Accordingly, the Commission revised its auction rules so that attributable interests in existing LPTV and television and FM translator stations will not be counted among an applicant's other mass media interests in determining its eligibility for a new entrant bidding credit in any broadcast or secondary broadcast auction. *Id.* at ¶75.

The FCC's ownership rules governing existing secondary broadcast services also make clear that the ownership restrictions for the proposed LPFM service must be no more restrictive than those in the 1996 Act. With respect to LP100 and microradio stations, they too -- like LPTV stations and other existing secondary broadcast services -- will operate with restricted power, have limited coverage areas, and will operate on a secondary basis. Even assuming, *arguendo*, the FCC elects to treat LP1000 stations as a primary service, the Commission has proposed to authorize LP1000 stations to operate with up to 1000 watts, which greatly exceeds the minimum ERP for Class A FM stations. Thus, LP1000 stations potentially may have larger coverage areas than certain under-powered Class A FM stations. In light of the substantial similarities between (i) LP100/microradio stations, and existing LPTV stations and other secondary broadcast services (all of which are not subject to the Commission's multiple ownership rules), and (ii) LP1000 stations and certain Class A FM stations, there is no rational basis for applying strict ownership restrictions to the proposed LPFM service. The Commission simply cannot, consistent with the 1996 Act, apply tighter ownership restrictions to LPFM stations than those that apply to full-power radio stations. As demonstrated above, because the proposed LPFM stations must be made available to existing broadcasters, who are likely to be in a more advantageous position to acquire them than parties who

---

[29](...continued)
Order in MM Docket No. 97-234, 13 FCC Rcd 15920 (1988), ("*Auction Order*"), *recon. granted in part,* FCC 99-74, ¶64 (released April 20, 1999) ("*Auction MO&O*").

do not operate existing full-power stations, the proposed LPFM service would not provide a means of increasing ownership diversity or promoting new entry into broadcasting.

B. The FCC's Proposal to Treat LP1000 Stations as a Primary Service is Inconsistent With Section 307(b) of the Act and the FM Allotment Priorities.

The FCC's proposal to treat LP1000 stations as a primary service has the potential to preclude FM allotments in a manner which is inconsistent with Section 307(b) of the Communications Act and the FM allotment priorities.[30] For example, if a party files a rulemaking petition seeking to bring a first local service to a specific community, and that proposal conflicts with a previously filed LP1000 application (or existing LP1000 station), the petitioner's proposal would be precluded by the LP1000 application regardless of whether the proposed full-power FM station would serve a substantially greater area and population, including white or gray areas. Therefore, the Commission's proposal to treat LP1000 stations as a primary service should not be adopted because it would preclude certain FM allotments in a manner that would be inconsistent with Section 307(b) of the Act and the FM allotment priorities.

[30] *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The criteria for determining the comparative preferability of a proposed FM allotment are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. *Id.* at 91.

V. Technical Matters.

A. The FCC's Proposal to Establish an LPFM Service is Inconsistent With Commission Proposals in Its *Technical Streamlining* Rulemaking Proceeding.

In its *Technical Streamlining* rulemaking proceeding,[31] the FCC recognized that the FM band is extremely congested. The Commission's proposals in this proceeding are inconsistent with the efforts the FCC has taken in its *Technical Streamlining* proceeding to help alleviate that congestion and provide full-power FM stations with greater flexibility in locating their transmitter sites in an effort to enhance their existing service. For example, in its *Technical Streamlining NPRM*, the Commission stated that increasing congestion in both the reserved and non-reserved portions of the FM band significantly restrict operating stations from relocating their transmitters to better transmitter sites. *Technical Streamlining NPRM* at ¶3. The Commission also stated that "[c]ongestion in the reserved band has increased during the past twenty years, and demand for NCE FM licenses remains high." *Id.* at ¶60. The Commission's proposal to establish a new LPFM service is inconsistent with the above statements in the *Technical Streamlining NPRM* in which the FCC expressly acknowledged the congested nature of the FM band.

Moreover, certain proposals in the *Technical Streamlining NPRM* are designed to help FM stations enhance their existing service despite the congestion. As one example, the FCC has proposed to allow negotiated interference agreements between stations. The Commission believes that the FM band is so congested that certain service improvements could not be implemented

---

[31] *1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Notice of Proposed Rule Making* in MM Docket No. 98-93, 13 FCC Rcd 14849 (1998) ("*Technical Streamlining NPRM*"), *First Report and Order*, FCC 99-55 (released March 30, 1999) ("*Technical Streamlining First R&O*").

without the proposed new rule.[32] *Technical Streamlining NPRM* at ¶20. In addition, the FCC proposed the use of a point-to-point ("PTP") prediction model for the purpose of providing a more accurate prediction of interfering contours. *Id.* at ¶31. The Commission proposed the use of the PTP prediction model because of the congested nature of the existing FM service. This proposal reflects the Commission's desire to provide FM stations with additional flexibility in locating their transmitter sites, and, thus, a greater opportunity to enhance their existing service.

A further example of the Commission's recognition of the congested nature of the FM band is reflected in its proposal to create an additional intermediate class of station -- Class C0. The proposed Class C0 stations would have maximum and minimum antenna heights of 450 meters and 300 meters above average terrain, respectively. *Id.* at ¶43. The Commission proposed this new intermediate class of FM station because approximately 60% of Class C stations are not operating with maximum facilities. The Commission believes that its current allotment scheme overprotects these facilities, and thereby effectively precludes proposals to introduce new services and/or expand existing services. *See Id.* at ¶¶42-44. The Commission's proposal to create a new intermediate Class C0 station is a further illustration of its effort to reduce overcrowding in the FM band.

---

[32] In proposing to permit negotiated interference agreements, the Commission stated as follows:

> Virtually all major and mid-sized markets, where we anticipate the greatest level of interest in negotiated interference agreements, receive service from five or more radio stations, our traditional measure of a well-served area. [footnote omitted] Opportunities for new full service or substantial facility improvements in these markets are extremely limited. *Congestion in the FM band* provides a major technical impediment to the further "urban clustering" of stations.

Technical Streamlining NPRM at ¶18 (emphasis added).

The Commission also recognized in its *Technical Streamlining* proceeding that there are stations which have been reluctant to pursue coordinated facility changes because of the possibility that competing, mutually-exclusive applications may be filed which would conflict with their joint proposals. *Id.* at ¶13. The FCC concluded that precluding the filing of competing allotment and minor change proposals in this limited context would serve the public interest because the coordinated facility changes would result in enhanced service to the public. *Id.* at ¶13. Accordingly, in its *First Report and Order* in the *Technical Streamlining* proceeding, the Commission adopted a new rule to permit the filing of up to four related, simultaneously-filed minor change applications. *Technical Streamlining First R&O* at ¶14.

As demonstrated above, the FCC's proposal to adopt a new LPFM service is inconsistent with the Commission's proposals in its *Technical Streamlining* proceeding which are designed to relieve the existing congestion in the FM band and permit full-power stations to expand or enhance their existing service despite that congestion. There can be no dispute that the proposed LPFM service would significantly impair the ability of full-power stations to take advantage of the new rules that may be adopted in the *Technical Streamlining* proceeding. Before authorizing a new LPFM service, the Commission should first determine the impact that the new rules adopted in the *Technical Streamlining* proceeding will have upon the existing congestion in the FM band. Therefore, among its other deficiencies, the FCC's proposal to adopt a new LPFM service is premature.

B. The Proposed LPFM Service Would Cause Substantial Interference to Existing Full-Power FM Stations.

As a result of the minimum distance separation requirements contained in Section 73.207 of the Commission's rules,[33] there are many instances, particularly in relatively rural areas, where there is an open area between the protected service contours of full-power FM stations. These open areas often are not large enough to permit the allotment of an additional full-power FM station. However, many of these gaps are sufficiently large enough to permit the authorization of an LPFM station. The Commission apparently believes that the authorization of an LPFM station in such an open area would not cause interference to nearby full-power FM stations, so long as the LPFM station's predicted interfering contour does not extend into the protected service areas of the full-power stations.

The Commission's proposal to establish an LPFM service fails to recognize that the vast majority of full-power FM stations enjoy good reception well beyond their predicted service contours. Indeed, there are many existing full-power FM stations that have a substantial number of regular listeners who are located outside the station's predicted service contour. If the Commission were to authorize LPFM stations in the open areas between the predicted service contours of full-power stations, many of the existing listeners in those areas no longer would be able to receive the signal of their favorite full-power station because of the interference caused by LPFM stations.

Moreover, if the FCC were to take the position that an LPFM station would not cause interference to full-power FM stations because any "interference" would occur outside the full-power stations' predicted service contours, this would constitute a grave injustice to the listening public.

---

[33] *See* 47 CFR §73.207.

Indeed, the Commission's position would completely ignore the perspective of those listeners who reside outside the predicted service contour of full-power FM stations. The average radio listener is not concerned with predicted service contours or other FCC technical niceties. The listener's only concern is that he or she be able to continue to receive the signal of his/her favorite station. Thus, regardless of whether the interference caused by an LPFM station occurs inside or outside the predicted contour of the listener's full-power station, from the listener's perspective, the interference is the same because it precludes the listener from being able to continue to receive the signal of their favorite station.

The interference caused by LPFM stations authorized outside a full-power station's predicted service contour is significant for at least three reasons. First, the new LPFM service would not constitute a satisfactory replacement for the full-power service which it would destroy. Due to the restricted power and extremely limited coverage areas of LPFM stations, the LPFM service would not cover nearly as large an area or population as the existing full-power service to which it would cause interference. In most instances, the loss of full-power service would be substantially greater than the limited gain in LPFM service. The loss of full-power service would be especially egregious in those instances where the LPFM station's signal (just as a full-power station's signal) extends well beyond its predicted service contour such that it overlaps with a full-power station's protected contour. In this case, the LPFM station also would prevent those listeners who reside within, but near the outer edge of a full-power station's protected contour, from being able to continue to receive the signal of their favorite full-power radio station.

In addition, there would be many instances where listeners located outside the predicted service contour of a full-power station -- who no longer would be able to receive the signal of their

full-power station due to the interference caused by an LPFM station -- also would not be able to receive the signal of the interfering LPFM station. The signals of the two stations would effectively cancel each other out so that listeners in certain areas would be unable to receive an adequate signal from either the full-power or LPFM station.

Furthermore, because the Commission has proposed not to require a minimum operating schedule for LP100 or microradio stations, it is likely that many interfering LPFM stations would operate only a periodic basis or for limited periods of time. As a result, the regular listeners of full-power stations who reside either just within the outer edge, or outside, the predicted service contour of their station would have no way of knowing when they would be able to listen to certain programs on their favorite full-power station.

In all three of the circumstances describe above, the proposed LPFM service would violate one of the Commission's fundamental principles that the listening "public has a legitimate expectation that existing service will continue."[34] In articulating this principle, the Commission has never made any distinction between listeners who reside either inside or outside a station's predicted

---

[34] *See, e.g., Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License,* 5 FCC Rcd 7094, 7097 (1990). In the above proceeding, the Commission stated:

> The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallotting of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, *a reception service*, or both.

Id. at 7097 (emphasis added).

service contour.[35] Although FCC Chairman William Kennard has repeatedly indicated that he does not intend to implement the proposed LPFM service in a manner that would cause interference to existing full-power stations,[36] there can be no dispute that the proposed LPFM service would deprive many listeners of the ability to continue listening to their favorite full-power radio stations.

C. The FCC's Proposal to Eliminate Second and Third-Adjacent Channel Separation Requirements is Inconsistent with the Commission's Longstanding Interference Protection Standards.

In its *Report and Order* in *Grandfathered Short-Spaced FM Stations,*[37] the Commission eliminated the second and third-adjacent channel distance separation requirements for "grandfathered" short-spaced stations (*i.e.*, those stations at locations authorized prior to November 16, 1964, that do not meet the distance separation requirements of subsequently adopted Section 73.207 of the Commission's rules, and have remained continuously short-spaced since that time).[38] However, in the same proceeding, the Commission stated: "We have no intention of relaxing second-adjacent channel and third-adjacent channel spacing requirements as allotment and

---

[35] *See, e.g.*, 47 CFR §74.1203 (an FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to, *inter alia*, the direct reception of the off-the-air signals of any authorized broadcast station).

[36] *See, e.g., News Release*, "*Statement of FCC Chairman William E. Kennard at Roundtable Discussion of Low Power FM*" (May 13, 1999) (stating that the FCC must implement its proposed LPFM service "in a way that protects existing broadcast signals and does not impede the conversion to digital radio").

[37] *See Report and Order* in MM Docket No. 96-120, *Grandfathered Short-Spaced FM Stations*, 12 FCC Rcd 11840 (1997).

[38] *Grandfathered Short-Spaced FM Stations*, 12 FCC Rcd at 11841, n.2.

application criteria."[39] The Commission explained that interference between second and third-adjacent channel stations generally results in interference in the immediate area of the transmitter of the interfering station, and is actually a substitution of service in that area.[40] Therefore, if the Commission were to establish an LPFM service without maintaining the second and third-adjacent channel interference protections, the proposed LPFM service also would cause substantial interference to existing full-power FM stations *within* their protected service contours.

As demonstrated in Appendix D to the *NPRM*, if the second and third-adjacent channel interference protections were eliminated, there would be sufficient spectrum available for a substantial number of LPFM stations to be authorized as a result of this proceeding.[41] In fact, it is likely that several LPFM stations could be authorized within the protected contour of any one full-power FM station. This would result in several pockets of interference to the full-power station around each of the LPFM stations' transmitters. Although the Commission has repeatedly indicated that it does not intend to implement its proposed LPFM service in a manner that would adversely affect existing broadcast stations, the proposal to eliminate the second and third-adjacent channel interference protections would have precisely this effect. Indeed, the elimination of the second and

---

[39] 12 FCC Rcd at 11848, ¶25, citing *Notice of Proposed Rulemaking*, 11 FCC Rcd 7245, ¶25 (1996). The Commission made the same statement in the concluding paragraph of that section of its Report and Order. 12 FCC Rcd at 11849, ¶29.

[40] *Id.* at 11849, ¶27.

[41] If the current interference protection requirements were to be maintained, an analysis by the Commission's staff indicates that no LP1000 or LP100 stations could be authorized in Albuquerque. *NPRM*, Appendix D. However, if the Commission were to eliminate third-adjacent channel protection requirements, three LP1000 stations and six LP100 stations could be authorized in Albuquerque. *Id.* If both second and third-adjacent channel protection requirements were eliminated, 16 LP1000 and 37 LP100 stations could be authorized in Albuquerque. *Id.*

third-adjacent channel interference protections would deprive a substantial number of existing listeners of the ability to continue to receive the signal of many full-power stations, even though the listeners reside well within the protected contours of the full-power stations.

Furthermore, the FCC's proposal to establish an LPFM service without maintaining the second and third-adjacent channel protection requirements is inconsistent with *Grandfathered Short-Spaced FM Stations* and its *Technical Streamlining NPRM.* In its *NPRM* in this proceeding, the Commission noted that it eliminated the third-adjacent channel protection for full-power grandfathered short-spaced stations, including stations which operate with substantially more power than LP1000 stations.[42] The Commission failed to note, however, that in the same proceeding, it refused to eliminate the second and third-adjacent channel separation requirements for all other commercial FM stations. The Commission's reference to its elimination of the second and third-adjacent channel protection standards for grandfathered short-spaced stations -- without stating that it refused to eliminate such requirements for all other commercial FM stations -- is grossly misleading. Indeed, the Commission repeatedly stated in *Grandfathered Short-Spaced FM Stations* that it had "no intention of relaxing second-adjacent channel and third-adjacent channel protection requirements as allotment and application criteria."[43]

Moreover, in its *Technical Streamlining NPRM*, the FCC proposed to revise the Section 73.215(e) spacing table to provide all commercial FM stations with a minimum of six kilometers of

---

[42] *NPRM* at ¶43, citing *Grandfathered Short-Spaced FM Stations*, 12 FCC Rcd at 11847-49.

[43] *Grandfathered Short-Spaced FM Stations*, 12 FCC Rcd at 11848-49, ¶¶25, 29 (citing *Notice of Proposed Rulemaking*, 11 FCC Rcd 7245, ¶25 (1996)).

relief from the Section 73.207(a) spacing requirements.[44] The Commission believes that its proposal would "significantly increase licensees' flexibility to identify sites that provide sufficient spacing to second- and third-adjacent channel stations." *Technical Streamlining NPRM* at ¶37. Nevertheless, consistent with its earlier determination in *Grandfathered Short-Spaced FM Stations*, the Commission maintained the second and third-adjacent channel protection requirements as allotment and application criteria under Section 73.207. Thus, the *Technical Streamlining NPRM* demonstrates that, as recently as June 1998,[45] the Commission intended to maintain the second and third-adjacent channel distance separation requirements for FM stations.

In the same proceeding, the FCC also proposed to eliminate the inconsistency between commercial and noncommercial station interference protection standards, which further demonstrates its concern regarding second and third-adjacent channel interference. Specifically, the Commission proposed to modify Sections 73.509 and 74.1204(a) of its rules to specify a 100 dBu interfering contour for second-adjacent channel NCE and FM translator stations. The Commission stated that the 100 dBu contour "better identifies *areas of potentially degraded or lost service within a station's protected service area caused by another station operating on a second adjacent channel.*"[46] The

---

[44] In proposing to revise Section 73.215(e) of its rules, the Commission noted that for second and third-adjacent channel stations, the contour protection rule generally limits the amount of relief from the Section 73.207 spacing requirements to no more than three kilometers, and in some cases provides no relief at all. As a result, stations with second and third-adjacent channel spacing problems have, in many instances, even less flexibility to relocate their facilities than they had under the former Section 73.207 waiver policies that permitted spacing waivers up to six kilometers. *See Technical Streamlining NPRM* at ¶¶36-37.

[45] The FCC's *Technical Streamlining NPRM* was released on June 15, 1998. *See* 13 FCC Rcd 14849 (1998).

[46] *Technical Streamlining NPRM* at ¶56 (emphasis added).

FCC's effort to eliminate the inconsistency between commercial and noncommercial service with respect to second-adjacent channel interference demonstrates the Commission's recognition that second-adjacent channel interference still exists.

The only explanation the Commission offered in its *NPRM* in this proceeding for the apparent change in its position regarding second and third-adjacent channel interference is contained in the following statement:

> Relaxed interference standards for low power FM stations may be the only way to "find" sufficient spectrum in medium and larger markets to create any new viable service of 100 watts or more.

NPRM at ¶44. Even assuming, *arguendo*, that eliminating second and third-adjacent channel protection requirements may be the only way to "find" sufficient spectrum for LPFM stations in certain markets, this does not constitute a sufficient basis for eliminating these interference protection standards. As demonstrated above, the Commission's proposal to eliminate the second and third-adjacent channel interference protection requirements is blatantly inconsistent with its decision to retain those requirements in two recent rulemaking proceedings. The Commission offered no evidence whatsoever to suggest that the potential for second and third-adjacent channel interference is any less with respect to its proposed LPFM service than it was at the time it adopted *Grandfathered Short-Spaced FM Stations* and its *Technical Streamlining NPRM.* Indeed, rather than present *any* evidence to suggest that its proposed LPFM service would not pose a threat of second and third-adjacent channel interference, the Commission merely requested comment on "the original rationale for 2nd- and 3rd-adjacent channel protection and the extent to which circumstances have changed in such a way to support relaxation of these protections." *NPRM* at ¶46, n.65. The only circumstance that has changed since the issuance of *Grandfathered Short-Spaced FM Stations* and

its *Technical Streamlining NPRM* is that the Commission has not been able to "find" sufficient spectrum for its proposed LPFM service. Therefore, in the event the Commission elects to eliminate the second and third-adjacent channel protection requirements with respect to LPFM stations, the Commission must demonstrate that establishing an LPFM service and eliminating the second and third-adjacent channel protection requirements would not cause interference to full-power FM stations. In light of its recent determinations in *Grandfathered Short-Spaced FM Stations* and its *Technical Streamlining NPRM* to maintain the second and third-adjacent channel interference protection requirements, it is unlikely that the Commission will be able to do so.

The FCC's proposal to eliminate the second and third-adjacent channel interference protection requirements also is inconsistent with its decision to increase the maximum power level of Class A FM stations to 6 kw.[47] In electing not to establish a 6 kw power increase across the board, the Commission specifically acknowledged that a blanket power increase would result in interference to the service of larger class stations. Accordingly, the Commission concluded that the public interest would not be served by imposing "an involuntary coverage reduction on Class B stations." The Commission further stated: "While a selective increase in power is consistent with the public interest, it should not be accomplished at the expense of reducing coverage or interfering with other existing facilities." *Id.* at 6381. As demonstrated above, the proposal to eliminate second and third-adjacent channel interference protection requirements would result in an involuntary coverage reduction on the part of existing full-power stations by causing interference to their existing facilities. The elimination of these separation requirements also would degrade the quality of FM

---

[47] *See Amendment of Part 73 of the Rules to Provide For an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power of Class A FM Stations*, 4 FCC Rcd 6375 (1989) (Second Report and Order).

service and cause many of the same problems that have plagued the AM broadcast service. The FCC should, instead, maintain the second and third-adjacent channel separation requirements and protect the integrity and quality of FM service as a whole.

D. Establishing an LPFM Service Would Significantly Hinder the Development of IBOC Digital Transmission Services.

In its *NPRM*, the Commission acknowledged that its "understanding of future IBOC systems is preliminary," and that it does not have a complete understanding of the negative impact that establishing an LPFM service would have on the transition to digital in-band-on-channel ("IBOC") technology for FM stations. *NPRM* at ¶49. The Commission further stated: "Clearly, we need to better understand the potential impact of second-adjacent channel LPFM protection standards on the successful development of an IBOC system." *Id.* Accordingly, in proposing to permit negotiated interference agreements between FM stations in its *Technical Streamlining NPRM*, the Commission specifically sought comments addressing how its proposal might effect the development and implementation of IBOC digital radio systems. *Technical Streamlining NPRM* at ¶27.

As demonstrated in both the *NPRM* in this proceeding and the *Technical Streamlining NPRM*, before the FCC establishes an LPFM service, the Commission must first gain more knowledge regarding IBOC digital conversion in order to determine the extent to which the proposed new LPFM service is likely to impair the development and implementation of the new digital transmission technology. This is true with respect to all three classes of the proposed LPFM service. Furthermore, due to the FCC's admitted lack of knowledge regarding IBOC systems, the Commission must maintain the second and third-adjacent channel protection requirements in

establishing an LPFM service in order to ensure adequate protection for the future development of IBOC digital conversion.

V. To the Extent the FCC Elects to Adopt an LPFM Service, the Commission Should Implement the Following Measures to Minimize the Harm that the New Service Would Cause to Existing Full-Power Stations.

A. The LPFM Service Should Be Limited to a Noncommercial Operation.

In the event the FCC insists upon establishing an LPFM service, all LPFM stations should be restricted to operating on a noncommercial basis. Restricting the LPFM service in this manner, and eliminating the competitive pressures associated with providing a commercial service, would help ensure that all LPFM stations attempt to fulfill their intended purpose of providing locally-originated, non-entertainment programming designed to serve the needs and interests of their respective local communities. Limiting the LPFM service to a noncommercial operation also would increase the availability of such stations to educational institutions and non-profit entities.[48]

As the Commission noted, most LPFM stations will need to generate at least some form of revenue in order to remain operational. However, the need for station revenues does not dictate that LPFM stations must operate on a commercial basis and attempt to generate funds through the sale of advertising. Due to their restricted power and limited coverage areas, it is highly unlikely that LPFM stations will be able to garner any meaningful revenues through the sale of advertising. Nevertheless, because of their noncommercial operation, LPFM stations may be able to obtain limited funding through underwriting provided by certain local businesses and community

[48] In licensing LPFM stations, the Commission should retain the eligibility requirements contained in Section 73.503 of the Commission's rules. *See* 47 CFR §73.503.

organizations.[49] Moreover, limiting LPFM stations to a noncommercial operation would help promote localism by encouraging LPFM stations to develop specialized programming that may serve the currently unmet needs and interests of a limited audience group. This specialized programming also might enhance an LPFM station's ability to generate underwriting revenues by making the station more attractive to certain local businesses and organizations whose products and activities are directed towards a narrow segment of the local community.

B. The FCC Must Impose a Mandatory Local Program Origination Requirement.

In light of the Commission's stated purposes in proposing to establish an LPFM service and the significant countervailing public interests that weigh heavily against such a service, the Commission cannot afford to give LPFM licensees the same discretion as full-power stations in determining "what mix of local and non-local programming will best serve" their respective community. *See NPRM* at ¶68. In order to ensure that all LPFM stations make every effort to fulfill the FCC's stated objective that they air community-oriented programming that "reflects the needs, interests, circumstances, and perspectives" unique to their community (*id.*), the Commission must impose a minimum local program origination requirement for all LPFM stations (including microradio stations) such that their overall programming must be comprised of no less than 80% local originated programming.

---

[49] Even if the proposed LPFM service were to be limited to a noncommercial operation, the ability of LPFM stations to obtain underwriting funds from local businesses and community organizations still would have an adverse impact upon full-power stations because they both would attempt to garner revenues from the same pool of prospective local advertisers/underwriters. Indeed, in today's broadcast marketplace, there is not a significant distinction between the efforts made by commercial stations to obtain advertising revenues and those by noncommercial stations to obtain funds through underwriting.

C. The FCC Should Impose Maximum Height Restrictions On All LPFM Stations.

The Commission proposed to permit LP1000 stations to operate with up to 1000 watts at an antenna height of 60 meters above average terrain. The Commission proposed to permit antenna heights greater than 60 meters above average terrain, however, so long as the station makes an appropriate downward adjustment in its ERP such that its predicted 1 mV/m signal contour radius does not exceed 14.2 kilometers. *NPRM* at ¶23, note 35. Similar treatment was proposed for LP100 stations. *Id.* at ¶30, note 44.

In the event the FCC elects to establish an LPFM service, the Commission must adopt maximum antenna height restrictions for each class of LPFM station. In the FM service, it is well established that the greater a station's antenna height, the greater distance the station's signal generally will extend because it will be less affected by intervening terrain. Thus, if an LP1000 station were to operate with an antenna height greater than 60 meters above average terrain and an equivalent reduction in operating power (such that its predicted 1 mV/m signal contour would not exceed 14.2 kilometers), the LPFM station likely could extend its actual (rather than predicted) service and interfering contours well beyond what they would be if the station were operating with 1kw at 60 meters HAAT.

As demonstrated above, LPFM stations are likely to cause significant interference to full-power stations operating in the same area. LP1000 stations would cause even more interference to the signals of full-power FM stations if they were to operate with antenna heights significantly higher than 60 meters (or 30 meters for LP100 stations) above average terrain. Therefore, to the extent all three classes of the proposed LPFM stations are established, the Commission should impose

maximum height restrictions of 70 meters HAAT for all LP1000 stations, and 40 meters HAAT for all LP100 and microradio stations.

D. The FCC Should Limit the Amount of Interference that LPFM Stations May Receive and Establish a Minimum Operating Requirement.

In the event the FCC elects to authorize an LPFM service, the Commission should adopt strict guidelines governing the amount of interference that LPFM stations are permitted to receive and establish a minimum operating schedule. As demonstrated above, it is highly unlikely that LPFM stations would be unable to generate sufficient revenues to air local programming that serves the needs and interests of their respective service areas. Moreover, LPFM stations would exacerbate the conditions of an already overly-congested FM band, preclude proposals to introduce new services, and significantly impair the ability of full-power stations to either expand or enhance their existing services. In addition, LPFM stations would cause significant interference to full-power stations both within and outside their protected contour, and would not constitute a satisfactory replacement service for the full-power service which they would destroy. The proposed LPFM service also poses a significant threat to the development and implementation of IBOC digital transmission services. Therefore, in light of the substantial public interest factors which weigh heavily against establishing an LPFM service, the Commission should not authorize any LPFM station if it is predicted to receive more than a *de minimis* amount of interference, *i.e.*, more than 5% of its predicted service area. Furthermore, the Commission should impose a minimum operating schedule to require all LP100 and microradio stations to operate no less than two-thirds of the total hours between 6:00 a.m. and 6:00 p.m., local time, Monday through Saturday.[50]

---

[50] The Commission proposed to require LP1000 stations to maintain the same minimum (continued...)

E. The FCC Should Not Treat LP1000 Stations as a Primary Service, LP100 Stations Should Not Be Given a Priority Over FM Translators and Boosters, and Full-Power AM and FM Stations Should Be Permitted to Use FM Translators and Boosters to Enhance Their Existing Service Without Regard to LPFM Stations.

In its *NPRM*, the FCC proposed to treat LP1000 stations as a primary service. *NPRM* at ¶27. The FCC proposed to treat LP100 stations as a secondary service, but suggested that they should receive priority status over FM translators and boosters. *Id.* at ¶¶30, 33.

Assuming, *arguendo*, that the FCC elects to establish an LPFM service, all LPFM stations should operate on a secondary basis. If LP1000 stations were licensed as a primary service, and/or LP100 stations were given priority over FM translators and boosters, the LPFM stations would preclude full-power FM stations from using translators or boosters to enhance their existing service where the service provided by the LPFM stations and translators/boosters is mutually exclusive. Therefore, the FCC's proposal would significantly impair the ability of full-power FM stations to enhance their existing service.

Before establishing a new LPFM service, the FCC first should make every effort to support existing full-power stations, particularly AM stations. Many AM stations have long suffered from a weak signal and poor reception. The ability to use FM translators to provide fill-in service within their existing contours would provide AM stations with a critical means of enhancing their service. Moreover, if the Commission were to permit daytime-only AM stations to use FM translators at night, this also would help to aid many primary service stations that are in severe financial distress

---

[50](...continued)
hours of operation as are required of the lowest class of full-power stations, *i.e.*, generally two-thirds of their authorized hours between 6:00 a.m. and midnight. *NPRM*, at ¶76. In the event the FCC establishes an LP1000 service, this minimum operating requirement should be adopted.

and might otherwise be forced off the air due to their relatively weak signal and inability to operate at night.[51]

In light of the substantial financial investment and past service to the public provided by AM and full-power FM stations, the licensees of such stations should have the opportunity to utilize FM translators and boosters to enhance their existing service without regard to the proposed LPFM stations. Accordingly, all LPFM stations should operate on a secondary basis and be subject to displacement by full-power FM stations. LPFM stations also should be subject to displacement by FM translators used by any full-power station, including AM stations, to fill in gaps in their existing service areas.

In the event the FCC were to afford LP1000 stations primary status, at the very least, FM translator and booster stations which pre-date the launch of LPFM service should receive grandfathered interference protection from LP1000 stations. Moreover, FM translators and boosters should not be treated on a secondary basis *vis-a-vis* LP100 stations. In the event the Commission elects to treat them in such a manner, all existing translators and boosters should receive grandfathered interference protection from LP100 stations.

F. The FCC Must Resolve All Mutually Exclusive Commercial LPFM Applications Through a Competitive Bidding Process.

In the event the FCC elects to establish a commercial LPFM service, the Commission's proposal to resolve mutually exclusive applications for commercial LPFM stations through a

[51] In the *NPRM*, the FCC refused to consider a pending proposal to permit AM stations to use FM translators to provide fill-in service because, according to the Commission, that proposal is not "sufficiently related" to the goals in this proceeding. *NPRM* at ¶3, n. 3 (citing *Public Notice*, DA 98-2527 (released December 10, 1998). The Commission's refusal to consider the above proposal will have an adverse effect on the ability of AM stations to improve their existing service through the use of FM translators, and should be reconsidered.

competitive bidding process (*see NPRM* at ¶104) must be adopted in order to comply with the Budget Act.

Section 309(j)(1) of the Communications Act of 1934, as amended (the "Act") (as amended by Section 3002(a) of the Budget Act), makes abundantly clear that if mutually exclusive applications are filed for "any initial license or construction permit," "the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding . . . ." 47 U.S.C. §309(j)(1). Moreover, in its *Auction Order* (establishing standards for auctions of broadcast facilities), the Commission stated that, based upon the express language of Section 309(j)(1) of the Act, "auctions are mandatory for *all secondary commercial broadcast services* (*e.g.*, LPTV, FM translator and television translator services)." *Id.* at ¶9 (emphasis added). The Commission also stated that Section 309(j)(1), as amended, no longer restricts the type of spectrum license which may be awarded through the competitive bidding process, or requires an affirmative public interest determination that the use of an auction will serve the statutory objectives. *Id.* The Commission further stated:

> Nothing in the statutory language or in the accompanying legislative history indicates that the requirement to use competitive bidding for "any initial license or construction permit" is limited to full-power radio and analog television stations, or that Congress intended such a limitation. Nor are secondary commercial broadcast service licenses exempted from the auction requirement under Section 309(j)(2), which enumerates the certain types of spectrum licenses that are not subject to competitive bidding. . . . The Conference Report states that "[a]ny mutually exclusive applications for radio or television broadcast licenses received after June 30, 1997, shall be subject to the Commission's rules regarding competitive bidding, including applications for *secondary broadcast services* such as low power television, television translators, and television booster stations. [footnote omitted]. This list of secondary broadcast service licenses is illustrative rather than exhaustive.

13 FCC Rcd at 15924, ¶10 (emphasis in original). Therefore, if the FCC establishes a commercial LPFM service, there is no statutory basis for excluding the proposed LPFM stations from the general auction requirements of Section 309(j)(1) of the Act.

In adopting auction rules for its proposed LPFM service, the Commission should not adopt any alterations or modifications to its auction procedure that will not be applied in the auction process of other broadcast services. The Commission should do no more than provide mutually exclusive applicants for LPFM facilities with a brief period after the filing of their short-form applications in which to attempt to resolve the mutual exclusivity between their respective applications. *See Auction MO&O* at ¶64.

Furthermore, as stated in the *Auction MO&O*, the Budget Act creates a presumption that reserve prices and minimum opening bids are in the public interest. *Auction MO&O* at ¶51. The Commission also stated that, in connection with its previous auction proceedings, the Wireless Telecommunications Bureau has found that the use of reserve prices and minimum opening bids serves the public interest objectives of Section 309(j) of the Act by promoting competition, disseminating licenses among a variety of applicants, promoting efficient spectrum use, and recovering a portion of the value of the spectrum for the public. *Id.* Thus, because the Commission has elected to use reserve prices and minimum bids in the auction of both full-power and secondary broadcast services, including LPTV stations and FM and television translators, these procedures also must be employed in auctions for LPFM facilities.

G. <u>All LP1000 Stations Should Be Authorized Through An Allotment Process</u>.

In the event the Commission elects to adopt a commercial LPFM service, all LP1000 stations should be authorized through an allotment process. As stated above, the Commission has proposed

that LP1000 stations would operate as a primary service, and generally be subject to all of the Part 73 rules applicable to full-power FM stations. *See NPRM* at ¶73. LP1000 stations also would be authorized to operate with substantially more power than the minimum ERP for Class A FM stations, and are likely to cause substantial interference to full-power stations both within and outside their protected contours. Therefore, in order to minimize the amount of interference that will be caused to existing full-power stations, the Commission should adopt an allotment procedure whereby interested parties are required to file a petition for rulemaking seeking the allotment of an LPFM channel to a specific community (or portion thereof) before permitting any application to be filed for that facility. The allotment procedure would permit the Commission to consider all mutually exclusive proposals together (including any counterproposals that may be filed), and allot an LPFM channel to the specified community at a location which would cause the least interference to existing stations and otherwise best serve the public interest.

H. In the Event the FCC Elects to Establish a Commercial LPFM Service, the Commission Should Make LPFM Stations Available to Daytime-Only AM Stations as a Means of Complimenting Their Existing Daytime Service.

Assuming, *arguendo*, the FCC elects to institute a commercial LPFM service, the Commission should permit licensees of daytime-only AM stations to have an opportunity to apply for LPFM stations as a means of complimenting their existing daytime service. The opportunity to do so would promote diversity by enabling many struggling daytime-only AM stations to continue to operate as stand-alone entities by enhancing their ability to compete more effectively in their respective markets. Permitting daytime-only AM stations to apply for LPFM stations also would promote localism by enhancing their ability to provide local news, public affairs, and other non-

entertainment programming that would better serve the needs and interests of their respective service areas.

VI. Conclusion.

As demonstrated herein, the Commission's proposal to establish an LPFM service would not serve the public interest. The proposed LPFM service will not meet any of the Commission's primary objectives of providing an increased opportunity for new entry, enhanced ownership diversity, or an increase in local programming. More importantly, the proposed LPFM service would cause substantial interference to existing full-power FM stations both within and outside their protected service contours. In addition, an LPFM service would significantly hinder the development of IBOC digital transmission services, and would result in a proliferation of unauthorized broadcast operations.

Nevertheless, assuming, *arguendo*, that the Commission elects to institute some form of LPFM service, in order to ensure that LPFM stations at least attempt to fulfill their intended purpose of airing community-oriented programming designed to serve the needs and interests of their respective local communities, LPFM stations should be restricted to operating on a noncommercial basis so that they will not be subject to the competitive pressures associated with providing a commercial service. The Commission also should impose a local program origination requirement on LPFM stations, so that a minimum of 80% of their programming is locally-originated.

Furthermore, the Commission must maintain the existing second and third-adjacent channel protection requirements in order to minimize the interference that will be caused to existing full-power FM stations. The Commission also must impose maximum height restrictions on all LPFM stations, restrict the amount of interference that such stations may receive, and establish a minimum

operating schedule for all LPFM stations. Should the Commission elect to authorize a commercial LPFM service, all mutually exclusive applications for commercial LPFM stations must be resolved through a competitive bidding process. Finally, the Commission cannot impose any ownership restrictions that are more restrictive than those mandated by the 1996 Act.

Respectfully submitted,

NEW MEXICO BROADCASTERS ASSOCIATION

By: _____
Vincent J. Curtis
Frank R. Jazzo
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.
1300 North Seventeenth Street
11th Floor
Arlington, Virginia 22209
(703) 812-0400

August 2, 1999

c:\ask...jazzo\rm\newmex2.com

APPENDIX A

COPIES OF LETTERS FROM INDIVIDUAL MEMBERS OF THE NEW MEXICO BROADCASTERS ASSOCIATION

MILLENNIUM MEDIA, INC.

KKOR FM 94.5 | KTHR FM 103.7 | KXXI FM 93.7 | KYVA AM 1230

March 24 , 1999

The Hon. William Kennard, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C, 20554

Re: FCC Notice Of Proposed Rule Making To
Establish Low Power FM Stations And
A Microradio Service

Dear Chairman Kennard,

I want to express my concern about the FCC's proposal to establish new low power FM stations and a microradio service, and my strong opposition to this Rule Making proceeding.

I would like to review the reasons for my opposition to this proposal, and to give you some facts concerning the operations of my company, Millennium Media, Inc. over the past 22 years in Gallup, New Mexico, that bear on my opposition. We are a small market, locally owned, radio group of three FMs and one AM station.

The Technical Degradation Of Existing FM Service

The FCC's proposal would turn back the clock some 50 years to a time when the Commission did in fact allocate 1000 watt maximum power FM stations, an allocation now again being proposed. The FCC wisely decided half a century ago that this was an inefficient use of spectrum, and that the public would best be served by higher powered (wider area) coverage from FM stations. That policy has served the public well. In sparsely populated states like New Mexico, high powered Class C FM stations, broadcasting with 100 KW power, and given second and third adjacent channel protection, have been able to reach enough people to be economically viable and provide the listeners with services they need and expect from radio.

P.O. BOX 420 405-407 SOUTH SECOND ST. GALLUP, NM 87305

(505) 863-6851 FAX: 863-2429

We broadcasters have systematically made technical improvements at great expense to maximize power and coverage, sometimes under FCC mandate to do so. For example, in 1986, under pressure from the FCC to either go to 100 KW power or forever lose the right to do so, my company expended over $250,000 to rebuild KKOR(FM), Gallup, and move it to an optimal transmitter site atop the Continental Divide. This maximized power and coverage consistent with the FCC's policies and dictates. Now, the FCC is proposing to allow literally thousands of low power(100 watt and 1000 watt) FM stations to be located mainly in small markets like Gallup, that can be built for a few hundred or thousand dollars. These can be placed so as to serve only the economically viable parts of the market (commercial areas), and can be operated cheaply. They will not have to provide full services, and will be able to impair the signal coverage of existing stations by not protecting their second and/or third adjacent channels, (In order for the FCC to "shoehorn" low power FM stations into populated areas, it is proposing to ignore second and third adjacent channel interference that may occur to existing stations in all market sizes).

The reasonable expectancy of broadcasters and the general public is that the FCC will refrain from adopting new rules that will impair their ability to serve, and be served, respectively. We have spent years developing the coverage areas assigned to us by providing broadcast services to those areas. Parts of these coverage areas will not be able to listen to FM radio stations that they have come to rely on for service.

This technical interference will be a problem for broadcasters whether the low power FM service is open for commercial operators, or is limited to non-commercial operations.

The Adverse Impact On Future Technical Development Of FM Radio

For several years, the FCC has been considering the development of in-band/on channel (IBOC) digital service that will revolutionize digital radio service in this country. Though this proposed service creates great uncertainty in the minds of small market broadcasters (we do not know how much it will cost to be able to participate in this technology, or how we may be impacted by existing listeners being able to receive "imported, distant radio signals"), we need the continued protection of the second and third adjacent channels to be assured of future participation in the IBOC digital service revolution. Though the technical studies proving the need for continued protection are beyond the means of our company to provide you at this time, I understand that the National Association of Broadcasters (NAB) will provide this proof.

There Are Still FM Availabilities In Small Markets

The FCC's proposal to establish new low power FM service is not going to address the issue of "access to the airwaves" in major markets. They already are served by so many signals that no new low power stations will be available to serve them. It is the small markets which are vulnerable to these proposals. Thousands of low power FMs will be available in small markets. At the same time, there are still full power FM availabilities that can be applied for in most, if not all, small markets. Again, it is beyond our means to provide this proof, but the FCC itself should be in possession of this information, as is NAB. Thus, it is those least able to absorb the adverse impacts of the FCC's proposals that will be impacted by them the most.

The Adverse Impact On Services To The General Public

I was astonished to learn from FCC (and NAB) staff members that you only want to hear comments on the technical issues of your proposal, and that you do not want to hear about economic issues, If that is true, you are saying that you do not care about services provided to the general public, since everybody knows that services can, and will, decline with adverse economic impacts on the industry by ill-advised FCC policies and actions. I want to demonstrate this by relating what happened to services to the general public when the FCC last adopted policies that adversely affected our industry.

In adopting Docket 80-90, the FCC ignored the adverse impacts its policies would have on services to the general public. Radio stations were added in most small markets with adverse impacts on broadcast services. Gallup is a city of around 20,000 population which has remained constant over the past 25 years. In 1987, there were four radio stations licensed to Gallup. Our company operated two of these, KYVA(AM) and KKOR(FM), with 24 hours per day live, local announcers on both stations. We had a news department of either two or three persons most of the time. The live announcers were a constant source of localism. As soon as a person called in, any time of the day or night, with an announcement of a death in the family, or an item of their Navajo Chapter activities, or information about a lost or found wallet or keys or pets, it got on the air on both stations. So did information phoned in by the Highway Patrol, City Police or County Sheriff about highway, road or street conditions or other emergencies. The same was true of vital information from the schools about closings and meetings, hospitals, fire department, and utility providers. Weather reports, in an area of often sudden changes, were broadcast hourly, or more often when necessary, 24 hours a day. The company was able to provide 24 hour live services on both stations because it had the economic base to do this. In 1988, the market picture began to change, and the proliferation of stations began. There are now seven radio stations licensed to Gallup (one being a non-commercial FM), and another six stations that broadcast , and sell advertising, on a daily basis to the Gallup community. In one year, from 1988 to 1989, revenues of our company dropped 20%. Still, we continued to provide 24 hour, live broadcasting. However, by 1990, the radio pie had been sliced so many ways that revenues were down by nearly 33%, and services had to be cut. Since payroll is the largest cost item in most broadcast operations, live announcers were let go in favor of syndicated programming. The company operations, which were in the red for 1989 and 1990, regained a minor degree of profitability at the expense of service to the public. News operations had to be cut back, and there were no longer live announcers 24 hours per day to take the phone calls and provide the 24 hour information that the general public came to expect. Nothing changed by way of rebuilding revenues for several years. In fact, in 1993, revenues were a mere 63% of what they were in 1988. One reasonably might suggest that this could be attributable to a change in key personnel, but in our case the General Manager and key sales personnel have been the same from well before 1988 to the present.

The FCC realized the disaster that Docket 80-90 inflicted on our industry, and so it began to relax its ownership rules to allow us to acquire additional stations. We realized that consolidation was the only way to survive, so we acquired an additional FM station in 1994, and a third FM station in 1998. The revenue picture has improved, and revenues are now about the same in 1998 as they were ten years earlier. The only problems with this are that we need to operate four stations instead of two to get the same revenues, we have had to make a huge capital committment to acquire the other two stations, and when inflation over ten years is factored in, we are still way behind the curve in being able to provide the full services we gave the public in 1988. Nonetheless, we do provide local, live programming; local news three times each day (the only local electronic news service in Gallup, whereas there were two services in 1988); local sports, including the only local play-by-play of Gallup High School sports involving girls and boys; and local public affairs,

election forums, public service, and weather on an hourly basis. We were the only company to provide live coverage of the Navajo Nation's Presidential Forum during the 1998 election process. The same is true of the Gubernatorial debate in New Mexico. We broadcast Navajo Nation news twice every morning, and during the noon and afternoon newscasts. Thus, much of the broadcast services of 1988 have been restored in the case of our company, thanks to consolidation. Now, the FCC intends to adopt policies that will not only destroy the broadcast services we can provide to the public, but also the technical integrity of that service. It is difficult to conceive of a more destructive course of action that the FCC could take with respect to small market, locally-owned, radio.

The Administrative Nightmare Of Policing Thousands Of New FM Stations

The FCC has budgetary problems that have severely affected its present ability to police the radio spectrum. It has closed, or reduced personnel in, field offices. There have been issues of unauthorized ("pirate") radio stations operating all over the country. The FCC has slowly and, to some broadcasters' way of thinking, ineffectively dealt with this problem. One can foresee a lot of chaos resulting from the proposed new low power FM and microradio. Interference complaints , if standards are relaxed, will be ignored. The broadcaster complaining of interference will be forced to prove its case, and the cost of doing this is well beyond the ability of small market broadcasters to pay. There will be a lack of support from the already overworked field offices that will be inundated with new complaints on top of their regular work. It also will be nearly impossible to stop a 100 watt or 1000 watt operator from over-modulating to gain coverage. This will be a temptation that is real because of lack of enforcement, and difficulty of monitoring. In short, proposed low power FM and microradio present enormous administrative burdens on an already over-burdened agency, and offer no protection to broadcasters against unlawful interference and over-modulation.

The FCC's Avowed Objective Of Allowing More People To Use Radio Ignores The Diversity Now Present In The Industry

I believe that your statement that consolidation in the broadcast industry has foreclosed access opportunities to churches, community groups, elementary schools, universities, small businesses, and minority groups is unfounded in most markets. In a small market like Gallup, New Mexico, the branch campus of the University of New Mexico has its own non-commercial FM station. There are two religious radio stations in the market, as well as religious services on other commercial stations. Community groups have full access to both public affairs and public service programming on all radio stations. No one is turned down at Millennium Media, Inc.. Elementary schools not only have coverage on the stations, but they come to the stations in groups to tour our facilities and announce special activities at their schools. As I type this letter, a group of nine children from Gallup Christian School is touring the facilities, and telling the radio audience of their drama club presentation. In addition, staff of our company regularly go to schools to emcee spelling bees,geography quizzes, and to participate in career days. "Minority groups" in this area represent about two-thirds of the population in the market, and are predominantly Native American and Hispanic. There is one full-time Spanish language FM station, and additional Spanish language programming on KYVA(AM). There is a full-time station that broadcasts exclusively in the Navajo language, KGAK(AM) that is 5 KW. There is also a 50 KW AM station that the FCC especially granted the Navajo Nation so that it could reach all corners of the Navajo Nation, and serve all of its various Chapters with Chapter news. The Navajo Nation also operates a Class C FM station, and both of its stations broadcast, and sell advertising, to Gallup. There are also radio stations licensed to Chinle, Arizona on the Navajo Nation, and an allocation for Tuba City, Arizona. The Zuni Nation is also served with a radio station and a translator.

Diversity of voices, and access to radio, is not an issue in this area, and we suspect this is not an issue in most small markets. Besides, as noted before, there are always full power FM facilities available in many of these markets, and existing technical standards offering protection on the second and third adjacent channels can be maintained.

For all of the above reasons, I strongly oppose the proposed low power FM and microradio rule making , and I very much appreciate your voting against its adoption. It is a matter of utmost importance to us, and to all locally-owned, small market broadcasters. We ask for the right to continue to provide essential services without elimination or reduction of existing protection against technical interference, and without the devastating economic consequences that inevitably lead to reduction of services to the general public.

Sincerely,

Millennium Media, Inc.

by George M. Malti, President

New Mexico

KNMX • 540 AM

May 4, 1999

Ms. Gloria Tristani, Commissioner
Federal Communications Commission
1919 M Street NW, Room 826
Washington, DC 20554

RE: Thank you for joining us at the NMBA convention

Dear Gloria:

It's always a pleasure to see you. I'm pleased that you could be a part of the New Mexico Broadcasters Association convention. I'm also proud that as a newly elected member of the NMBA Board I can not only extend a true broadcast welcome to you, but also talk with you about issues from the position of a minority broadcaster.

Gloria, I understand your concern that a dialogue be conducted on Mass Media Docket 99-25. My family is relatively new to broadcasting. We purchased our station, KNMX, Las Vegas, New Mexico out of bankruptcy in August, 1996. Since that time, we have struggled to make sure that the quality of radio broadcasting available to the city was the finest possible.

We are the only service in the area that features an expanded local newscast every day at 12 noon. In addition, our programming is *live* during the prime daytime hours of 8am – 4pm, Monday through Friday. During those hours we offer New Mexico variety music, hosted by a local Hispanic woman, Maria Garduno; we also host a local talk show from 12:15pm – 2:00pm. Again, this is programming that can be found in no other place in Northern New Mexico.

My commitment to broadcasting is long term. I am particularly concerned about the implications of low power FM and microradio service. Our FM will be up this summer. The possibility of incurring second and third channel interference with that signal concerns me a great deal. What's more, with the huge local commitment that we are making to Las Vegas, additional competition may force us to go the way of many other small broadcasters with little or no live programming, public service and news and information. Frankly, these concerns pale in comparison to my understanding of the impact of relaxed interference standards on the ability of my stations and all others to develop in-band/on channel (IBOC) digital service.

To that end, I would respectfully request that you vote against Docket 99-25. Again, thank you for your concern about New Mexico and its broadcasters. We look forward to seeing you when you are next in the state.

Truly yours,

Matt C. Martinez, General Manager
Sangre de Cristo Broadcasting Co, Inc.

304 South Grand Ave. Las Vegas, New Mexico 87701
505-425-5669 Office 505-425-3555 Request Line 505-425-3557 Fax

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-9208
RM-9242

Comments of
Trumper Communications-Albuquerque (KZRR-FM, KLSK-FM, KTEG-FM, KPEK-FM, KZSS-AM, KSYU-AM)

My name is Milt McConnell, and I am the Vice President and General Manager of the aforementioned radio stations in Albuquerque, New Mexico. Additionally, I am the President of the Albuquerque Broadcasters Association and am a Board member of the New Mexico Broadcasters Association.

I am writing to formally oppose the creation of a Low Power Radio Service. My main concern is the fact that the Federal Communications Commission would have to eliminate, or alter significantly, the interference protection FM broadcasters currently enjoy. At the same time, this idea could hurt our transition to digital broadcasting by eliminating the second-adjacent channel spacing restrictions currently in place.

As a broadcaster since 1970, I believe it prudent that the Commission should first determine what is necessary for development of the In-Band, On-Channel radio service. We would not want our transition to the digital world curtailed by the elimination of the current protection standards which IBOC proponents have used to develop their systems.

Further I would also argue the fact that the Commission has taken over two years to silence pirate operators in Portales and Soccoro, New Mexico. With the significant cutbacks in the field offices, it doesn't seem logical that there would be sufficient resources to be able to police thousands of new radio stations.

As the Commission is aware, the Docket 80-90 created thousands of new stations such as the proposal before us. History shows that we need real broadcasters who have a desire and ability to provide real service elements to their respective communities. The proposal of Low Power FM will not result in the desired creation of new minority and female ownership but rather will

put a significant dent in the ability of New Mexico Broadcasters in rural communities to provide the community news and public service now in place.

It has been suggested that 13,000 comments received by the Commission is driving this effort. May I suggest that the nearly $20 million dollars in public service provided in 1998 by the New Mexico Broadcasters would be impacted negatively is this proposal is enacted. Which is a greater loss?

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, (as announced by Commissioner Gloria Tristani before the New Mexico Broadcasters Association Friday April 30,1999), 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.

Even if many minorities and church groups were able to have these stations, there are simply not enough of the new frequencies available for everyone who may want one. And there is no guarantee that minorities and females would want or receive a license.

In Albuquerque as a result of consolidation, there are more live talk programs, more talk programming that is local, and more diversification of programming than existed prior to the passing of the Telecommunications Act of 1996. For example, the formats that did not exist before consolidation include two new talk stations, a children's formatted station, and four additional Hispanic stations. We would still have many simulcast stations and many stations duplicating programming if it weren't for consolidation.

Finally I agree in principle with the Commission that there should be voice for minorities and women. The place for such opportunity is the Internet, not Low Power FM spectrum. There is a place on the Internet for everyone to set up their own broadcast of their specific interests. After seeing all of the imposters resulting from the Docket 80-90, there clearly is no place for inexperienced broadcasters in today's competitive media landscape. The idea is good, but the execution of LPFM will not result in the desired effect.

Sincerely,

Milt McConnell
VP/General Manager
Trumper Communications