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

**In the Matter of  
  
Creation of a Low  
Power Radio Service**

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

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

**To: The Commission**

**REPLY COMMENTS OF CUMULUS MEDIA, INC.**

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September 17, 1999

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## SUMMARY

When the Commission initiated this proceeding, it assumed that a Low Power FM ("LPFM") service could be established without requiring second- and third-adjacent-channel and Intermediate Frequency interference protection. What harm could there be, then, in establishing such an LPFM service? Assuming even the slightest benefit from LPFM, if there were no costs, creating the service would be in the public interest.

The record established in this proceeding to date demonstrates that LPFM would in fact impose great costs upon the listening public, by creating significant interference to primary FM stations. What once may have been considered a harmless opportunity to increase citizens' access to the airwaves has now been proven to be a serious threat to the licensed use of those airwaves and to the integrity of the FM service. The Commission stands poised, based upon ideas conceived without adequate information, to degrade the FM radio band that provides millions of listeners with valuable commercial and public radio service.

This detriment is compounded by the threat that the Commission's proposals represent to the nascent digital audio radio service ("DARS"). DARS promises to increase both spectrum efficiency and the quality of FM broadcasting. Yet the Commission, which acknowledges that it does not know the potential effect of LPFM on DARS, appears ready to proceed — based upon what is at best an incomplete record — to impede the development of DARS. This threatens to disrupt a service which promises to provide greater benefits to more people than any reasonable analysis of the benefits of LPFM would suggest can be provided by LPFM.

The record has established that LPFM is not the “everybody wins” proposition that the Commission assumed it would be. There are significant costs that will be borne by the listening public — people who have not flooded the Commission with comments, but whose interests the Commission must protect nonetheless. Based upon that record, the Commission should abandon its plans for LPFM. If the Commission feels compelled to continue this proceeding, it must at least abandon any thought of degrading existing interference protection: second- and third-adjacent-channel and Intermediate Frequency interference protections are essential to preserving the technical quality of the FM service and must be preserved. Finally, prudence requires that the Commission take no action establishing LPFM without first determining the harm it will inflict upon DARS.

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**To: The Commission**

**REPLY COMMENTS OF CUMULUS MEDIA, INC.**

Cumulus Media, Inc. ("Cumulus"), by its attorneys and pursuant to Section 1.415(c) of the Commission's Rules, hereby respectfully submits these Reply Comments in response to the Commission's *Notice of Proposed Rule Making* in this proceeding ("*NPRM*"), FCC 99-6, adopted on January 28, 1999 and released on February 3, 1999, 64 Fed. Reg. 7577 (published on February 16, 1999).<sup>1/</sup>

**BACKGROUND**

In this proceeding, the Federal Communications Commission (the "FCC" or the "Commission") proposes the establishment of a Low Power FM ("LPFM") radio service. The

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<sup>1/</sup> These Reply Comments are timely filed, in accordance with the revised schedule for submitting Reply Comments in this proceeding that was adopted in the *Order*, FCC 99-233, adopted and released on August 31, 1999.

Commission has proposed creating primary and secondary LPFM services operating at 1,000 watts and 100 watts, respectively, and has requested comment on the establishment of a "microradio" class of service operating with between one and 10 watts. In order to increase the number of LPFM facilities that could be licensed, the Commission has proposed subjecting existing primary FM radio stations and their listeners to significant new interference.

Based upon the record established in this proceeding, Cumulus opposes the establishment of LPFM. Cumulus filed Comments in this proceeding on a timely basis on August 2, 1999, generally expressing Cumulus's concern with respect to the Commission's LPFM proposals. Cumulus has now reviewed the opening comments filed by other parties in this proceeding. Cumulus's Reply Comments follow.

Cumulus, through subsidiaries, currently owns, operates (either as the licensee thereof, or pursuant to so-called "time brokerage" agreements with the licensees thereof), or has pending before the Commission applications for the Commission's consents to acquire the licenses of, a total of more than 250 commercial AM and FM radio broadcasting stations clustered in various mid-sized and smaller markets in certain Northeastern, Mid-Atlantic, Southeastern, and Midwestern states. As the parent company of the licensees of those stations, Cumulus has a keen interest in the proposals in the *NPRM* to strip existing primary FM broadcasters and their listeners of critical interference protection.

## DISCUSSION

### **I. THE RECORD ESTABLISHED IN THIS PROCEEDING DEMONSTRATES THAT THE COMMISSION'S LPFM PROPOSALS, IF ADOPTED, WOULD DEGRADE THE FM RADIO BAND AND DISSERVE THE PUBLIC INTEREST**

#### **A. Relaxation of Interference Protection from Second- and Third-Adjacent-Channel and Intermediate Frequency Stations Would Cause Unacceptable Levels of Interference to Listeners of Existing FM Service.**

In undertaking this proceeding, the Commission stated its belief that "current restrictions on third-adjacent channel operations are not needed for LPFM stations, and we believe it may be possible to disregard second-adjacent channel interference for these stations as well."<sup>2/</sup> This belief has been conclusively refuted by the technical analyses submitted in this proceeding. Based upon comprehensive testing, the Consumer Electronics Manufacturers Association ("CEMA") has concluded that abandoning second- and third-adjacent-channel and Intermediate Frequency-related protections will likely "result in significant interference" to FM service.<sup>3/</sup> Specifically, based upon its examination of FM receiver performance, CEMA found the following:

- eliminating second-adjacent-channel interference protection requirements "could result in creation of extensive new, objectionable interference to existing services;"
- eliminating third-adjacent-channel interference protection requirements "would

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<sup>2/</sup> *NPRM* ¶ 1.

<sup>3/</sup> CEMA Comments at 3. CEMA, with the support of National Public Radio and the Corporation for Public Broadcasting, conducted a "comprehensive examination of interference concerns . . ." CEMA Comments at 5.

result in creation of extensive new objectionable interference to existing services;"  
and

- eliminating Intermediate Frequency protection requirements would result in severe localized objectionable interference.<sup>4/</sup>

In their joint statement on LPFM, Chairman Kennard and Commissioner Tristani declared: "As we consider the establishment of a low power radio service, we will be mindful of interference concerns. We will not undermine the technical integrity of the FM band. Our job is to be the guardian of the spectrum, not to degrade it."<sup>5/</sup> But in fact the Commission has indicated that it is willing to sacrifice some technical integrity in the FM band and to degrade spectrum to some degree in order to create LPFM stations.<sup>6/</sup> The Commission is in effect, but without admitting it, seeking to balance the undermining and degradation of FM broadcasting that would result from reduced interference protection against the perceived benefits of giving new broadcasters the opportunity to provide "diversity in radio services."<sup>7/</sup>

It is now clear that the *NPRM* underestimated the damage that its proposed reduction in interference standards would inflict upon primary FM radio service. Although the Commission did not know if second- and third-adjacent-channel interference restrictions are necessary to

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4/ CEMA Comments at 13-15.

5/ *NPRM* at 2534a (Joint Statement of Chairman William E. Kennard and Commissioner Gloria Tristani).

6/ See *NPRM* ¶ 44 ("Relaxed interference standards for low power FM stations may be the only way to 'find' sufficient spectrum in medium and larger markets to create any new viable service of 100 watts or more.") (footnote omitted).

7/ *Id.* ¶ 1.

protect the public's ability to receive primary FM broadcasting without harmful interference,<sup>8/</sup> technical analysis provided in the comments of CEMA and others has set the record straight; elimination of second- and third-adjacent-channel interference protection "is likely to result in significant interference to current and future FM service . . . ." <sup>9/</sup> The spectrum would be unacceptably degraded, and the listening public would suffer. This demonstration of significant interference should bring to an immediate end the discussion about discarding the second- and third-adjacent-channel and Intermediate Frequency protections that allow millions of Americans to enjoy high-quality FM broadcasts.

In their joint statement quoted above, Chairman Kennard and Commissioner Tristani further stated that "we cannot deny opportunities to those who want to use the airwaves to speak to their communities simply because it might be inconvenient for those who already have these opportunities." <sup>10/</sup> On the contrary, it is not inconvenience to broadcasters, but rather harm to the listening public, that should lead the Commission to abandon its LPFM proposals.

Moreover, as the Broadcast Signal Lab Engineering Study shows, with the elimination of second- and third-adjacent-channel interference protection, performance of lower priced radios tend to be worse than the performance of other receivers on the average. <sup>11/</sup> It would be

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8/ See *NPRM* ¶¶ 1, 43-48.

9/ CEMA Comments at 3.

10/ See footnote 6, *supra*.

11/ Broadcast Signal Lab Engineering Study, dated June 30, 1999, Executive Summary. This study was commissioned by the National Lawyers Guild Committee for Democratic Communication, the Minority Media and Telecommunications Council, and others.

particularly unfortunate if, in an attempt to increase "citizens' access to the airwaves," <sup>12/</sup> the Commission were to make people who cannot afford expensive radios suffer disproportionately the degradation of our nation's FM broadcasting service.

**B. Relaxation of Interference Protection from Second- and Third-Adjacent-Channel and Intermediate Frequency Stations Would Jeopardize Nascent Digital Audio Radio Service.**

The Commission's proposals additionally threaten the very creation of terrestrial digital audio radio. The record demonstrates that elimination of second-adjacent-channel protections would raise serious interference concerns for the proposed new Digital Audio Radio Service ("DARS"). <sup>13/</sup> In its analysis of in-band/on-channel ("IBOC") DARS, "CEMA's testing shows that digital audio radio service could face interference from . . . [second] adjacent channels." <sup>14/</sup> Lucent Technologies, Inc. ("Lucent") notes that "[w]here additional interference from an analog signal is present on . . . [second] or . . . [third] adjacent signals on both sides of the Hybrid IBOC FM signal, the impairment would be worse . . . ." <sup>15/</sup>

When it began this proceeding, the Commission quite correctly noted that its "understanding of future IBOC systems is preliminary and . . . we may not be fully aware of any negative impact or restrictions that authorization of low power radio service would have on the

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<sup>12/</sup> *NPRM* ¶ 1.

<sup>13/</sup> *See* CEMA Comments.

<sup>14/</sup> CEMA Comments at 6. *But see* *NPRM* Appendix C (USA Digital Radio Partners, L.P. findings of negligible interference or no harmful FM-to-IBOC DARS second- or third-adjacent-channel interference.)

<sup>15/</sup> Comments of Lucent Technologies Inc., dated August 2, 1999, at 9.

transition to a digital IBOC technology for FM stations.”<sup>16/</sup> The record now shows that the proposals would have substantial negative impact upon the development of IBOC DARS.<sup>17/</sup> That is especially troublesome because, as Commissioner Powell has observed, IBOC DARS “could improve the quality of radio service and potentially increase spectral efficiency.”<sup>18/</sup> As a nascent technology – facing all of the costs, obstacles, and uncertainty of a new service – IBOC DARS’s ability to provide improved quality and spectral efficiency is threatened by an increasingly uncertain regulatory environment.

Even if the development of IBOC DARS were able to overcome the obstacles that the *NPRM* threatens to throw in its path, the record raises serious concerns about the ability of the listening public to benefit from the proposed new LPFM service.<sup>19/</sup> As Lucent noted, its “analysis to date suggests that it will be difficult for additional low power analog and new digital IBOC signals to co-exist and serve their intended service areas.”<sup>20/</sup> It would be unwise for the Commission to proceed with its LPFM proposals without a better understanding of these issues.

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<sup>16/</sup> *NPRM* ¶ 49.

<sup>17/</sup> CEMA Comments at 3.

<sup>18/</sup> *NPRM* at 2537 (Statement of Commissioner Powell).

<sup>19/</sup> CEMA Comments at 3.

<sup>20/</sup> Comments of Lucent Technologies, Inc., at 10.

## **II. THE COMMISSION'S PROPOSALS WOULD HARM EXISTING FM SERVICE AND THE DEVELOPMENT OF DIGITAL BROADCASTING TECHNOLOGY FOR SCANT PUBLIC BENEFIT**

### **A. As the Commission Itself Has Established in Previous Proceedings, Low Power FM Stations Are Inefficient and Should Not be Allowed to Interfere with Primary FM Stations.**

Over two decades ago, the Commission considered remarkably similar arguments regarding low power broadcast operations.<sup>21/</sup> At that time, the Commission weighed the contention that noncommercial, educational Class D low-power FM radio broadcasting stations “(1) . . . offer truly local service; (2) . . . provide training; and (3) . . . represent a stepping stone to larger facilities.”<sup>22/</sup> In that proceeding, the Commission concluded:

Having balanced the competing equities, it has become clear that these low power operations cannot be permitted to function in a manner which defeats the opportunity for other more efficient operations which could serve larger areas . . . .<sup>23/</sup>

This reasoning is even more compelling now. No longer limited to just the lower 20 channels reserved for noncommercial educational use (and not subject to a Table of Assignments), the *NPRM* puts the entire FM band at risk. And in addition to impairing the integrity and efficiency of traditional FM service, LPFM now poses yet another problem: It is a direct threat to DARS, a significant technological advancement that stands to benefit far more listeners than LPFM would benefit. What was sound public policy in favor of advancing the

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<sup>21/</sup> *In the Matter of Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations, Second Report and Order*, 69 FCC 2d 240 (1978).

<sup>22/</sup> *Id.* ¶ 18, 69 FCC 2d at 246-47 (footnote omitted).

<sup>23/</sup> *Id.* ¶ 24, 69 FCC 2d at 248-49.

efficient use of the public's airwaves 21 years ago is now also essential to the development and deployment of a significantly-advanced service.

Notwithstanding the inherent inefficiency of LPFM operations, a number of proponents of LPFM argue that LPFM facilities should not be required to meet even minimal operating requirements or should have to provide only a very limited amount of service.<sup>24/</sup> Even assuming that LPFM facilities would offer the "diversity in radio voices and program services" that the Commission hopes for,<sup>25/</sup> the minimal operations supported by LPFM's advocates, combined with the limited service areas of the proposed LPFM stations, would make any public benefit from such operation quite minimal.

**B. Legitimate Community Needs are Better Served by Use of Existing Primary FM Facilities, both Public and Commercial.**

Cumulus and other broadcasters compete with each other to provide the best service possible – service responsive to the needs of their communities. To meet that goal, they commit considerable resources. Commercial and noncommercial, educational FM radio offers the ability to provide community information more efficiently and effectively as compared with the sporadic and limited LPFM operations.

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<sup>24/</sup> See, e.g., Comments of J. Rodger Skinner, Jr., dated July 29, 1999, at 39-40 ("I don't believe LP-100 stations should have minimum hours of operation, except that any station off-the-air for more than ten days must notify the Commission and indicate when they will return to the air and the reasons for being off the air"); Comments of United Church of Christ, *et al.*, dated August 2, 1999, at 12 (proposing a minimum operating schedule of five hours per day, six days per week).

<sup>25/</sup> *NPRM* ¶ 1.

**III. THE COMMISSION SHOULD TERMINATE THIS PROCEEDING OR, AT A MINIMUM IT SHOULD CONDUCT ADDITIONAL ANALYSIS OF THE HARM LPFM WOULD CAUSE TO PRIMARY FM AND TO DIGITAL AUDIO RADIO**

- A. If the Commission Does not Conclude that LPFM Will Cause Harmful Interference to Existing Primary FM and Emerging DARS Facilities, It Must at Least Concede that the Record Indicates the Potential for Such Interference.**

The record is clear: The Commission should terminate this proceeding without disturbing the interference protection rules that have served the listening public so well for so long.

Even if the Commission is not persuaded by the evidence submitted, however, it must at least concede that there is substantial new evidence that the potential for harmful interference and disruption to the listening public is greater than had been anticipated in the *NPRM*. Viewed most favorably to LPFM, the record demonstrates that there would likely be more interference to existing primary FM stations than the Commission expected. If the Commission decides to continue with this proceeding despite that evidence, the most it can reasonably do is conduct further studies, in particular with regard to interference to IBOC DARS, in order to determine the extent of damage that LPFM will cause. It would be arbitrary and capricious for the Commission to create an LPFM service based upon the assumption that there would be no harmful interference, when that assumption has been proven to be wrong.<sup>26/</sup>

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<sup>26/</sup> See *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("Normally, an agency rule would be arbitrary and capricious if the agency has . . . offered an explanation for its decision that runs counter to the evidence before the agency . . . .")

**B. The Commission Should Initiate an IBOC DARS Proceeding to Develop the Record Further.**

Because IBOC DARS is as promising as it is new, the Commission has indicated that it will be "wary of any provisions that would limit the development of future terrestrial digital radio services."<sup>27/</sup> In this situation, prudence dictates that the Commission initiate a separate proceeding to assess more fully the impact of LPFM on IBOC DARS. Only with established technical regulations for IBOC DARS can the Commission reach a meaningful conclusion regarding the extent to which its LPFM proposals could damage digital service. Such a proceeding would have the additional benefit of assuring the DARS industry at this critical juncture that Commission regulations will protect the viability of such a service.

**IV. IF THE COMMISSION DECIDES TO PROCEED WITH THE ESTABLISHMENT OF AN LPFM SERVICE, IT MUST MINIMIZE THE DAMAGE BY ADOPTING STRICT INTERFERENCE CRITERIA**

**A. The Commission Should Maintain Second- and Third-Adjacent-Channel and Intermediate Frequency Protections.**

For the reasons detailed above, the Commission should not authorize LPFM facilities. If, however, the Commission finds itself unable to resist LPFM, it should at least minimize the damage it would be causing. At most, the Commission should proceed slowly, with only a few experimental LPFM authorizations initially, allowing LPFM to establish a track record before going further.

By the FCC's own analysis, it can maintain existing interference protections, including

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<sup>27/</sup> NPRM ¶ 1 (footnote omitted).

protection of secondary FM translator stations, and still authorize over 70 LPFM facilities at 100 watts in the 60 small, medium, and large cities analyzed by the Commission.<sup>28/</sup> Authorizing those stations, subject to the limitations described below, would allow the Commission to assess the licensing and operation of LPFM stations on a trial basis, without the more serious disruption to the listening public that would accompany more widespread and permanently-reduced interference protection.

**B. Other Limitations Will Attenuate the Harm of LPFM.**

**1. LPFM operations should be limited to 100 watts.**

As suggested by many of the commentors, LPFM facilities should be authorized at no more than 100 watts.<sup>29/</sup> As demonstrated by the Commission's analysis,<sup>30/</sup> even with protection of translators, limiting LPFM facilities to 100 watts would allow for more than three times the number of 1,000-watt facilities that could be accommodated on a primary basis. Accordingly, a 100-watt limit would better serve the Commission's goals for greater radio broadcast ownership and "diversity" in radio voices.<sup>31/</sup>

By limiting power levels to 50 watts in urban areas, where demand may be greater, and to

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<sup>28/</sup> *NPRM*, Appendix D.

<sup>29/</sup> *See, e.g.*, Comments of the National Lawyers Guild (encouraging the Commission not to authorize 1,000-watt LPFM service except in "very rural areas"); Comments of Minority Media and Telecommunications Council, *et al.*, at 19 (suggesting that LPFM facilities should be limited to 50 watts in urban areas and 100 watts in rural areas).

<sup>30/</sup> *See* note 28, *supra*, and accompanying text.

<sup>31/</sup> *NPRM* ¶ 1.

100 watts in rural areas, as the Minority Media and Telecommunications Council recommends,<sup>32/</sup> the Commission would be able to increase the opportunities for ownership diversity.

**2. LPFM operations should be on a secondary basis.**

Cumulus supports the Commission's tentative conclusion that LP100 facilities should operate on a secondary basis. Because commentors generally support few or no minimum operating hours for such stations,<sup>33/</sup> and because as the Commission has previously concluded, low power operations are an inefficient use of spectrum,<sup>34/</sup> all LPFM facilities should be treated as secondary to all other operations, including translator and repeater operations.<sup>35/</sup> As noted by Inner City Broadcasting Corporation of Berkeley, *et al.*, translators can be essential to the transmission of programming to those portions of stations' authorized service areas that are unable otherwise to receive a listenable signal.<sup>36/</sup> It would be grossly inefficient, and a disservice to the listening public, to permit sporadic and limited LPFM operations to interfere with translator and repeater operations providing reliable and substantial service to their communities.

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<sup>32/</sup> Comments of Minority Media and Telecommunications Council, *et al.*, at 19.

<sup>33/</sup> See note 25, *supra*, and accompanying text.

<sup>34/</sup> See note 24, *supra*, and accompanying text.

<sup>35/</sup> See Comments of Lucent Technologies, Inc., at 11 (supporting secondary status for LPFM).

<sup>36/</sup> Comments of Inner City Broadcasting of Berkeley, *et al.*, dated August 2, 1999, at 3. See also, Comments of the National Federation of Community Broadcasters, dated August 2, 1999 at 12-13 (supporting full interference protection for existing terrestrially-fed FM translators).

**3. Other technical limitations will minimize interference.**

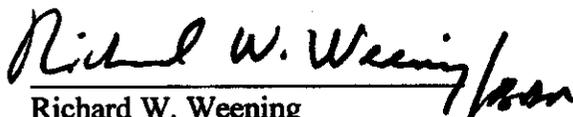
The Commission has suggested a number of technical limitations that could reduce the potential for interference from LPFM stations. Those restrictions, which would also reduce the administrative burden placed upon the Commission, should be designed to protect both the analog and the digital operations of primary stations. Specifically, the Commission should require FCC certification of all LPFM transmitters, and should establish emission and bandwidth limits that protect primary stations' analog and digital transmissions, keeping in mind that digital facilities may initially operate at lower power levels pending completion of the transition from analog to digital service. Such criteria should be based upon the record established in a separate DARS rule making proceeding, as proposed above.

**CONCLUSION**

For the reasons set forth in Cumulus's opening Comments and in these Reply Comments, Cumulus respectfully urges the Commission to terminate this proceeding without adopting the proposals set forth in the *NPRM*. If the Commission does not terminate the proceeding, the Commission, at a minimum, should conduct additional analysis of potential interference and/or should adopt strict interference criteria and other limitations on LPFM service as described herein.

Respectfully submitted,

**CUMULUS MEDIA, INC.**



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September 17, 1999

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I, Sylvia Chukwuocha, hereby certify that true and correct copies of the foregoing Reply Comments were sent this 17<sup>th</sup> day of September, 1999, via hand delivery, to the following:

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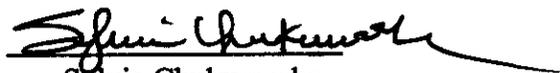
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