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

SEP 17 1999

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

REPLY COMMENTS OF
THE SCRANTON TIMES, L.P. and SHAMROCK COMMUNICATIONS, INC.

The Scranton Times, L.P. and Shamrock Communications, Inc. hereby submit these Reply Comments in the above-captioned proceeding. The Scranton Times, L.P. is the licensee of four radio stations in the Scranton, Pennsylvania, area. Its affiliated company, Shamrock Communications, Inc., is the licensee of five radio stations in Maryland and Texas.[1] Shamrock files these Reply Comments in support of the numerous Commenters in this proceeding who have expressed concerns with respect to the impact of LPFM on the integrity of the FM band and on the introduction of digital radio. The Reply Comments also address the FCC's plan to use LPFM to increase diversity. Shamrock supports Commission initiatives to expand opportunities in radio production and ownership, but questions the means by which the Commission hopes to achieve that goal in this proceeding. Contrary to the Commission's hopes,

[1] Shamrock also holds a 50% interest in the Milwaukee Radio Alliance, L.L.C., the licensee of three radio stations in the Milwaukee area. The Scranton Times, L.P. and Shamrock Communications, Inc. are referred to herein as "Shamrock."

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Shamrock does not believe that the licensing of LPFM will lead to increased diversity in ownership or programming. In addition, Shamrock is concerned about the impact that LPFM will have on the AM band.

A. Low Power FM is Not Necessary, Nor is it Likely, to Increase Diversity

In the *Notice of Proposed Rulemaking* in this proceeding ("LPFM NPRM"), the Commission said it believes that "these new LPFM stations would provide a low-cost means of serving urban communities and neighborhoods, as well as populations living in smaller rural towns and communities. In creating these new classes of stations, our goals are to address unmet needs for community-oriented radio broadcasting, foster opportunities for new radio broadcast ownership, and promote additional diversity in radio voices and program services."[2] Shamrock agrees with the Comments of the National Association of Broadcasters ("NAB") and the Corporation for Public Broadcasting ("CPB") that diversity of programming already exists in the radio industry. In fact, as indicated by NAB in its Comments, the "diversity of formats in the radio industry is continuing its trend towards more choices. This translates into wider variety to the public as a direct result of consolidation."[3]

Shamrock's radio stations air the following different formats: adult standard, oldies, classic rock, country, full service, talk, alternative rock, classical, smooth jazz, rock, and urban. In fact, on the 12 stations in the commonly owned group, there are 11 formats. NAB's Comments detail several studies performed on radio formats and diversity in the industry since

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[2] *NPRM* at ¶ 1.

[3] NAB Comments at p. 7.

the Telecommunications Act of 1996 was passed. Shamrock believes these studies accurately reveal that the public has been provided with a wider variety of selection since the consolidation that resulted from the 1996 Act. Similarly, in its Comments, the Corporation for Public Broadcasting ("CPB") noted the degree of diversity of ownership and formats among non-commercial stations. Approximately one in seven CPB radio grantees is a minority grantee.[4] "According to a 1998 survey, 50 of the 352 non-commercial stations CPB funds are minority controlled and broadcast programming designed to appeal to minority audiences; by FY 2000, that number is expected to have increased to at least 60."[5]

CPB also provides diverse programming via satellite feeds to its member stations, and stations routinely originate their own regular programing aimed at underserved populations.[6] The CPB Comments include a 30-page single-spaced listing of the diverse programing aired on CPB stations from Alabama to Wisconsin. Programing aimed at Native Americans, Hispanics, Filipinos, Koreans, and Afro-Caribbean natives are just a few of the stations' offerings.[7]

Thus, Commenters in this proceeding have demonstrated that a problem of lack of diversity which the FCC seeks to correct through LPFM simply is not supported by the evidence.

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[4] Comments of Corporation for Public Broadcasting ("CPB Comments") at 4, citing *Corporation for Public Broadcasting, Current and Planned CPB Public Radio Minority Service Strategies and Investments -- How to Build on Our Success (1999) ("Minority Services Strategies"), at 2.* A minority grantee is defined as possessing a majority minority staff, a majority minority board, and a significant measurable minority audience over the prior two years.

[5] CPB Comments at 5, citing *The Corporation for Public Broadcasting and The Needs of Minority and Diverse Audiences and Public Broadcasting's Services to Minorities and Other Groups: A Report to Congress (July 1, 1998)*, at 97, and Minority Services Strategies at 2.

[6] CPB Comments at 5.

[7] *Id.* at Exhibit A.

With such large and diverse offerings of programing on full power stations, Shamrock questions the need to clutter the FM band with more stations, and undermine the FM service.

Furthermore, Shamrock believes that there are other avenues available for achieving the FCC's stated goal of addressing unmet needs for community-oriented radio broadcasting. As NAB accurately points out, the personal computer and Internet access together provide immense opportunities for people to communicate without using a radio. Many broadcasters currently webcast their stations' signals over the Internet. In addition, Internet only "radio stations" provide a means for people to provide service locally, nationally or internationally at minimal cost -- there is no need for the "radio station" to own a transmitter, have a FCC license, worry about short-spacing and other technical constraints, or follow all of the various federal regulations pertaining to broadcast stations. At the same time, these Internet only "radio stations" have the ability to be interactive with their followers. With approximately 25% of Americans having access to the Internet, Internet only "radio stations" offer an excellent avenue for increasing diversity in programming. The Internet should not be ignored by the FCC as a means to achieve the goal of providing community-oriented programming.[8]

It should also not be ignored that the Commission has already instituted initiatives to increase ownership diversity in existing broadcast services by adopting new entrant bidding

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[8] As a counter argument to the suggestion that the Internet is a better means to address the FCC's concerns about diversity, some LPFM proponents note that the Internet is not nearly so ubiquitous as is radio, and that, because use of it requires a computer, it tends to be for the affluent, a group which presumably is not the intended recipient of LPFM radio. However, as pointed out by CPB, the number of households wired to the Internet increases every day. By the time LPFM is ready to commence operations, the number of wired households will be even greater. *See* CPB Comments at 15.

credits for auctions of broadcast facilities.[9] Bidders in auctions for specific facilities will be entitled to a credit of as much as 35% of their winning bid if they have few or no existing broadcast facilities. This new entrant bidding credit is intended to increase diversity of ownership in the existing broadcast services. The first broadcast auction is scheduled for September 28, 1999.[10] The FCC should allow this new idea to take root before deciding that LPFM is the only way to increase diversity of ownership.

Moreover, as indicated by CPB, the LPFM NPRM does not say how the Commission will guarantee that LPFM stations will be run by, or cater to, populations that the FCC believes are currently underrepresented by radio.[11] While the NPRM proposes limiting ownership of LPFM stations to entities that aren't current full power licensees, the NPRM does not indicate how the LPFM licenses will end up in the hands of the underrepresented or those interested in niche programing.[12] As stated earlier, Shamrock believes diversity is a laudable goal. However, the FCC's proposal is not a guarantee that LPFM will achieve that end, and other, less problematic means exist to increase diversity.

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[9] See *Implementation of Section 309(j) of the Communications Act — Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, (MM 97-234) (First Report & Order) 13 FCC Rcd 15920 (1998), *recon denied*, MO&O, FCC 99-74 (rel. Apr. 20, 1999), *modified*, MO&O, FCC 99-201 (rel. Aug. 5, 1999) ("Broadcast Auction Order").

[10] See Public Notice, *Closed Broadcast Auctions*, DA 99-1638 (rel. Aug. 16, 1999), pertaining to Auction 25.

[11] CPB Comments at 12.

[12] *Id.* at 13.

B. LPFM Implementation Should Await the Completion of Digital Conversion Studies

Shamrock is very concerned that LPFM will have a negative effect on the radio industry's plan to transition to digital. NAB had requested an extension of the Comment deadline in this proceeding until after the completion and evaluation of field testing by three In-Band On-Channel Digital Audio Broadcasting ("IBOC DAB") proponents. Those tests are scheduled to conclude in December 1999.[13] This request for an extension of the Comment period was denied by the Commission. As such, all of the evidence is not in regarding the impact of LPFM on a transition to digital, yet the Commission is proceeding with the LPFM rulemaking.

The industry is moving forward with developing digital technology with the understanding that the FCC intends that radio stations transition to digital technology.[14] Furthermore, the FCC has encouraged the transition.[15] Nevertheless, the LPFM proposal appears to jeopardize such a conversion. As stated by the FCC in the NPRM, its "understanding of future IBOC systems is preliminary and it may not be fully aware of any negative impact or restrictions that authorization of low power radio service would have on the transition to a digital IBOC

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[13] NAB Comments at 2.

[14] In fact, as stated by NAB in its Comments, the National Radio Systems Committee DAB Subcommittee was reactivated in January 1998, to study IBOC DAB systems currently being developed by several companies, and has been developing test guidelines that the developers may follow when collecting system performance data. All three IBOC DAB system developers have agreed to submit test data for their systems to the Subcommittee by December 15, 1999. The Commission is well aware of all of this activity regarding IBOC DAB. NAB Comments at 46 and n. 113-115.

[15] "While the Commission has yet to formally advance any specific proposal, it has already expressed its support of conversion to digital radio." NPRM at ¶47 citing *Report and Order* in Gen. Docket No. 90-357, 10 FCC Rcd. 2310, 2315 (1995).

technology for FM stations."[16] Shamrock reiterates NAB's plea that the Commission not go forward with a proposal to create a new LPFM service without understanding the impact that the proposed service would have on the radio broadcasting industry's ability to convert to digital transmission technology."[17] Given the uncertainty about the impact that LPFM will have on IBOC, the Commission should delay any further action on LPFM until after an IBOC standard has been adopted.[18]

C. The Administrative Burdens Associated with Administering LPFM will be Substantial

Shamrock believes that the costs associated with regulating LPFM will be enormous and an inefficient use of limited FCC resources. NAB questioned the ability of the FCC to enforce whatever rules are imposed upon LPFM stations.[19] Since 1995, the Commission has scaled back the number of field offices that inspect stations and investigate complaints.[20] Given the fact that the LPFM proposal, if adopted, could increase by several hundred the number of broadcast stations that the field offices must monitor, the potential for unauthorized operations and other rule violations is significant. Sanctioning the offenders will take time away from the duties of the already- stretched FCC enforcement staff.

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[16] *NPRM* at ¶ 49.

[17] NAB Comments at 45.

[18] *Id.* at 47.

[19] *Id.* at 64.

[20] *Id.* at 65.

Furthermore, the Commission proposes that LPFM licensees be subject to differing compliance requirements. This poses another regulatory burden on licensees, listeners and the Commission. For instance, the Commission proposes that LPFM 1000 operators follow Part 73 rules applicable to full-power radio stations with regard to the length of their license terms and renewal procedures, but suggests that the renewal process might be simplified due to "their status and the nature of their services."[21] This is not acceptable. If LPFM1000 stations are afforded primary status, they should not operate under a different set of rules than full power stations. In addition, the Commission should apply to these stations the maximum permissible radiofrequency exposure limits and related regulatory provisions that apply to full power FM stations, as proposed in the NPRM and as urged by NAB.[22] This is very important given that some of these stations would operate at the same power levels as some FM stations.[23] Shamrock believes these provisions should apply not only to LP1000 and LP100, but also to microradio stations, if adopted.

Similarly, Shamrock believes that all LPFM stations should be subject to the same programming and operating schedule requirements. Implementing a system with differing programming and operating schedule requirements, as suggested in the NPRM, will not be feasible. In this regard, Shamrock echoes NAB's concern that the Commission is not adequately equipped to handle the addition of hundreds of new stations, especially stations operated by

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[21] *NPRM* at ¶ 82.

[22] *NPRM* at ¶ 74, NAB Comments at 77.

[23] *NPRM* at ¶ 74.

novices to the industry who have limited means to obey the rules.[24] Shamrock agrees with NAB's statement that existing radio stations comply with FCC rules largely through self regulation out of a concern that actions which are contrary to the rules could threaten a broadcast license and result in a loss in a broadcaster's investment.[25] However, as noted in the Comments of Bonneville International Corporation, "LPFMs will have few funds to retain legal an engineering counsel to ensure compliance with rules and regulations."[26] In addition, operators of LPFM may not have the same financial incentive to stay within the confines of the rules because their capital investment will not be as great.[27] Shamrock agrees with NAB that since out-of-band emissions or use of excessive power by a LPFM operator would cause interference to other stations, the FCC cannot ignore enforcement when arriving at a LPFM policy.[28]

D. The Commission Should Recognize That Implementation of LPFM Could Cripple AM Radio

The Commission should not underestimate the impact LPFM will have on AM broadcasters. The radio marketplace simply cannot support the addition of low power FM stations.[29] AM stations already suffer from a declining revenue base. LPFM would erode this revenue base even further. The impact of LPFM on programming options available to AM

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[24] NAB Comments at 65.

[25] *Id.* at 65.

[26] Comments of Bonneville International Corporation at 10.

[27] NAB Comments at 65.

[28] *Id.* at 66.

[29] See Hibernia Communications LLC Comments at 2.

broadcasters is also cause for concern. While the industry may be flourishing, AM broadcasters continue to struggle. LPFM may seriously compromise this sector of the industry.

E. Conclusion

For the foregoing reasons, Shamrock is opposed to the FCC's proposals for the creation of any LPFM service.

Respectfully submitted,

THE SCRANTON TIMES, L.P.

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