ORIGINAL

FLEISCHMAN AND WALSH, L. L. P.

ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION
1400 SIXTEENTH STREET, N. W.
WASHINGTON, D. C. 20036
TEL (202) 939-7900 FAX (202) 745-0916
INTERNET fw@fw-law.com

AARON I. FLEISCHMAN

FLEISCHMAN AND WALSH, P. C.
CHARLES S. WALSH
ARTHUR H. HARDING
STUART F. FELDSTEIN
JEFFRY L. HARDIN
STEPHEN A. BOUCHARD
R. BRUCE BECKNER
CHRISTOPHER G. WOOD
SETH A. DAVIDSON
JAMES F. MORIARTY
MATTHEW D. EMMER
HOWARD A. TOPEL
LOUIS H. DUPART*

JILL KLEPPE McCLELLAND
REGINA FAMIGLIETTI PACE
CRAIG A. GILLEY
PETER ... BARRETT
... RESNIK
SUSAN A. MORT
MARK D. PIHLSTROM
BETH-SHERRI AKYEREKO
BRIAN C. MALADY
PAUL W. JAMIESON
THOMAS E. KNIGHT
SETH M. WARNER
MARK B. DENBO**
BRANDON H. HIRSCH
CARA E. SHEPPARD
STEVEN J. HAMRICK
KEVIN C. BRENNAN

* VA BAR ONLY
**MD BAR ONLY

August 2, 1999

DOCKET FILE COPY ORIGINAL

RECEIVED

AUG 2 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445-12th Street, S.W., Room TWB-204
Washington, D.C. 20554

Re: Comments of Mega Communications, L.L.C.
MM Docket No. 99-25

Dear Ms. Salas:

Transmitted herewith, on behalf of Mega Communications, L.L.C., are an original and four copies of its Comments in the above-referenced proceeding regarding the Commission's Low Power FM proposals. A copy of these comments is also being submitted on diskette.

Should there be any questions, in connection with this filing, please contact the undersigned directly.

Very truly yours,

Christopher G. Wood
Counsel for Mega Communications, L.L.C.

cc: Attached service list

103893

No. of Copies rec'd 0+4
List ABCDE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

AUG 2 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: The Commission

COMMENTS OF
MEGA COMMUNICATIONS, L.L.C.

Christopher G. Wood
Mark B. Denbo
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, DC 20036
202/939-7900

Date: August 2, 1999

Its Attorneys

SUMMARY

Mega Communications, L.L.C. ("Mega"), a Spanish language radio operator led by a veteran Hispanic-American broadcaster, strongly opposes the creation of a new LPFM service. It is the creation of LPFM, rather than industry consolidation, which poses the greatest threat to the growth of *existing* minority broadcasters today.

Initially, the Commission must fully recognize the extent to which minority broadcast voices *already* exist. Mega and its sister companies, for example, own 16 broadcast stations in five markets on the east coast. Those stations broadcast diverse formats, reflecting the eclectic mix of nationalities making up the Latino community in each of those markets, and are actively involved in local community affairs. The Commission should also realize that the relaxation of ownership restrictions is not necessarily harmful to minority voices. Mega, for example, has taken advantage of the new rules to combine the programming, operational and sales functions of five AM stations in the Washington, D.C. market. Mega has also been able to obtain new properties as the result of spin-offs from the mergers of larger radio operators.

The creation of LPFM will not help small and independent operators generally. It is by now well-established that the mass allocation of a number of new broadcast outlets actually creates economic instability for such operators, forcing them to curtail local service in order to survive. While the NPRM points to satellite radio, a new *technological* development, the real precedent for LPFM is the massive allocation of new FM outlets in the 1980s, creating what one FCC Commissioner aptly termed an "economic disaster" for the radio industry.

Moreover, it appears that LPFM will have a disproportionate impact on the smaller markets in which existing stations compete for less revenue. The Hartford, Connecticut market, for example, cannot be expected to accommodate up to four of the thousand-watt LPFMs, or 18

of the hundred-watt LPFMs, without significant economic impact on smaller operators such as Mega's two AM stations serving the Latino and African-American communities.

LPFMs will harm minority broadcast voices in particular. First, such broadcasters are not likely to have the strongest facilities in their markets. Mega, for example, began exclusively as an AM broadcaster because those outlets were the most affordable. Although Mega has been able to add two FM stations to its roster, it is not yet able to acquire the same kinds of superior facilities owned by the national radio conglomerates in each market. Moreover, minority broadcast voices often do not have the same extensive resources as national group owners to weather the economic disruption that this new service will cause.

Although an LPFM might "cherry pick" the geographic area where an ethnic population is located, a full power station must bear the expense of broadcasting to a larger service area even if its format is targeted to a minority audience. In smaller markets, the dilution of audience and revenue from such cherry picking would result in the full power stations that now serve the minority community switching to other, more profitable formats, leaving the minority audience with service from only low power or even secondary outlets. Even non-commercial LPFMs would drain the audience from full power stations with minority formats, thus impacting revenues for those stations.

While the creation of LPFM will likely harm *existing* minority broadcasters, there is no reason to believe that this new service will create *new* minority voices. The Commission cannot Constitutionally set aside LPFM outlets for minorities. Moreover, the auction of these facilities would continue the same economic barriers for new entrants that exist today.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission

COMMENTS OF MEGA COMMUNICATIONS, L.L.C.

Mega Communications, L.L.C. ("Mega"), by its attorneys, submits these comments in response to the Commission's Notice of Proposed Rulemaking regarding the establishment of a low power FM ("LPFM") service.[1] Mega, a Spanish language radio operator led by a veteran Hispanic-American broadcaster, strongly opposes the creation of a new class of low power radio stations. Such stations pose a very real threat to minority ownership in broadcasting as well as the continued growth of minority-oriented stations. The creation of an LPFM service would thus undermine the very policy goals that the Commission is seeking to serve.

I. Mega Communications' Minority Broadcast Service.

Mega was formed last year by Alfredo Alonso, an experienced minority broadcaster, and Adam Lindemann, a former Senior Vice President at Oppenheimer & Company who left to head

[1] *In the Matter of Creation of a Low Power Radio Service*, Notice of Proposed Rulemaking, 14 FCC Rcd 2471 (1999) ("*NPRM*").

his own investment firm. Their venture is backed financially by Activated Communications Limited Partnership ("Activated"), an investment vehicle of Mr. Lindemann's family. Mega and its sister companies indirectly own 16 radio stations in the Boston, Hartford, Philadelphia, Washington, D.C. and Tampa/St. Petersburg markets. Mr. Alonso is the President and an equity member of each of these companies and holds majority voting control over four of them.[2]

Mr. Alonso has spent nearly 20 years developing media properties targeted to minority communities. In 1978, at the age of 18, he hosted an Urban Contemporary radio program in New York City. In 1985, with the backing of two investors, Mr. Alonso purchased and reformatted his first broadcast property, a Minneapolis AM station that previously had been off the air. Five years later, he founded Radio y Musica, a weekly publication directed toward the Spanish language radio and music industries. In 1992, Mr. Alonso assisted in the reformatting of KLAX-FM in Los Angeles, which would become the first Spanish-language station to be top-ranked in that market. In 1993, he became the General Manager of Spanish language stations WSKQ-AM and FM in New York City. Three years later, Mr. Alonso founded Mega Broadcasting Corporation, the predecessor in interest to Mega, to acquire and develop broadcast properties.

Activated and its principals have previously financed a number of communications ventures, including Metro Mobile CTS, Inc., which was a leading independent cellular telephone

---

[2]Mega is the indirect parent company of the licensees of WLLH(AM), Lowell, MA; WBPS(AM), Dedham, MA; WNEZ(AM), New Britain, CT; WLAT(AM), Manchester, CT; WEMG(AM), Philadelphia, PA; WSSJ(AM), Camden, NJ; WEMG-FM, Egg Harbor, NJ; WINX(AM), Rockville, MD; WKDV(AM), Manassas, VA; WKDL(AM), Silver Spring, MD; WMGG-FM, Dade City, FL and WLCC(AM), Brandon, FL. An application is also pending for FCC consent to the assignment of WARE(FM), Ware, MA to another Mega subsidiary. In addition, Alfredo Alonso holds a majority voting interest in the parent companies of WAMG(AM), Boston, MA; WZTM(AM), Largo, FL; WBZS(AM), Alexandria, VA and WZHF(AM), Arlington, VA. All of these stations broadcast in the Spanish language, with the exception of WNEZ, which broadcasts a CHR Rhythmic format oriented to African-American and West Indian listeners.

company. Last year, recognizing the explosive growth in the Spanish population in the United States and the increasing demand for Spanish language radio, Mr. Lindemann backed Mr. Alonso to form the present Mega. With this new investment and additional bank financing, Mr. Alonso has rapidly added to Mega Broadcasting's original roster of just five properties, including the acquisition of additional stations in Massachusetts, New Jersey, Maryland, Virginia and Florida. While most of Mega's purchases have been AM broadcast stations, the company has actively sought FM properties and has successfully acquired two of them to date.

As the Washington Post recently observed:

> Spanish radio is following a traditional pattern. Top 40, country-western and black radio all gained a toehold in Washington by broadcasting over the cheaper-to-buy, limited-coverage AM frequencies. Gradually, they made inroads into FM, with its more powerful signals.
>
> And that is how most Spanish-format stations -- which this year numbered more than 500 nationwide -- began.[3]

Mega's stations broadcast diverse Spanish language formats reflecting the eclectic mix of nationalities that makes up the Latino community in each radio market. For example, in the Washington, D.C. area, the Hispanic audience is largely from El Salvador and other Central American countries, with significant Bolivian and Peruvian populations and a growing Mexican community. In the Hartford and Philadelphia markets, the Latino audiences are predominantly Puerto Rican. Thus, in the Washington, D.C. market, WBZS(AM) and WINX(AM) are formatted as Spanish Tropical, WKDV(AM) and WKDL(AM) have a Central American/Mexican format, and WZHF(AM) has a Latin Adult Contemporary format. Similarly, in Philadelphia,

---

[3] Sylvia Moreno, "Spanish-Language Stations Are Making Waves," Washington Post, Apr. 13, 1999, at B1.

WEMG(AM) and WEMG-FM simulcast a Tropical format, while WSSJ(AM) is a Latin Adult Contemporary format.

Based upon Arbitron audience share ratings, Mega is the leading Spanish radio operator in most of its markets. Mega is therefore able to provide advertisers with access to the targeted demographic groups it serves, and a large percentage of the company's revenues is derived from local direct advertisements or local ad agency purchases.

Although they are among the smaller operators in their markets, Mega's stations are actively involved in the affairs of the local Hispanic communities. For example, in Washington, D.C., Mega's stations have promoted the workshops and seminars of the Latino Civil Rights Center and raised funds to finance an operation to save the life of a Salvadoran woman with a brain tumor. In Philadelphia, WEMG (formerly WURD) was the co-sponsor of the 1998 campaign to promote voter registration, education and participation in the local Latino community. To support local education, the station has also "adopted" local inner city schools, announcing on-air the names of students with perfect attendance and presenting certificates of merit to those students in a school ceremony. The Mayor and the City Council of nearby Camden, New Jersey and the Pennsylvania House of Representatives have awarded official commendations to WEMG for its civic involvement.

In the Hartford market, the Mega Education program, promoting the need for education from kindergarten through high school, has helped increase local school attendance. Mega's stations offer students scholarships and other incentives to make education a priority in their lives. Mega has also promoted a series of free family concerts in the area, fostering a sense of greater unity. Its Park Street concert for the Hispanic community last year drew over 45,000 people, for which Mega was commended by the City of Hartford. This year Mega has organized two major events for the African-American community. In short, Mega represents exactly the kind of community broadcast "voice" which the LPFM proceeding is apparently seeking to promote.

II. LPFM Threatens Smaller Broadcasters and Their Service To The Public.

The *NPRM* expresses concern that the consolidation of ownership in the broadcast industry may be harming small and independent operators.[4] But the creation of this new service would be no solution. It is by now well-established that the mass allocation of a number of new broadcast outlets actually creates economic instability for small and independent operators, forcing them in turn to curtail community service in order to survive. The Commission must bear these lessons in mind when considering the purported benefits of a new broadcast service on paper.

While the NPRM points to satellite radio, a new *technological* development, the real precedent for LPFM is the massive allocation of new FM outlets in smaller markets following the technical changes adopted in BC Docket No. 80-90. In 1985, the Commission allocated nearly 700 new FM channels across the country in one fell swoop, without regard to their economic impact in even the smallest of markets.[5] Many more allocations followed those, based upon the new technical rules. The results were disastrous, as the sheer number of new FM outlets slashed the profitability and market value of existing stations, forcing broadcasters to curtail service and, in many cases, to cease operating. By 1991, the Commission was forced

---

[4]*NPRM* at ¶ 10.

[5]*Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast* Assignments, First Report and Order, 100 FCC 2d 1322 (1984).

to seek public comment on "whether radio service (or AM in particular) is foundering as we perceive..."[6] According to a Mass Media Bureau report, more than half of all commercial radio stations had lost money in 1990.[7] A year later, the FCC's records indicated that some 197 AM stations and 30 FM stations *officially* were silent.[8] In 1992, the Commission acknowledged that "small stations have been operating near the margin of viability for years..."[9]

The cause of this economic distress was no mystery. In describing the "serious problems plaguing the radio industry" at that time, FCC Commissioner Ervin S. Duggan plainly stated that "[f]oremost is a glut of stations, caused in large part by the FCC's efforts in the recent past to increase diversity by multiplying the number of broadcast voices."[10] He later wrote that the Commission's "*radical action*" in allocating these stations, "*however well-intentioned, was an economic disaster for the industry.*"[11] Commissioner Duggan further warned that:

---

[6]*Revision of Radio Rules and Policies*, Notice of Proposed Rulemaking, 6 FCC Rcd 3275 (1991) ("*Radio Ownership NPRM*"), at ¶ 6. The Commission thus proposed to loosen its ownership restrictions "with a view toward ensuring that the aural services can continue to compete in the communications marketplace and provide service to the public." *Id.* at ¶ 1.

[7]*Revision of Radio Rule and Policies*, Report and Order, 7 FCC Rcd 2755 (1992) ("*Radio Ownership Order*") at ¶ 2.

[8]*Radio Ownership NPRM* at ¶ 2.

[9]*Radio Ownership Order* at ¶ 2 (footnote omitted).

[10]*Radio Ownership NPRM,* Separate Statement of Commissioner Ervin S. Duggan (footnotes omitted and emphasis added).

[11]*Radio Ownership Order,* Statement of Commissioner Ervin S. Duggan (emphasis added).

> regulatory change, even when undertaken in the name of competition and economic growth, is much more complicated than we can fully anticipate. Better, then, to go carefully.[12]

The interim Chairman of the FCC observed in 1993 that Docket 80-90 "led to such a proliferation of stations that for many it created only the opportunity to go broke."[13] If hundreds of new FM outlets constituted a "glut," then the thousands of new stations now proposed would be a veritable tidal wave. Commissioner Duggan's admonition to "go carefully" is all the more important in this proceeding.

The lesson from this bitter experience is that the Commission must not make public interest determinations in a vacuum, without regard to economic impact. Indeed, the NPRM itself has recognized the relevance of the economic health of smaller radio operators to the public interest. As the Commission came to realize in 1992, the radio industry's ability to serve that public interest, convenience and necessity is "fundamentally premised on its economic viability."[14] The same is true of individual stations and markets. Despite the Commission's concerns with consolidation, not all radio operators today are national conglomerates with the resources to ride out another tidal wave of new allocations. A new "glut of stations" in smaller markets will harm the remaining independent and small broadcasters in particular.

The Commission's own projections indicate that LPFM will have a disproportionate impact on smaller markets in which existing stations compete for less revenue. For example, the *NPRM* estimates that, based upon the level of interference and translator protections adopted, up to four

---

[12]*Id.*

[13]Remarks by Chairman James H. Quello, Before the NAB/RAB, National Association of Broadcasters Convention, Las Vegas Hilton, April 19, 1993.

[14]*Radio Ownership Order* at ¶ 10.

of the thousand-watt FMs could be allocated to Manchester, Connecticut, a city of just 52,000 people in the Hartford, Connecticut radio market.[15] These new primary stations, while technically "low power," will have anything but a low impact on that market. The *NPRM* itself recognizes that the 60 dBu contour of a thousand-watt LPFM would be as much as half that of a full power Class A FM, covering a "significant portion" of many urban areas.[16] The *NPRM* also reports that up to 18 of the hundred-watt LPFMs could be allocated to Manchester.[17] It recognizes that even a hundred-watt LPFM might serve *several thousand* listeners.[18] Clearly, Hartford is not a market that is able to economically accommodate 18 new broadcast outlets without significant economic disruption. Nor can a combination of just two AM stations in that market be expected to compete against 18 new LPFMs drawing *thousands* of listeners. The FCC must not repeat what Commissioner Duggan aptly termed a *"radial action"* to the detriment of smaller and independent broadcasters.

III. The Proposed New LPFM Service Will Harm Minority Broadcast Voices In Particular.

It appears that a significant goal underlying this proceeding, although not expressly stated in the *NPRM*, is the promotion of minority broadcast voices and service to local minority communities. The *NPRM* predicts that LPFM will "address unmet needs for community-oriented radio broadcasting, foster opportunities for new broadcast ownership, and promote additional

---

[15]*NPRM*, Appendix D.

[16]*NPRM* at ¶ 24.

[17]*NPRM*, Appendix D. In contrast, the *NPRM* does not calculate that *any* of the thousand-watt LPFMs could be allocated to New York, Chicago or other markets that are better able to accommodate additional competition. *Id.*

[18]*NPRM* at ¶ 30.

diversity in radio voices and program services."[19] It cites in particular the petitions of LPFM supporters, which argue that low-power stations could serve the needs of ethnic groups, "particularly linguistic minorities," which they believe are "often ignored" by full power stations.[20] The *NPRM* also expresses concern that consolidation of radio ownership may have harmed small broadcasters and potential new entrants by driving up station prices, thus exacerbating the difficulty of entering the industry and surviving as an independent operator.[21]

Mega believes that the furthering of minority broadcast voices remains not only a legitimate, but an important, goal for the Commission. Unfortunately, LPFM is not the answer. Indeed, the creation of LPFM may be the greatest threat facing *existing* minority broadcasters today. Minority broadcast voices, which tend to be more recent entrants in the industry, without the same resources and superior technical facilities as the national radio conglomerates, will bear the brunt of the economic disruption created by new LPFMs.

Initially, the Commission must fully recognize the extent that minority broadcast voices are already on the air. Mega is a good case in point. The financial backing of Activated has allowed minority broadcaster Alfredo Alonso to increase his reach from five to sixteen stations, including for the first time FM outlets. Mega and its sister companies have thus provided Boston with its first 24 hour Spanish language radio outlets, and dramatically increased the number of Spanish language stations in the Washington, D.C. market. Moreover, the Commission should be aware

---

[19]NPRM at ¶ 1.

[20]*Id.* at ¶ 8 and n. 19.

[21]*Id.* at ¶ 10. *See also* Statement of Commissioner Susan Ness. Of course, even if this were not a goal of the LPFM proceeding, the Commission is bound to consider the economic impact of LPFM on existing minority broadcasters, given its long standing goal of furthering minority ownership and voices.

that minority "voices" are not limited to companies which are owned exclusively by minorities. Mr. Alonso is the President and holds 15 percent of the equity and voting power of Mega, the indirect owner of 12 stations. Mr. Alonso also is the President and holds a majority of the votes in Mega's sister companies which own four additional stations. (Activated and its principals hold the remaining equity in all of these companies.) Yet *all of* these stations are overseen and programmed by Mr. Alonso and serve as minority voices in their communities.

The Commission must also realize that relaxation of ownership restrictions is not *necessarily* harmful to minority broadcast voices. Minority broadcasters, like other radio companies, have utilized the new rules to take advantage of consolidation and economies of scale. In the Washington, D.C. market, for example, Mega has been able to combine sales, operational and programming functions for five stations, WKDV(AM), WKDL(AM), WINX(AM), WBZS(AM) and WZHF(AM). Moreover, Mega's sister companies have benefitted from the divestiture of stations by large broadcast groups as a by-product of consolidation. In the Boston market, for example, Mega Communications of Boston Licensee, L.L.C. acquired WAMG(AM) (formerly WNFT) from CBS Radio Inc., pursuant to the merger of CBS and American Radio Systems. In the Tampa market, Mega Communications of Tampa Licensee, L.L.C. acquired WZTM(AM) from Clear Channel Communications upon the consummation of that company's merger with Jacor Communications. Thus, at least in some respects, consolidation actually has helped existing minority broadcasters.

It is the creation of thousands of new LPFMs, rather than consolidation, which most endangers existing minority broadcast voices. First, such broadcasters are not likely to have the strongest facilities in their markets. Mega, for example, began exclusively as an AM broadcaster because those outlets were most affordable. The Commission has long recognized the technical disadvantages of AM stations.[22] Indeed, the *NPRM* in this proceeding reaffirms that many AM stations continue to experience "significant interference and degraded reception..."[23] In the markets where Mega competes, as in most areas, the most popular stations continue to be in the choice FM band.[24] Although Mega has been able to acquire two FM outlets as its business has expanded, it is not yet able to acquire the same kinds of superior facilities as the national radio conglomerates. At the same time that Mega agreed to acquire what is now WMGG(FM) in the Tampa market for $3.5 million dollars, CBS reportedly bought two FM stations in the same market for $75 million.[25] To the extent that minority voices and smaller broadcasters are concentrated in the AM band, or hold less powerful FM stations, they will be more vulnerable to the economic instability created by new low power broadcast outlets.

Moreover, minority broadcast voices generally do not have the same resources as large station groups to weather such economic disruption. The largest owners are able to easily attract the most experienced sales, management and programming personnel, moving them from market to market as the need arises. They have a strong national sales presence to leverage in local markets, while smaller broadcasters such as Mega must rely primarily upon local sales. The largest

---

[22]*See e.g., Review of Technical Assignment Criteria for the AM Broadcast Service*, 8 FCC Rcd 3250 (1993).

[23]*NPRM* at ¶ 17.

[24]In Philadelphia, 9 of the 10 top-rated stations are in the FM band. In Boston, the figure is 7 of 10, and in Washington, D.C., 9 of the 10. In Tampa-St. Petersburg, 9 of the 10 top-rated stations, including an AM-FM simulcast station, are in the FM band. In Hartford-New Britain, 8 of the 10 top-rated stations, including a simulcast station, are in the FM band. R&R Directory, Vol. 1, 1999 (reflecting Fall, 1998 Arbitron data).

[25]See "Changing Hands," Broadcasting and Cable, September 21, 1998 at 90.

operators own many of the most popular and profitable stations in each market,[26] which they may sell to advertisers in a package at great discounts. Indeed, the advantages of such joint selling are reaped largely by group owners with the stations that are most highly sought after by large advertisers. In contrast, minority-formatted outlets have traditionally been undervalued by such advertisers. The recent Civil Rights Forum on Communications Policy study, *When Being No. 1 Is Not Enough: The Impact of Advertising Practices On Minority-Owned & Minority-Formatted Broadcast Stations*, concluded that 91% of all minority broadcasters have been affected by "no Urban/Spanish dictates."

The Commission apparently envisions LPFMs competing *directly* with foreign-language and other minority formats, rather than the higher-rated mainstream formats aired by the radio conglomerates. The *NPRM* explains that LPFM could operate "similar to a full-power station but on a smaller scale," providing service to a local ethnic community.[27] But such service is likely to undermine the economic viability of existing, full power broadcast services with ethnic formats. As Radio Business Report observed at the beginning of this year:

> How many of DC's [then] three Spanish AMs (plus a 4th simulcast) could survive competition from a couple of well placed 1 kw FMs? We're all for competition, but

---

[26]According to Arbitron data, Chancellor Media owns 4 of the top 12 rated stations in Philadelphia, 5 of the top 9 rated stations in Boston, 2 of the top 8 rated stations in Washington, D.C., 4 out of the top 11 rated stations in Tampa-St. Petersburg, and 3 of the top 5 (including the top 2) rated stations in Hartford-New Britain. AM/FM owns 4 of the top 8 rated stations in Philadelphia, 2 of the top 4 rated stations in Boston, and 5 of the top 12 rated stations in Washington, DC. Clear Channel owns 4 out of the top 7 rated stations in Tampa-St. Petersburg and 3 others in Hartford-New Britain. R&R Directory, Vol. 1, 1999.

[27]*NPRM* at ¶ 11.

what social agenda is served by having one minority entrepreneur put another out of business?[28]

While an LPFM might "cherry pick" the geographic area where an ethnic population is located, a full power station must bear the expense of broadcasting to a larger service area even if its format is targeted to a minority audience. For Mega, that threat is exacerbated by the relatively small percentage of the entire population in each of its markets made up by Spanish-speakers. According to government figures, just 4.1% of the Philadelphia market is Hispanic, as is just 5.3% of the in Boston market, 7.7% of the Washington, D.C. market, 9.0% of the Tampa-St. Petersburg market, and 7.8% of the Hartford-New Britain market.[29] Thus, any dilution of this audience by low cost operators targeting enclaves of Spanish-speaking population could significantly dilute Mega's audience and revenue. Ultimately, such "cherry picking" would result in full power stations that now serve the minority community switching to other, more profitable formats. As a result, the minority audience would be left with service from only low power outlets, some of which may have only secondary status.

Nor would the detrimental economic impact of LPFM on minority and smaller broadcast voices be alleviated by limiting the new service to noncommercial operations. Any LPFM stations targeting Hispanic listeners would siphon audience away from Mega's stations, causing their ratings to decrease. Mega's stations would thus be forced to charge less for advertising time, as advertisers would seek to negotiate a lesser "cost per point" to advertise on them.[30] In short, even

---

[28]Jack Messmer, Carl Marcucci and Dave Seyler, *The 12 Myths of Low Power FM*, Radio and Business Report, Feb. 22, 1999, at 6.

[29]R&R Directory, Vol. 1, 1999.

[30]Cost per point ("CPP") is a dollar figure that, when multiplied by a station's ratings (continued...)

a *non-commercial* LPFM service targeted to the same narrow group that Mega serves would likely have an adverse economic impact.[31]

IV. There Is No Guarantee that LPFM Stations Will Actually Be Placed In the Hands of Minority Broadcasters.

While the creation of LPFM will likely harm *existing* minority broadcasters, there is no reason to believe that this new service will create *new* minority broadcast voices, as intended. Recent legal precedents do not permit the Commission to create set-asides for minority owners.[32] Moreover, Section 309(j) of the Communications Act requires that if LPFM is to be a commercial service, all new permits in that service must be awarded by auction to the ***highest bidder***. If rising station prices are indeed a barrier to new entrants to the radio industry, as the *NPRM* surmises, then new minority broadcasters should not be expected to prevail at auction with any greater frequency than other bidders. At best, the award of LPFMs would be made on a first-come first-served basis, putting minority applicants on an equal footing with others. In short, as Commissioner Furchtgott-Roth has recognized, "there is in all likelihood no Constitutionally sound

---

[30](...continued)
points (as determined by Arbitron), produces the cost per 30- or 60-second spot that a customer will pay to advertise on that station. In practice, an advertiser or advertising agency and a particular station will come to an agreement as to what the station's CPP will be. A lower CPP would slash the amount that a station could charge per spot.

[31]The *NPRM* notes that the Commission has begun to receive applications for LPFM authorizations on a purportedly "experimental" basis. *NPRM* at n. 1. Given the adverse impact likely from even noncommercial LPFM outlets, the Commission should not grant any such experimental authorization while this proceeding is pending.

[32]The Supreme Court, in *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995), held that the federal government may not use race-based criteria for decision-making unless the program satisfies the Court's "strict scrutiny" test; that is, that the program is narrowly-tailored to further a compelling government interest.

way" to assure that this new service increases broadcast ownership by minorities and women.[33] On balance then, the LPFM service can only be expected to harm minority broadcast voices, as its detrimental impact on existing broadcasters is more certain than its purported future benefits.

V. The Commission Must Not Legitimize Unlicensed Radio Operators.

The *NPRM* seeks comment on a proposal to grant LPFM authorizations to parties that previously operated broadcast stations illegally, but finally ceased operations when directed by the Commission to do so or at least after publication of the *NPRM* in the Federal Register.[34] Mega strongly opposes such "amnesty" for "pirate" radio operators. First, parties that have deliberately violated the most fundamental of FCC rules cannot be trusted to abide by the law in the future.[35] The fact that a pirate ceased its illegal operations after being caught, or after being offered a reward by the *NPRM* in the form of eligibility for LPFM licenses, neither mitigates its deliberate violations nor demonstrates any propensity to obey the law.

Mega has had first-hand experience with these illegal operators. In Hartford, one pirate has broadcast in Spanish on 97.7 MHz for over a year. This "station" flagrantly sells advertising to local businesses, with the competitive advantage that it need not expend the resources necessary to comply with the FCC's technical, filing and public service requirements. A new Spanish language pirate has joined it on 87.7 MHz. Another pirate, shut down earlier this year on 105.3 MHz, is rumored to be returning to the air. Clearly, these illegal operators should not be rewarded with licenses to continue on their frequencies!

---

[33]*NPRM*, Dissenting Statement of Commissioner Harold W. Furchtgott-Roth.

[34]*NPRM* at ¶ 67.

[35]For example, it does not appear to be wise to rely upon a former pirate to certify that his microradio transmitter meets emission limits and other standards. *NPRM* at ¶ 35.

It simply does not make sense to offer pirate operators who illegally broadcast what the United States Radio Listeners Association has termed a "garbled hodge-podge of narrowly-focused, limited range signals of little interest or use to the vast majority of radio listeners," [36] with stations that threaten the valuable local service provided by broadcasters like Mega, who have expended significant sums to acquire *licensed* stations. The Commission should be looking for ways to bolster the ability of existing minority voices, such as Mega, to compete in today's radio market, and not adopt policies that threaten their growth. In short, the Commission's proposal is no solution to its current problems with pirate broadcasters.

VI. Conclusion.

The creation of an LPFM service would not help smaller broadcasters. It would not promote minority voices or increase service to minority communities. What LPFM would do is harm existing minority voices and smaller operators, who lack the resources and facilities of the large radio conglomerates to weather the economic disruption from a tidal wave of new FM

---

[36] USRLA Comments at ¶ 6

outlets in smaller markets. The creation of LPFM would thus completely undermine the very goals of this proceeding. The Commission must now reconsider and abandon its ill-advised proposal.

Respectfully submitted,

MEGA COMMUNICATIONS, L.L.C.

By: ______________________

Christopher G. Wood
Mark B. Denbo

Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, DC 20036
202/939-7900

Date: August 2, 1999

Its Attorneys

CERTIFICATE OF SERVICE

I, Bernadette T. Clark, a secretary at the law firm of Fleischman and Walsh, hereby certify that a copy of the foregoing "Comments of Mega Communications, L.L.C.," was served this 2nd day of August, 1999, via first class mail, upon the following:

*Paul Gordon (with diskette)
Mass Media Bureau
Federal Communications Commission
The Portals II
445-12th Street, S.W., Room 2-C223
Washington, D.C. 20554

*Bruce Romano
Mass Media Bureau
Federal Communications Commission
The Portals II
445 12th Street, S.W., Room 2-C267
Washington, D.C. 20554

Lori J. Holy, Esq.
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036-2891

*Hon. William Kennard
Chairman
Federal Communications Commission
The Portals II
445-12th Street, S.W., Room 8-B201
Washington, D.C. 20554

*Hon. Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
The Portals II
445 Twelfth Street, SW -- Room 8-A302
Washington, D.C. 20554

*Hon. Michael K. Powell
Commissioner
Federal Communications Commission
The Portals II
445 Twelfth Street, SW -- Room 8-A204
Washington, D.C. 20554

*Hon. Gloria Tristani
Commissioner
Federal Communications Commission
The Portals II
445 Twelfth Street, SW -- Room 8-C302
Washington, D.C. 20554

*Hon. Susan Ness
Commissioner
Federal Communications Commission
The Portals II
445 Twelfth Street, SW -- Room 8-B115
Washington, D.C. 20554

Bernadette T. Clark
Bernadette T. Clark

*By Hand

99737.1