

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of
Creation of a Low
Power Radio Service

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MM Docket No. 99-25
RM-9208
RM-9242

REPLY COMMENTS OF
CLEAR CHANNEL COMMUNICATIONS, INC.

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SUMMARY

Any fair and reasonable reading of the record in this proceeding confirms that the Proposal to create one or more classes of low power FM radio ("LPFM") cannot be adopted at this time.

First, the record completely fails to demonstrate that LPFM service will not endanger existing radio service. To the contrary, extensive evidence shows that the elimination of interference safeguards simply to "find" more spectrum for LPFM stations will result in the effective silencing of established voices (and inefficient spectrum use) through objectionable and widespread interference.

Second, the record fails to demonstrate that the adoption of LPFM at this time will not postpone or preclude the benefits of the digital revolution from reaching terrestrial radio. To the contrary, the record is replete with the obstacles that premature adoption of LPFM radio services would pose to any successful DAB implementation.

Third, the record does not demonstrate that LPFM will achieve the Commission's stated justifications for the service: increasing viewpoint diversity, fostering localism and expanding full power broadcast opportunities for new entrants. Again, to the contrary, LPFM proponents and recent history alike suggest that the Commission would have to restrict LPFM radio stations through constitutionally or legally dubious means if it is to be even reasonably certain that additional radio stations -- whether LPFM or otherwise -- would result in more viewpoint diversity, better local programming, or a realistic stepping stone to additional full power broadcast ownership.

Because the *Notice's* Proposal would risk substantial damage to the public interest through widespread interference and the delay of digital radio, and may never accomplish its proposed aims, the Commission should reject the Proposal.

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To: The Commission

REPLY COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.

Clear Channel Communications, Inc. ("Clear Channel"), pursuant to Section 1.415 of the Commission's Rules, respectfully submits these reply comments with regard to the above-captioned proceeding, in which an overwhelming number of comments highlighted the dangers inherent in the creation of hundreds or thousands more FM radio stations ("low power FM" or "LPFM"). ^{1/}

Based on the record in this proceeding, the issue whether to adopt LPFM, as proposed in the *Notice* (the "Proposal"), distills to a single question:

Is the Commission willing to endanger the present and future of all existing FM services -- from full power stations to translators to reading services for the visually impaired -- simply to "find" more spectrum for an

^{1/} *Notice of Proposed Rule Making, Creation of a Low Power Radio Service*, MM Docket No. 99-25 (released February 3, 1999) ("*Notice*"). Clear Channel already has filed comments in this proceeding that summarize many basic reasons to reject or postpone consideration of the *Notice's* proposal (the "Clear Channel Comments"); these reply comments focus on particular aspects of other comments in this proceeding that require emphasis or analysis.

untested low power service that would enable, at most, a few, small radio stations to be added to areas already served by a number of radio stations and other media?

The question neither overstates the danger LPFM poses to established services nor understates the Proposal's likely public benefits. First, the Proposal's threat to existing radio services is real. The *Notice* proposes permanently waiving long-standing interference safeguards to find more spectrum to create more LPFM stations. In fact, the elimination of such safeguards for LPFM appears a prerequisite to any LPFM Proposal. ^{2/} Yet, the studies in the record overwhelmingly demonstrate that the sweeping waiver of such safeguards will cause objectionable interference to existing full power radio services, on which the public already depends for its information and entertainment, or to other existing services -- such as reading services for the visually impaired -- that advance the public interest through their use of the FM frequencies.

Even the Commission's own *Interim Report* did not begin to demonstrate that LPFM will not harm existing FM services. ^{3/} First, the *Interim Report* refused to consider the impact LPFM stations would have on the reception of most radios -- including the common portable or clock-type radio so critical to radio's "mobile and ubiquitous" nature. Second, the *Interim Report* assessed only a few radio receivers in highly specific conditions, and failed to explain whether the

^{2/} See *Notice* at ¶ 44.

^{3/} See William Inglis & David Means, *Interim Report, Project TRB-99-3, Second and Third Adjacent Channel Interference Study of FM Broadcast Receivers* (released August 5, 1999) ("*Interim Report*").

results of the study would apply to full power as well as low power stations. Third, the analysis was done hurriedly and was admittedly incomplete.

In contrast to the failings of the *Interim Report*, and the telling absence of any reliable technical study supporting LPFM, several comprehensive analyses each show that LPFM *will* cause widespread interference to existing radio services, especially to the inexpensive receivers on which the ubiquity of the medium depends. The results of such studies should not be surprising: obviously, the Commission has not previously limited the number of broadcast voices available to the American public through such interference safeguards for no reason. Rather, as the studies (and common sense) indicate, the sweeping elimination of a number of interference safeguards in order to create more sources of potential interference will, in fact, create widespread interference, rather than the “insignificant” effects suggested by the *Notice*. ^{4/} And, as the comments make plain, the technical deficiencies of the LPFM Proposal do not end with interference, but range from diminished flexibility to the increased likelihood of improper operations.

Second, the danger LPFM poses to the future of radio is real. Terrestrial radio was the first wireless media; yet, it is very likely to be the last to bring the benefits of digital broadcasts to its listeners. Radio’s move to digital intends not to affect analog transmissions during the transition period. However, the LPFM Proposal intends to add additional FM signals in such a way that their spectrum mask will overlap the digital portions of existing stations’ authorized

^{4/} *Id.* at ¶ 45.

channels. At the same, digital transmissions, which will be lower power relative to analog, are more susceptible to second- and third-adjacent channel interference. The potential for conflict is self-evident, and particularly so when the Commission has not issued any type of *Notice of Proposed Rule Making* with regard to its proposed rules for DAB. At the very least, the more stations that occupy such near-channel spectrum, the harder it will be for any transition of radio to digital to succeed. Comments from USA Digital Radio, Inc. and others underscore that the LPFM Proposal should not be adopted at this time, unless the Commission wants to forestall terrestrial digital radio for years.

Third, the lack of likely public benefit from the Proposal -- even when interference issues are disregarded -- is real. The history of radio from 1980 to 1996 -- during which time thousands of new radio stations came on-air -- demonstrates that additional radio stations, even when coupled with ownership restrictions of the sort outlawed under the Telecommunications Act of 1996, do not automatically satisfy the Commission's apparent standard for sufficient viewpoint diversity, enhanced localism, or more opportunities for parties new to full power broadcasting. The relatively few pro-LPFM comments that address such issues offer little reason -- short of constitutionally or legally dubious means -- to think the creation of LPFM stations is any more assured of further broadening actual viewpoints broadcast. Neither does the record demonstrate that other significant benefits would flow from the Proposal, and certainly no benefit sufficient to justify any change as sweeping and dangerous as the Proposal.

This proceeding has attracted considerable public attention -- including more than 7,000 pages of comments filed on or between July 25 and August 2 alone. But the Proposal ultimately should not be adopted based on the number of comments cast for and against . Rather, the Proposal should not be adopted unless the record demonstrates that LPFM stations, as proposed:

- will not create objectionable interference; and
- will accomplish, in some measurable and significant way, the Commission's intended ends of increasing viewpoint diversity in radio broadcasts, fostering programming of local interest beyond that already available, and increasing the number of new entrants into full-power broadcast media.

Because the record in this proceeding provides no non-arbitrary basis for either conclusion, the Proposal to create one or more classes of LPFM services cannot be adopted at this time.

I. THE EVIDENCE IN THE RECORD PROVIDES NO BASIS TO CONCLUDE THAT LPFM STATIONS WILL NOT CAUSE WIDESPREAD INTERFERENCE TO EXISTING FM SERVICES.

The *Notice* indicates that the Commission founded the Proposal on an assumption that LPFM stations, even those operating on frequencies that would be forbidden to full-power stations, would result in "insignificant" interference to existing services. ^{5/} Otherwise, the Proposal necessarily would implicate well-established Commission precedent and policies that bar waiver of fundamental interference safeguards unless overwhelming and certain public interest benefits

^{5/} *Notice* at ¶ 45.

would result, a standard which the Proposal cannot hope to meet. 6/ Yet, despite the thousands of comments filed in this proceeding, the record includes no reliable study that demonstrates the prerequisite fundamental to the Proposal: that LPFM stations, as proposed, will not cause any objectionable interference to established FM services. 7/

The Commission need look no further than the comprehensive and detailed studies provided by the National Association of Broadcasters (the "NAB Study" or "NAB Comments") and the joint report -- filed as part of three separate comments -- of National Public Radio, Inc., Consumer Electronics Manufacturers Association, and the Corporation of Public Broadcasting (collectively, the "NPR/CEMA Study") for evidence. These two analyses confirm what common sense would indicate: the Proposal markedly would increase interference and diminish the overall efficiency of radio. 8/ The comments of the Public Radio Regional

6/ See, e.g., Clear Channel Comments at 6-9.

7/ To the extent LPFM proponents even address such critical technical matters, most content themselves with parroting the superficial or preliminary analysis contained in the *Notice*. See, e.g., Comments of J. Rodger Skinner, Jr. at 32-33. Such uninformed assertions are no basis on which to adopt LPFM. For example, suggesting that the Commission's limited experience with grandfathered short-spaced stations universally justifies the elimination of interference safeguards with regard to LPFM stations already has been shown to be deficient on both logical and technical grounds. See, e.g., NAB Comments at 18-19. Likewise, the sweeping assertion that, *whatever the results of actual receiver testing*, the interference to be caused by LPFM "would be minimal" hardly provides an informed basis for Commission action. Comments of J. Rodger Skinner at 32-33.

8/ See, e.g., Comments of National Association of Broadcasters at 28-40 (explaining that extensive testing shows that interference protections are still necessary, that radio receivers have not improved sufficiently to reject such interference, and that LPFM in particular will cause interference); Comments of

Organizations offer a fair summary of the most telling points of each study, including: 9/

- “any elimination of second and third adjacent channel protections will have ‘real world’ effects on actual listener reception of radio signals;”
- the “addition of any new LPFM stations, even with existing second and third adjacent channel protection, will result in an unacceptable increase in interference to listeners;”
- “in the presence of second adjacent interference, 13 of the 16 receivers tested [by CEMA] could not achieve the minimum acceptable listenable signal; three of the thirteen receivers failed to function at all;”
- “the elimination of the IF taboo [for LPFM] would result in a *significant and serious* increase in interference for listeners;” and
- “the field impact of LPFM on interference will be much worse than lab tests indicate.”

In short, each Study demonstrates that the *Notice* erred when it presumed that the Proposal would not result in significant interference to existing FM services.

In human terms, of course, the implications of the studies are far more troubling. They mean that a listener accustomed to enjoying a certain FM signal will no longer get that signal as clearly or at all. 10/ They mean that, on the whole,

National Public Radio, Inc. at 15 (noting that, contrary to popular wisdom, the quality of FM radio receivers, on the whole, has not improved over the years).

9/ Comments of Public Radio Regional Organizations at 18-25. PRRO also notes that such studies conform with real world experiences of stations from California to New York. *Id.*

10/ In addition, the Commission historically has preferred eliminating the loss of established services to the introduction of new services, even if more net people could potentially profit from such new services. For example, in station modification or short spacing cases, any non *de minimus* loss area is sufficient reason to deny the relevant application. *See, e.g., Triangle Publications, Inc., 37*

the quality of available FM signals will diminish, which in turn will diminish the interest of the public in radio. They mean that many LPFM stations will have even smaller service areas than those projected, because the interference that will result also will disrupt their signals. 11/ They mean that a visually impaired person may not be able to access an FM reading service. 12/ And they mean that it would not be surprising if, in a particular case, implementation of the Proposal could *diminish* the number of listenable voices available to a particular area or community.

The Commission's *Interim Report* does not demonstrate otherwise, in large part because of the Report's obvious deficiencies. Most important, the *Interim Report* does not study all types of radios. More than three-quarters of all radios sold in the United States in 1998 were clock or portable radios, including walkmans. 13/ Such lower-quality, but inexpensive receivers are responsible for much, if not most, radio listening in the United States. 14/ Yet, the *Interim Report* declines to study

FCC 2d 307, 313 (¶ 14) (1964) (denying proposed modification that would increase service to almost 400,000 persons but would cause loss of existing service to fewer than 90,000). The relevance of this precedent to the Proposal here is self-evident.

11/ See NAB Comments at 20-28 (showing that the real-world effect of such interference may disrupt up to 95.8 percent of an LP100's service area).

12/ See, e.g., Comments of Harrisburg Area Radio Reading Service at 1 (fearing that LPFM services would interrupt its reading service, which operates at a low power digital subcarrier likely prone to such interference, to 800 persons who are visually impaired).

13/ *Id.* at 9.

14/ For example, CEMA estimates that 55 percent -- or more than half -- of U.S. radio listening occurs outside the car. See CEMA Comments at 10. The small service areas of LPFM, especially the proposed LP-100 stations (or those of even lower power), would suggest that the percentage of listening to such stations on

such "small, inexpensive receivers with integral antenna," and studies only five "small, moderate-cost receivers with antenna connection." The result, as even a cursory review of the data makes clear, is an analysis that is hopelessly skewed. 15/

Such skewed data cannot overcome the compelling analysis of the NAB Study and the NPR/CEMA Study, each of which clearly demonstrate the dangers of the LPFM Proposal. The Proposal, after all, must seek to benefit the entire public, not merely those individuals who want and can afford to buy expensive home-stereo equipment or those who want to own a radio station of their own near their hometown without paying what the market would require. 16/ Yet, the *Interim Report* does not even consider how these "other" listeners will be affected by the Proposal. Accordingly, the *Interim Report* must be discarded in favor of the far

"non-car" radios would be even higher. Accordingly, the importance of a thorough study of "non-car" radios with regard to the Proposal should be even greater. Yet, the *Interim Report* tests more car radios (Category III) than it does common household radios (Categories I & II).

15/ Such bias only is exacerbated by the *Report's* decision to evaluate nearly twice as many expensive "stationary" receivers (Category IV) as it does low or moderately priced "stationary" receivers (Categories I and II) combined. See *Interim Report* at 4-5. Accordingly, the *Report* not only ignores the receiver that is most readily available to persons of low or moderate disposable income levels, but also does not attempt to compensate in some small way by testing more moderately-priced (Category II) models.

16/ In other words, the Proposal "must focus on the needs of [all] listeners, not just licensees . . . on service as well as access." Comments of Corporation of Public Broadcasting at 2.

more extensive and rigorous NAB and NPR/CEMA Studies, which show that most radio receivers will be noticeably affected by implementation of the Proposal. 17/

Other failings of the *Interim Report* confirm that it provides no basis for adoption of the Proposal. The *Report* studies only a few radio receivers -- a defect that causes the *Report* itself to admit that it should not be used as a basis for any general action. 18/ The *Report* addresses only second and third adjacent channel interference in a shielded room -- an environment which excludes intermodulation interference and the interaction of potential interfering signals with unpredictable terrain or weather effects. 19/ The *Report* does not even explain whether its analysis was limited to low power stations or whether it also should apply to full power stations. 20/

17/ See, e.g., Comments of National Association of Broadcasters at 28-40; Comments of National Public Radio, Inc. at 15; Comments of Consumer Electronics Manufacturers Association at 3; Comments of Corporation of Public Broadcasting at 15-19. Other studies confirm these parties' well-documented concerns. For instance, the Comments of the North Carolina Association of Broadcasters and the Virginia Association of Broadcasters demonstrate the particular problems LPFM stations would cause to existing FM services in those states.

18/ See *Interim Report* at 5 ("Because of the small sample sizes in each category, extreme caution must be exercised in interpretation of the data until sufficient additional examples can be tested to improve statistical significance.").

19/ Or, as the Comments of the Public Radio Regional Organizations note, field performance will experience even worse interference than found in lab tests. See Comments of Public Radio Regional Organizations at 19

20/ If the latter, the Commission must reject the study as being patently inconsistent with years of Commission precedent, or should immediately lift such safeguards with regard to all existing FM stations, lest the Commission be guilty of unnecessarily interfering with the efficient provision of radio service and the possibility of more full power radio choices for consumers.

These defects in the *Interim Report* should not be a surprise to the Commission. The authors of the *Report* properly and repeatedly acknowledged the shortcomings in the study. Throughout the *Report*, it was noted that the work was limited by the “need to develop some information quickly,” the “need to get some *objective* data into the record as quickly as possible,” the “lack of equipment” readily available, the inability to include the most prevalent class of radio receivers because of “time constraints,” and the overall need for further study. 21/ Even in the Conclusions, the *Interim Report* was careful to limit its observations that “can be conclusively made” to only “the sample at hand,” while cautioning that no party should attempt to make “sweeping conclusions” from the *Report’s* limited data. Such caveats underscore that the *Report* cannot be viewed as more reliable or more “objective” than the far more detailed NAB and NPR/CEMA Studies. Rather, the failings of the *Report* only confirm that any study on which the Commission intends to base its decision in this proceeding must be made available for public comment, lest later studies include similar patent deficiencies. 22/

21/ *Interim Report* at 3, 4 & 5 (emphasis added).

22/ The obvious requirement for public comment as to any Commission study critical to this proceeding -- see, e.g., *Air Transport Association v. FAA*, No. 98-1109, slip op. (D.C. Cir. March 5, 1999) -- begs the question: if the Commission knew that the Proposal required more study than what its experts could perform during the comment period, why did the Commission not extend the comment period? Even the abbreviated study submitted by the Commission Staff was not publicly available prior to the comment deadline. For the Commission to issue a *Notice of Proposed Rule Making* without any technical support, and then prove unable to make available any type of technical study of the Proposal prior to the comment deadline, while effectively requiring the general public to complete any technical study before that deadline, smacks of caprice. In particular, the Commission has not yet explained why it sees the need for such haste with regard to the LPFM

II. NO EVIDENCE IN THE RECORD DEMONSTRATES THAT IMPLEMENTATION OF THE PROPOSAL WILL NOT SIGNIFICANTLY DELAY OR PRECLUDE DIGITAL RADIO.

Dozens of comments stressed the need for an unimpeded transition to digital radio transmissions. ^{23/} The reasons are many and evident:

- the transition to digital radio promises to benefit all radio listeners and broadcasters in the United States;
- a prompt transition to digital audio broadcasting is critical to the future viability of radio;
- the transition to digital is a finite process, requiring only a temporary burden on FM spectrum, but one which is best done as quickly as possible to limit the number of new FM stations that commence operations before the transition; and
- DAB implementation would give consumers a reason to obtain higher-quality receivers that, in turn, may enable greater future use of the FM spectrum.

Again, only a relatively few LPFM proponents even considered the critical subject of digital audio broadcasting. Of these, most downplayed the significance of digital transmissions, contended that the Commission should not be

proceeding, when other proceedings -- including the recently concluded local ownership proceedings -- have continued for several years, despite, in that instance, explicit congressional directives to amend the Commission's Rules and the absence of any need to study any complex technical ramifications of the relevant issues.

^{23/} See, e.g., Comments of Cox Radio, Inc. at 17-20 (noting that waiting for DAB will not preclude future implementation of LPFM but that implementation of LPFM will delay, if not preclude, any transition to DAB); Comments of Public Radio Regional Organizations at 13-14 (explaining the importance of further progress on DAB before closing comments on LPFM).

worried about the interplay between digital and LPFM, or asserted that the public is not interested in better audio quality. 24/ The Commission should know better.

Since 1992, avowed Commission policy has been to be "committed to continuing our work with the broadcast industry to ensure that the broadcasters are able to promptly implement terrestrial DARS." 25/ More recently, in statements released with the *Notice*, each Commissioner indicated that LPFM should not be allowed to compromise radio's digital transition. 26/ The strong investor interest in satellite radio -- which is to begin competing with free terrestrial radio within the next year or so -- likewise confirms that the public's interest in better audio transmissions is able to be publicly noticed.

The *Notice* sidestepped the potential threat LPFM would pose to any imminent DAB transition by suggesting that second-adjacent LPFM stations would not affect radio's digital transition, despite the increased use of the FM band that would result under both proposals. 27/ The comments of USADR and Lucent do not allow such ignorance to continue. For example, Lucent's current analysis leads it

24/ See, e.g., Comments of Mike Hoyer at 10 (demanding that any digital transition either engineer around LPFM or live with the "temporary" interference that would result); Comments of J. Rodger Skinner, Jr. at 35-36 (suggesting that FM band does not need improvement). Ironically, Skinner suggests that, if a digital transition is to be attempted, that new broadcast spectrum should be made available. Of course, if the Commission chooses to go that route, it should reject the Proposal and instead provide new spectrum sufficient to accommodate additional FM stations as well as any new digital stations.

25/ *Amendment of the Commission's Rules with regard to the Establishment and Regulation of New Digital Audio Radio Services*, 7 FCC Rcd 7776 (1992).

26/ See Comments of Lucent Technologies Inc. at 3 (quoting each commissioner).

“to be pessimistic about the effects of permitting low power FM stations [especially LP1000 or LP100 stations] on adjacent channels.” 28/ Lucent explains that the elimination of second and third adjacent channel safeguards for any new low or full power radio stations will “constrain the technical capability of an IBOC system to replicate each station’s analog service area with a digital signal during a transition period” and/or will “cause interference to the analog LPFM signal in a portion of that station’s service area.” 29/ In other words, LPFM interference will not be limited to existing analog signals, but also will reduce or ruin the most evident consumer benefit of digital radio -- sharper signals.

USADR is similarly troubled by the timing and implications of the *Notice’s* LPFM Proposal. It reiterates that the Commission should not take the irrevocable act of adopting LPFM at least until all DAB testing is complete and a fuller sense of the interaction of LPFM and the proposed DAB technologies can be ascertained. 30/ Moreover, its preliminary studies suggest that a single LPFM station could create an area of interference approaching 40 square kilometers (or 15 square miles) to a full power station’s digital signal, which, in a densely populated area, could translate into interference to thousands of households. 31/ The same

27/ See *Notice* at ¶ 49.

28/ Comments of Lucent Technologies Inc. at 5.

29/ *Id.*

30/ Comments of USA Digital Radio, Inc. at 7.

31/ See *id.* at 7, Exhibit A.

study notes that the condition would be exacerbated by the presence of any more than one LPFM station in the same region. 32/

By supporting IBOC as the standard for the transition to digital, and by not seeking additional spectrum as was necessary for digital television and digital operations for other services, radio broadcasters have demonstrated their commitment to spectrum efficiency. In exchange, existing full power FM stations should have the benefit of a reasonable expectation that they will enjoy at least existing levels of protection from interference during the transition to digital. They should not, while facing the challenge of transitioning to digital, be forced to confront the issues arising from potential interference from a whole new radio service.

Accordingly, on this record, substantial evidence -- and common sense -- confirm that LPFM will adversely affect, and may preclude, any DAB transition. No evidence supports the Commission's suggestion that technical solutions may overcome all the delays that LPFM would create to DAB implementation, especially if the Commission intends digital receivers to be readily affordable to the general public. Until DAB has become a reality, the Commission, as Chairman Kennard has explained in another forward-looking communications context, at least should "do no harm" to the digital future of radio, especially as that digital future may then facilitate the creation of additional FM stations. 33/

32/ *Id.*

33/ William E. Kennard, Chairman, Federal Communications Commission, Wall St. J. at A18 (August 24, 1999).

III. THE RECORD ILLUSTRATES THAT EMPTY ASSERTIONS AS TO THE ALLEGED BENEFITS OF THE PROPOSAL OFFER NO BASIS FOR ITS ADOPTION.

The irony of the Proposal is that it intends to create hundreds more radio stations in order to “restore” diversity to radio. Yet, the past 20 years have been a period in which the number of radio stations has markedly and consistently increased. Since 1980, approximately 3,500 radio stations have been added to the nation’s radio dial. Such addition of radio stations was not without cost: the increase in AM stations led to the reduction of audio quality in that band, and prompted the Commission to encourage parties to reduce the number of AM stations. 34/ Likewise, the proliferation of generally small FM stations in Docket 80-90 weakened the health of the industry -- leaving many stations without sufficient funds to ensure the highest quality of service. 35/

Such recent history underscores that any proposal to create more radio stations in order to foster viewpoint diversity or encourage a particular type of programming must clearly specify its goals and demonstrate that it actually will be able to accomplish them lest the further addition of radio stations again not satisfy

34/ The additional dangerous irony that the Proposal might “AM-ize” the FM band is not lost on a number of commenters. *See, e.g.*, NAB Comments at 15. The problems which the AM band still suffers because of overcongestion is reason enough to reject the Proposal.

35/ *See, e.g., Revision of Radio Rules and Policies*, 7 FCC Rcd 2755 (1992) (noting that, since 1984, “[t]he number of radio stations has continued to grow, as has the number of non-radio outlets, such as cable, that compete with radio broadcasters for audience and advertising. . . . More than half of all commercial radio stations lost money in 1990, and small stations in particular have been operating near the margin of viability for years.”)

the Commission's expectations. However, comments in support of the Proposal do not establish any sufficient reason to think that the Proposal, in the absence of further restrictions of dubious legality or constitutionality, is likely to lead to an actual increase in viewpoint diversity or other significant benefits.

As a general rule, the LPFM comments in this proceeding rely on the following related contentions to justify adoption of the Proposal:

- LPFM, as proposed, will increase viewpoint diversity, foster local programming, and increase new full-power broadcast entrants; and
- LPFM is a necessary antidote to the reduced programming diversity caused by recent consolidation.

Neither of these arguments, as advanced on this record, survive closer scrutiny.

Certainly, neither establish a sufficient basis to adopt LPFM, especially in light of the extensive studies detailing the serious dangers -- to both present and future FM services -- of the Proposal.

- a. *LPFM, without constant supervision and possibly illegal regulation, is unlikely to increase viewpoint diversity, foster local programming, and increase new full-power broadcast entrants.*

The Commission's fundamental rationale for the Proposal was to accomplish three laudable, albeit unmeasurable, goals: more viewpoint diversity, better local programming, and increased opportunities for new full-power entrants. 36/ Yet, even pro-LPFM comments make clear that the Proposal is by no means ensured of achieving any, never mind all, of these good intentions.

For example, one pro-LPFM commenter demands that the Commission to "be vigilant" in regulating all LPFM licensees' programming and format, as well

as requiring LPFM owners to provide access to other parties, perhaps upon request, lest LPFM operations fail to enhance local programming or viewpoint diversity. 37/ Another urges the Commission to resurrect extensive programming regulations and local ownership or officership (i.e., “quasi-integration”) requirements, despite their questionable practical effect and legal validity, in order to improve the likelihood that a particular LPFM station might foster viewpoint diversity and localism. 38/ That such requirements are incredibly impractical, and may well violate Commission policy and the Constitution in the context of today’s media marketplace, are not the most fundamental difficulty with such pro-LPFM comments. A more fundamental concern, at this point in the proceeding, must be that such urging for continuing Commission oversight of LPFM stations *by LPFM proponents* confirm that the Proposal is by no means assured of achieving the primary public interest benefits of the Proposal.

In contrast, parties familiar with the past record of such “micro” stations recognize the inherent flaw in the Proposal: that “the Commission will not achieve its stated desires with the LPFM service now envisioned.” 39/ Cox Radio, among others, has highlighted the logical and practical defects in the *Notice’s* assumption that the Proposal is necessary or likely to lead to increased viewpoint

36/ See *Notice* at n.3.

37/ See Comments of Brian Helvey and Edward Voccia, Appendix at 12-14.

38/ See Comments of United Church of Christ, Office of Communications, *et. al.*, at 8-9.

39/ Comments of JET Broadcasting Co., Inc. at 9.

diversity and better local programming. 40/ Moreover, to the extent the Commission continues to associate ownership diversity as relevant to viewpoint diversity, at least one minority broadcaster confirms that LPFM stations pose even more of a threat to minority-owned full power services than to other full power broadcasters. 41/ Another broadcast entity, which seeks to serve minority audiences, confirms a hidden, and assuredly unintended, danger of the Proposal: if adopted, this particular entity would divest its full-power station in order to “downgrade” to a low power facility with better coverage characteristics. 42/ Collectively, such comments provide more than enough confirmation that the Proposal is unlikely to accomplish, to any worthwhile extent, the goals that are its *raison d’etre*. 43/

b. *Recent trends in the radio industry has not endangered the programming choices available to consumers.*

Pro-LPFM comments often allude to threat economic rationalization of the radio industry poses to diversity. Yet, the record does not demonstrate the great loss of programming diversity that it is supposed to warrant the Proposal.

First, to the extent such concerns refer to format diversity, they are unfounded. In recent years, format diversity has not diminished. 44/ Accordingly,

40/ Comments of Cox Radio, Inc. at 13-17.

41/ See Comments of Mega Communications, L.L.C. at ii (“LPFMs will harm minority broadcast voices in particular.”)

42/ Comments of Morris Broadcasting Company at 1.

43/ Comments of National Public Radio, Inc. at 27.

44/ NAB Comments at 6 (detailing increases in format diversity since 1996).

as NAB notes, "the Commission cannot base its LPFM proposals on any lack of programming choices." 45/

Second, to the extent they refer to other forms of programming diversity, they are similarly baseless, as such statements ignore the recent proliferation of media, both inside and outside radio. For instance, most LPFM proponents do not mention that the Proposal, even if implemented without regard for key interference protections, is unlikely to create more than the 3,000-plus radio stations that have been added to the U.S. radio dial in just the last 20 years. Few, if any, LPFM proponents consider the potential of satellite radio, which presumably will air new programming from parties other than existing broadcasters. Most notably, only a relative few LPFM proponents mention the possibilities of the Internet, and then generally to downplay the medium as not equivalent to radio.

Such an attitude -- that only terrestrial radio is relevant to media diversity -- is both short-sighted *and* insufficient as a basis for Commission action. As Cox, the NAB and others demonstrate, the Internet must be considered a real and vital part of the media competition benefiting the U.S. consumer. The number of Americans listening to the "radio" over the Internet is skyrocketing. 46/ In fact, as noted in the comments of a number of parties, Chairman Kennard himself

45/ *Id.* at 7.

46/ *See, e.g.,* Comments of Cox Radio, Inc. at 14.

declared the Internet to be tantamount to broadcasting just a few months after the *Notice* was issued. 47/

More important, whether the Internet (or other media) is perfectly interchangeable with radio is not the issue; the issue is whether further congestion of the FM band is necessary to provide specific types of additional programming to consumers. It is not. Consumers do not choose radio because they have no alternative media choices -- the majority of radio listening is done outside the car, including many places where consumers certainly have access to many other sorts of media. Even consumers *en route* can choose from an increasingly growing array of programming choices, from pre-recorded music or texts to the imminent arrival of satellite radio. Thus, as a factual matter, terrestrial radio cannot be viewed as the sole means for a particular group to reach particular consumers. 48/

Third, as noted, it is far from guaranteed that all LPFM stations will develop their own formats, as opposed to simply mimicking -- albeit on a smaller scale -- the successful format (or programming) already available in most large or mid-size markets. 49/ In fact, as even LPFM proponents recognize, an LPFM

47/ See Speech to the National Association of Broadcasters (April 20, 1999).

48/ In fact, the role intended by proponents for LPFM stations would appear best served by the Internet. LPFM proponents generally visualize LPFM stations as filling a particular niche or delivering programming to a specific subset of a community. Transmission of niche programming to such a specific group would seem an entirely appropriate use of the Internet, and a rather inappropriate use of radio, the original *mass* media. See, e.g., Comments of the Corporation of Public Broadcasting at 3.

49/ In the *Notice*, the Commission expressly focused its research on such large and mid-size markets. This concern makes little operative sense, as these markets *already are well-served*. Accordingly, distorting a LPFM Proposal in an attempt to serve well-served markets actually may *diminish* the possible benefits of the

station must respond to the needs of its public if it is truly to serve the public. ^{50/} Not coincidentally, such responsiveness also is critical to the programming decisions of existing radio stations. Accordingly, it would be surprising if LPFM stations were not tempted to repeat styles of programming already available in most larger radio markets, if with different personalities or slight variations. Such minimal variations do not justify the public interest costs of LPFM, especially in markets already served by a number of radio stations and other media.

IV. CONCLUSION

The Commission must postpone completion of this proceeding. First, the proceeding did not subject the Proposal -- which would irrevocably affect the entire FM band -- to sufficient review. The Commission issued the *Notice* despite not having conducted any significant tests of real-world receivers or potential interference problems. It then extended the comment period, but for far less time than was necessary for even its own experts to complete a detailed examination of the technical risks critical to a proper understanding of the Proposal. It noted the key relationship between LPFM and the digital radio, but chose not to run the proposals' comment periods concurrently, presumably because that may have delayed action on LPFM.

Yet, the sweeping nature of the Proposal is not something that should be decided quickly or without sufficient data (or without public comment regarding

Proposal, because it reduces the probability that LPFM stations actually will provide any new or diverse programming that is significantly valued by the area's inhabitants.

^{50/} See Comments of Brian Helvey & Edward Voccia, Appendix at 13 (noting LPFM stations must include "music and related formats" that appeal to listeners).

the methodologies used to obtain that data). It is not a proposal that can be decided by merely counting the votes of various activists. ^{51/} Rather, it requires a sober assessment of how it will harm the existing U.S. radio public, and whether the flood of new stations will do anything significantly to benefit that public, without overburdening the abilities of the Commission or the future of radio.

Despite the length of the *Notice*, the Commission never once explains its need for speed in this proceeding. If the Proposal is technically sound, the Commission should be willing to endure a few months delay to prepare and subject to public comment a thorough report that answers the specific data that demonstrates the contrary. And if the data is not conclusively in favor of LPFM, the Commission owes it to the American people to do no harm. Once a proposal like LPFM is adopted, it may become nearly impossible to undo, and any attempt to remedy such a hasty decision -- even one clearly based on insufficient data --

^{51/} As the Commission is aware, the urge of individuals and groups to develop their own radio stations was the key impetus behind the creation of the Commission, with extensive powers to limit spectrum use. *See, e.g., Deregulation of Radio*, 84 FCC 2d 968, 977-78 (¶ 25) (1981) (refusing to relax technical requirements, lest the nation "see a return to that unregulated period prior to 1927 when chaos rode the air waves"). As the Commission is also aware, even elimination of second and third adjacent channel safeguards would not be enough to satiate the interest of non-broadcasters in owning a radio station, as the Proposal, at most, projects to offer a few thousand such stations. Accordingly, the effort of a few LPFM proponents to deem the Commission as no more than a vote-counting device -- *see, e.g., Comments of Michigan Music Is World Class at 1*-- must be rejected if the Commission is not to deny its own reason for existence.

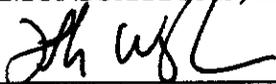
would disturb far more settled expectations than a simple refusal to adopt the Proposal unless and until more is known.

In any event, at this time, the record offers no basis for the adoption of LPFM. In fact, the record overwhelmingly demonstrates that the Proposal would disrupt existing FM services -- from full power FM radio to FM translators to FM reading services for the visually impaired -- and could delay indefinitely digital audio broadcasting, which all radio may need to remain competitive. Against such imposing public interest negatives, the Proposal offers no more than a possibility of benefits, the extent of which, even in the best possible case, cannot overcome the certain negatives of the implemented Proposal. Accordingly, the Commission should reject the Proposal or, at the very least, delay any further consideration of the Proposal until the transition to digital radio is well underway.

For all the foregoing reasons, Clear Channel asks that the Commission reject the Proposal at this time.

Respectfully submitted,

**CLEAR CHANNEL
COMMUNICATIONS, INC.**

By: 

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