

ORIGINAL

EX PARTE OR LATE FILED

99-25

September 30, 1999

Re: Meetings on Friday, September 24, 1999 with Mr. David Goodfriend, Office of Commissioner Susan Ness, and Ms. Susanna Zwerling, Mass Media Bureau, regarding MM Docket No 99-25

John Riffer  
Federal Communications Commission  
Office of the General Council  
Administrative Law Division  
445 12th Street, SW  
Washington, D.C. 20554

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Dear Mr. Riffer,

This is a Notice that Ex Parte meetings regarding Low Power FM took place on September 24, 1999 between the FCC staff listed above and Greg Ruggiero and myself of the Microradio Empowerment Coalition.

The content of our meetings described the widespread support for the legalization of LPFM we are witnessing from the American public, support which has been conveyed to us through our contact with a diverse array of community groups.

Almost everything we discussed was a recitation of the arguments filed as Comment on MM Docket No 99-25 by the National Lawyers Guild Committee on Democratic Communication.

Arguments made not in National Lawyers Guild Committee on Democratic Communication Comment on MM Docket No 99-25 included our suggestions that 20 to 50 watt licenses may well serve densely populated areas like New York City, minimize interference concerns, and maximize diversification of license holders.

Sincerely,



Amanda Huron  
Microradio Empowerment Coalition

No. of Copies rec'd 0+1  
List ABCDE

enc: two copies each of materials given to Mr. Goodfriend:

- Microradio Empowerment Coalition Mission/Principles;
- Microradio Empowerment Coalition letter to the FCC;
- National Lawyers Guild Committee on Democratic Communications Comment to FCC on MM Docket No. 99-25;
- National Lawyers Guild Committee on Democratic Communications press release on results of technical study on low power FM.

To: The Honorable William E. Kennard Chairman,  
Commissioner Gloria Tristani,  
Commissioner Michael Powell  
Commissioner Susan Ness  
Commissioner Harold Furchtgott-Roth  
Federal Communications Commission  
The Portals, 455 Twelfth Street S.W. Washington, DC 20554

cc: President Clinton, Hillary Clinton, Vice President Al Gore,  
Bill Bradley, and George Bush, Jr.

cc: Microradio Empowerment Coalition

MM Docket No. 99-25

Regarding The Creation of Low Power FM Licenses: RM-9242, RM-9208

Dear Honorable Chairman Kennard,

We are writing to commend you and the Federal Communications Commission for taking action on an issue of great importance to us - ending the 21-year ban on community access to the airwaves. We have become increasingly concerned about the growing concentration of the media in our country and are pleased that the Commission is responding to public outcry to increase opportunities for local communities to use our radio airwaves.

One of the fundamental tenets of our democracy is to ensure that diverse interests have opportunities to express themselves, not merely to be the recipients of what a handful of other people tell them. It is a nonnegotiable component of our right to a free press and free speech.

Radio is perhaps the most qualified of any media outlet to provide community access. It is a relatively inexpensive medium to produce and is well-suited to cover community issues and local culture. Unfortunately, over the past three years the U.S. radio broadcasting industry has experienced an unprecedented wave of consolidation and mergers. As a result, the electronic medium best suited to inexpensive, local programming has become arguably the most regimented and centralized of our major media. Even a multimillionaire would have trouble entering the radio broadcasting industry today, because economies of scale (permitted by deregulation) demand that a firm own numerous stations in several markets to be even remotely competitive. As for the person of average means, their lot is limited to being a passive consumer of an increasingly monopolistic industry that has less and less competitive pressure to heed the diverse, local needs of listeners. And, for poor people and others who are considered unimportant to the advertising community, radio increasingly has little to offer. Again, the great tragedy of this situation is that radio is the ideal medium to provide an accessible local service for democratic communications of interest and value to the entire population.

Awarding licenses for new low power FM radio stations would empower local communities with a new public forum to express its many voices, cultures, ideas, and needs. Low power radio stations would create much needed public fora for a variety of groups -- including community activists, youth, ethnic and linguistic minorities, the religious community, local artists and cultural associations - and provide a forum for dialogue and debate about important local and public interest issues. These kinds of stations would strengthen community identity in urban neighborhoods, rural towns and other communities which are currently too small to win attention from "mainstream," profit-driven media.

The strong interest in independent radio stations shows that the creation of low power radio service would have wide public support. The tremendous demand for microradio is demonstrated by the emergence of a national Free Radio Movement, widespread civil disobedience, constitutional challenges of the Commission's aggressively enforced 21-year ban, as well as the proliferation of unlicensed community radio stations supported by local government, whose operators broadcast at the risk of financial losses, seizure of property, arrest, and in some cases, imprisonment.

In addition, the Commission has stated that in the last year alone, 13,000 people inquired regarding the possibility of obtaining a license for low power broadcasting in their communities. In support with the efforts of the Microradio Empowerment Coalition ([mec@tao.ca](mailto:mec@tao.ca)), we urge you to legalize microradio in order to benefit non-commercial community groups whose interest in microradio is to communicate, to educate, and to inform, not to make money. We are confident you agree that broad citizen access to information and culture is at the heart of a democratic society.

To support this vision, we urge you to legalize microradio with the following concerns in mind:

1. Microradio licenses should be awarded for non-commercial use only. The current radio spectrum is dominated by commercial media. LPFM licenses should go to non-commercial community groups who want to use radio to communicate with their neighbors, not make profit from them.
2. Licenses should be held locally, be non-transferable, affordable to all communities, easy to apply for and limited to one per license holder; they should NOT be businesses.
3. Power levels should be up to 100 watts in urban areas and up to 250 watts in rural areas.
4. The Commission should NOT diminish new low-power stations to "secondary status." It would be a tragedy to take away licenses from low-power community stations just because the Commission subsequently granted a power increase to a pre-existing station or granted a new high power license somewhere nearby.

5. The Commission should grant full amnesty for the microbroadcast pioneers who have suffered government seizure and fines. Their property should be returned. They should be granted equal opportunity in applying for and receiving new licenses.

6. Problems, technical or otherwise, should be referred to the local voluntary micropower organization for assistance or mediation (e.g. the Ham radio model). The FCC should be the forum of last resort.

7. LPFM must be protected and maintained in the future as radio makes the transition from analog to digital broadcasting.

8. If the FCC intends to license some commercial stations, they must be licensed last. In this instance, there should be a 2 year "headstart" for non-commercial licenses. The right of citizens to communicate is protected by the Constitution and the FCC's mandate. The right to make money through local radio is not a protection under the FCC's mandate.

9. Stations should be locally programmed. However, recorded materials such as music, poetry, documentaries, features etc. may be used. Sharing of program materials and resources among micro and community stations is strongly encouraged. No more than 20% of air time from off-site feeds or syndicated tapes.

10. Licenses should be awarded to unincorporated non-commercial associations, and non-profit organizations.

11. Within two years new spectrum space (including any future digital spectrum space) should be allocated for continued expansion of microradio broadcasters so that any community group that wishes to broadcast has access to available spectrum space (frequencies). Further, all manufacturers of consumer radio receivers for sale in the United States should be required to include this spectrum set aside for microradio broadcasters.

12. Licensing fees should be affordable to all communities.

Again, we commend Chairman Kennard and the Commission for your willingness to address these issues. We are hopeful that the creation of a new class of low power FM radio licensing becomes a reality during the Chairman's present term. We look forward to working on making the airwaves more accessible for our local communities.

Signed,

MEC Honorary Chair:

Robert W. McChesney, Professor, University of Wisconsin, Madison

Steering Committee:

Diane Fleming, Philadelphia, PA

Peter Franck, San Francisco, CA  
Amanda Huron, Washington, D.C.  
Alan Korn, San Francisco, CA  
Efia Nwangaza, Greenville, NC  
Greg Ruggiero, New York, NY

Noam Chomsky--Massachusetts Institute of Technology  
Howard Zinn--Professor Emeritus, Boston University  
Nancy Kranich--Librarian  
Ron Daniels--Executive Director, Center for Constitutional Rights  
George Gerbner--Founder, Cultural Environment Movement  
Edward Herman--Wharton School, University of Pennsylvania  
Janine Jackson--Fairness and Accuracy in Reporting  
Herbert Schiller--Professor Emeritus, University of California, San Diego  
Juliet Schor--Harvard University  
Mark Crispin Miller--New York University  
Laura Flanders--national producer for Pacifica Radio  
David Barsamian--Director, Alternative Radio  
Stuart Ewen -- Author  
Elaine Bernard--Harvard Trade Union Program  
Al Lewis--Organizer ("Grandpa" from the Munsters)  
Dan Simon--Founder, Seven Stories Press  
Dee Dee Halleck--Deep Dish TV  
Ben Bagdikian--University of California, Berkeley  
Loretta Ross--Executive Director, National Center for Human Rights Education  
David C. Korten, Author, and Chair of the Positive Futures Network, publishers of YES Magazine  
Carl Jensen--Founder, Project Censored  
Mike Albert--ZNet & Z Magazine  
Ellen Braune--Publicist  
Jamie Love--Director, Consumer Project on Technology  
Gary Ruskin--Director, Commercial Alert  
Barbara Ehrenreich--Author  
Gloria Steinem--Ms.  
Mumia Abu-Jamal--Journalist  
Kurt Vonnegut-- Author

# **MICRORADIO EMPOWERMENT COALITION**

## **STEERING COMMITTEE:**

Sara Zia Ebrahimi, Philadelphia  
Diane Fleming, Philadelphia  
Peter Franck, San Francisco  
Amanda Huron, Washington, D.C.  
Alan Korn, San Francisco  
Greg Ruggiero, New York City

**HONORARY CHAIR:** Robert W. McChesney, Madison

## **MEMBERS:**

Center for Constitutional Rights  
Chicago Media Watch  
Communication Workers of America Local 9423  
Community Powered Radio, Seattle  
Critical Path AIDS Project  
Cultural Environment Movement  
Excellent Radio  
Fairness and Accuracy in Reporting  
Institute For Local Self Reliance  
Libraries for The Future,  
Media Alliance (Ca)  
Media Education Foundation  
National Lawyers Guild Committee on Democratic Communications  
National Center for Human Rights Education  
The National Peoples Campaign  
New York Free Media Alliance  
Paper Tiger Television  
Project Censored  
Project on Media Ownership  
Prometheus Radio Project  
Radio4all  
Safeguards Project  
South Jersey Clinic Defense Coalition  
UW-Madison Greens

## **MISSION**

The Microradio Empowerment Coalition is a coalition of non-profit organizations, community and civic groups, associations, and individuals who are committed to

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working together to replace the FCC's ban on low-power broadcasting with a new regulatory setup that establishes a community based system of non-commercial microradio stations, starting this year, and carrying over through radio's transition from analog to digital broadcasting.

### **PRINCIPLES**

The Microradio Empowerment Coalition is founded on the principle that Democracy depends on community access to information and culture and that access is only genuinely achieved when there exist communications media that are non-commercial, accessible, based in and responsive to the diverse local forces which characterize every community. Building, supporting, and expanding a non-commercial media system is essential to helping to building, supporting and expanding a democratic society. Only with a real democracy will we ever move toward a just and fair society.

### **ANALYSIS**

The core of communication in this country, the mass media, are business driven enterprises that are based on and profit through commercialism. Commercial media have no real obligations to the public interest, no commitment to citizen access, localism, diversity, or civic journalism. The business of commercial media is to deliver (sell) audiences to advertisers for profit. Its commitment is not to educate or enlighten public awareness for the democratic good. With the passage of the Telecommunications Reform Act of 1996, concentration of media ownership has increased, to the further detriment of democratic society.

Since the 1930s, the Federal Government has favored commercialism in the management of the airwaves, establishing license requirements that few grass roots non-profit community groups could ever hope to fulfill or afford. Since 1978, the government has aggressively enforced a ban on low-power community broadcasting.

Starting in 1989 and gathering steam over the past five years, a civil disobedience movement organized by microbroadcast activists has been growing, and recently, showing signs of having impact. A few weeks after hundreds of microbroadcasters demonstrated outside the headquarters of the Federal Communications Commission (FCC) in October 1998, FCC Chairman Kennard made a speech to the NAB in which he signaled an interest in considering new regulations for micropower broadcasting. This was good news, but people are very concerned that he has in mind primarily another tier of commercial stations.

### **PURPOSE AND PROPOSALS**

The purpose of the Microradio Empowerment Coalition is to mount a campaign to

win enactment of new federal regulations creating a non-commercial, low-power, community radio broadcasting system, and to explore ways of setting up a decentralized network of centers that offer training, advice, and resources for the advance of non-commercial, community oriented media.

Coalition members agree on the following points:

1. Non-commercial service
2. Only one station per license holder
3. Local license holding, no absentee licensees
4. Stations will be locally programmed. However recorded materials such as music, poetry, documentaries, features etc. may be used. Sharing of program materials and resources among micro and community stations is strongly encouraged. No more than 20% of air time from off-site feeds or syndicated tapes.
5. That licensees be unincorporated not-for-profit associations, or non profit organizations.
6. That equipment shall be "type accepted" which meet basic technical criteria in respect to stability, filtering, modulation control, etc.
7. That problems, whether technical or otherwise, shall be first referred to the local or regional voluntary micropower organization for technical assistance or voluntary mediation. The FCC shall be the forum of last resort.
8. Amnesty and return of property for microbroadcasters who suffered government seizure of property and fines. No penalization of microradio pioneers in any upcoming licensing system.
9. That licensing fees shall be affordable to all communities.
10. That within two years new spectrum space shall be allocated for continued expansion of microradio broadcasters so that any community group that wishes to broadcast has access to available spectrum space (frequencies). Further, all manufacturers of consumer radio receivers for sale in the United States shall be required to include this spectrum set aside for microradio broadcasters.

## **COALITION MEMBERSHIP**

1. Joining. Each new coalition member organization joins by signing on to founding statement above, sending with it a letter of support.

2. Inform Congress. As part of our campaign, each new coalition member sends a letter to their representatives in Congress requesting support for non-commercial microradio regulation, cc-ing each FCC Commissioner individually. (Snail mail is probably best, but e-mail is better than nothing.)

Send to:

William Kennard [wkennard@fcc.gov](mailto:wkennard@fcc.gov)  
Susan Ness [sness@fcc.gov](mailto:sness@fcc.gov)  
Harold Furchgott-Roth [hfurchtg@fcc.gov](mailto:hfurchtg@fcc.gov)  
Michael Powell [mpowell@fcc.gov](mailto:mpowell@fcc.gov)  
Gloria Tristani [gtristan@fcc.gov](mailto:gtristan@fcc.gov)

Federal Communications Commission  
2000 M Street, NW  
#548  
Washington, D.C. 20554

3. Requested Dues

All sliding scale, offer what you can afford. \$25 for organizations with an annual budget under \$100,000; \$100 for organizations with annual budget of 100,000 or more. Funds help pay for postage, phone bills, photocopying etc.

4. Meet with Civic Groups.

Member organizations are encouraged to meet with civic groups in their community or area of interest, such as clubs, religious organizations, unions, media watch dog groups and the like, and solicit from them letters of support for the principles of the MEC.

5. Public Education, Outreach, and Publicity. Coalition members are encouraged to write articles and letters to press editors, attend or organize community meetings, rallies, etc. Send copies of newspaper stories, etc. to the FCC commissioners. Organizations are encouraged to use available resources like newsletters, web sites and listserves to help support and build the coalition.

6. Coalition members are encouraged to support their local microbroadcasters

**Microradio Empowerment Coalition**

2-12 Seaman Ave, #5K  
New York, New York 10034  
212. 942. 8899

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

COMMENT OF  
NATIONAL LAWYERS GUILD,  
COMMITTEE ON DEMOCRATIC COMMUNICATIONS  
FILED ON BEHALF OF ITSELF AND THE BELOW LISTED MICRO-  
BROADCASTERS, CONCERNED ORGANIZATIONS, AND INDIVIDUALS

SUMMARY:

The promise of a new LPFM service is that of:

- Local programming designed for local communities,
- Diverse and alternative voices and viewpoints,
- Service to currently unserved communities.

Two Guiding Principles:

Therefore, we propose that all decisions related to LPFM be measured by two guiding principles:

1. Encourage use of LPFM by those who have an urgent desire to communicate above all else - whether that be communication of information, ideas, art, or culture. Discourage those who wish to use LPFM as a means of making money.
2. Encourage maximum diversity of voices and viewpoints.

Wherever a decision needs to be made regarding implementation of LPFM these two principles should be applied.

We Support a Complete Amnesty for Microradio Pioneers

We Support Allocation of New Spectrum for LPFM

We support the establishment of a 100 Watt LPFM service. We believe the service should have the following features:

1. Non-commercial (including no “underwriting” announcements),
2. License/Registration Non-Transferable,
3. Primary status, modified to allow more liberal receipt of interference,
4. Local programming requirements,
5. Operator<sup>1</sup> requirements:
  - a. One to an operator (local and national),
  - b. Local residency requirement,
  - c. No operation by those with full-power radio license (local and national)
  - d. No operation by those with full- or low-power TV license (local and national )
  - e. No operation by those with ownership interest in other mass media such as telephone company, cable TV company, satellite broadcaster, daily newspaper, etc.

We urge the Commission NOT to adopt a 1,000 watt LPFM service, with the exception of very rural areas.

We urge an application, regulatory, and renewal system based largely in voluntary local self-regulation.

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<sup>1</sup> We have attempted to use the word “operator” rather than “owner” throughout. This is to emphasize that the electromagnetic spectrum is a public resource. Current full-power “owners” appear to have taken that semantic usage too literally. We have not used the word “licensee” as we favor a regulatory scheme more akin to a “registration” system than a “licensing” system.

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## STATEMENT OF INTEREST

The Committee on Democratic Communications of the National Lawyers Guild (CDC) on behalf of itself and the undersigned organizations and individuals, submits this response to the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking.

The National Lawyers Guild was founded in 1937 on the proposition that human rights are more important than property rights. Throughout its 63 year existence it has worked with progressive human rights organizations and individuals to make sure that they have access to the legal system and that it serves rather than impedes their efforts.

The Committee on Democratic Communications focuses on the right of all peoples to a world-wide system of media and communications based upon the principle of cultural and informational self-determination. The Committee formed in 1987 to work for the First Amendment and for the Right To Communicate as an international human right.

The Committee supports independent media organizations and forms of communication, such as micro-radio, public access television, and grass roots cyberspace resources, and works to ensure that they can function free from government or big business control. The Committee offers legal advice and representation to groups and individuals seeking to establish and sustain such forms of communication.

Since 1989 the CDC has actively worked to support the micro-radio movement and has provided legal advice and support to Mbanna Kantako and Free Radio Berkeley as well as other micro-radio broadcasters. After doing the initial research which made it clear that the ban on low power radio is both unconstitutional and a violation of the Right to Communicate under international law, we have trained lawyers in the issues involved in the representation of micro broadcasters, the CDC worked to ensure that micro-broadcasters can find legal representation when challenged by the FCC, and is now committed to making sure that when the FCC adopts low power FM it will be a real change and addition of new voices, ideas, and culture to the radio spectrum.

## INTRODUCTION:

The Committee on Democratic Communications of the National Lawyers Guild (CDC) is very pleased that the FCC has initiated this rulemaking to establish a new low power FM (LPFM) radio service. We wholly support, in principle, the establishment of such a service. However, we are deeply concerned that certain elements of the proposal will lead to an LPFM service that does not succeed in addressing the primary needs that led to this rulemaking and may, in fact, simply replicate in miniature the current failures of full-power radio service.

The promise of a new LPFM service is that of:

- Local programming designed for local communities,
- Diverse and alternative voices and viewpoints,

-- Service to currently unserved communities.

Current full-power radio has fallen victim to massive consolidation of ownership in a few hands, safe, bland, and homogenized programming designed for the lowest common denominator; and an abandonment of relevant local programming.

Since the advent of radio “broadcasting” in the 1920’s, what was once a quite open marketplace of ideas and culture has slowly shrunk into a cramped and restricted corporate model. This corporate model has so pervaded our current consciousness that many are unable to see beyond it, to imagine an alternative form of radio broadcast communication. Yet it is really the corporate model that is bizarrely illogical, for it utilizes one of our main communications mediums not to communicate, but simply to amass audiences and sell them. Can anyone truly say that most current full-power commercial broadcasters are driven by an urgent desire to communicate? To communicate ideas, information, or artistic and cultural expression? Rather, they are simply driven by a desire to make money by selling audiences to advertisers. They might as well be selling shoes or tires or paper towels-- its just a product to them, the content is interchangeable and basically unimportant.

The FCC has gone a good part of the way in envisioning a new type of radio service, an entirely new model. But we urge the FCC to go even further. It appears that a variety of goals and motivations underlie the FCC’s current proposal. Some of those goals appear contradictory to us. As such, there is no coherent and cohesive theory that consistently underlies the FCC’s proposal. We fear that the contradictions may eventually unravel the entire fabric of this new service and vitiate its dynamic ability to bring fresh, new, vibrant voices to American communities. Without a clear, consistent vision of what this new service should be, we believe there is a great risk that ten years down the road the small loopholes will have grown to freeways, and the same forces that have so enervated the creative spirit of current radio will dominate in LPFM.

### Two Guiding Principles:

Therefore, we propose that all decisions related to LPFM be measured by two guiding principles:

1. Encourage use of LPFM by those who have an urgent desire to communicate above all else- - whether that be communication of information, ideas, art, or culture. Discourage those who wish to use LPFM as a means of making money.
2. Encourage maximum diversity of voices and viewpoints.

Wherever a decision needs to be made regarding implementation of LPFM these two principles should be applied.<sup>2</sup>

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<sup>2</sup> Of course, other reasonable factors may also be considered. No rigid application of these principles to absurdity is intended. For example, having station operators rotate on a daily basis might lead to maximum diversity of voices and viewpoints, but would be impractical and counterproductive.

We also note that application of Principle 1 is likely to significantly lessen the administrative problems that vex the FCC in this proceeding. If the new LPFM service is designed so that profitmaking is not a significant possibility, then we predict that the number of applicants will be greatly diminished. In addition, those who do apply will not be likely to invest great sums of money in attorneys and engineers to complicate and lengthen the process. Finally, those who are interested in applying will more likely be amenable to negotiated solutions, such as time-sharing, where there are conflicts.

We intend to refer to these two principles throughout our comments. We hope that the FCC will see the wisdom of applying such a coherent theory throughout.

### AMNESTY FOR MICRORADIO PIONEERS

Prior to beginning our detailed analysis of the FCC's LPFM proposal, we must address an issue of overriding moral importance-- that of amnesty for those who have steadfastly and bravely brought us to this point by consistently asserting their constitutional rights to free speech.

When Mbanna Kantako opened the modern microbroadcasting era in 1989 by transmitting local news and information to the mostly African-American residents of his housing project in Springfield, Illinois the FCC could have responded by recognizing that a serious need was being addressed and asking how it could help to further Kantako's desire to support his community. After all, the FCC is supposed to work in the public's interest, is it not, rather than in the interests of entrenched broadcasting monopolists? Yet the FCC's reaction then, and for many years following, was simply to try to shut down such operations by whatever legal means possible. Had the FCC enforcement staff succeeded, we would not now be at this juncture.

The FCC initially dealt with Kantako as it had over the years with many unlicensed "pirate" broadcasters-- assuming that an intimidating show of legal force would end the problem. But Kantako was the first of a new breed of unlicensed broadcaster. He was not a scampy, overenthusiastic teenager who wanted to play DJ,<sup>3</sup> but a concerned citizen and community activist who desperately wanted to do something for his community and was intensely frustrated by the complete neglect of the establishment media. He was not going to back down-- he had been told that broadcasting was supposed to operate in the public's interest, not solely to feed the greed of Mel Karmazin, Michael Eisner, Rupert Murdoch and a hoard of other corporate vultures who had clamped their mouths onto this "public" resource.

The story since then is well-known to the FCC. Rather than deter Mr. Kantako, the FCC's repressive posture spawned a movement. A thousand transmitters bloomed in communities throughout the U.S. due to the overwhelming public need for a new kind of broadcasting and the courage of these pioneers. These unlicensed "microbroadcasters" were not criminals. They were not seeking to defraud the public, they were seeking to inform the public. They were not seeking to enrich themselves, just to enrich their communities. They had no criminal intent, motive, or

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<sup>3</sup> Not that there's anything wrong with that. We'll bet that more than a few FCC engineers and "respectable" licensed broadcasters had a fling as "pirates" in their dimly remembered youths.

purpose. Their purpose was to address clearly felt community needs that had been neglected and abandoned by both the FCC and the licensed broadcasters.

The FCC does not have clean hands in this matter.

The urgent need for an LPFM service stems from the FCC's absurd notion that a government-created monopoly should be regulated solely by "market forces". The FCC's deregulation of radio in the 1980s eliminated community ascertainment requirements, local programming and news and public affairs requirements, and commercial limits. More importantly, by making license renewal nearly automatic, the FCC effectively insulated broadcasters from any community input or influence. The ability of local citizens and community organizations to enter into a significant negotiating posture with local broadcasters in order to raise and address their concerns was eliminated. Broadcasters now need answer only to their absentee corporate masters.

It was also the FCC's enchantment with corporate visions of empire building that created the problem. The FCC long ago abandoned any vision of building and nurturing small, community oriented radio stations that were closely and keenly involved with their audience. Rather the FCC and entrenched corporate broadcasters continually pushed for higher power stations and multiple ownership both locally and nationally. No more mom and pops who lived and worked in the community. Stations are owned by large, faceless, distant corporations who pipe in canned music via satellite and wire out their cash receipts to national banking centers. The FCC had completely lost the vision of radio as a means of truly communicating ideas and information among people and now saw it as simply a problem in engineering efficiency and cash flow production. The hollow men had triumphed.

As with any form of neglect and repression, there is a backlash. Short of open revolt, that backlash often takes the form of civil disobedience. Civil disobedience harms no one, it is nonviolent, it is not criminal, it is profoundly moral. Civil disobedience comes when people simply refuse to be bullied any further and assert the basic rights which are theirs, though they may have to assert them in the face of governmental force and repression. In the course of American history, those who engage in civil disobedience have nearly always been judged by history as morally justified. The government that had asserted its repressive force is nearly always condemned.

In 1954, Rosa Parks, despite legal prohibition, sat in a seat at the front of a bus in Montgomery, Alabama. Others sat at lunch counters, used drinking fountains, and entered public places and facilities that they were legally barred from utilizing. Would it not be odd, would it not indeed be perverse, if ultimately all African-Americans were given their basic right to sit anywhere in the bus they pleased, except for Rosa Parks? What would we think of the court or government that would say that she, and she alone, should forever be banished to the back of the bus because it was she, and she alone, who dared to confront the authority of the government and to assert and win basic rights and basic dignity for all people? Such a result would be immoral, Kafkaesque, and laughable. Would you Chairman Kennard, Commissioner Ness, Commissioner Powell, Commissioner Furchtgott-Roth, Commissioner Tristani wish to be recorded in history as the ones who kept Rosa Parks sitting in the back of the bus due to alleged "character" issues? We

urge you to think carefully about this decision. There are times to break free of the mind-numbing procedures and forms and language of bureaucracy. This is one of them. A stunted, bureaucratic retreat to the Commission's definition of "character qualifications" would ill-serve this proceeding and this nation. The pioneers who steadfastly brought us to this point have more than enough character to qualify as licensees. In fact, in our eyes, they should be given a licensing preference to reward them for their unselfish civic-mindedness in the face of massive forces of opposition and even ridicule. The FCC must admit that this proceeding is occurring not out of the goodness of the government's heart, but solely because the unlicensed microbroadcasters have refused to back down, have refused to be silenced by unjust and unconstitutional regulations. Had they done what the FCC wanted, and turned off their transmitters upon receiving a warning letter, this proceeding would not exist.

We respectfully ask that the FCC act boldly, wipe the slate clean, grant an unconditional amnesty to all unlicensed microbroadcasters and start afresh. The pioneers of microradio must be given the opportunity to be "LPFM" broadcasters. Any other result would be immoral.

### I. New Spectrum Allocation

The Commission states that it will not consider allocation of new spectrum for LPFM in this rulemaking.<sup>4</sup> We can understand the Commission's reluctance to bite off too large a chunk at one time. Yet the Commission concedes throughout the NPRM that a very limited number of channels will be available for LPFM, especially in urban areas. That remains true even if second and third adjacency protections are dropped, LPFM is assigned a secondary status, spectral emission masks are required, transmission bandwidth is limited, and LPFM stations are allowed to receive greater interference than normal. While all of these strategies may increase somewhat the number of LPFM channels available, it will still be severely limited, especially in population centers.

Therefore, we strongly urge that the FCC initiate a separate additional rulemaking, to follow on this one, to consider allocating additional spectrum to LPFM. We believe that the need and demand are great. While we do not want to dwell on this issue at too much length here, but instead look forward to a future rulemaking, we wish to make a few specific points on this topic.

Delay May Be Fatal: There is great competition for spectrum. Spectrum that may be feasibly available for LPFM now may be irrevocably assigned to some other use in the near future. It is urgent that a rulemaking be initiated now before additional opportunities are lost.

A number of areas of the spectrum may currently have potential for LPFM use. VHF-TV channel 6 is not currently used in many areas of the country. Additional Channel 6 space may open up as television converts to digital. We believe that at least some of that Channel 6 space just below the current FM band, might reasonably be opened up to LPFM use.<sup>5</sup> In addition, we

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<sup>4</sup> NPRM Paragraph 15.

<sup>5</sup>We note that receivers that can tune those frequencies are already being manufactured and sold in Japan and could easily be brought into the US market at minimal cost.

have been told that other areas of the spectrum, such as 2300-2305 MHz, 139-140.4 MHz, and 141.5-143 MHz might be available and suitable for an LPFM service.

Now Is a Good Time to Introduce New Receivers: Significant changes are happening in radio broadcasting that will impel many listeners to purchase new receivers. Direct broadcasting of radio via satellite has already begun. Digital terrestrial broadcasting is being proposed for the near future. Modern radio receivers are far superior to those of a few years ago. As such, many consumers may be acquiring new radio receivers during the next few years. If a new portion of spectrum is to be assigned to LPFM, the sooner it is determined and can be added to new radio receivers, the better.

Listeners Who are Already Introduced to LPFM May Be More Likely to Purchase New Radio Receivers: Once an LPFM service is introduced in the current FM band, listeners will be more likely to purchase new radio receivers when they learn that the band is being expanded to accommodate further LPFMs. For example, imagine that a channel in a congested urban area is being time-shared by 3 or 4 licensees. If new spectrum opens up and some of the licensees migrate to the new spectrum, it is likely that many of their listeners will acquire new radio receivers in order to continue listening to them. The sale of new receivers will get a sort of “jump start”.

## II. Non-Commercial Service

### A. Entirely Non-Commercial Service is In the Public Interest.

In our previous Comments and Reply Comments in proceeding RM-9208 and 9242 we argued extensively for the need to make LPFM an entirely non-commercial service. In sum, the majority of current full-power radio broadcasting has been given over to commercial service and it has resulted in programming that flows inevitably from commercial imperatives. Even most current non-commercial full power radio is really a form of commercial radio; the average listener cannot distinguish the difference between a “commercial” and an “underwriting acknowledgment”. And “underwritten” non-commercial radio has suffered the same effect that commercial support has on commercial radio-- a drift toward blander, toned down, and less local programming. Both advertising and “underwriting” put one in the business of selling audiences to advertisers, and quantity ratings become much more important than quality programming.

A new LPFM service is an opportunity to counterbalance the “quantity over quality” imperative of current full-power radio service. It is an opportunity to allow those to communicate who have a burning need and desire to communicate, not to amass audiences for sale. It is the prime example of Principal 1, above. Completely non-commercial service will only attract those who truly wish to provide a service to their community. Commercial service will attract those who simply wish to increase their bank accounts. The sort of daring, innovative, controversial, experimental, and novel programming that LPFM is perfectly suited for will simply not happen if it is commercial. The commercial media already has control of nearly all of the broadcast spectrum. LPFM is an opportunity for an entirely different model of local, community based radio service not based on a profit motive.

Additionally, a completely non-commercial LPFM service avoids the situation associated with the "highest bidder" auction requirement for commercial licensing in the 1997 Budget Act. Licensing LPFM only to the wealthy would completely defeat the entire purpose of LPFM, which is to bring diverse, local voices onto the air, most of whom are currently priced out.

We know that many of the current commercial microbroadcasters wish only to sell limited amounts of advertising to small local businesses in order to pay their minimal operating expenses. But once commercial LPFM is legalized and opened up, it will attract many who are far less high-minded. There will be no practical way to prevent them from turning LPFM into a junior version of current commercial radio.

In addition, by "non-commercial" we also intend that there be no "underwriting". Public broadcast "underwriting" announcements have become indistinguishable from advertising and basically have the same effect on the resultant programming.

The Commission appears to believe that there are two reasons why commercial service should be allowed: First, that stations will not be able to survive financially without commercials and, secondly, that commercial operation is the only way to allow small, local businesses some access to radio exposure.<sup>6</sup> We do not believe that either of these assumptions is true.<sup>7</sup>

First, a number of currently operating full power stations have existed for a long period of time without either advertising or "underwriting". The primary example of these is the five Pacifica stations.<sup>8</sup> KPFA (Berkeley, CA) has been on the air since 1949 without ads or underwriting, and the others have been on the air for over 20 years. Most of the Pacifica stations now have annual budgets of well over one million dollars. These stations raise their funds primarily through direct listener support. This includes listener subscriptions, donations, grants, attendance at various community events sponsored by the station, purchase of tapes, and purchase of station promotional items such as cups and T-shirts. The Pacifica stations represent a different model of financing for radio stations-- one where the station is directly responsible to its audience and in direct contact with them at all times. It is not necessary for such stations to exist in poverty; in fact there is no reason why a station that is responsive to its audience cannot raise significant funds from various forms of listener support and other innovative funding mechanisms.

While the audience size of LPFM stations will be significantly smaller than the Pacifica stations, similarly their expenses will be greatly scaled down.

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<sup>6</sup>NPRM Paragraph 69.

<sup>7</sup>We note that in the days just before this NPRM was issued we became aware that Commission staff was grossly overestimating the cost of establishing a micro radio station. Apparently staff thought the cost was in the area of \$20,000, an overestimation by a factor of ten.

<sup>8</sup>KPFA, Berkeley; KPFK, Los Angeles; KPFT, Houston; WBAI, New York; WPFW, Washington, D.C., all licensed to the Pacifica Foundation, Inc.

Second, there are many ways to involve and promote local businesses beyond on-air advertising. For example, the Pacifica stations publish a program guide in which advertising is accepted. In addition, there is nothing to stop a station from, on its own initiative, designing programming which highlights interesting, positive and worthwhile local businesses and local business owners who benefit the community. A community minded station might very well decide to implement such programming without getting paid for it or getting anything in exchange.

#### B. Non-Commercial Form of Organization

Current FCC rules regarding applicants for non-commercial stations require that the applicant be a non-profit "organization". Yet, apparently, it is Commission practice to only grant licenses to non-profit "corporations". The Commission, apparently, will not grant a license to a non-profit unincorporated association.

Whatever reasoning and merits for such a policy for full-power stations, we believe it is not appropriate for LPFM stations. The very idea of such stations is that they be run simply and inexpensively by small community organizations with severely limited budgets. To require formal non-profit incorporation is a hurdle that will severely burden many potential LPFM licensees. We note that in a number of states, such as California, non-profit incorporation is not a simple or inexpensive process.

In addition, we note that commercial applicants labor under no such burden. Commercial applicants may be individuals, partnerships, or any other recognized form of organization. Incorporation is not required.

Therefore, we propose that an unincorporated association be eligible for a non-commercial low power license upon a showing that it has adopted by-laws or some other adequate form of organization stating who the responsible parties will be and requiring the association to operate, under applicable local law, on a non-profit basis.

#### C. Limitations on Any Commercial Operation

We firmly oppose commercial operation of LPFM stations and believe that commercial operation will completely undermine the basic rationale for LPFM. However, if the FCC should proceed to adopt commercial operation, we strongly suggest the following as a means to preserve the unique nature of local, community based radio.

1. Headstart for Non-Commercial: During the first two years after approval of an LPFM service, only non-commercial applicants may apply, and they may apply for any available LPFM channel. Only after two years will commercial applications be allowed, and then only in that part of the FM band not reserved for non-commercial LPFM. This will strongly encourage non-commercial operations.

2. LPFM Licenses Are Non-Transferable: LPFM licenses should not be transferable. If a licensee ceases operations, the spectrum being used should simply be vacated and become available for other applicants.<sup>9</sup>

A speculator is not interested in serving the community, in slowly building institutions over time, in getting to know the heart of the community. A speculator wants to hype a property's value quickly, take a profit, and get out. Speculation will kill LPFM, especially if commercial LPFM with easy license transferability is allowed. We refer again to Principal 1, above. All efforts should be made to encourage those who have an urgent desire to communicate, and to discourage those who only want to make a profit.

3. 80% Reservation for Non-Commercial: In the current FM band, only about 20% of the band is reserved for non-commercial. If the FCC must authorize commercial LPFM, then the reverse percentages should be used to address this imbalance. We favor reserving 80% of the band for non-commercial use.

4. Any Advertising Should be Run-Of-Schedule, Not Program Specific, and be Subject to Time Limits:

If commercial LPFM is allowed, advertising that is program or time specific should not be allowed. All advertising should be aimed at overall support for the station, not at support of a specific program. Therefore, advertising should be run randomly throughout the broadcast day on a run-of-schedule.

The FCC should establish specific time limits on any advertising it allows.

5. Limitations on Business Interests: The FCC should not allow local businesses to be operators of LPFM stations where the local business intends to use the station primarily to promote its own business. We fear that the FCC will be flooded with applications from fast food operations, movie theaters, record stores, etc., whose primary purpose in operating a LPFM is to promote their business to the local neighborhood. Limitations on such operations should be put in place.<sup>10</sup>

III. Primary vs. Secondary Status:

A. Modified Primary Status: We consider it completely unacceptable for the new LPFM service to have secondary status. In particular, we find it reprehensible that a full-power station would be able to "bump" off a community based LPFM station just because it wants to increase its power or relocate its transmitter. This is a complete violation of Principal 2, stated

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<sup>9</sup> Completely formal transfers would be allowed, such as the transfer of a license from an unincorporated association to a corporation where the principals remain the same, or the transfer of an interest in a license upon the death of the licensee to the licensee's heirs.

<sup>10</sup> The new "Radio Disney" which is targeted at children and flooded with little but Disney promotions illustrates that this fear is not excessive.

above, to encourage maximum diversity of voices and viewpoints. It assumes that big, commercial stations somehow have greater priority or value than small community stations which have less wattage, but give voice to many more people-- people who truly want to communicate.

It's as if the traffic rules always gave the right-of-way to large tractor trailers carrying Velveeta over small compact cars carrying people. An approach based simply on "bigger is better" is excessively simplistic. The First Amendment does not give greater status to the louder, richer, or more powerful speaker. It values all speech equally. We see no reason why a slight alteration in the transmission pattern of a full-power commercial station should be allowed to wipe out an entire community's voice. Efficiency is not an element of the First Amendment, while diversity is one of its core elements.

We do not see any reason why the issue need be framed in the polarized dichotomy of "primary" versus "secondary" status. Rather, we suggest that the Commission analyze each element involved separately and determine how each is to be applied.

In particular, we would find it reasonable that LPFM stations be allowed to receive greater interference than they otherwise would under "primary" status. Such a position would allow for a much larger number of LPFM stations and, we believe, the trade-offs would be slight. A small amount of interference at the edges of one's broadcast radius is a small price to pay for station stability and the basic ability to broadcast at all.

B. Class D Stations: We note that there are a number of currently operational Class D stations which were "grandfathered" in prior to the 1978 elimination of Class D. These stations have generally been providing a valuable local, community-based radio service for many years. This rulemaking should in no way endanger the status or existence of those stations. We believe that currently operating Class D stations should receive a status at least equal to the status of the new LPFM service. In addition, new applications for LPFM service should not be allowed to displace an existing Class D station.

#### IV. Status of Repeaters:

Distant Signals: Low Power FM stations should have a higher status than repeaters or translators which simply rebroadcast a non-local station, including currently existing facilities.<sup>11</sup> This is in accord with our Principal 2, above, to create greater diversity of voices and viewpoints. This is especially in the public interest where the choice is between a locally operated and programmed service versus one which simply repeats a distant signal.

Local Signals: Currently existing translators or repeaters which fill in or contiguously extend a local signal should be "grandfathered" in and not subject to challenge by new applicants.

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<sup>11</sup> There are a number of statewide or countywide public broadcast systems operated by governmental or quasi-governmental units which provide a valuable integrated service, especially to rural areas. We believe that any existing elements of such a system should be "grandfathered" in and not subject to displacement by higher status applicants.

However, for future applications, LPFM applicants who originate at least 75% local programming should have priority over translators and repeaters. We believe that this represents a fair compromise and a reasonable application of our Principal 2, above.

V. Opposition to 1,000 watt LPFMs.

We must admit to being somewhat shocked by the FCC's proposal to initiate a class of LPFMs with a power range of 500-1,000 watts. Very few of those who commented previously in this matter supported such high powered stations.

This is one of those areas where we believe the Commission shows a confusion of purpose which leads to contradictory policy goals. We believe the Commission should follow Principal 1, stated above, to foster the greatest reasonable diversity of voices and viewpoints. The Commission itself notes throughout the Notice how few channels there will be for LPFM, especially in major urban areas. Given this scarcity, every effort should be made to maximize the number of different stations that can exist. In many situations, the licensing of a 1,000 watt LPFM will likely preclude a number of 100 watt and 10 watt LPFMs. Once again, efficiency has little or no place in First Amendment analysis, whereas diversity does.

The Commission apparently sees 1,000 watt LPFMs as an entry point into broadcasting for entrepreneurs and small businesses. While it is true that LPFMs may provide a entry point into full-power broadcasting, we see that as a minor side-effect of this new service, not as a significant purpose. The purpose of LPFM should be to maximize the number of voices and viewpoints that can utilize radio for communications and to give back to communities their voices. We do not think that 1,000 watt LPFMs will aid in achieving that goal.

Only in rural areas where populations are spread thinly and demand for spectrum space is not as intense can we see a role for 1,000 watt LPFMs.

We urge the Commission not to adopt a 1,000 watt LPFM service, with the exception of very rural areas.

However, if, despite our strong objection, the Commission should adopt such a service, we urge that it wait two years to allow 100 watt LPFMs to have first choice of channels. Only after two years would 1,000 watt applicants be allowed on any remaining frequencies.

VI. 100 Watt LPFM Service:

We support the establishment of a 100 Watt LPFM service, with the reservations expressed elsewhere in these comments. In particular, we believe the service should have the following features:

1. Non-commercial (including no "underwriting" announcements),
2. License/Registration non-transferable,
3. Primary status, modified to allow more liberal receipt of interference,
4. Local programming requirements,

5. Operator requirements:

- a. One to an operator (local and national),
- b. Local residency requirement,
- c. No operation by those with full-power radio license (local and national)
- d. No operation by those with full- or low-power TV license (local and national )
- e. No operation by those with ownership interest in other mass media such as telephone company, cable TV company, satellite broadcaster, daily newspaper, etc.

We see no particular reason why there should be a lower limit of 50 watts on LPFM stations. We think each LPFM station should determine what its optimal power should be. Why force a station to operate at 50 watts when it might be quite happy operating at 20 watts, thereby freeing up additional spectrum for other potential users?

Possibly the Commission sees operation at less than a certain power level as being an inefficient use of spectrum. However, we view it as quite the contrary for the following reason. Later in this comment we will discuss registration/licensing in greater detail. However, in general, we urge the Commission to consider a registration/licensing system which allows for a great deal of flexibility for local agreements to maximize the use of this scarce resource. Through local agreements stations can negotiate time-sharing, adjustments in power, adjustments in transmitter height, transmitter siting, directionalization, etc. so that many more LPFM stations can operate in a given area. Many of these small community stations may not wish or need to operate 24 hours a day, or at full power all of the time. A station that is operating at 50 watts during the day may be willing to drop to 20 watts at night so that another station a few miles away can come on the air for nighttime only operation. We prefer to allow maximum flexibility in these matters so that local LPFM operators can work out such arrangements among themselves.

VII. 1-10 Watt Service:

We fully support a 10 watt service. We imagine that schools, apartment complexes, churches, small, isolated towns and others might find such a service very useful. We believe such a service should be entirely non-commercial. Otherwise, such a service would be particularly vulnerable to being taken over by local businesses, such as fast-food restaurants, movie theaters, etc., primarily to publicize their businesses.

In addition, we believe that introduction of such a service should be delayed for one year to allow 100 watt LPFM stations to utilize available channels and establish themselves. However, once introduced, 10 watt "microradio" should have the same modified primary status as we support for 100 watt LPFMs in Section III, above.

VIII. AM Low Power Radio: We understand the Commission's reluctance to initiate a low power AM service. AM interference is far more difficult to predict and control than FM. Nevertheless, given the scarcity of channels available and applying our Principle 2, above, to create maximum diversity, we feel that the Commission should consider a very low power AM service (on the order of 20-50 watts maximum), possibly with daytime only operation. Such a

service might be very useful to schools, city governments, and other institutions whose primary need would be during daytime hours. Such a service would likely increase the diversity of local voices, while taking a bit of the pressure off of LPFM.

IX. Event Broadcasting: The Commission has decided not to pursue consideration of “event broadcasting” in this rulemaking. Event broadcasting was the subject of RM-9246 on which comments were solicited in 1998. We believe that low-power event broadcasting has a significant role to play in community development. In addition to its ability to enhance entertainment, sporting, cultural, and civic events it can also play a major role in increasing public safety and welfare during large events. We strongly urge the Commission to initiate a rulemaking to consider authorizing low power event broadcasting.

X. Minimum Distance Separations:

Given the need to process the initial round of applications quickly and expeditiously and with the potential for a very large number of applicants, we feel that the Commission’s suggestion of initially using simple station separation requirements rather than “a more sophisticated and spectrally efficient approach”<sup>12</sup> is reasonable. However, a better alternative would be to initially use a more sophisticated approach only in the top markets where competition is likely to be keenest. We would favor this approach if the FCC can implement computer programming which will process such applications without undue or lengthy delay.

In later application rounds the use of more sophisticated interference analysis would be called for where necessary. We would hope that by that time the FCC would be able to make the appropriate software and databases available to community non-profits who cannot afford expensive studies so that they can prepare an adequate application.

In addition, where a number of first-round applicants appear to be mutually exclusive, we strongly urge that they be allowed and encouraged to work out agreements among themselves. Part of that process might involve the development of more sophisticated models which would indicate that, in fact, there is no interference or the interference is less than the simpler model would indicate.

In addition, we note that in Appendix B the minimum distance separations for 100 watt LPFMs are based on the assumption that the station will be operating at maximum power, i.e. 100 watts ERP. We hope that if an applicant is actually applying to operate at a lesser power, such as 50 watts ERP, that its minimum distance separation will be based on that actual power, not on the maximum power. We would only support minimum distance separations if they are based on the actual power, not the maximum power. Such an approach would encourage applicants to initially file for less power than the maximum, thereby reducing mutual exclusivity and allowing for more LPFMs to be authorized.

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<sup>12</sup> NPRM Paragraph 41.

## XI. Second and Third Adjacent Channel Protections:

We agree with the Commission's proposal to eliminate second and third adjacent channel protections relating to LPFM, both as to their relationship to full-power stations and to other low-power stations.<sup>13</sup> Following our Principal 2, we believe that the enormous gains in diversity will far outweigh any minimal interference that might result.

However, we are certain that full-power broadcasters will object to this proposal. To address their concerns about interference and signal degradation we restate the proposal we made in our previous comments in this proceeding. We believe that LPFM stations should be allowed and encouraged to form local and regional associations. The FCC should allow these associations to be largely self-regulating, in the first instance. Complaints regarding interference will initially be directed to these associations who will attempt to resolve the problem. Only those complaints that cannot be resolved locally will be referred to the FCC. It is our belief and hope that very few such complaints will ever reach the Commission.

We also note that it is within the FCC's authority to require more stringent standards for future radio receivers distributed in the United States. With all of the current ballyhoo over the sound quality that digital radio is promised to deliver, we do not see it as particularly onerous or burdensome to require that radio receivers of the next millennium utilize simple, cheap, and currently available technology to reduce the level of interference between stations on second and third adjacent frequencies.

## XII. Digital Radio:

The Commission also raises the issue of whether a new LPFM service with only same channel and first adjacent channel protections will interfere with the introduction of the proposed new digital radio technology known as In-Band-On-Channel (IBOC) digital radio technology.<sup>14</sup> This digital technology would be introduced on the current FM band and on the same channels now used by analog radio broadcasters.

CDC has addressed this issue both in our previous comments filed in this proceeding, and also in our comments filed in RM-9395 in response to the rule making petition of USA Digital Radio (USADR).

First of all, we believe that the public interest is better served by locating a new digital radio service in a different part of the spectrum. This is being done by nearly all of the industrialized countries of the world, including our neighbor Canada. Such a solution would have many advantages, including allowing for LPFM to be engineered in from the start.

Second, as we stated in our comments in RM-9395, our review of the proposal by USADR indicates that, according to USADR's own analysis, it is unlikely that there will be

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<sup>13</sup>NPRM Paragraphs 42-50.

<sup>14</sup> NPRM Paragraphs 47-50.

interference between LPFM and IBOC. The Commission staff appears to agree with that reading.<sup>15</sup> In that case, there will be no problem.

However, if there should be any possibility of significant interference between LPFM and IBOC, we maintain that it must be resolved in favor of LPFM. Essentially, we refer to Principal 2, above, calling for greater diversity of voices and viewpoints. IBOC digital radio will have the effect of somewhat increasing the sound quality of music on radio, and providing for the use of additional auxiliary channels to accompany the primary channel. While there is nothing wrong in making such improvements to radio service, they do not address any urgent or pressing need. Their current absence is not keenly felt by the listening public, nor is there any great public demand for these improvements. IBOC does little, if anything, to increase the diversity of voices and viewpoints on the public airwaves.

LPFM does, on the other hand, meet a pressing need for which there is great, and increasing, public demand. Further, it better satisfies the FCC's First Amendment and public interest obligations by greatly increasing the diversity of licensees, voices, and viewpoints in American radio.

While we believe that IBOC and LPFM will prove to be compatible, should any conflict arise, we believe that it must be resolved in favor of LPFM. Additionally, we do not believe that the proposal to authorize IBOC should be allowed to hold up the implementation of LPFM. We would strongly object to any delay in LPFM based on the IBOC proceeding.

### XIII. Operator Restrictions:

#### A. Operator Restrictions On Which We Agree With The FCC's Proposal:

Paragraph 57: We agree with the proposed operator restrictions in Paragraph 57. These are:

1. Licensees of full-power broadcast stations may not operate LPFM stations.<sup>16</sup>
2. No one may operate more than one LPFM station in the same community.<sup>17</sup>

The Commission asks further questions in Paragraph 58.<sup>18</sup> To each of these questions we refer to Principle 2, stated above: the solution that creates the greatest diversity of operators,

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<sup>15</sup> NPRM Paragraph 47.

<sup>16</sup> It is possible that an exception may be worth considering for daytime-only AM stations, or for AM stations subject to drastic power reduction at night. Possibly after a two year waiting period, such stations might be eligible for any remaining LPFM channels in their own or a nearby community.

<sup>17</sup> There may be situations where a translator, booster, satellite station, etc. might be called for and could be approved on a case by case basis. For example geographical features might prevent a small community from being served by only one transmitter. Or a rural community, such as an Indian reservation, that is very spread out may justifiably need multiple transmitters.

voices, and viewpoints should be adopted. There will be enough competition for LPFMs as it is. Operators should be restricted to that 99.99% of the population that has been entirely shut out of mass media participation. Barring that extremely small number of people who already have mass media ownership interests from LPFM does no harm of any sort. Allowing cross-ownership can only increase the already existing inequity, rather than decrease it. In fact, even where a frequency is unused, it is preferable to wait for a diverse user, than allow it to be foreclosed by a user who already has mass media ownership.

Therefore, operators of full-power broadcast stations in other communities should not be allowed to operate an LPFM.

Owners of other mass media, such as cable TV, telephone companies, satellite broadcasters, daily newspapers, etc. should not be eligible to be LPFM operators.

In Paragraph 59 the Commission seeks comments regarding “possible cooperative arrangements (short of attributable interests...) among LPFM licenses that might facilitate the new service’s development without unduly diluting its benefits...”.

We agree with what would appear to be the basic thrust of this statement. To the extent that such “cooperative arrangements” would include time-sharing, we strongly support that concept, as we state in various places throughout these comments.

To the extent that such “cooperative arrangements” contemplate networking, syndication, shared news services, and other such program and resource sharing, we also strongly support such cooperation, BUT with some major caveats.

First, as we state in Section XIV (below) we strongly urge a requirement of a minimum of 75% locally originated programming. Network programming, news service feeds, and other programming which is not locally originated can have great value and we strongly support its development among LPFM stations. But localism is one of the core “benefits” of LPFM programming and must be preserved as one of its major components.

Second, the Commission has extensive experience with the tendency of networks and network type arrangements to seek to usurp the independence and judgment of local operators and affiliates through fairly subtle means.<sup>19</sup> The Commission has acted in the past to prevent such

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<sup>18</sup> “We seek comment on whether the proposed cross-ownership restriction will unnecessarily prevent individuals and entities with valuable broadcast experience from contributing to the success of the service, or whether it is necessary to keep the service from being compromised or subsumed by existing stakeholders. Commenters should also address the alternative of permitting individuals and entities with attributable involvement in broadcasting to establish LPFM (or microradio) stations in communities where they do not have an attributable interest in a broadcast station. We also seek comment on whether the cross-ownership restriction should be extended to prevent common ownership of LPFM or microradio stations with newspapers, cable systems, or other mass media.”

<sup>19</sup> See, for example, National Broadcasting Corporation vs. United States, 319 U.S. 190 (1943) regarding the FCC’s “Chain Broadcasting” regulations limiting the control of networks over affiliates.

usurpation and should remain vigilant to see to it that such practices do not gain a foothold in LPFM.

**B. Operator Restrictions on Which We Disagree With the FCC Proposal:**

1. National Operator Limits- One to an Operator: We strongly disagree with the Commission's proposal that one party may operate multiple LPFMs nationally. We refer to both Principles 1 and 2, above. Multiple operations will tend to attract those whose primary goal is profit, not service. Multiple operations may be more "efficient" in some ways, but at the cost of diversity. That balance has been struck the wrong way too often in other broadcast services. The LPFM service should be different. Efficiency should not be given any significant weight. Diversity should be the primary goal.

The Commission has noted numerous times how scarce LPFM slots are likely to be in many areas.<sup>20</sup> Why allow multiple operations in the face of such scarcity? This scarce resource should be distributed as widely as possible. Even if a channel remains unused, it is preferable to await a diverse user, than allow it to be foreclosed by one who already has mass media ownership interests.

Additionally, multiple operators are necessarily absentee operators at all, except possibly one, of their stations. The entire focus of LPFM is on a station that is strongly imbedded in and involved in its community. It seems to us simple common sense that an operator who lives in the community and has one station to will be more focused on seeing to it that that station truly serves that community.

This is one of the loopholes that we strongly fear could eventually undermine the basic promise of LPFM. Multiple operations will attract empire builders who want to "efficiently" program 10 LPFM stations with the same packaged programming. This would be a disaster. It is completely at odds with the basic purpose of a new LPFM service. We urge the Commission to seriously revisit our two basic Principals-- discourage profiteers, encourage diverse voices. LPFMs should be strictly one to an operator-- locally and nationally. This will likely cut down on the number of initial LPFM applicants-- and that is a good thing. Only those who truly desire to communicate, only those who truly desire to provide service to their community will apply. The others will find sufficient alternative avenues for their empire-building and profit-making schemes.

2. Local Residency Requirements: As with multiple operations, and for the same basic reasons, we strongly urge the Commission to adopt a local residency requirement. It is hard for us to understand why the Commission should not adopt such a requirement. Since competition for LPFM licenses may be intense, the Commission should initially do everything to reasonably limit the number of applicants. In most communities, there may not be enough spectrum to accommodate all applicants, even with residency requirements. Why allow additional applicants

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<sup>20</sup> e.g. NPRM Paragraphs 44 and 48.

who are from outside the community and likely to be absentee operators? It just doesn't make much sense.

In addition, the Commission states,<sup>21</sup> "we expect the nature of the service provided by the two smaller class (sic) of stations would attract primarily local or nearby residents in any event." Therefore, the Commission seems to want and desire, at least for LPFM stations of 100 watts or less, local residency as a good thing. Yet the Commission is reluctant to mandate local residency. Commission expectations have proven wrong before, and this is one of those loopholes that we fear could become a ravine. We see little reason why the Commission should not simply mandate local residency if that is seen as a positive.

Frankly, it is the experience with national non-commercial religious broadcast organizations which gives us pause. We have absolutely no problem with local churches and other local religious organizations becoming LPFM licensees. In fact we support and encourage such a result. However, during the last decade a number of national non-commercial religious broadcasters have taken advantage of a loophole in the regulations for FM translator licensing to establish huge networks of stations rebroadcasting the same, identical national programming, with no local content. These translators have already taken much of the spectrum that might otherwise be available for local LPFM's. It is not the religious nature of the programming we object to, it is the absolute lack of localism. We fear that given the way the FCC is structuring the current LPFM proposal, large chunks of the new LPFM service might end up being used in the same manner. This would be a disaster, given the unique potential for LOCAL programming that LPFM promises.

The failure of the FCC to require local operators and local programming, and its allowance of multiple operations may well lead to a similar perversion of the purpose and intent of LPFM and would be, we feel, an absolute disaster. The full-power broadcasters have already largely abandoned local service. LPFM is the last great opportunity to bring back service truly designed for and focused on a local community. A local residency requirement is one of the elements necessary to ensure that this opportunity is not squandered.

### 3. Integration of "Ownership" Into Management:

For the same reasons as stated above regarding local "ownership", it would make sense that operators be required to be actively involved in the management of the station.. Allowing absentee operators simply does not make sense in the context of LPFM. Again, with the competition for LPFM likely to be heavy why not reduce the number of potential applicants by restricting eligibility to those who really want to communicate via radio? Why should one who desires to be an absentee operator get equal treatment with one who truly wants to personally serve their community? Such a restriction is eminently reasonable, will benefit the community, and will serve to pare down the number of applicants to those who most urgently want a local community station, as opposed to those who are schemers and speculators.

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<sup>21</sup> NPRM Paragraph 61.

The Commission asks whether the decision in *Bechtel vs. FCC* would preclude an integration rule.<sup>22</sup> We do not think that the decision in *Bechtel vs. FCC* precludes an integration rule. In the *Bechtel* cases, the D.C. Circuit court ruled that the FCC's integration preference<sup>23</sup> was enforced in an arbitrary and capricious manner. For instance, the policy behind integrated station "ownership" was significantly mooted by the fact that such a licensee could easily sell the station to a subsequent purchaser who had little day-to-day oversight over station operations. Because a significant public policy is advanced if the operator of an LPFM station is a local resident (i.e., increased diversity of voices and local content), we believe the FCC can establish an integration rule for LPFM provided that such a rule is enforced in a consistent manner. We strongly believe that implementation of the proposals set forth in the CDC's comments would ensure such a result.

#### XIV. Local Programming:

We are extremely disappointed in the Commission's proposal to not impose a local programming requirement. We consider it a major mistake which could undermine the entire LPFM service. The whole point of LPFM is localism-- service to a particular community, designed by and for that community. Frankly, if local programming is not a requirement of the new LPFM service, than we would rather see no service at all.

The Commission states that, "based on our expectation of the nature of the licensees that will populate LPFM... we expect that a significant amount of programming will be locally produced as a matter of course."<sup>24</sup> This would not be the first time that the FCC has had such "expectations" and been wrong.<sup>25</sup> It does not really matter what the current potential applicants for LPFM might be planning. What matters is how this new service will develop ten and twenty years down the road-- will it still be a model of local programming, embedded in and responsive to its community? Or will it be just more generic, bland pap piped in from a "professional" studio somewhere in L.A. or New York. If its the second, then the entire service in just not worth the effort and we will withdraw our support.

If the Commission does not require a significant local programming component, then we fear the following result. Those who have no interest in local programming and service to a particular community, but rather in empire building, will be attracted to LPFM as applicants. They will flood the applicant pool, either now or in the future, and push aside those who have fought for many years for LPFM as a local, community service. Additionally, even some of those who sincerely wish to provide local programming will succumb to the inevitable financial pressures and start down the slippery slope of utilizing a variety of network and syndicated programming.

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<sup>22</sup> NPRM Paragraph 62. *Bechtel v. F.C.C.*, 957 F.2d 873 (D.C. Cir. 1992), *Bechtel v. F.C.C.* 10 F.3d 975 (D.C. Cir. 1993).

<sup>23</sup> "Integration" here refers to the FCC's previous preference for station owners to also be part of the full-time on-premise station management.

<sup>24</sup> NPRM Paragraph 68.

<sup>25</sup> Consider the Prime Time Access Rules, for example.

Let's face it: network and syndicated programming is usually just a whole lot easier to do and a whole lot cheaper. Without a requirement to keep programming local, even the most dedicated community activist may, five or ten years down the road, be subjected to a mighty temptation to take the easy way.

The entire purpose of LPFM is to give the community a voice, put local people on the air, broadcast local city council meetings, high school football games, local dramatic productions, etc. Those who are not unconditionally dedicated to doing this should simply not be applicants for LPFM. Considering the crush of applications that is expected, why would the FCC wish to open the process to those who are not dedicated to community service? By limiting LPFM to local service, it will reduce the number of applicants and limit the applicants to those who are dedicated to community-based programming. We can see no rational reason for the FCC wishing any other result.

We do not propose that programming be 100% local origination. We propose that programming be a minimum of 75% locally originated.<sup>26</sup> We not only recognize the value of networking and cooperation among LPFM stations to produce regional and national programming, but strongly encourage it. However, such programming should not dominate any LPFM station and should be kept to below 25%.

#### XV. Transferability

We absolutely oppose the Commission's proposal to allow for transferability of LPFM licenses and construction permits.<sup>27</sup> We refer to Principle 1, above, that all decisions should be made to encourage those who wish to communicate, and discourage those who wish to profit. Those who wish to communicate will not care if licenses are transferable-- at that point where they cease to desire to communicate they will be happy to vacate their channel to become available again for others. Only those who seek to profit will be concerned that transferability be allowed.

Allowing transferability of licenses will only encourage speculators to apply for licenses or to purchase them for trading purposes. Speculators do not invest in long term development, do not get to know their community, do not see beyond the next year or two. Allowing speculation, especially in community LPFM stations, is simply not in the public interest. A licensee who ceases to utilize their channel should simply allow that portion of spectrum to return to the general pool of available channels.<sup>28</sup>

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<sup>26</sup> We consider pre-recorded music that is individually selected and aired locally to be "local" origination.

<sup>27</sup> NPRM Paragraph 86.

<sup>28</sup> As stated above, in footnote 6, we do not object to completely formal transfers such as from a partnership to a corporation where control remains the same, or to an heir of a licensee.

## XVI. Applications and Renewals:

We have a somewhat different approach to the application and renewal process than that outlined by the Commission. We would prefer to see a system that more closely resembles a “registration” system than a licensing system. The system would be designed, to the maximum extent possible, so that conflicts among applicants could be resolved through local, voluntary agreements. Conflict resolution by the FCC would be only a last resort. This approach will be applied below to each element of the application and renewal procedure.

In addition, we believe the LPFM service should be entirely non-commercial. Therefore, our comments in this section are addressed primarily toward non-commercial applicants. As the Commission notes,<sup>29</sup> “the Balanced Budget Act of 1997 appears to mandate auctions... if mutually exclusive applications for commercial LPFM facilities were filed.” Therefore, even if the Commission were to allow for commercial licensees, the application procedure would appear to be, necessarily, quite different than that for non-commercial licensees.

### A. Electronic Filing:

In general, we agree with the FCC’s proposal that electronic filing be mandatory.<sup>30</sup> This will certainly lead to a more prompt and efficient processing of applications. We believe that, at this time, nearly all potential applicants have electronic filing available to them. Further, that availability is constantly growing so that by the time the FCC is actually ready to receive applications it should be even more widespread.

However, should even a fairly small number of commenters in this proceeding reasonably indicate that electronic filing is not readily available to them or would add an unfair burden, then we would support an alternative method of filing, such as filing the application via computer disk.

### B. Filing Windows:

We agree with the FCC proposal that there should be fairly short filing windows. We believe that a filing window of about 7 business days is reasonable, assuming that sufficient advance notice will be given.

1. No First Come, First Served: However, we strongly oppose any system which utilizes a first-come, first-served approach. This will serve no real purpose, and will simply lead to a potential disaster when every applicant attempts to file simultaneously during the first minute that the filing window is open. How can it possibly benefit the public to award a license to the applicant who files at 9:01 AM as opposed to the applicant who files at 9:06 A.M. Such an approach seems

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<sup>29</sup> NPRM Paragraphs 103 ff.

<sup>30</sup> NPRM Paragraph 91.

inequitable, irrational, and unrelated to any public interest purpose or goals, except for a sort of robotic efficiency.

The Commission might wish to consider having these filing windows roll-out over the United States over a period of a few months so that Commission staff can spread the administrative burden and the system will not be overwhelmed.<sup>31</sup> At a reasonable time after the first round of applications have been completed, a second round might be initiated. After that, applicants could simply file for any channels still available.

## 2. Amending Applications to Remove Conflicts:

It would be useful if applicants can rapidly receive information that their proposal is mutually exclusive with another proposal, but only if that information is sufficient to allow the applicant to amend their application to remove the conflict.<sup>32</sup> If the information is not sufficient to allow for a useful amendment, or if there is no opportunity to amend, then such information serves no real purpose.

The system should be set up so that applicants can submit an amended application in order to remove the conflict. In fact, there might be an additional period of one or two days to allow for such amendments. However, the amendment should only be processed if it actually places the applicant in a non-conflicted situation. If the amendment would simply create a conflict with yet another applicant, then it should not be processed and the original application should remain in place.

## 3. No Information to Enable Cross-Filing:

Any information that is given to applicants during an open filing window should not allow them to then design an application which purposefully conflicts with another applicant. This is sometimes called “cross-filing” or “filing on top” of an applicant. It has been done, sometimes extensively, in other FCC proceedings in the past, and is not in the public interest in the context of LPFM.

Rather each LPFM applicant should design the station that best serves the audience they wish to reach. Such applications should be designed with no reference at all to other applicants, unless such cooperation is mutual and voluntary.

Otherwise, we fear that some applicants will purposefully wait to see what the plans of the initial applicants are. They may then design their applications to be slightly more in line with some FCC criterion, and then file on top of the earlier applicant in order to eliminate them as a competitor. Such a situation would be inequitable and would not serve the public interest. Therefore, we support a system which gives applicants enough information to allow them to remove conflicts by filing an amended application, but does not give them information which

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<sup>31</sup> NPRM Paragraph 97.

<sup>32</sup> NPRM Paragraph 95.

would allow them to design an application that would be intended specifically to compete with another applicant.

4. Impose Extensive Public Interest Qualifications to Reduce the Number of Initial Applicants:

The first thing the Commission should do to make the application process simpler is to impose reasonable public interest requirements on applicants to initially reduce the number of applicants. To the extent that the FCC's proposals do not do this, they appear to us to be irrational and contrary to the FCC's explicitly stated goal of reducing the potential flood of applicants.

In Paragraph 40 the Commission states that it, "expect[s] to receive a very large volume of applications." The Commission repeats this statement in Paragraph 91, and notes the difficulty this poses. This concern is then mentioned numerous times in the following paragraphs. In Paragraph 97 the Commission states that, "We are concerned... about...a flood of applications in a short period that would be so great as to overwhelm any filing system we might be reasonably able to devise."

Further, in Paragraph 106, the Commission notes its statutory obligation, under Section 309(j)(6)(E) of the Communications Act, "in the public interest, to continue to use engineering solutions, *threshold qualifications*, service regulations, *and other means* in order to avoid mutual exclusivity in application and licensing proceedings" (emphases added).

Yet, despite this serious concern and statutory obligations, the Commission has refused to put in place certain fairly obvious limitations on applicants, limitations all of which would serve the public interest and which would likely significantly reduce the expected "flood" of applicants. We are just baffled by the Commission's illogical position in this area.

We will briefly repeat the restrictions we have proposed above:

1. Non-commercial (including no "underwriting" announcements),
2. License (and construction permit) non-transferable.
3. Local programming requirement: 75% local programming.
4. Operator requirements:
  - a. One to an operator (local and national),
  - b. Local residency and integration requirement,
  - c. No operators with full-power radio license (local and national)
  - d. No operators with full- or low-power TV license (local and national )
  - e. No operators with ownership interest in other mass media such as telephone company, cable TV company, satellite broadcaster, daily newspaper, etc.

All of these requirements are in the public interest. We are certain that, even with these requirements, there will be an abundance of applications. Yet these requirements will significantly reduce the number of applicants, thereby easing the application process. In addition, these requirements will fulfill both Principals 1 and 2, above. They will encourage those who are most interested in actual communication, in actually serving their community. They will discourage those interested in profit-making or empire-building. And they will create the maximum diversity of operators, views, and voices. For the FCC to fail to mandate these requirements is for the FCC to invite the very administrative nightmare it claims it wishes to avoid.

#### 5. Local Self-Regulation: The Core of the Application and Regulatory Process

After a window has closed, those applications that are not mutually exclusive with others should be considered “registered”. As long as they construct the station within the time limit, they are ready to go on the air.

Where there is mutual exclusivity, the applicants should all be notified of that fact, notified of who they are in conflict with, and given as much information as possible as to exactly wherein the conflict lies. At that point, such applicants should be given three months to negotiate a settlement.<sup>33</sup> An additional three month extension may be granted if the majority of applicants in a group request such an extension.

The FCC should encourage creative solutions and provide assistance wherever feasible and possible. FCC field offices might be enlisted to provide engineering or technical advice. Solutions might include time-sharing, reduction of power at certain times, relocation of transmitter sites, alterations in transmitter elevation, directionalization of signal, etc. More sophisticated modeling than the initial distance separations should be allowed in order to show that conflicts have been resolved satisfactorily.

We suggest that the Commission take the following steps to encourage local and voluntary resolution. Note that we also propose that applicants who follow these steps will eventually be given a priority status if the local negotiations should fail and the next step of the application process must be resorted to.

##### a. Encourage the Creation of Voluntary, Local Self-Regulatory Organizations

Applicants who are mutually exclusive should be encouraged to voluntarily form a local self-regulating organization (LSRO) which will assist with resolution of the conflicting applications and will serve as an ongoing self-regulatory body. Even applicants who are not mutually exclusive should be urged to join such an organization, since the organization will provide on going self-regulatory functions. As we describe below, such a non-mutually exclusive applicant might benefit from such membership at renewal time.

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<sup>33</sup> Such settlements shall NOT include financial payments or other similar exchange of valuable consideration.

Such organizations should be encouraged to initiate processes which will lead to resolution of application conflicts. The organization might initiate mediation or binding arbitration as a means of resolving conflicts. An established local organization might be recruited to be the coordinating body for the LSRO. Public libraries or cable television public access organizations might be the perfect institutions to be at the core of an LSRO. A library might receive an offer of programming time on the member stations in return for its efforts. We also suggest that the FCC might make a small stipend available to libraries that undertake such a function to defray costs and staff salaries. Since the library will be taking on administrative work that the FCC might otherwise do, such a stipend would not be unreasonable. The library staff and board might be requested to assist in mediating or arbitrating conflicts.

In some situations, especially where there is extremely heavy competition for very limited LPFM channel space, a solution might involve creation of a "public access" facility. The library could become the official applicant and run a public access LPFM, based on the principles developed by cable television public access channels. The mutually-exclusive applicants could be guaranteed some priority in public access assignments during an initial period, such as the first five years, in return for voluntarily assigning their application to the library.

These are just a few suggestions as to how an LSRO might organize to resolve conflicts. Each LSRO will be left to determine its own constitution and procedures. But the FCC should grant the LSROs maximum flexibility to resolve issues locally and should support them with whatever information and assistance is reasonably needed.

b. Encourage Cooperation with Local Self-Regulatory Organizations.

Once a majority of mutually-exclusive applicants in any given region have agreed to form an LSRO, they will so notify the FCC, which will recognize the status of that LSRO. Other mutually-exclusive applicants may opt not to cooperate with the LSRO. However, should there be a failure to resolve all issues voluntarily and locally, those applicants who have worked with the LSRO should receive a substantial preference if the FCC must intervene to resolve issues. Whether such intervention requires a weighted lottery, a point system determination, or some other procedure, applicants who have participated at the local level in good faith should receive a strong preference. Such a preference will encourage applicants to participate at the local level, and, therefore, avoid situations where the FCC must intervene.

c. Ongoing Local Self-Regulation:

The LSRO's role will not end with the application process, but will be ongoing. Any allegations of interference from any user of the electromagnetic spectrum will first be referred to the LSRO for resolution. Only where the LSRO is unable to resolve the issue voluntarily will the FCC be involved.

In addition, the LSRO will play a significant role at renewal time. We discuss this further below.

d. Funding of LSRO

The LSRO, once established, should be allowed to institute mandatory dues from its members to defray expenses, as long as those dues are fairly minimal such as \$100 annually. Such funds will, at least, provide some minimal operating expenses. In addition, we would urge the FCC to contribute a small stipend to each LSRO, especially if it has integrated a local institution, such as a public library, at its core coordinating organization. This is justified since the LSRO will be undertaking tasks that would otherwise fall to the FCC. However, we hope and believe that the LSROs, as models of local, self-regulation might be attractive as grantees to private and community foundations and other funders. In particular, the arbitration and mediation services provided might be an attractive program for private funders, and possibly even qualify for some governmental grants. The FCC should do everything possible to encourage such funding. The Commission might even request of Congress legislation, such as tax deductions and funding opportunities, that would assist in fundraising for LSROs.

6. Application Process in Lieu of Voluntary, Local Resolution:

If, for whatever reason, application conflicts cannot be resolved voluntarily at the local level, then the decision must fall to the Commission.

a. Mandated Resolution:

Prior to resorting to a lottery, point system determination, or other such method to resolve conflicts, the Commission has the authority to mandate a resolution. Particularly where there are a fairly small number of mutually-exclusive applications, such a solution would appear to be quite reasonable.

In particular the Commission could mandate time-sharing, lowering of power levels (either in general or at certain times of day), lowering of transmitter height, moving of transmitter to a different location, etc. Some of these methods, particularly time-sharing and power level adjustment, are well established as within the Commission's authority.

We realize that time-sharing has, generally, not been favored by the Commission in resolving conflicts among full-power stations.<sup>34</sup> However, we feel that time-sharing is much more appropriate, and even beneficial, among LPFM stations. Many LPFM stations will be operated by very small organizations which would be hard-pressed to broadcast 24 hours a day, seven days a week. They are likely to be able to provide a higher quality service if they can focus on a limited amount of program production.

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<sup>34</sup> See FCC 98-269, Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Further Notice of Proposed Rulemaking (MM Docket No. 95-31), Adopted October 7, 1998, at Paragraph 26.

Similarly, some stations may be operated by public schools, libraries, churches, or other such organizations who would mostly be interested in operating during the daytime and only on certain days of the week, such as Monday through Friday only, or Saturday and Sunday only. Others may be primarily operated by people who work on weekdays and would, therefore, wish to operate only at night or on weekends. Time-sharing and other flexible arrangements would seem to perfectly meet these needs. It would maximize the number of operators and voices while utilizing the limited LPFM spectrum most efficiently. In addition, we do not think it would cause the same level of audience confusion that time-sharing in full-power radio might lead to. There may be some initial confusion at first, but because of the very local nature of LPFM we believe that listeners would quickly learn and understand that a variety of stations were sharing the limited local LPFM channels. They would soon know when the stations they wanted to listen to were broadcasting. The initiation of this new service would likely lead to local newspaper articles and other media coverage which would inform radio listeners of the situation.

b. Last Resort Resolution:

In the event that all of the above methods fail to provide a resolution of application conflicts, then the Commission must resort to a method such as a lottery or point system determination. We hope and believe that such a situation will rarely occur.

In fact the FCC should institute regulations which strongly encourage early voluntary resolution. Licenses which are awarded through last resort resolution should be non-renewable. In addition, those who joined an LSRO should receive a heavy preference in the last resort resolution.

We slightly favor a weighted lottery since the results should be almost the same as a point system and yet it is far simpler to administer. We are more concerned that the point system or weighting factors are truly those which will service the public interest. Again we refer to our two guiding principles: First, encourage those who wish to communicate and serve the community, discourage those whose motive is profit-making or empire-building; second, create maximum diversity of operators, views, and voices.

Therefore, we propose that the following be the primary factors in a point system or a weighted lottery. In addition, they should be given very significant weight.

- 1A. The applicant pledges non-commercial service,
- 1B. Non-commercial service which includes a pledge of no underwriting announcements receives additional weight.
2. A pledge not to transfer the station, but rather if the applicant should cease broadcasting, to allow the channel to simply become vacant so that others can apply for its use. Some points, though less, may be given an applicant who pledges to transfer the station only for reasonable and demonstrable recovery of actual costs.

3. The applicant pledges to provide a minimum of 75% local programming,
4. The applicant pledges to operate only one LPFM station (locally and nationally)
5. The applicant is a local resident (i.e. lives within the secondary service area of the station).
6. The applicant does not have a full-power radio license (local and national)
7. The applicant does not have a full- or low-power TV license (local and national )
8. The applicant does not own other mass media such as telephone company, cable TV company, satellite broadcaster, daily newspaper, etc.
9. The applicant pledges to serve a specific and identifiable community that is otherwise unserved or underserved. We have in mind here primarily non-English language communities which do not receive adequate service in their language. However, other specific communities, such as children, the elderly, the disabled, Native Americans, etc. might also be considered.
10. The applicant joined an LSRO and acted in good faith to achieve a voluntary resolution of the mutually exclusive situation.

In addition, the following programming pledges will also receive weight in the lottery. However, in the initial application these pledges may be made conditional on the application process reaching the last resort resolution stage.

11. The applicant pledges that a minimum of 10% of music programming will be local music programming.<sup>35</sup>
12. The applicant pledges to carry full coverage of the local city council meeting or similar civic event (such coverage need not be live).
13. The applicant pledges to provide at least 30% of its programming in a "public access" mode.

Obviously, any of the above criteria which have already been determined as mandatory for applicants would not have to be included again in a point system or weighted lottery.

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<sup>35</sup> We would define local music as follows. Local music is:

- A. A live or taped broadcast of a performance that occurred in the same state as the LPFM station,
- B. A commercial recording where either a. at least one of the primary performing musicians resides in the same state as the LPFM stations, b. at least one of the primary songwriters or composers resides in the same state as the LPFM station, c. the production company is located in the same state as the LPFM station.

However, if the Commission does not follow our recommendations that the majority of the above be mandatory, then this provides an opportunity to give credit to those who have voluntarily pledged to the above standards.

#### 7. Renewals:

We suggest that LPFM operators must renew their registration every four years. If there have been no significant problems or complaints, registration renewal should be automatic.

All LPFMs in a given state should be required to renew within the same time period, as is now the practice for full-power stations. During that same time period, applicants for new LPFM stations that are mutually-exclusive with existing stations may apply.<sup>36</sup> The same process that has been outlined above will be utilized to accommodate new applicants. Some additional guidelines might be appropriate such as the following:

a. All attempts will be made to accommodate new applicants, within reason, but they may be required to settle for less time than requested,

b. A renewal preference will be given to currently operating LPFM stations to achieve some continuity. However, that preference might be lessened after a ten year period, and might be eliminated altogether after a twenty year period.

c. A renewal preference will be given to an LPFM station that has joined a LSRO.

d. Polling, a referendum or plebiscite, or some other method may be utilized to determine the level of community support for different LPFM operators. Such levels of support may be taken into account in determining whether an LPFM operator must give ground for new entrants. However, such "popularity" measures should not be dispositive or given undue weight, as a high quality service to small communities (such as foreign language communities) may have great public service value, while appealing to only a small number of people.

XVII. Radio Broadcast Auxiliary Frequencies: All LPFM stations should be permitted to seek authority to use radio broadcast auxiliary frequencies.

#### XVIII. Transmitter Certification:

We agree with the FCC's proposal<sup>37</sup> that all transmitters be certified, i.e. type-accepted, even for any 1-10 watt microradio service.

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<sup>36</sup> Applicants that do not pose any mutual exclusivity conflicts may apply at any time, once the second formal application round has been completed.

<sup>37</sup> NPRM Paragraph 15.

XIX. Spectral Emission Masking and Bandwidth Limits: It would appear that somewhat tighter spectral emission masks and bandwidth limits than otherwise normal would greatly reduce the possibility of interference.<sup>38</sup>

However, we are loath to impose such additional restrictions on LPFM stations unless absolutely necessary. Our optimal solution would be to propose that such restrictions not be placed on LPFM licensees initially.

We have proposed, above, that Local Self-Regulating Organizations (LSROs) be the first forum to handle interference issues. We suggest that tighter spectral masks and bandwidth limitations be among the primary tools an LSRO can utilize to resolve interference issues. A solution that is tailored to fit each situation is preferable to a “one size fits all” rule from Washington that applies to the whole country. We would prefer such a solution if it is technically feasible and not excessively costly.

However, the loss of subcarriers and stereo capability or a minimal reduction in audio quality is a small price to pay for the ability to broadcast at all. Therefore, especially in dense population areas, we would support the use of tightened spectral masking and reduced bandwidth as means for resolving conflicts and allowing more LPFM stations to be on the air.

XX. Other Public Interest, Service, and Political Programming Rules:

We agree with the Commission’s proposals that additional “public interest” and service rules, as outlined in Paragraphs 70-73 should not be applied to LPFM stations with a 100 watt maximum.

We also agree that the political programming rules mentioned in Paragraph 75 would appear to be statutorily mandated. In addition, we believe that, in practice, they will rarely apply to LPFM stations. When they do, their application would appear to be largely unobjectionable.

XXI. Operating Hours:

We agree with the Commission’s view that no specific operating hours be required of 100 watt or less LPFM stations. However, our reasoning is somewhat different than the Commission’s. We have urged previously in these comments that the Commission emphasize local self-regulation as the first and primary method of regulating LPFM and resolving any disputes. As such, we envision negotiated or mediated time-sharing arrangements as a significant component in LPFM operation and regulation. Therefore, we assume, that many LPFM stations, especially in congested areas, will be part of a time-sharing arrangement and will not broadcast full time.

Of course, the Commission also states<sup>39</sup> that should the situation develop where stations are “wasting” spectrum by controlling it, but not utilizing it, and preventing others from utilizing

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<sup>38</sup> NPRM Paragraphs 51-56.

<sup>39</sup> NPRM Paragraph 77.

it, then this issue could be revisited. We agree with that position, but emphasize that with an encouragement of local self-regulation and flexible time-sharing arrangements, such a situation should never occur.

XXII. Construction Periods:

We suggest somewhat shorter construction periods than the FCC's proposals: for LPFM-100 stations 10 months, and for "microradio" (1-10 watts) 9 months. These stations should be fairly inexpensive and relatively easy technically to put on the air. We do not believe that people should be allowed to tie up unused spectrum indefinitely if they are unprepared to begin operations. A 10 months for LPFM-100 stations and 9 months for "microradio" stations should be more than enough time. Of course, as the Commission states,<sup>40</sup> extensions could be granted if the reason for delay were beyond the applicant's control.

Respectfully submitted by,

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On Behalf Of:

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(Appended Statements of Signatories)

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<sup>40</sup> NPRM Paragraph 81.

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**STUDY FINDS CLEAR SIGNALS FOR COMMUNITY RADIO**  
**Low Power FM advocates release study showing interference concerns to be unwarranted**

July 30, 1999

Cambridge, MA - According to a technology study released today by a consortium of LPFM advocates, implementation of a Low Power FM ("LPFM") radio service will not lead to a significant increase in interference with current, full-power stations.

The Federal Communications Commission (FCC) is currently considering the creation of a new, low power radio service. As part of its Notice of Proposed Rulemaking, the FCC requested studies of commercially available radio receivers to examine whether more stations could be supported on the dial without increased interference. The possibility that new, low power radio stations could interfere with full power stations currently in operation has been the most significant argument impeding adoption of the new service by the FCC.

In response to the FCC's request for additional research, a receiver engineering study was conducted by Broadcast Signal Lab, LLP. The study was commissioned by a coalition of LPFM advocates including the National Lawyers Guild Committee on Democratic Communications, the Media Access Project, the Microradio Empowerment Coalition, the Prometheus Radio Project, the Minority Media and Telecommunications Council, and others.

Highlights of the study include:

10 commonly available radio receivers were exposed to incrementally greater levels of potentially conflicting signals, simulating the conditions that would result from the presence of LPFM stations on the dial. The results suggested that there was room to relax current FCC interference rules.

Full power radio stations are currently permitted to create a blanket of interference within a specified geographic radius near the transmission site, known as the blanketing area. LPFM signals were shown to create only minimal interference within several hundred feet of the transmitters, with many receivers showing no interference even within that small radius.

Any interference within this small blanketing area is easily remedied by low cost filters, which all radio stations (including the potential LPFM stations) are already required to provide to listeners encountering interference problems in that zone.

A typical 50,000 watt full-power station is permitted a blanketing area of 9150 feet around its transmitter. A 100 watt community station, by contrast, would be allowed a blanketing area of 401 feet.

"The National Association of Broadcasters has consistently used buzzwords like interference to scare the American public and hide their opposition to increasing the number of voices available over the airwaves," said Alan Korn, an attorney with the National Lawyers Guild Committee for Democratic Communications. "Our study shows that opening the airwaves to the public with LPFM will cause far less interference than that caused by existing full power stations. These results confirm that the only interference the NAB is really concerned with is interference with their monopoly over the radio dial."

"It's good to be able to lay this interference issue to rest," says Jeremy Lansman, owner of KYES TV in Anchorage. "It is now more clear than ever that LPFM will create far less interference than many already licensed radio stations do. The listening public will only benefit from the many innovative new stations that will emerge in this wave of licensing. What the NAB fears is economic competition from low power signals, not the noise."

Full copies of the Broadcast Signal Lab study and its executive summary are available online at:

<https://gullfoss.fcc.gov/cgi-bin/ws.exe/prod/ecfs/comsrch.hts>

Enter "99-25" in the field "docket #." Enter "National Lawyers Guild" in the field "filed on behalf of."

You can also receive the study by sending an e-mail to: [aakorn@igc.org](mailto:aakorn@igc.org). Copies of the executive summary may also be obtained by fax by leaving a message with the National Lawyers Guild Committee on Democratic Communications at (415) 522-9814.

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