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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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CREATION OF A LOW POWER RADIO SERVICE	)	MM DOCKET NO. 99-25
	)	
	)	RM-9208
	)	RM-9242

TO: CHIEF, MASS MEDIA BUREAU

Reply Comments of Public Radio Regional Organizations and Station Resource Group

The Public Radio Regional Organizations ("the PRROs") and Station Resource Group ("SRG") hereby jointly file these Reply Comments in response to the Commission's Notice Of Proposed Rule Making in the above-captioned proceeding ("the LPFM Proceeding").

The PRROs are comprised of Rocky Mountain Public Radio, West Coast Public Radio, Minnesota Public Radio, Eastern Public Radio, California Public Radio, Public Radio In Mid-America, and Southern Public Radio. The PRROs represent over 169 noncommercial educational ("NCE") licensees with over 370 primary and FM translator stations across the country. SRG is comprised of 47 members who operate 168 primary stations, produce the majority of public radio's national programming and account for one-third of public radio's audience. Together, the PRROs and SRG represent a broad range of public radio stations located in virtually every state in the country. These include stations located in major markets, medium and small markets, and rural markets; community and institutional licensees; single station licensees; and organizations that provide statewide or regional service with a network of NCE stations.

INTRODUCTION

Neither the diversity of the stations represented by the PRROs and SRG, nor their commitment to diversity, can be questioned. Like National Public Radio ("NPR"), the Corporation for Public Broadcasting ("CPB") and the National Federation of Community Broadcasters ("NFCB"), the PRROs and SRG (collectively, the "NCE Commenters") unanimously endorse the objective of increasing the diversity of radio programming available to the American public. Like other NCE Commenters, however, the PRROs and SRG are concerned that the service proposed in the LPFM Proceeding will not achieve its objectives, that implementation of the LPFM service as proposed will adversely affect public radio listeners and public radio reception and that LPFM will impose exorbitant costs on the growth and development of public radio services.

The first section of these Reply Comments summarizes some of the shared concerns of the NCE Commenters and focuses on the adverse effects LPFM could have on existing and future public radio service.[1] The second section discusses particular issues raised by a selection of individual commenters.

I. THE POTENTIAL EFFECTS OF LPFM ON NCE SERVICE

All NCE Commenters expressed concern that the new LPFM service should not result in serious loss of public radio service to listeners currently served by existing NCE stations.[1] This concern was fueled by the Commission's failure to conduct a thorough examination of underlying interference issues prior to the initiation of the LPFM Proceeding. As proposed, LPFM had a recognized potential of unknown scope for causing interference to NCE stations. In

[1] In emphasizing the concerns shared by NCE Commenters, PRROs and SRG do not suggest that the NCE Commenters agree on all points, or even that they take the same approach to the issues raised by the LPFM Proceeding.

particular, the Commission's proposal to eliminate current protections from interference by stations located on second and third-adjacent and intermediate frequency channels led NCE Commenters to fear that the proposed LPFM service would destroy or seriously degrade existing NCE service. NCE Commenters expressed concern that LPFM could adversely affect digital audio broadcasting ("DAB") and proposed new in-band-on-channel ("IBOC") systems.[2] Most NCE Commenters urged the Commission not to implement any LPFM service until it could better assess the harm LPFM might cause both to existing analog broadcasting services and to future DAB services.

In *Digital Broadcasting Systems and their Impact on the Terrestrial Radio Broadcast Service, Notice Of Proposed Rulemaking,* MM Docket No. 99-325, FCC 99-327 (released November 1, 1999), the Commission recognized that LPFM service is inextricably related to DAB service. Both the LPFM and DAB proceedings raise policy issues concerning the most efficient use of limited spectrum, high-quality audio reception by listeners, and interference issues concerning the technical compatibility of LPFM and DAB services. See NPRM, ¶ 25. Among the basic issues to be resolved in the DAB proceeding is whether an in-band, on-channel ("IBOC)" or a new spectrum DAB allocation model will be adopted. The different models may have radically different effects on the allocation of LPFM frequencies and the protection of existing analog radio broadcast and DAB frequencies from interference. Moreover, the DAB proceeding also purports to address issues of receiver selectivity and quality listener reception of digital radio signals during the period of DAB conversion and afterwards – these issues are also central to the LPFM proceeding. Because of the close relationship between the proposed LPFM

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[1] *See* CPB Comments, pp. 15-22; PRROs Comments, pp. 3-7; SRG Comments, pp. 13-24; NPR Comments, pp. 923; NFCB Comments, p. 1.
[2] *See* PRROs Comments, pp. 6-7; SRG Comments, pp. 23-24; NPR Comments, pp. 22-23; *but see* NFCB Comments, pp. 13-15.

and DAB services, it is clear that neither service can be adopted until common issues are resolved. The Commission cannot move forward with an LPFM service until a DAB standard is finalized and implemented. To do otherwise would risk at least some portion of the full digital potential that DAB offers for terrestrial broadcasting. There are too many "unknowns" on the digital radio landscape.

The FCC now has a wealth of laboratory tests results, including results of tests that the FCC itself has conducted. The tests use different methodologies, they sample different receivers, and they reach different conclusions about the accuracy of the Commission's hypothesis that many current forms of interference protections are no longer necessary. Although the PRROs and SRG do not have the engineering expertise to reconcile the studies, they cannot help but observe that the studies support radically different conclusions about the potential interference that LPFM will cause. Further laboratory testing seems essential to determine the relative accuracy of these conflicting studies.

Although additional laboratory tests would give the Commission a much clearer understanding of the current state of receiver technology, it would not answer all questions about the potential effect LPFM will have on existing stations and real listeners. Field testing and subjective listening tests also are necessary to determine the actual effect of filling vacant interstices in the FM spectrum with new sources of interference. As shown in the CEMA study,[3] crowding the FM spectrum with new frequencies will not only create adjacent and IF channel interference, but also may give rise to new forms of "intermodulation" interference through the combination of frequencies with unknown interference potential. The Commission would be remiss in its duties if it launched a new LPFM service without field testing the potential for

actual harm.

Most NCE Commenters recognize that NCE stations are particularly susceptible to interference from new LPFM stations for two distinct reasons. First, because the Commission has used a "contour" rather than a mileage separation system to license NCE stations, congestion in the reserved band of frequencies is already severe. The addition of new stations without regard to IF taboos, second and third-adjacent channel interference, and new forms of intermodulation interference, will make a bad situation far worse.[4] Second, because NCE stations favor formats (primarily classical, jazz and talk) that use lightly processed signals and that command close auditory attention, they are particularly susceptible to the subjective effects of interference.[5] Listeners who would tolerate the hiss and crackle of interference in a Limp Biskit performance will tune out when the same level of interference jet-skis through a Terry Gross interview, a Wynton Marsalis improvisation or a Mozart sonata.

The following are some of the other concerns shared by one or more of the NCE Commenters:

- The effect of LPFM on the public investment in NCE broadcasting.6 Unlike commercial broadcasting, public broadcasting is heavily subsidized by federal and state governments. Since 1962, one federal program, the Public Telecommunications Facilities Program, has invested over $600 million in the physical facilities of public radios.7 If LPFM causes interference, that interference will not only affect continuing support from private contributors, but also will devalue the government's capital investment in public broadcasting.

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[3] NPR joined with CPB and the Consumer Electronic Manufacturers Association in conducting a study of interference that would be caused by the proposed LPFM service (the "CEMA Study"). SRG includes a detailed discussion of this study in its Comments at p. 18.
[4] *See* NPR Comments, pp. 18-19; SRG Comments, p. 23.
[5] *See* CPB Comments, pp. 20-22; PRROs Comments, p. 9; SRG Comments, pp. 21-22; NPR Comments. p. 12.
[6] *See* CPB Comments, pp. 2-7; PRROs Comments, pp. 5-6; SRG Comments, pp. 11-13; NPR Comments, pp. 4-9.
[7] *See* NPR Comments, p. 5.

- The effect on listeners outside a station's predicted service area.8 The proposed LPFM allotment scheme would protect only the theoretical service area of existing stations. Most stations serve a considerable actual audience outside their predicted service area contour. According to evidence collected by PRROs, the audience outside a station's protected contour may, in some cases, be larger than the audience within its protected contour.9 The Commission has made no attempt to determine how many listeners (or contributors) would have to be deprived of an existing NCE service in order to make room for new LPFM services.

- The effect of LPFM on translator service.10 Because NCE licensees are not limited to "fill-in" translator stations, they have constructed translator networks that serve large rural areas, particularly in the West. Over nine million people currently receive a public radio signal through a public radio translator station.11 Such translator services are highly vulnerable to interference to either the input or output channel. A single LPFM station thus may have the potential to knock out a whole network of translator or satellite/ repeater stations.

- The preclusionary effects of LPFM.12 Every new use of spectrum involves not only the issue of interference – whether the new use will adversely affect an existing service – but also the issue of preclusion – whether the new service will prevent an existing service from modifying or expanding its coverage. In a departure from its traditional analysis of spectrum usage, the Commission has not taken into account the fact that LPFM will preclude existing full-service stations from upgrading full-service facilities and providing new translator services. Because the broadcast medium is, by its nature, a mass medium, the Commission traditionally favors uses of spectrum that provide wide area service. The proposed LPFM service will serve very limited geographical areas, while precluding full-powered stations from using the same spectrum to serve much larger areas. LPFM is thus an inherently inefficient use of spectrum.

- The economical feasibility of LPFM.[13] The Commission adopts a "field of dreams" approach to LPFM, and assumes that if LPFM stations are authorized, they will somehow attract the funding needed to survive. Years of financial struggle make NCE stations skeptical of this approach to fundraising. Without any assurance of federal or state funding and with a very limited advertising or donor base, LPFM stations are highly likely to fail, or to be so perennially strapped for funds that they cannot provide a reliable service.

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[8] *See* CPB Comments, p. 9; PRROs Comments, pp 4-5; SRG Comments, p. 15.
[9] *See* PRROs Comments, p. 4
[10] *See* CPB Comments, p. 21; PRROs Comments, pp. 3-4; NFCB Comments, pp. 12-13.
[11] *See* PRROs Comments, p. 3.
[12] *See* CPB Comments, pp. 10-12; PRROs Comments, p. 8; SRG Comments, pp. 8-10.
[13] *See* CPB Comments, p. 7; PRROs Comments, p. 8; SRG Comments, pp. 10-13; NPR Comments, p. 29.

- Whether LPFM will result in more diverse programming.[14] The Commission's assumption that an LPFM service will result in a greater diversity of programming is speculative. The stimulus to diversity takes the primarily negative form of proposed limitations on the number of LPFM stations any single licensee could own and the prohibition on ownership of LPFM stations by licensees of full-service stations. The Commission's proposal does nothing to stimulate creative programming or an adequately funded, and thus sustainable, program service. The issue of whether LPFM will produce new, high quality programs is entirely uncertain.

II. ANALYSIS OF INDIVIDUAL COMMENTS

More than 1500 comments and letters were filed in this proceeding. Because of the volume of material submitted and the limited time for review, SRG and PRROs can respond only to selected comments that bear most directly on the issues concerning public radio.

A. Comments of J. Rodger Skinner, Jr.

Like many other Comments, the Comments of J. Rodger Skinner, Jr., the proponent of LPFM whose petition commenced the LPFM Proceeding, demonstrate the dangers of oversimplifying LPFM and its impact on existing radio listenership, including public radio station listenership. Like other LPFM proponents, Mr. Skinner feels passionate about LPFM and its benefits. However, Mr. Skinner's theories are wholly unsupported by adequate studies or other engineering analyses. Moreover, his theories about interference are contradicted by the "listening tests" contained in the CD ROMs submitted with NPR's Comments, as well as the technical studies of CEMA and others in this proceeding. LPFM will have an affect – an adverse affect – on public radio listening in this country.

Mr. Skinner ignores the fundamental risk that LPFM poses for existing public radio service, including service outside protected contours and service from public radio satellite/repeater or public radio translator stations. In fact, his suggestion that LPFM stations be permitted to use contour overlap protection to "shoehorn" in more new LPFM stations would

exacerbate the already problematic mileage separations set forth in the NPRM, jeopardize public radio service to listeners, saddle public radio licensees with enormous burdens in trying to identify and combat potentially disruptive LPFM stations, and create an administrative nightmare at the FCC. His view that LPFM should not protect translator service would be the death knell for public radio translator service in many communities.

Even so, Mr. Skinner rightly points out that the economic viability of LPFM is uncertain, that LPFM would be doomed as a noncommercial service, that microradio stations do not make sense (he has withdrawn his support for that proposal), and that signal coverage and automobile radio listening are of primary importance to the success of a radio broadcasting. Taken as a whole, Mr. Skinner's Comments stand for all the reasons why LPFM should not be authorized in the FM band as proposed. LPFM cannot be implemented simply; it cannot be done without enormous costs to public radio listeners and NCE radio stations throughout the country; it cannot be done in a way that guarantees achievement of the FCC's goals of program diversity and enhanced community service.

B. Comments of NFCB and MAP

The Comments of the National Federation of Community Broadcasters ("NFCB") and Media Access Project, who filed on behalf of the United Church of Christ and others, ("MAP" or "UCC") are studies in contradiction. Both reveal the inherent tension between a laudable public policy concept and the real world difficulties of making LPFM "work" as a viable community radio service in the FM band. In the views of the PRROs and SRG, the tension cannot be reconciled without doing irreparable harm to public radio nationwide.[15]

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[14] *See* CPB Comments, pp. 2-10; 12-13; NPR Comments, pp. 29-30.

[15] The PRROs and SRG are sympathetic to the tough spot that NFCB finds itself in as a group of existing broadcasters who support community broadcasting. However, the PRROs and SRG believe that preservation of

The tension is prevalent in NFCB's Comments, which protest the overcrowding of the "reserved" band (Ch. 200-220) while supporting new LPFM entrants to that band. NFCB also raises multiple issues that greatly concern the future of public radio in this country, but that are not immediately relevant to the implementation of an LPFM service. For example, NFCB cites the onslaught of translator applications by "national" filers, "national" applicants for new NCE stations seeking main studio waivers and satellite-fed translators.[16] While all of these considerations affect the question of "who is using" the NCE reserved spectrum, they do not address the basic spectrum usage issues raised by the LPFM Proceeding: the depletion of the reserved NCE spectrum, the diminishing opportunities for improved public radio service and the ongoing need for reliable NCE service. PRROs and SRG believe that LPFM cannot be authorized without jeopardizing the stability and growth of public radio listening.

NFCB also comments on several items that require further consideration before being implemented. For example, NFCB suggests that LPFM should be a "noncommercial only" service, and that strict new underwriting rules should be imposed on the LPFM service. NFCB does not explain how the Commission would accommodate different underwriting rules for different services or enforce new accounting features, such as a ban on disbursements to "related or unrelated third parties."[17] NFCB also supports a "one per customer" limitation, yet does not address the complex ownership issues and attribution standards that would be necessary in an NCE context. NFCB suggests that IBOC issues should not preclude LPFM, yet provides no

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public radio service and its future should be paramount over LPFM and that other distribution mechanisms or other spectrum can meet the public policy needs underlying LPFM.

[16] NFCB also criticizes these trends with too broad a brush. As explained in the PRROs initial Comments in this proceeding, many public radio stations operate regional or statewide networks (some with satellite-fed programming) as a cost-effective way to provide public radio service to as many citizens as possible to further the mandate of Section 396 of the Communications Act.

[17] NFCB comments that LPFM should be an NCE service, if only to avoid spectrum auctions for the service. The viability and need for LPFM should not be determined by whether congressional mandates can be avoided, but by whether the service, as a whole, makes sense as an FM band radio service.

technical means to "put the genie back into the bottle" if NFCB's unsupported assumptions about DAB prove wrong.

MAP's Comments showcase the myriad reasons why LPFM, regrettably, cannot live up to its potential as noncommercial community radio broadcast service. MAP supports LPFM, yet suggests a crushingly onerous amount of FCC oversight and regulatory requirements to accomplish the policy goals of LPFM, while admitting the extreme financial hardships that will plague LPFM licensees. For example, MAP supports rigid local origination requirements, a brand new mechanism for NCE attribution, imposition of the complex sponsorship identification and political broadcasting requirements (presumably including lowest unit charge calculations), a host of information disclosures, tax exempt documentation requirements, minority control determinations, a new two-track application processing system that favors local institutions over minority-controlled applicants, vague standards as to how applicants qualify under the two-track system, and a point system for mutually exclusive applications.

MAP's Comments assume the financial ability of LPFM to achieve its goals without one iota of economic, historical, or other support for this assumption. As discussed above, it will be virtually impossible to keep LPFM stations afloat as noncommercial operations, even without the onerous burden of the regulatory regime envisioned by MAP. The FCC should not move forward on LPFM until it is assured that the service can be financially viable and that it can be regulated effectively to achieve the policy goals envisioned by the FCC, with or without the administrative burdens MAP advocates.

Indeed, the very reason behind MAP's suggested regulatory regime (to ensure that LPFM would fulfill its policy goals), juxtaposed with the extreme burdens that the regime imposes on LPFM and the FCC, reinforces the conclusions discussed above: LPFM cannot be done simply

and it cannot be done in a way that guarantees achievement of the FCC's goal of community service.

Finally, both NFCB and MAP support an "amnesty" program for pirate radio stations that seek LPFM stations. PRROs and SRG oppose this suggestion. Any individual or entity with so little respect for the Communications Act as to operate an unlicensed broadcast station is unqualified to be a Commission licensee.

C. Comments of National Lawyers Guild et al., UCC et al., Dewey Matthews Runnel and LuRunn Broadcasting System

The National Lawyers Guild et al., UCC., Dewey Matthews Runnel and LuRunn Broadcasting System propose that LPFM service be restricted to noncommercial operation, regardless of the frequency on which the station operates.[18] National Lawyers Guild asserts that new LPFM service is an opportunity to counterbalance the "quantity over quality" imperative of current full-power radio service,[19] that "completely noncommercial service will attract only those who truly wish to provide service to their community," and that "LPFM is an opportunity for an entirely different model of local, community based radio service not based on a profit motive."[20] While these ideals are noble, they are completely impractical, absent a supportive infrastructure that makes a sustainable NCE service possible.

As PRROs and SRG discuss in their respective comments, LPFM service that is restricted to noncommercial service is likely to fail.[21] Public radio stations have historically struggled with financial problems. Today, public radio stations continue to struggle even with significant support from national, state, and private sources. Whether an LPFM service could survive on a

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[18] *See* Comments of United Church of Christ et al., p. 20; Comments of National Lawyers Guild et al., p. 6; Comments of Dewey Matthews Runnel, p. 8; Comments of LuRunn Broadcasting System, p. 8.
[19] *See* Comments of National Lawyers Guild, et al. p. 6.
[20] *See* Comments of National Lawyers Guild, et al. p. 6.
[21] *See* PRROs Comments, p. 8; SRG Comments, p. 11.

noncommercial basis is therefore highly problematic.[22]

National Lawyers Guild further proposes that LPFM stations be forbidden from raising funds through underwriting announcements. NCE stations now receive approximately 17% of their revenue from underwriting.[23] Despite its aversion to underwriting, National Lawyers Guild does not explain how LPFM will survive if this important source of revenue is taken away.

National Lawyers Guild points out that the NCE stations licensed to Pacifica Foundation, Inc., have successfully survived for years without either advertising or underwriting announcements.[24] Pacifica is a remarkable success story in noncommercial broadcasting. Its stations are licensed to major markets where they can draw financial support from an enormous listener base. National Lawyers Guild acknowledges that the audience size of LPFM stations will be significantly smaller than Pacifica's, but it fails to recognize that pure listener-supported stations like Pacifica's are the exception and not the rule in noncommercial broadcasting. As the PRROs and SRG comments discuss at length, no LPFM service should be authorized on an NCE basis when no resources exist to sustain the service. Radio stations cannot survive without a reliable source of revenue.

Even though the National Lawyers Guild supports LPFM, it strongly urges the Commission to initiate a separate, additional rulemaking, to follow the LPFM Proceeding, to consider allocating additional spectrum to LPFM.[25] PRROs and SRG do not oppose this suggestion, provided that the Commission scraps this proceeding and initiates a rulemaking proceeding to allocate spectrum for LPFM that is not in the existing, overly-congested FM band.

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[22] See CPB Comments, p. 7; PRROs Comments, p. 8; SRG Comments, pp. 10-13; NPR Comments, p. 29.
[23] *See http://www.cpb.org.*
[24] *See* Comments of National Lawyers Guild et al., p. 7.
[25] *See* Comments of National Lawyers Guild et al., p. 4.

D. Comments of Salem Communications Corporation

Salem Communications Corporation ("Salem") notes that the FCC's LPFM proposal fails to recognize that most full power stations "enjoy good-quality reception well beyond their protected service contours."[26] Salem conducted engineering studies on two of its full-power stations to demonstrate the detrimental effects that LPFM would have on full power stations that provide interference-free signals beyond their protected service contours. Salem concludes that LPFM would cause destructive interference to full power stations. Salem's conclusions are consistent with those of PRROs, whose member stations report that there is a substantial number of listeners and donors that reside outside stations' protected contours, in some cases many miles beyond a protected contour.[27]

Salem notes that if the Commission were to authorize LPFM stations in the open areas between the protected service contours of full power stations, many of the existing listeners in those areas no longer would be able to receive the signal of their favorite full power stations because of the interference caused by LPFM stations.[28] PRROs and SRG agree with Salem in its assertion that the proposed LPFM service would violate one of the Commission's fundamental principles: the listening "public has a legitimate expectation that existing service will continue."[29]

Salem concludes that LPFM would have an adverse impact on the development and deployment of IBOC service.[30] This conclusion echoes the FCC's own acknowledgment that it does not fully understand the impact that LPFM service could have on the transition to this

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[26] *See* Comments of Salem Communications Corporation, p. 2.
[27] *See* Comments of PRROs, p. 4.
[28] *See* Comments of Salem Communications Corporation, p. 5.
[29] *See* Comments of Salem Communications Corporation, p. 5, citing *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990).
[30] *See* Comments of Salem Communications Corporation, p.23

technology.[31] PRROs and SRG urge the Commission not to risk the digital future of radio by prematurely authorizing LPFM.

E. Comments of Romar Communications, Inc.

Romar Communications, Inc. ("Romar") was an early supporter of LPFM; however, its enthusiasm for the Commission's proposal waned after careful consideration of LPFM's effects on the broadcasting industry.[32] Romar now gives "cautious, limited and conditional support" to LPFM because it is concerned that the Commission's current proposal would "seriously compromise FM broadcast technical standards to the detriment of incumbent licensees, restrict too narrowly the universe of potential local applicants for an LPFM license, but also open too widely the opportunity for LPFM speculation nationwide."[33] While Romar concedes that it does not have the technical expertise to determine the impact that potential second or third-adjacent interference would have on full-power stations, it suggests that third-adjacent interference protections be lifted.[34] Romar suggests that the Commission retain protections for second-adjacent interference and re-evaluate them in five to ten years, once the standard's impact is better known and IBOC technology is more fully developed. Romar notes that "thirty years in the broadcast industry has taught [it] that rescinding an ill-conceived rule is nearly impossible when new stations are created as that rule's result."[35]

The Romar Comments nicely illustrate the complexity of the issues involved in the LPFM Proceeding and of the need for caution, especially when publicly supported, federally funded stations located in the limited spectrum reserved for noncommercial educational purposes, are placed at risk.

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[31] *See* Comments of Salem Communications Corporation, p.23
[32] *See* Comments of Romar Communications, Inc., p. 1.
[33] Id.
[34] Id. at p. 18.

CONCLUSION

For all these reasons, PRROs and SRG urge the Commission not to proceed with LPFM. PRROs and SRG believe the record in this LPFM proceeding clearly establishes that LPFM – superimposed on incumbent radio listenership in the FM band – will not serve the public interest, but harm it. The very real interference and opportunity costs that LPFM would impose on current and future public radio listeners and public radio stations is not a fair trade for the illusive benefits of LPFM. We urge the Commission not to sacrifice our existing public radio service and our existing public radio system. If the policy concept underlying LPFM is worth pursuing, the Commission should find alternative spectrum or alternative distribution mechanisms for it that do not burden the listening public with intolerable interference.

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[35] Id.

Respectfully submitted,

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November 15, 1999