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**BY HAND DELIVERY**

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Reply Comments of Infinity Broadcasting Corporation**
**MM Docket No. 99-25**

Dear Ms. Salas:

On behalf of Infinity Broadcasting Corporation, transmitted herewith are an original and four copies of its Reply Comments in the above-referenced proceeding. Please date-stamp the return copy and return it to the courier delivering this package.

Please contact the undersigned if there are any questions regarding this matter.

Respectfully yours,

Christopher J. Sova

Christopher J. Sova

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**BEFORE THE**

# Federal Communications Commission

**WASHINGTON, D.C. 20554**

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| In the Matter of | ) | |
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| **NOTICE OF PROPOSED RULEMAKING** | ) | **MM Docket No. 99-25** |
| | ) | |
| **Creation of a Low Power Radio Service** | ) | |

To: The Commission

**REPLY COMMENTS OF INFINITY BROADCASTING CORPORATION**

**LEVENTHAL, SENTER & LERMAN P.L.L.C.**
**2000 K Street, N.W.**
**Suite 600**
**Washington, DC 20006**

Dated: November 15, 1999

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## SUMMARY

Infinity Broadcasting Corporation ("*Infinity*") hereby submits reply comments regarding the establishment of a low power FM radio service ("*LPFM*") as proposed by the Commission in its *Notice of Proposed Rulemaking*, MM Docket No. 99-25 ("NPRM").

For almost forty years, the Commission has zealously and consistently acted to preserve the integrity of the FM allocations scheme; however, in the NPRM, the Commission, perhaps for the first time, intends to reverse this longstanding commitment by proposing to eliminate existing second and third adjacent channel interference protections currently in place. The elimination of the second and third-adjacent channel protections currently in force would irreparably degrade the technical integrity and the quality of service provided by existing FM stations, and impede the ability of existing licensees to promote and implement technical improvements, including in-band on-channel digital radio.

Several parties to this proceeding have submitted compelling evidence demonstrating that the LPFM service proposed by the Commission is more likely to frustrate rather than further the Commission's goals of promoting community-oriented broadcasting and diversity. Existing stations currently do an exemplary job serving the needs and interests of their communities and offer diverse programming choices. In fact, in recent years the number of radio stations that provide programming that serves minority audiences, such as urban and Spanish-language programming, has increased substantially. In comments filed in this proceeding, several minority-owned broadcast companies that are establishing themselves as major players in the industry have astutely explained that, ironically, their stations are likely to be most adversely affected if they are subjected to the increased interference and additional competition that a

proliferation of LPFM stations would generate. These concerns are well-founded and would appear to make it difficult for the Commission to justify establishing a new LPFM service.

Preliminary research suggests that the authorization of LPFM stations could jeopardize the implementation of IBOC because the existing channel allocation criteria have been utilized as the basis for the development of this technology. Accordingly, the Commission clearly should not proceed with the implementation of LPFM before the impact on the continued development and future viability of IBOC DAR can be thoroughly reviewed and analyzed.

The relaxation of the second and third adjacent channel spacing requirements will result in new interference to certain existing stations which will prevent these stations from serving certain areas they now serve; therefore, the authorization of low power FM stations will result in the modification of these stations' licenses. Before any low power FM station is authorized, an existing FM station whose license will be adversely modified due to new interference from the operation of a LPFM station must be afforded prior notice and the opportunity for a full evidentiary hearing in accordance with Section 316 of the Communications Act of 1934, as amended, to determine if the public interest could be served by such modification.

If the FCC nonetheless proceeds with a proposal to authorize any LPFM stations, it should not, under any circumstances, relax second-adjacent channel protection. Further, consistent with the Commission's conclusions when it established and revised its rules applicable to the FM Translator service, all LPFM stations should be secondary and comply with the rules that currently apply to FM translators.

**BEFORE THE**

# Federal Communications Commission

**WASHINGTON, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| NOTICE OF PROPOSED RULEMAKING | ) | MM Docket No. 99-25 |
| | ) | |
| Creation of a Low Power Radio Service | ) | |

To: The Commission

**REPLY COMMENTS OF INFINITY BROADCASTING CORPORATION**

## I. Introduction

Infinity Broadcasting Corporation (*"Infinity"*) which is controlled by CBS Corporation ("CBS") hereby submits these reply comments regarding the proposal by the Commission to establish a low power FM radio service ("*LPFM*") as set forth in the above-captioned *Notice of Proposed Rulemaking*, MM Docket No. 99-25 ("NPRM"). Infinity is one of the largest radio broadcasting companies in the United States. Infinity employs approximately 5,900 persons full-time and an additional 2,000 persons part-time. Infinity operates 116 FM and 46 AM stations in 35 markets. Infinity's 162 radio stations serve diverse segments of the population. They encompass a wide variety of programming formats, including, for example, news/talk, classic rock, urban, alternative, sports, country and oldies. The Infinity stations excel

at providing localized, community-oriented programming and service. The stations promote and sponsor hundreds of community service events and charitable organizations within their local communities, and air public affairs programming that addresses a diverse range of current issues of concern to their listeners. The Commission's determinations in the instant proceeding will therefore have a significant impact upon Infinity.

In the NPRM, the Commission proposes to add three distinct classes of low power radio service in the existing FM band: a 1000-watt primary service, a 100-watt secondary service, and a "microradio" service that would operate at from 1 to 10 watts. The proposed 100 watt and "microradio" stations would operate on a secondary basis with respect to all primary radio stations, and would not be permitted to cause interference to co-channel and first-adjacent channel stations within the protected service contours of such existing and future primary stations, nor would they be protected from interference from these primary stations.[1] The proposed 1000-watt stations would operate as "primary" stations, and would have co-channel and first-adjacent channel interference protection from other stations.[2] However, in order to maximize the number of LPFM stations that could be authorized, in the NPRM the Commission proposes to eliminate the second and third-adjacent channel protections currently in effect[3] which have provided interference protection for existing FM stations for almost forty years.

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[1]*Notice of Proposed Rulemaking: In the Matter of Creation of a Low Power Radio Service*, FCC 99-6 at para. 31 (released Feb. 3, 1999).

[2]*Id.* at para. 27-28.

[3]*Id.* at para. 42.

Infinity believes that the Commission's underlying objective in proposing to establish a low power FM service -- to create new opportunities for radio ownership and to promote diversity of voices and programming -- is important and laudable. As has been widely acknowledged in press reports, Infinity assumed a leadership role in working with other broadcasters in an effort to develop voluntary industry initiatives that will achieve this objective without the need for structural regulation. Accordingly, Infinity has carefully examined and considered the Commission's LPFM NPRM and the comments filed by numerous other parties in this proceeding. Unfortunately, technical studies submitted by the NAB and other broadcasters provide compelling evidence that implementation of the Commission's LPFM proposal would result in significant additional interference to existing stations with an attendant degradation of the service provided by these stations. In other words, even assuming arguendo that the Commission's goals might be achieved by implementing the proposed LPFM service -- which numerous parties to this proceeding have argued is unlikely -- it would be at the expense of the technical integrity of the FM band. This result would clearly be unwise, potentially devastating to existing full power FM stations, and antithetical to the overall public interest.

In fact, the Commission acknowledges in the NPRM and has emphasized in countless decisions released over the past 30 plus years that it is essential that the Commission refrain from taking actions that would degrade the technical integrity of the FM service, the quality of service provided by existing stations, or the ability of existing licensees to promote and implement technical improvements, including in-band on-channel digital radio. Infinity firmly

supports the Commission's long-standing recognition of the importance of and commitment to preserving the technical integrity and superiority of the FM service, which has been critical to the development and success of FM broadcasting.

In 1962, the Commission adopted the current Table of Allotments and fixed mileage separations for co-channel, first, second, and third adjacent channel FM stations on which it is based. In the rule making proposing this FM allocations scheme, the Commission explained that it viewed the FM mileage-based allocations scheme as a blueprint for achieving the maximum potential for the FM service. The Commission expressed its goal that the FM spectrum not become overcrowded and degraded by interference among licensees, as the AM spectrum had become, and established an over-all plan for efficiently allocating the scarce FM spectrum.[4] For almost forty years, the Commission has zealously and consistently acted to preserve the integrity of the FM allocations scheme.

In the NPRM proposing to create three new classes of LPFM stations, however, the Commission has, perhaps for the first time, proposed to reverse this longstanding commitment on a wholesale basis. In particular, it has proposed to eliminate the second and third adjacent channel interference protections currently in place in order to make available "sufficient spectrum" for a substantial number of LPFM stations. The Commission's scheme to implement LPFM seems particularly ill-advised in view of evidence that has been submitted in

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[4]*Notice of Inquiry, Notice of Proposed Rule Making, and Memorandum Opinion and Order: Revision of FM Broadcast Rules, Particularly as to Allocation and Technical Standards*, Docket 14185, FCC 61-833 at para. 17.

comments of the NAB and other broadcasters reg on existing stations of adding hundreds of new FM stations by means of eliminating or reducing adjacent channel protection. arding the potential significant negative impact

Furthermore, the rule changes that would be required to implement an LPFM service as proposed by the Commission may compromise the ability of existing stations to provide top quality service and to keep pace with technical enhancements, including the introduction and further development of terrestrial digital radio services.[5]

## II. Existing Radio Stations Are Already Providing Substantial, Diverse, and Valuable Services To Their Communities.

Among the Commission's stated purposes in proposing to authorize three classes of new low power FM stations are the provision of a low-cost means of serving urban communities and neighborhoods, as well as populations living in smaller rural towns and communities, and the promotion of community-oriented broadcasting.[6] However, there is no empirical evidence that existing stations do not adequately serve the needs and interests of their communities or offer diverse programming choices, or that LPFM stations would provide more or better community-oriented programming than is provided by existing stations.

On the other hand, there is an abundance of empirical evidence demonstrating that existing radio broadcast stations serve as a key source of local news and information, that they provide substantial amounts of community-oriented public affairs programming and public

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[5]*See* Comments of USADR at 6-9.

[6]NPRM at 1

service announcements, and offer a large variety of formats and personalities from which listeners are able to choose. Indeed, radio stations are unique among media outlets for strong ties to their communities and the amount and types of specialized services to their communities that they provide. These ties and services are described and praised in local newspapers throughout the country and are recognized by the NAB and state broadcast associations through press reports and awards. As examples of the unique services radio stations provide, a small sample of the community-oriented services provided by only a few of the Infinity radio stations is set forth below.

- Station KKMJ(FM), Austin, Texas, sponsors the annual "Women & Heart Conference" in conjunction with the American Heart Association, various running and walking events to benefit the American Cancer Society and the American Diabetes Association, and co-sponsors events with the Austin Junior League such as "A Christmas Affair", which benefits a variety of Austin non-profit groups. Station KAMX(FM) in Austin sponsors events to check infant car seat safety, to raise money to buy toys for underprivileged children in Travis County, to send local underprivileged children to summer camp, and to raise blood for the Austin Blood Bank.
- Station KQBT(FM) in Austin sponsors annual events to raise money for the East Austin Youth Association and for the Austin Center for Battered Women.
- Station KOAI(FM), Dallas, Texas, sponsors "Montage Festival of Art and Jazz", a three-day civic event designed to support 500 Inc., the largest arts philanthropic organization in Dallas/Ft. Worth.

- Station KLUV-FM in Dallas conducts a food drive in November and December to benefit the North Texas and Tarrant area food banks.
- Station WWMX(FM), Baltimore, Maryland, airs the weekly program "Baltimore Perspectives" which focuses on issues of local interest, and also sponsors public service programs that support the Maryland Food Bank, Johns Hopkins Children's Center, and the Baltimore Zoo.
- Station WBCN(FM), Boston, Massachusetts, airs "The Boston Sunday Review", a 2-hour weekly series focusing on issues of concern to people in the Boston area, and sponsors an AIDS Walk-A-Thon event in Boston that raises funds for AIDS research and patient assistance.
- Station WBMX(FM) sponsors a Walk for Science to raise money for the Muscular Dystrophy Association, Walk America to raise funds for the March of Dimes, MS Walk to support the MS Society in helping to fight Multiple Sclerosis, and the One-on-One Mentoring Walk to support mentoring programs between school age children and business professionals.
- In Pittsburgh, Station WDSY-FM conducts an annual radiothon for St. Jude's Children's Research Hospital and a "Line Up for Life" blood drive.

These are but a few examples illustrating the significant extent to which Infinity radio stations become directly and actively involved in serving and maintaining strong ties with their local communities. A complete chronicle of the myriad contributions made by existing broadcast stations to their local communities would require many volumes. Contributions such

as those noted above exemplify the unique role that existing radio stations play in their local communities, and convincingly demonstrate that existing stations are doing an exemplary job serving the needs and interests of their communities.

Another of the purposes cited by the Commission in recommending the authorization of LPFM service is that diversity of programming would increase. In particular, the Commission states that there are "unmet needs for community-oriented radio broadcasting."[7] The NPRM, however, provides no evidence that existing stations are not adequately fulfilling the needs of the communities they serve or that LPFM stations will provide more diverse broadcasting formats or community-oriented programming. In fact, in recent years, there has been a dramatic increase in the number of different programming formats offered by existing stations, especially narrower, specialized formats. For example, Infinity's radio stations broadcast in a wide variety of formats, including news, talk, sports, urban, gospel music, rock music, classical music, oldies, jazz, Spanish, and country music, which are targeted to the diverse needs of varying age groups and racial and cultural groups within local communities.

Moreover, the number of stations offering programming that serves minority audiences such as urban stations and Spanish language stations has grown substantially. For example, Hispanic Broadcasting Co. (formerly Heftel) owns a total of 39 stations that program in

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[7]NPRM at 1.

Spanish-language formats in 11 of the top 15 Hispanic markets.[8] In recently-released Arbitron ratings reports, stations owned by Hispanic Broadcasting Co. were the first and second rated stations (12+) in the Los Angeles market.[9]

Radio One, founded in 1980 when its Chairperson Cathy Hughes purchased a single AM station in Washington, D.C, specializes in acquiring and improving poorly-performing stations in markets that have a significant minority presence. The majority of the company's stations provide programming targeted to African Americans. Radio One now owns or is in the process of acquiring, 26 stations.[10] On May 6, 1999, Radio One raised $120,000,000 through a public offering of its stock, and intends to expand its operations into the 20 top African American markets where it does not yet own stations.[11]

As additional examples, Radio Unica, founded only two and one half years ago, provides Spanish-language programming. The company, which currently operates 13 stations in 10 markets and can be heard on an additional 36 affiliates nationwide[12], reaches 83% of the U.S. Hispanic population.[13] The company is working to build a nationwide Spanish-language radio

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[8]*See* http://www.heftel.com

[9]"AMFM still tops, but Jammin' drops", Broadcasting & Cable, July 26, 1999 at 21.

[10]"Black Broadcasting Firm Readies Unusual Pair of IPOs", The Washington Post p. F07, March 29, 1999 at p. F07.

[11]"Radio One Taking Off", Broadcasting & Cable, May 17, 1999, p. 69.

[12]"Company Town; Radio Unica Seeks to Raise $98 Million in IPO", Los Angeles Times, July 13, 1999 at Sec. C, p. 9.

[13]"Miami-Based Spanish-Language Radio Network May Go Public", The Miami Herald,

(continued...)

network, and recently announced plans to become a publicly traded company in order to obtain funds with which to acquire additional stations to expand its network and to pay down debt. "Su Casa Propia Con Countrywide", an innovative program produced by Radio Unica to help Hispanics realize the American dream of home ownership, resulted in 25 new home-loan approvals for Hispanics in the first week that it aired.[14] Mega Communications, L.L.C. ("Mega") was formed one year ago by an experienced Hispanic American broadcaster. Mega and its affiliates own 16 radio stations that "broadcast diverse Spanish language formats reflecting the eclectic mix of nationalities that makes [sic] up in the Latino community in each radio market."[15]

Executives of these minority owned broadcast companies have recently explained in comments filed in this proceeding that minority-run broadcast stations, which are just now establishing themselves as major players in the industry, could be the segment most adversely affected if subjected to the signal interference and additional competition that a proliferation of newly-authorized LPFM stations would bring to the already highly competitive radio broadcasting industry. In comments filed in this proceeding, Radio One opined that implementation of the LPFM service proposed by the Commission would not achieve the Commission's goals. Specifically, it explained:

> [c]rowding the FM band even further with the new low power stations will simply threaten existing minority-owned licensees with harmful interference without furthering the Commission's objectives. . . . The new

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[13](...continued)
July 13, 1999.

[14]The Miami Herald, June 28, 1999.

[15]Comments of Mega Communications, L.L.C. at 1-3.

> licenses, because commercial, must be auctioned. As a result, only the most well-financed bidders, not the minority and small business community groups the Commission seeks to aid in this proceeding will gain access to the new service. In short, Radio One urges the Commission not to establish a LPFM service.[16]

In a recent interview, Alfred Liggins, CEO of Radio One, stated

> I don't like low-power FM, particularly as it relates to companies like Radio One. We have enough of a challenge competing against the larger companies that have five FMs in a marketplace, to our two. If you drop a bunch of low-power FMs in the middle of Washington, D.C., or New York City, they probably won't go Country. They are more likely to be Urban or Hispanic. Then, we get hurt. It is tough for us to get to a full complement in the big markets. If you drop a bunch of smaller stations in, which we can't own, it hurts us.[17]

In its comments in this proceeding, Mega, like Radio One, "strongly opposes the creation of a new LPFM service."[18] Mega's comments highlight the irony of the Commission's proposal:

> Mega believes that the furthering of minority broadcast voices remains not only a legitimate, but an important goal for the Commission. Unfortunately, LPFM is not the answer. Indeed, the creation of LPFM may be the greatest threat facing *existing* minority broadcasters today. Minority broadcast voices, which tend to be more recent entrants in the industry, without the same resources and superior technical facilities as the national radio conglomerates, will bear the brunt of the economic disruption created by new LPFMs.[19]

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[16]Comments of Radio One at 2-4.

[17]Radio Ink, May 10, 1999 at 31.

[18]Mega Comments at 1.

[19]Id. at 9.

Significantly, the NPRM fails to provide any evidence that LPFM stations, if authorized and constructed, will provide more or better services to their communities, or to specific segments of their communities, than full power stations presently provide. The proposed 100 and 10 watt LPFM stations will only serve a limited number of persons within very small communities or neighborhoods. These stations will likely be essentially unavailable to mobile listeners who will pass through these stations' service areas quickly. Existing full-power stations, on the other hand, have larger service areas and use higher quality equipment, thus enabling them to serve a greater number of persons. Further, these stations have greater resources to provide essential services in the public's interest, such as up to the minute news, weather, traffic reports, and information regarding local emergencies.

The comments quoted above as well as comments filed by several other long-standing, well-respected broadcasters have explained why the implementation of an LPFM service could in fact frustrate, rather than advance, the Commission's goals of increasing programming diversity and community service.

Infinity believes the sentiments expressed by Radio One, Mega, Clear Channel and others are well taken.[20] In view of the degradation of the technical integrity of the FM band that the authorization of scores of LPFM stations would cause, which is discussed below, the

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[20]See e.g., Comments of Clear Channel Communications, Inc.; Comments of Cox Radio, Inc. Diana Coon, General Manager of WMAN, WYHT, and WSWR, Mansfield, Ohio, stated "I am a minority in this industry. The premise is to get more women, African-Americans and Hispanics into ownership, and that this [LPFM] will do it. To me, it has a lot more nuisance potential than it does income potential...It seems to me they are destroying an industry to give somebody something that is not going to be worth a lot of money anyway." Radio Ink, March 29, 1999 at 54.

evidence that existing stations are adequately fulfilling the goals the Commission has set for LPFM stations, and the likelihood that those likely to be most adversely affected are minority and female-owned licensees, it is difficult to justify the authorization of the proposed LPFM service.

## III. Existing FM Service Will be Eroded by the Introduction of LPFM

For several decades, the Commission has zealously and consistently protected the FM band from erosion and acted to preserve the integrity of the FM allocation scheme by establishing a Table of Allotments and enforcing co-channel, and first, second, and third adjacent channel interference protection. Unlike AM radio service, the carefully-established interference protections afforded existing FM stations has resulted in a technically efficient and superior service. As discussed more fully in the engineering statement of Bernard R. Segal, P.E. attached hereto as Exhibit A (the "*Engineering Statement*"), LPFM stations, by virtue of their limited coverage range, must be located within the "hearts of the communities proposed to be served in order to reach the intended target audiences."[21] If the Commission relaxes second and third adjacent channel protections for existing FM stations, as it has indicated would be necessary to permit the authorization of a meaningful number of LPFM stations, there is little doubt that LPFM stations will create interference to existing FM signals within the densely populated areas of the communities which they serve.[22]

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[21]Engineering Statement at 6.

[22]*Id.* at 9-10.

Almost 40 years ago, when the Commission established the current FM allocations scheme along with its attendant minimum spacing requirements, the Commission articulated as its primary goals the desire to provide some service of satisfactory signal strength to all areas of the country, as many program choices as possible, and service of local origin to as many communities as possible. The Commission determined that the achievement of these objectives would be best furthered by implementing an allocations scheme that would enable stations to serve wide areas, protected from interference out to the point where their signals become too weak to be generally useful. The Commission noted that this scheme would allow for service in rural and other sparsely settled areas of the nation. The Commission recognized then that the same result could not be obtained from the assignment of a large number of low-powered more closely spaced stations, for the reason that such stations cause destructive co-channel interference over a wider area than that within which they render a useful service.[23] In many instances, existing FM stations are currently heard free of interference in such rural areas; however, if LPFM stations are allowed to initiate service in these areas without regard to second and third adjacent channel interference protections currently in place, the cumulative impact of the new LPFM signals will be to substantially erode the existing FM signals that serve those areas.[24]

In the NPRM, the Commission, on the one hand, acknowledges that it is important to protect the integrity of the FM spectrum, but, on the other hand, observes that in

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[23]*Notice of Inquiry, Notice of Proposed Rule Making and Memorandum Opinion and Order*, FCC 61-833, at 3.

[24]Engineering Statement at 7-8.

order to make available sufficient spectrum for the allocation of LPFM stations, particularly in larger markets, it would be necessary to eliminate second and third adjacent channel mileage protection.[25] These positions are, unfortunately, irreconcilable. The Commission should not authorize scores of new stations to operate in the existing FM band, not only because it would reverse the longstanding commitment to preserving the technical integrity of the existing FM service, but also because it would undermine the ability of existing licensees to modify their facilities to offer the best service available and to keep pace with technical enhancements.[26]

As discussed in detail in the memorandum attached hereto as Exhibit B, for almost forty years, the Commission has consistently preserved the integrity of the allocation scheme for the FM service that is based upon mileage separations, and has faithfully defended and strengthened its policy of protecting the FM band from erosion. Now, foreshadowing a one hundred eighty degree shift in policy the Commission proposes to eliminate second and third adjacent channel protection and permit the authorization of hundreds of low power FM stations.

Indeed, even when the Commission implemented Docket 80-90 in 1983, resulting in the reclassification of certain stations operating without maximum facilities and the addition of thousands of FM stations to the FM Table of Allotments, the Commission retained guardband

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[25]NPRM at 2 and 19.

[26]NPRM at 19.

protection on second and third adjacent channels and decided against altering the minimum separation requirements, observing that it did not "consider the increase in availability [for new stations] to justify the loss of existing primary service areas."[27]

Likewise, less than ten years ago the Commission declined to authorize what would have constituted a new class of low power FM stations when it concluded that FM translators should not be permitted to originate programming. In 1988, the Commission initiated a Notice of Inquiry in response to several Petitions For Rulemaking to review the role of FM translators in the radio broadcast service. Certain petitioners had requested the Commission to authorize unlimited program origination for translators and to protect translators from interference by adopting channel spacing requirements -- effectively creating a low power FM service. These petitioners suggested that doing so would "permit 'narrowcasting' or diverse and unique programming targeted to smaller geographic areas that share common interests."[28] Explaining its unwillingness to adopt the suggested changes, the Commission stated:

> In view of our commitment to authorize primary service in the most spectrally efficient manner, we believe it is necessary and appropriate <u>to preserve the existing relationships in our FM allocations scheme and, thus, to maintain full-service stations and translators in their current roles as providers of primary and secondary service, respectfully</u>. Consistent with this position, we do not contemplate the creation, as the La Tour petition appears to suggest, of a new class of low power FM

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[27] *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, 94 FCC 2d 152 at para. 62.

[28] *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, Notice of Inquiry,* 3 FCC Rcd 3664, 3667 (1988).

> stations equal in standing to full-service facilities and will carefully examine all policy options in this area in terms of their effect on our overall allocations scheme.[29]

The Commission reiterated its commitment in this regard in both its notice of proposed rulemaking proposing to reexamine certain rules applicable to FM translators[30] and its Report and Order in that proceeding.[31] In its Report and Order, the Commission emphasized that "we believe that our efforts to improve local service must be balanced against the technical degradation to the overall broadcasting system that could result from a proliferation of translator stations.[32]

And to a similar effect, only two years ago, the Commission issued a Report and Order that relaxed the spacing standards for a specific and relatively small numbers of pre-1964 grandfathered FM stations, but stressed that its action would not increase the interference to be experienced by other stations that were not included among the specific group of grandfathered stations. The Commission determined that any increase in total interference is not in the public interest, and it stressed the importance of maintaining the technical integrity of the FM band by preventing increased interference:

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[29] *Id.* at 3668 (emphasis added).

[30] *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, Notice of Proposed Rulemaking*, 5 FCC Rcd 2106 (1990).

[31] *In re Amendment of Part 74 of the Commission's Rules, Concerning FM Translator Stations, Report and Order*, 5 FCC Rcd 7212 (1990).

[32] *Id.* at 7219.

> We believe that the current rules should be changed to allow for sufficient flexibility when co-channel and first-adjacent channel grandfathered stations seek to relocate. However, providing this flexibility should not jeopardize another station's ability to serve its listeners. . . . Our underlying presumption is that any increase in total interference, caused and received, is not in the public interest. Interference caused and interference received are opposite sides of the same coin. Both represent an inefficient use of the spectrum.[33]

In response to one party's suggestion that slight increases in interference caused should be permitted when a net reduction in interference occurs, the Commission responded that:

> subjecting other grandfathered stations to an increase in interference, without offsetting factors, would be unfair. Allowing stations to increase interference caused would result in diminished service areas, and promote perpetual degradation of the overall quality of FM service. Therefore, we will not allow for any increases in interference caused.[34]

In a Memorandum Opinion and Order released October 1, 1999, the Commission denied an FCC licensee's short-spacing waiver requests, noting that each such waiver granted "to some extent undermines the goal of insuring fair distribution of FM service."[35] In its discussion, the Commission stated that "[t]he spacing rules were put into force as the best means for achieving an orderly, efficient, and effective development of the commercial FM broadcast

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[33]*Grandfathered Short-Spaced FM Stations*, 11 FCC Rcd 7245 at para. 9 (emphasis added).

[34]*Id.* at para. 10.

[35]*Memorandum Opinion and Order, In re Application of Greater Media Radio Company, Inc.*, FCC 99-226 at para. 5 (released October 1, 1999).

service"[36], that the spacing rules "promote a fair distribution of FM service across the country, as required by 307(b) of the Communications Act, avoiding undue concentration of stations in urban areas (particularly major markets)", and that "[t]he Commission has long held that 'strict enforcement of the mileage separation rules is of paramount importance to the integrity of the entire FM assignment plan."[37]

In the NPRM, the Commission has proposed to do precisely what it has previously said, over and over again, it would not — relax 2nd and 3rd adjacent channel spacing requirements as allotment criteria for all stations, and authorize classes of stations that would indisputably impair the service that existing FM stations now provide. This action would be squarely inconsistent with the Commission's steadfast and longstanding refusal to waive the spacing requirements at the allotment stage and its commitment to grant individual stations waivers of the spacing requirements very sparingly, only if unique circumstances were present. Significantly, as explained more fully in Exhibit B, the Commission has previously rejected as a basis for short-spacing waivers at both the allocations and application stage the precise public interest justification advanced to support the proposal to create an LPFM service — that an increase in programming diversity could result.[38]

In the NPRM, the Commission acknowledges that in deciding whether to create a low power FM service, the impact of increased interference to existing stations and their listeners

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[36] *Id.* at para. 9.

[37] *Id.*

[38] *Bristol, Tennessee*, 46 RR 2d 650 (1979); *Denver, Colorado*, 46 RR2d 2379 (1980); *Universal Broadcasting of Indiana*, 102 FCC 2d 1457 (1986).

must be weighed against any benefits low power stations would provide.[39] Unless it can be conclusively demonstrated that the LPFM proposal will not adversely impact the public's ability to receive high quality service from existing stations, LPFM should not be implemented. Based on the technical evidence submitted this far, it appears that such a demonstration cannot be made. As explained above and in the attached Engineering Statement, eliminating second and third adjacent channel interference protection to create low power FM stations will clearly and dramatically increase interference caused to existing stations, degrade the superior technical quality of the FM service and prevent many listeners from clearly receiving stations they now enjoy.

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[39]NPRM at para. 45.