the notion of low power FM conjures up appealing images of populist broadcasting, *it is not clear* that the addition of numerous radio stations to the airwaves is in the public interest. As the Internet continues to evolve and expand, the concept of an ordinary person disseminating information and ideas to the world virtually cost free is a popular one. The radio spectrum, however, cannot accommodate every voice in the United States that wishes to broadcast its message. Indeed, the Commission and the Supreme Court have consistently held that with regard to the airwaves the public is afforded only the right to information and not the right to broadcast.⁴³ Spectrum is allocated in the amateur radio services and the Citizens Band for hobbyists and others to use to have their voices heard and to learn about the mechanics of

⁴³See National Broadcasting Co. v. United States, 319 U.S. 190 (1943); see also, Red Lion Broadcasting Co., Inc. v. United States, 395 U.S. 367 (1969).

radio broadcasting. Allowing amateur broadcasters to use the FM band would come at the expense of the Commission, the broadcast industry, and ultimately, the public whom the broadcasters serve.

Numerous alternative mechanisms currently exist that would fill the needs that the Commission seeks to address. Time brokerage arrangements allow access to the airwaves so that people can broadcast information, news, and ideas to the public. If there was truly a demand for popular broadcasting there would be a greater market for time brokering agreements as people sought out air time to voice their views. Similarly, web sites, fax machines, and community newsletters, all form complementary alternatives to spread information and ideas throughout a discrete community or group of people. Granted none of these options carries quite the same romantic appeal as starting one's own radio station, but the Commission exists to protect the airwaves and provide the public with broad access to information, not access to the airwaves by all comers.

Additionally, commenters have articulated the availability of AM stations to fill the "void" that the Commission seems to have identified in this proceeding.

- "Hundreds of ailing AM stations can be purchased for less than the cost associated with putting a new LPFM station on the air. If the FCC wants to increase the number and diversity of voices on the air, then why not use abandoned AM frequencies and allocate this spectrum instead of creating LPFM? Existing transmission and studio facilities exist for many of these frequencies and getting them back on-air would certainly be less expensive and quicker than building a new LPFM station from the ground up."⁴⁴

⁴⁴Comments, MM Docket 99-25, filed by Our Three Sons Broadcasting, LLP on July 19, 1999 at 1.

Thus, other means currently exist for achieving the dissemination of news and entertainment at the community level and the Commission has not sufficiently supported the need for the creation of an entirely new radio service within the FM band.

F. If the Commission Creates a Low Power Service it Should Be Entirely Noncommercial, Open to Existing Broadcasters, and Comply with the Same Regulations Applicable to Full Power Stations.

In the alternative, if the Commission decides to pursue the creation of a low power FM service it should allow existing broadcasters to apply for stations, the service should be completely noncommercial, and the same regulations should apply to low power as exist for full power stations. These measures will help to ensure that low power operates in the public interest, while at the same time achieving the Commission's stated goals.

1. Low Power should be completely noncommercial.

If the Commission's focus in this proceeding is truly to "address unmet needs for community-oriented radio broadcasting"⁴⁵ then there is no need for the new stations to be commercial. In light of the minimal cost anticipated for low power stations, churches, community groups, and colleges will be able to maintain a station without selling advertising. By requiring low power stations to operate noncommercially, the Commission will also encourage broadcasters to utilize the stations for community programming. Additionally, designating the stations as noncommercial will help prevent the further consolidation of ownership within the broadcasting industry. As discussed above, if the radio market is flooded with additional stations competing for the same local advertising dollars, the end result will be

⁴⁵NPRM ¶ 1.

greater economic pressure and increased group ownership. By designating low power stations as exclusively noncommercial the Commission will uphold its goal of supporting community-oriented broadcasting while combating ownership consolidation.

2. Low Power should comply with the same regulations currently applicable to full power.

The Commission must apply consistent standards throughout the FM service, regardless of the type of station, to safeguard the integrity of the FM band. In order to protect existing FM stations and aviation equipment from interference, all low power radio stations, from LP 1000 to microradio, should be subject to the same regulations currently applicable to full power stations. Although the broadcast contours of low power will be significantly smaller than full power, the mantle of broadcasting in the public interest will apply undiminished. Therefore, in order to ensure that the stations serve the public, the full gamut of Commission rules, from political rules to EAS requirements, should apply to the new service. By consistently applying regulations throughout the radio service, the Commission will protect the public and the broadcast spectrum.

3. Current noncommercial educational FM licensees and permittees should be allowed to own low power stations.

Should the Commission decide to establish a low power service, existing broadcasters should be allowed to apply for licenses. The NPRM proposes that a person or entity with an attributable interest in a full power broadcast station would not be permitted to own an interest in “any LPFM (or microradio) station in any market.”⁴⁶ The Commission cites little support for its terse decision that existing broadcasters should not be allowed to hold LPFM licenses, stating

⁴⁶NPRM at ¶ 57.

that the “goals of increased opportunity for entry, enhanced diversity and new program services” would be hard, if not impossible, to achieve if current licensees are eligible for the new service. A licensee who has successfully operated an AM or FM station, however, would be an ideal candidate for a low power station. The fact that a licensee was previously approved by the Commission and complied with the FCC regulations indicates that the applicant is qualified to hold a low power license. Current licensees and permittees have the broadcasting experience necessary to make the new low power service a success. By drawing on their engineering, programming, and financial experience, existing broadcasters would help low power stations achieve the high level of signal quality and programming of full power FM stations.

4. The Commission’s conclusion that AM stations not be allowed to use FM translators and that experienced broadcasters be barred from owning low power stations violates the requirements of the APA.

The Commission’s decision to pursue low power without considering the value of allowing existing AM stations to utilize FM translators to fill-in their signals violates the Administrative Procedure Act (“APA.”)⁴⁷ Similarly, the Commission’s decision to preclude broadcasters with an attributable interest in a full power station from owning a low power station fails to meet the demands of the APA. The APA requires that agencies engaging in a rule making must give appropriate notice and allow “interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.”⁴⁸ When giving

⁴⁷Administrative Procedure Act, 5 U.S.C. § 500, *et seq.* (1998).

⁴⁸Administrative Procedure Act, 5 U.S.C. § 553(c) (1998).

notice in a rule making proceeding, the agency “must provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully.”⁴⁹

In this case, however, rather than soliciting comments on the best manner in which to serve the public and the most efficient use of spectrum, the Commission simply dismisses the possibility that AM stations might utilize FM translators to fill-in their signals. The Commission has essentially made its decision that a new low power service is more effective and efficient than the use of translators by AM stations, without any input from interested parties. In the same fashion, the Commission has concluded that existing broadcasters should be barred from owning low power stations. The Commission has all but decided these issues without providing factual details supporting its proposals; thus, the Commission has precluded any meaningful comment on the subject. By failing to consider relevant factors in the proposed action, the Commission has essentially bypassed the notice and comment requirements of the APA.⁵⁰

⁴⁹Florida Power & Light Co. v. United States, 846 F.2d 765, 771 (D.C. Cir. 1988), cert. denied, 490 U.S. 1045 (1989).

⁵⁰“To suppress meaningful comment by failure to disclose the basic data relied upon is akin to rejecting comment altogether. For unless there is common ground, the comments are unlikely to be of a quality that might impress a careful agency. The inadequacy of comment in turn leads in the direction of arbitrary decision-making.” United States v. Nova Scotia Food Products Corp., 568 F.2d 240 (2d Cir. 1977).

III. CONCLUSION

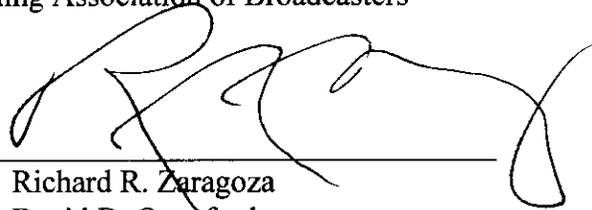
The authorization of a low power service within the existing FM band will overwhelm the Commission's resources, create harmful interference in the FM band, and hinder the transition to terrestrial digital radio. Accordingly, the Associations request that the Commission NOT create a low power FM service.

Respectfully submitted,

Alabama Broadcasters Association
Alaska Broadcasters Association
Arizona Broadcasters Association
California Broadcasters Association
Colorado Broadcasters Association
Connecticut Broadcasters Association
Florida Association of Broadcasters
Georgia Association of Broadcasters
Hawaii Association of Broadcasters
Idaho State Broadcasters Association
Illinois Broadcasters Association
Indiana Broadcasters Association
Iowa Broadcasters Association
Kansas Association of Broadcasters
Kentucky Broadcasters Association
Louisiana Broadcasters Association
Maine Association of Broadcasters
Maryland/DC/Delaware Broadcasters Association
Massachusetts Broadcasters Association
Michigan Association of Broadcasters
Minnesota Broadcasters Association
Mississippi Association of Broadcasters
Missouri Broadcasters Association
Montana Broadcasters Association
Nebraska Broadcasters Association
Nevada Broadcasters Association
New Hampshire Association of Broadcasters
New York State Broadcasters Association
North Dakota Broadcasters Association
Ohio Association of Broadcasters

Oklahoma Association of Broadcasters
Oregon Association of Broadcasters
Pennsylvania Association of Broadcasters
Radio Broadcasters Association of Puerto Rico
Rhode Island Broadcasters Association
South Carolina Broadcasters Association
South Dakota Broadcasters Association
Tennessee Association of Broadcasters
Texas Association of Broadcasters
Utah Broadcasters Association
Vermont Association of Broadcasters
Washington State Association of Broadcasters
West Virginia Broadcasters Association
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