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

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

REPORT AND ORDER

Adopted: January 20, 2000 **Released: January 27, 2000**

By the Commission: Chairman Kennard and Commissioners Ness and Tristani issuing separate statements; Commissioner Furchgott-Roth dissenting and issuing a statement; and Commissioner Powell approving in part, dissenting in part and issuing a statement.

Table of Contents

I. Introduction 2

II. Issue Analysis 3

A. Goals 3

B. Classes of Service 7

1. LP100 Service 13
2. LP10 Service 14

C. Nature of Service and Licensees 15

1. Noncommercial Educational Service 15
2. Public Safety and Transportation 21

D. Eligibility and Ownership 24

1. Cross-Ownership Restrictions 26
2. Requirement That Applicant Be Community-Based 31
3. National Ownership Limits 37
4. Local Ownership Limits 42
5. Attribution 47
6. General Character Qualifications and Unlicensed Broadcasters 51

E. Technical Rules 56

1. Spectrum for Low Power Radio 56
2. LPFM Spectrum Rights and Responsibilities 60
3. Minimum Distance Separation Requirements 68
4. Second and Third Adjacent Channel Protection 73
5. Other Technical Standards and Provisions 105

F. Application Processing 122

1. Electronic Filing 122
2. Window Filing Process 127
3. Selection Among Mutually Exclusive Applications 134
4. License Terms and Renewals 153
5. Transferability 161

G. Programming and Service Rules 164

1. Public Interest Requirements 164
2. Locally Originated Programming 168
3. Political Programming Rules 173
4. Station Identification 177
5. Operating Hours 180
6. Main Studio Rule, Public File Rule and Ownership Reporting Requirements 183
7. Construction Permits 187
8. Emergency Alert System 190

III. Conclusion 198

I. INTRODUCTION

1. With this *Report & Order*, we authorize the licensing of two new classes of FM radio stations -- one operating at a maximum power of 100 watts and one at a maximum power of 10 watts. Both types of stations, known as low power FM stations (LPFM), will be authorized in a manner that protects existing FM service. They will be operated on a noncommercial educational basis by entities that do not hold an attributable interest in any other broadcast station or other media subject to our ownership rules. Initially, only entities located in the communities the stations serve will be eligible to participate in this service. Even once this eligibility criterion is relaxed, we will grant a significant selection preference to locally-based applicants. We believe that the LPFM service authorized in this proceeding will provide opportunities for new voices to be heard and will ensure that we fulfill our statutory obligation to authorize facilities in a manner that best serves the public interest.

2. In establishing this new service, we are determined to preserve the integrity and technical excellence of existing FM radio service, and not to impede its transition to a digital future. In this regard, our own technical studies and our review of the record persuade us that 100-watt LPFM

stations operating without 3rd-adjacent channel separation requirements will not result in unacceptable new interference to the service of existing FM stations. Moreover, imposing 3rd-adjacent channel separation requirements on LPFM stations would unnecessarily impede the opportunities for stations in this new service, particularly in highly populated areas where there is a great demand for alternative forms of radio service. We will not, therefore, impose 3rd-adjacent channel separation requirements. To avoid any possibility of compromising existing service, given the new nature of the LPFM service, we will impose separation requirements for low power with respect to full power stations operating on co-, 1st- and 2nd-adjacent and intermediate frequency (IF) channels.[1] We believe that the rules we are adopting will maintain the integrity of the FM band and preserve the opportunity for a transition to a digital radio service in the future, while affording significant opportunities for new radio service.

II. ISSUE ANALYSIS

A. Goals

3. The *Notice of Proposed Rulemaking* we adopted on January 28, 1999[2] responded to petitions for rule making and related comments indicating substantial interest in, and public support for, increased citizens' access to the airwaves.[3] In the year since we issued the *Notice*, proposing rules authorizing the operation of new low power FM radio stations, we have received comments and letters from thousands of individuals and groups seeking licenses for new radio stations. Many of these comments, which will be discussed in greater detail below, included comprehensive engineering studies and valuable suggestions for service rules. These comments -- from churches or other religious organizations,[4] students,[5] labor unions,[6] community organizations and activists,[7] musicians,[8] and other

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1 Existing FM stations must protect and are protected from interference from stations operating on the same, *i.e.*, co-channel, frequency, and each of the first three adjacent FM channels. Distance separation requirements are based on a desired-to-undesired signal strength ratio methodology and are designed to permit the reception, generally, of a "desired" station throughout its protected service area. Co-channel protection is based on the "desired" signal providing a signal strength of at least 40 dB greater than an "undesired" co-channel signal and 6 dB greater than an "undesired" first-adjacent channel signal within the "desired" station's protected service area. This methodology also ensures that a "desired" signal is not less than 40 dB less than an "undesired" 2nd- or 3rd-adjacent channel signal within the "desired" station's protected service area.

2 *Notice of Proposed Rulemaking*, MM Docket No. 99-25, 14 FCC Rcd 2471 (1999) (*Notice*).

3 Petition of J. Rodger Skinner, RM-9242, *Public Notice*, Report No. 2254 (February 5, 1998); Petitions of Nickolaus Leggett, Judith Leggett, and Donald Schelhardt, RM-9208, *Public Notice*, Report No. 2261 (March 10, 1998).

4 *See generally* Comments of Abyssinian Baptist Church; Comments of Crown Heights Jewish Community Council; Comments of the United States Catholic Conference; Comments of Immanuel Presbyterian Church; Comments of the Jewish Community Federation of Cleveland, Ohio; Comments of Association of Islamic Charitable Projects; Comments of Mendan Presbyterian Church; Comments of Calvin Christian Reformed Church; Comments of the United Church of Christ, et al. (UCC, et al.).

5 *See generally* Comments of Justin W. Clifton on behalf of KAMP Student Radio; Comments of University of Arizona; Comments of Adrian Kohn, General Manager, WGTB, Georgetown University; Comments of Brookland High School, Brookland, Arkansas; Comments of El Cerrito High School, El Cerrito, CA.

6 *See generally* Comments of AFL-CIO; Comments of Communications Workers of America.

citizens -- reflect a broad interest in service from highly local radio stations strongly grounded in their communities. In authorizing this new service today, we enhance locally focused community-oriented radio broadcasting.

4. Our goal in creating a new LPFM service is to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities. To that end, in the *Notice* we proposed to establish two classes of low power FM radio service: a 1000-watt primary service and a 100-watt secondary service. We also sought comment on whether to establish a secondary class of stations operating between one and 10 watts.[9] Commenters supporting low power radio generally argued for the creation of an LPFM service consisting of 100 or 10 watt stations. Most commenters did not support the creation of 1000 watt stations, arguing that the local aspect of LPFM service could be diminished by the size of the service area of such stations.[10] Some commenters opposing the institution of 1000 watt service argued that 1000 watt stations present a greater interference potential than 100 or 10 watt stations.[11] We also stated in the *Notice* a hope that the largest of the proposed LPFM stations, at 1000 watts, could serve as a proving ground and an "entry" opportunity for new entrants into the full-power broadcasting industry. While we continue to view this as a worthwhile goal, we are persuaded by commenters that establishment of a 1000 watt service would not best fulfill our goals at the present time. Our establishment of a low power radio service consisting of two classes operating at maximums of 100 watts and 10 watts will allow licensees to serve their local communities, and will permit a greater number of new stations to be authorized, fostering a diversity of new voices on the airwaves.

5. Another goal expressed in the *Notice* was that any new LPFM service specifically include the voices of community based schools, churches and civic organizations. In the *Notice*, we raised the question of whether the LPFM service should include both commercial and noncommercial licensees or whether it should be entirely noncommercial. We also proposed that any stations of one to 10 watts be exclusively noncommercial, as we did not see commercial potential in stations with such limited service areas. Many of the commenters supporting LPFM strongly supported the establishment of an entirely noncommercial service.[12] We tentatively concluded that auctions would be required if

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7 *See generally* Comments of Mount Pleasant Broadcasting Club; Comments of Haitian American Community Broadcasting Federation; Comments of Zeitgeist Community Gallery of Cambridge; Comments of Advocates for a Better Community.

8 *See generally* Comments of Louisiana Music Commission; Comments of Michigan Music is World Class Campaign; Letter from Low Power Radio Coalition by Artists (September 22, 1999); Comments of Jazz Music Radio.

9 In the *Notice* we referred to the one-to-10 watt stations as "microradio" stations; for simplicity, however, throughout this *Order* we will use the term "LP10" stations.

10 *See, e.g.,* Comments of National Lawyers Guild, et al. at Section V; Reply Comments of the United Church of Christ, et al. (UCC, et al.) at 4.

11 *See, e.g.,* Comments of Walt Disney Company (Disney) at 5.

12 *See, e.g.,* Comments of National Lawyers Guild, et al. at Section II; Comments of Prometheus Radio Project at 2.

mutually exclusive applications for commercial LPFM facilities were filed, but noted that licenses for noncommercial educational or public broadcast stations are specifically exempted from auction by Section 309(j).[13] Given the overwhelming support for the establishment of a noncommercial service, and the tendency of auctions to skew the allocation of licenses away from noncommercial entities that are more likely to serve underrepresented sections of the community, we conclude that eligibility for LPFM licenses should be limited to noncommercial, educational entities and public safety entities.

6. Finally, in proposing the creation of a new LPFM service, we made clear that we will not compromise the integrity of the FM spectrum. We are committed to creating a low power FM radio service only if it does not cause unacceptable interference to existing radio service. The *Notice* proposed that current restrictions on 3rd-adjacent channel operations might be eliminated in order to establish an LPFM service and also sought comment as to whether 2nd-adjacent channel separations are necessary. The modification of our existing rules concerning channel separations has generated extensive comment, as well as extensive engineering studies.[14] Our Office of Engineering and Technology has conducted its own engineering tests, and has comprehensively reviewed the studies submitted by commenters. The rules adopted today reflect our well-considered conclusion that the elimination of 3rd-adjacent channel separation requirements for LPFM stations will not cause unacceptable levels of interference to existing radio stations. We recognize that the elimination of restrictions on both the 2nd- and 3rd- adjacent channels would create many more opportunities for community-based LPFM stations, but, given the ambiguity in the record on this issue and our commitment to ensure that the new LPFM service does not unacceptably interfere with existing radio services or impede a digital future for radio broadcasting, we must proceed cautiously. Accordingly, we will impose 2nd-adjacent channel separation requirements on LPFM stations.

B. Classes of Service

7. Background. In the *Notice*, the Commission proposed to authorize two classes of LPFM stations: (1) an LP1000 class which would be for primary stations operating with an effective radiated power (ERP) of between 500 and 1000 watts and with an antenna height above average terrain (HAAT) up to 60 meters, and (2) an LP100 class which would be for stations operating on a secondary basis with between 50 and 100 watts ERP and with antennas up to 30 meters HAAT. We also sought comment on a very low power secondary LP10 service with an ERP between one and 10 watts. For each proposal, the Commission sought comment on the power levels associated with each class, the eligibility for such stations and the effects that each class may have on the full power radio service.

8. Comments. *LP1000*. Generally speaking, the proposal to authorize LP1000 stations generated the most controversy among the commenters. The topic was one of the few areas that generated opposition by both current full service broadcasters and low power radio proponents, although for different reasons. Commenters connected to the existing broadcast industry and the Association of Federal Communications Consulting Engineers (AFCCE) expressed their concerns regarding the large

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13 47 U.S.C. § 309(j)(2).

14 *See generally* Comments of National Association of Broadcasters (NAB); Reply Comments of UCC, et al.; Comments of the Consumer Electronics Manufacturing Association (CEMA); Comments of the Corporation for Public Broadcasting (CPB); Comments of National Public Radio (NPR).

potential for interference posed by such operations.[15] Additionally, AFCCE, as well as commenters that generally support the LP1000 proposal, expressed concerns that the service could preclude other lower powered LPFM stations. Most commenters supporting the LP1000 proposal proposed to limit LP1000 stations to rural areas or areas where sufficient spectrum could be found for both LP1000 and LP100 classes of service.[16]

9. *LP100.* The proposal for LP100 stations generated the most positive comments. Commenters generally felt that LP100 stations would provide a reasonable coverage area while remaining small enough to continue focusing on local needs. From an engineering standpoint, various commenters, including AFCCE, stated that the LP100 proposal appears "reasonable" and the proposed power range would allow the use of equipment, such as exciters and simple single bay antennas, that are already available.[17] Not all comments were favorable, however. In general most negative comments shared the view stated by Disney that "[a] secondary LP100 service is undesirable for two reasons: first, because it would be difficult to establish a procedural and enforcement framework that would adequately protect FM broadcasters from interference; and second, because LP100 stations would create only marginal new radio listenership given the overriding levels of interference they would receive from full service stations."[18]

10. *LP10.* The Commission's proposal for an LP10 service operating with 10 watts or less elicited both highly favorable support and vociferous opposition. Most support for the proposal came from individuals and public interest groups. The comments in favor of LP10 generally viewed such a service as suitable for school campuses and local community organizations that wish to serve small areas and do not have the resources to construct and operate a higher-powered facility.[19] Furthermore, given what they saw as a smaller potential for interference, these groups considered LP10 as the best option for crowded urban areas where higher-powered facilities are not likely to fit.[20] On the other hand, most comments opposing the LP10 proposal came from broadcasters and individuals concerned that the Commission would not be able to enforce its rules against the numerous LP10 stations and that widespread interference would result. In fact, the NAB stated that, while the Commission feels that an LP10 station would not result in significant interference, the sheer number of LP10 stations may result in more interference than the higher-powered station proposals would create. Additionally, the NAB cited the Commission's 1978 determination that Class D 10 watt operations result in inefficient spectrum usage.[21] However, one broadcaster, WEOK Broadcasting Corporation, noted that "[v]ery low power

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15 *See* Comments of AFCCE at 11-13; *see also* Comments of NAB at 37-40; Comments of Disney (August 2, 1999) at 3-5, Engineering Statement at 6-7.

16 *See, e.g.,* Comments of Vincent Chiao; Comments of Spencer Graddy Clark.

17 *See* Comments of AFCCE at 13.

18 *See* Comments of Disney at 2.

19 *See, e.g.,* Comments of National Lawyer's Guild; Comments of Amherst.

20 *See, e.g.,* Comments of ACLU, et al.; Comments of REC Networks.

21 *See* Comments of NAB (August 2, 1999) at 81-85 (Vol. One).

stations (perhaps one to 10 watts) could operate as useful adjuncts to college campuses," provided there are some restrictions on usage.[22] Likewise, not all public interest groups felt that an LP10 service would be a good idea. For example, the Civil Rights Organizations stated that LP10 stations should not be authorized because they would be "hard-to-regulate."[23]

11. Decision. We will not authorize 1000 watt stations. We will, however, authorize LP100 and LP10 stations, in two separate stages. First, we will license LP100 stations. These stations generally will provide coverage appropriate to community needs and interests expressed in the record in this rule making. The Mass Media Bureau is delegated authority to issue an initial and subsequent public notices inviting the filing of applications for LP100 stations on dates consistent with this *Order* and processing requirements. After a period of time sufficient to process the initial LP100 applications, the Mass Media Bureau is authorized to open a filing window for applications for LP10 stations, which can also serve very localized community needs. We adopt this sequential process in order to provide the larger (100 watt) stations with their greater service areas the first opportunity to become established. Given that some LP10 stations can be sited where LP100 stations cannot, we expect that opportunities will remain for LP10 after the initial demand for LP100 stations has been accommodated. Additionally, our own resources will be better spent first advancing service to relatively greater areas.

12. However, the record, including comments from both current broadcasters and public interest groups who were opposed to stations as large as 1000 watts, convinces us that licensing such a service is not in the public interest. As argued by commenters, 1000 watt stations may pose a greater interference concern for existing broadcasters and are not necessary to meet the most pressing and widespread demand for service expressed in the record. Moreover, LP1000 stations could have a significant preclusive effect on the licensing of LP100 and LP10 stations. Yet, these lower powered stations will permit many more opportunities for community-oriented service than would 1000-watt stations.

1. LP100 Service

13. LP100 stations will be authorized to operate with maximum facilities equivalent to 100 watts ERP at 30 meters (100 feet) HAAT[24] and minimum facilities equivalent to 50 watts at 30 meters (100 feet). This would permit a maximum 1 mV/m contour (60 dBu) with a radius of approximately 5.6 kilometers (3.5 miles), subject to the radio environment. Depending on population density, such a station could serve hundreds or thousands of listeners. This service will allow LPFM licensees to broadcast affordably to communities of moderate size and interest groups that are geographically proximate, such as ethnic, professional, industry and student groups, and retirement neighborhoods. Spectrum rights and responsibilities for this service are addressed below.

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22 *See* Comments of WEOK Broadcasting Corporation at 7.

23 *See* Reply Comments of the Civil Rights Organizations at 13 n. 24.

24 Antenna heights greater than 30 meters HAAT would be permitted, but an appropriate downward adjustment in ERP would have to be made such that the 1 mV/m F(50,50) signal contour radius would not exceed 5.6 kilometers.

2. LP10 Service

14. LP10 stations will operate at between one and 10 watts ERP and an antenna height of up to 30 meters (100 feet) HAAT. Such stations will produce a 60 dBu signal out to about 1.6 to 3.2 kilometers (1 to 2 miles) from the antenna site. Such stations will fit in some locations where LP100 stations cannot, due to separation requirements, and will provide groups with the opportunity to operate stations that reach smaller communities or groups with a common interest. Spectrum rights and responsibilities for this service are addressed below.

C. Nature of Service and Licensees

1. Noncommercial Educational Service

15. Background. In proposing the creation of a new LPFM service, the Commission set forth its goals of encouraging diverse voices on the nation's airwaves and creating opportunities for new entrants in broadcasting. We raised the question of whether the service should be noncommercial in nature. We noted that while mutually exclusive commercial broadcast applications are subject to auction, certain noncommercial stations are specifically exempted from our auction authority.[25]

16. Comments. Of those commenters supporting LPFM, an overwhelming majority endorsed establishing it as a noncommercial service. Commenters stressed the diversity that would be created by a noncommercial service,[26] and argued that noncommercial radio is the best way to serve local communities.[27] Other commenters, however, argued that low-power FM licensees should be available to both noncommercial and commercial licensees.[28]

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[25] 47 U.S.C. § 309(j)(2)(C).

[26] *See, e.g.,* Comments of Civil Rights Organizations at 16 (noncommercial stations would serve groups, including those defined by race, religion ethnicity, language or age, that are poorly served by advertiser-supported radio).

[27] *See, e.g.,* Comments of Civil Rights Organizations at 16-17 (noncommercial LPFM service is the best means of creating locally-based radio likely to serve needs of the local communities); Comments of National Lawyers Guild at 6-8 (noncommercial service will attract those who truly wish to provide a service to their community). *See also* Comments of The National Federation of Community Broadcasters (Community Broadcasters) at 7 (noncommercial LPFM service would avoid the debate over the impact of LPFM on the economics of radio broadcasting); *see also* Comments of Creative Educational Media Corp. at 4; Comments of Mid-America Broadcasting Co. at 3, Comments of Nassau Broadcasting at 3; Comments of WATD at 4; Comments of WBRV at 3.

[28] *See, e.g.,* Comments of Amherst (filed April 28, 1999) at 32-34 (supporting licensing all categories of LPFM service, but arguing that noncommercial uses should be given priority); *see also* Comments of Media Island International (both commercial and noncommercial stations should be licensed but noncommercial should be given a two-year "head start" on commercial); Comments of Trident Media at 2-3 (LPFM stations should have the option of being commercial in order to generate revenues and remain viable).

17. Decision. We will establish LPFM as a noncommercial educational service. Our goals in establishing this new service are to create opportunities for new voices on the air waves and to allow local groups, including schools, churches and other community-based organizations, to provide programming responsive to local community needs and interests. We believe that a noncommercial service is more likely to fulfill this role effectively than a commercial service. Commercial broadcast stations, by their very nature, have commercial incentives to maximize audience size in order to improve their ratings and thereby increase their advertising revenues. We are concerned that these commercial incentives could frustrate achievement of our goal in establishing this service: to foster a program service responsive to the needs and interests of small local community groups, particularly specialized community needs that have not been well served by commercial broadcast stations. We believe that noncommercial licensees, which are not subject to commercial imperatives to maximize audience size, are more likely than commercial licensees to serve small, local groups with particular shared needs and interests, such as linguistic and cultural minorities or groups with shared civic or educational interests that may now be underserved by advertiser-supported commercial radio and higher powered noncommercial radio stations.[29] We note that commenters addressing this issue favored establishing LPFM as a noncommercial service by a substantial margin, though some have argued that a commercial service could provide ownership opportunities for new entrants.[30] While we have considered the entrepreneurial opportunities that low power radio stations might create, we nonetheless conclude that a noncommercial service would best serve the Commission's goals of bringing additional diversity to radio broadcasting and serving local community needs in a focused manner.[31]

18. Establishing LPFM as a noncommercial service will have the added benefit of giving us additional flexibility to assign licenses for this service in a manner that is most likely to place them in the hands of local community groups that are in the best position to serve local community needs. As a general matter, where mutually exclusive applications are filed for initial commercial licenses or construction permits, the licenses or permits must be awarded by competitive bidding pursuant to 47 U.S.C. § 309(j). Licenses for noncommercial educational broadcast stations, as described in Section 397(6) of the Act, however, are not subject to competitive bidding.[32] Accordingly, having decided to establish LPFM as a noncommercial service, we will require that LPFM licensees comply with the eligibility requirements of Section 397(6) of the Act.[33]

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29 Comments of Civil Rights Organizations at 16-17

30 *See e.g.*, Comments of UCC, et al. at 25-26 (commercial low power stations could provide an important entrepreneurial opportunity for members of demographic groups that have historically been underrepresented in the broadcast industry as licensees and professionals).

31 While opposing the establishment of an LPFM service generally, NPR stated that "if there can be some assurance that prospective licensees will serve the community and the public interest, it is by" applying the "current eligibility criteria" for noncommercial educational licensees to all LPFM stations. Comments of NPR at 29-30.

32 *See* 47 U.S.C. § 309(j)(2)(C) and 397(6).

33 As discussed below, we will license LPFM stations to operate in both reserved and non-reserved portions of the FM band. Nevertheless, the same eligibility and noncommercial service restrictions will apply to all LPFM stations, regardless of the portion of the FM band in which they are licensed to operate. In this regard, LPFM NCE stations will be different from full-service NCE stations that operate in the non-reserved band. The latter can convert from NCE status to commercial status at will by filing a notification letter with the Commission, but LPFM (continued....)

19. Section 397(6) of the Act defines "noncommercial educational broadcast station" as a station which:

(A) under the rules and regulations of the Commission in effect on the effective date of this paragraph, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or

(B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes.[34]

Since the statute incorporates by reference the Commission's noncommercial eligibility rules, we must look to those rules in determining noncommercial eligibility under Section 397(6) of the Act. The Commission's rules limit eligibility for noncommercial radio stations to nonprofit educational organizations that show that the station will be used "for the advancement of an educational program."[35] In applying this rule, the Commission has required that applicants be (a) a government or public educational agency, board or institution, or (b) a private, nonprofit educational organization, or (c) a nonprofit entity with a demonstrated educational purpose.[36] We require that an applicant described in (a) or (b) have an educational program and demonstrate how its programming will be used for the advancement of that program. An applicant applying as (c) must specifically show (i) that it is in fact a nonprofit educational organization, (ii) that it has an educational objective, and (iii) how its programming will further that objective.[37]

20. The requirement that NCE licensees provide programming that advances an educational objective may be satisfied by a variety of programs, including but not limited to "instructional programs, programming selected by students, bible study, cultural programming, in-depth news coverage, and children's programs such as Sesame Street that entertain as they teach."[38] We have also stated that "in order to qualify as an educational station, it is not necessary that the proposed programming be

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stations will not be permitted to change their noncommercial status.

34 47 U.S.C. § 397(6).

35 47 U.S.C. § 73.503(a). The same eligibility requirements were in effect on the effective date of Section 397(6) of the Act. *See also* Appendix A to *Notice of Inquiry*, In the Matter of Eligibility for Noncommercial Educational FM and TV Broadcast Station Licenses, BC No. 78-164, FCC 77-382, 43 Fed. Reg. 30842 (1978), 30844 (processing guidelines for institutional and organizational applicants for noncommercial educational licenses).

36 *See generally* Appendix A to *Notice of Inquiry*, In the Matter of Eligibility for Noncommercial Educational FM and TV Broadcast Station Licenses, BC No. 78-164, FCC 77-382, 43 Fed. Reg. 30842, 30844 (1978).

37 *See, e.g.*, In re Applications of Music Ministries, Inc. and Community Education and Religious Broadcasting, *Hearing Designation Order*, 9 FCC Rcd 3628 (Aud. Serv. Div. 1994).

38 *Further Notice of Proposed Rulemaking*, In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants, MM Docket No. 95-31, FCC No. 98-269, 13 FCC Rcd 21167, 21169 (1998).

exclusively educational."[39] Given the latitude that entities have under our rules to qualify as NCEs, we do not believe that limiting eligibility for LPFM licenses to NCEs will unduly limit the range of groups that will be eligible to apply for LPFM licenses or the services that they can provide.[40]

2. Public Safety and Transportation

21. Background. One appropriate use of LPFM stations is use by public safety or transportation organizations. Although the *Notice* did not specifically raise this issue, a number of commenters proposed it.

22. Comments. We received a number of comments from public safety and transportation entities arguing that they would use LPFM stations to serve communities' need for public safety and traffic information. The New York State Thruway Authority (Thruway) argued that low power FM stations could be used for the benefit of public safety and transportation entities throughout the country to provide critical real-time information to travelers confronting emergency situations, traffic patterns and accidents.[41] The Texas Department of Transportation stated a low power FM service would offer more reliable service to travelers than does its existing AM Travelers' Information Stations (TIS).[42]

23. Decision. The public safety and transportation commenters propose important uses for low power FM stations. LPFM stations could be used by state or local governments or other not-for-profit entities to provide traffic, weather, and other public safety information to local communities. The use of LPFM stations for public safety purposes will further our goal of better serving local communities. Certain of these entities already hold TIS or other broadcast licenses. We emphasize, however, that we will not exempt these licenses from the cross-ownership restrictions, described below, and will therefore require TIS licensees or other public safety or transportation licensees, to return their existing licenses upon the initiation of LPFM service. Thus, in addition to noncommercial, educational organizations, associations or entities as described above, public safety radio services used by state or local governments or not-for-profit organizations, as defined in 47 U.S.C. § 309(j)(2)(A), will be eligible for LPFM licenses.

D. Eligibility and Ownership

24. In order to further our diversity goals and foster local, community-based service, we will

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39 *Memorandum Opinion and Order*, In re Application of Lower Cape Communications, Inc., FCC 80-453, 47 RR2d 1577, 1579 (1980). *See also Memorandum Opinion and Order, Florence Bridges*, FCC 78-719, 44 RR2d 667, 668 (1978).

40 We note, however, that individuals cannot qualify as NCEs.

41 Comments of the New York State Thruway Authority at 2. *See also* Comments of the Port Authority of New York and New Jersey (LPFM stations could be used to facilitate the transmission of travel information to the public).

42 Comments of Texas Department of Transportation at 2.

not allow any broadcaster or other media entity subject to our ownership rules to control or to hold an attributable ownership interest in an LPFM station or enter broadcast related operating agreements with an LPFM licensee. Additionally, to foster the local nature of LPFM service, we are limiting eligibility to local entities during the first year LPFM licenses are available. We are also adopting a significant local ownership preference to be applied in resolving mutually exclusive applications. After local entities have had an opportunity to apply for construction permits, we will permit applications by qualified non-local applicants. After the first two years, we will permit multiple ownership of LPFM stations nationally, but only up to a maximum of 10 LPFM stations over a phased-in period.

25. Throughout this discussion we use the term "community" in a manner different from our traditional use of the term.[43] Here, we use the term to refer to the very small area and population group that will make up the potential service area and audience of an LPFM station. Given the very small nature of LPFM service contours and prospective audiences, we do not expect LPFM service areas to be coincident with traditional political boundaries that we use to define communities in other contexts, such as our allocations process.[44]

1. Cross-Ownership Restrictions

26. Background. In the *Notice*, the Commission tentatively concluded that strict cross-ownership restrictions would be appropriate for low power radio. We proposed to prohibit any person or entity with an attributable interest in a broadcast station from having an ownership interest in any LPFM station in any market. We sought comment on whether the proposed strict cross-ownership restrictions would unnecessarily prevent individuals and entities with valuable broadcast experience from contributing to the success of the LPFM service. We also asked for comment on whether broadcasters with an attributable interest in broadcasting stations should be allowed to establish an LPFM station in a community where they do not have an attributable broadcast interest. We proposed to prohibit joint sales agreements, time brokerage agreements, local marketing or management agreements, and similar arrangements between full power broadcasters and low power radio entities. We also sought comment on whether the cross-ownership restriction should be extended to prevent common ownership of LPFM stations with cable systems, newspapers, or other mass media.

27. Comments. Several commercial broadcasters, educational broadcasters and individuals propose that cross ownership be allowed.[45] The NAB opposes restricting current broadcasters from low power ownership, claiming that consolidation of ownership in fact increases diversity of broadcast formats because of economic efficiencies.[46] The NAB further alleges that such a prohibition would

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[43] The "community" concept is significant with respect to the limits on local ownership of LPFM stations. The concept of "community" is not relevant to our cross-ownership restrictions, which, as discussed below, are absolute and thus do not depend on a determination of the locality of a particular media interest.

[44] In allocating full-power FM stations to specific communities, we define a community as a geographically identifiable population grouping, usually determined based upon whether the area is incorporated or is listed in the U.S. Census. *Amendment of Section 73.202(b),* MM Docket No. 90-385, 6 FCC Rcd. 5835 (1991).

[45] *See, e.g.,* Comments of NAB at 71; Comments of Nassau Broadcasting Partners at 7.

[46] Comments of NAB at 70.

preclude low power stations from realizing efficiencies through joint operations with a full power counterpart.[47] Some commenters propose that current broadcasters be allowed to apply for LPFM stations, but that they should be required to give up their current station license prior to initiating operations at the LPFM station.[48] Others propose that full service station owners not be barred, so long as the LPFM station is in another market.[49] Metro Detroit Broadcasting Corporation proposes a waiver of multiple ownership provisions for minority-owned low power stations.[50]

28. Most commenters, however, oppose cross-ownership of full-service stations and LPFM stations.[51] The National Lawyers Guild, for example, asks why the Commission would allow the few companies who already hold a broadcast license also to hold a low power license when 99.9 percent of the American people are barred from using the most effective communications media in the nation.[52] Most commenters also support the Commission's proposal to prohibit arrangements between full service broadcasters and LPFM entities, such as joint sales and time brokerage agreements. UCC, et al., adds that not only should such agreements between full power licensees and low power licensees be prohibited, but also that agreements of a similar nature between two or more low power licensees should be disallowed.[53]

29. Decision. We will prohibit common ownership of LPFM and any other broadcast station, including translators and low power television stations, as well as other media subject to our ownership rules.[54] Thus, no broadcaster or other media entity, or any party with an attributable interest in them, can hold any attributable ownership interest in an LPFM licensee. One of the most important purposes of establishing this service is to afford small, community-based organizations an opportunity to communicate over the airwaves and thus expand diversity of ownership -- a purpose inconsistent with common ownership of LPFM stations and existing broadcast facilities or other media interests. Moreover, many of the commenters' remarks favoring cross ownership are directed to the establishment of the proposed LP1000 service. These arguments regarding efficiencies and economies and competitive standing for stations that might compete commercially, however, are less applicable to noncommercial educational LP100 and LP10 stations. Similarly, our own expressed concern that cross-ownership limits could retard the development of low power radio by excluding entities with broadcast experience is less pressing in the absence of commercial 1000 watt stations. We conclude that our interest in providing for

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47 *Id.* at 70-71.

48 *See, e.g.*, Comments of Morris Broadcasting Company of New Jersey, Inc. at 6; Comments of the University of Dayton at 6; Comments of El Cerrito High School - West Contra Costa Unified School District at 6.

49 Comments of Douglas E. Smith at 2-3.

50 Comments of Metro Detroit Broadcasting Corporation at 5.

51 *See, e.g.*, Comments of Amherst at 38.

52 Reply Comments of the National Lawyers Guild, etc. at 4.

53 Comments of UCC, et al. at 13.

54 47 C.F.R. §§ 73.3555 & 76.501.

new voices to speak to the community, and providing a medium for new speakers to gain experience in the field, would be best served by barring cross-ownership between LPFM licensees and existing broadcast owners and other media entities. This prohibition is national and absolute in nature, unlike our existing cross-media ownership rules. Thus, for example, a newspaper cannot have an attributable interest in any LPFM station, regardless of whether the newspaper and LPFM station are co-located. We believe our interest in promoting diversity warrants such a strict approach.

30. We have also decided to prohibit operating agreements in any form, including time brokerage agreements, local marketing or management agreements, and similar arrangements, between full power broadcasters and LPFM broadcasters, or between two or more low power licensees, as suggested by UCC, et al.[55] As noted above, many commenters strongly oppose allowing any form of operating agreement that would dilute new ownership in the low power service. We are concerned that such agreements too readily could undermine the strict cross-ownership restriction adopted by allowing an ineligible entity to program or manage an LPFM station. We see no harm, however, in permitting any existing licensee to apply for an LPFM station on the condition that it is otherwise qualified and it represents that it will divest its interest prior to commencement of LPFM operations.

2. Requirement That Applicant Be Community-Based

31. Background. In the *Notice*, we sought comment on whether to establish a local residency requirement, although we were not inclined, at that time, to do so. We were concerned that a residency requirement would limit the pool of potential owners of low power stations and would deny opportunity to individuals and entities who resided in a location where no frequency is available, as there will not be low power frequencies available in every community. We also noted that we expected in the case of LP100s and LP10 stations, in particular, that the very nature of the stations would attract primarily local or nearby residents. We note that given our decision to restrict eligibility to noncommercial educational entities, the term "residency" is somewhat misleading. The issue now is whether we should limit applicants to entities based within the local community they wish to serve and, if so, how we should define whether or not they are community-based. Nonetheless, given that the *Notice* and comments are cast in terms of residency, we will continue to use the term, but do so in the organizational or institutional sense noted here.

32. Comments. Most commenters support a requirement that LPFM licensees be locally based.[56] They argue that local residents are more likely to be aware of issues of importance to the local community, and to gear their programming accordingly. UCC, et al. proposes that a majority of the entity's board reside in the station's service area.[57] The Civil Rights Organizations suggest that a majority of the licensee's board of directors, the head of the board and the CEO be local residents.[58]

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55 Comments of UCC, et al. at 13.

56 *See, e.g.,* Comments of the American Civil Liberties Union of Massachusetts et. al. at 6; Comments of Community Broadcasters at 9.

57 Comments of UCC, et al. at 31-32.

58 Comments of Civil Rights Organizations at 21-22.

Some commenters propose that applicants should be based within 25[59] or 50 miles[60] of the new low power station, or within the station's proposed contour.[61] Community Broadcasters proposes that a majority of the members of the governing body of the LPFM licensee be residents within the primary service contour of the proposed station.[62] On the other hand, many commenters oppose the imposition of a residency requirement. Some argue that a local residency requirement would be struck down under the standards set forth by *Bechtel v. FCC*,[63] discussed below. Some point out that a residency requirement is incompatible with a five- to ten-station national ownership cap.[64]

33. Decision. We continue to be concerned about the potentially preclusive effect of a strict local "residency" requirement and do not believe that local sources are the only valuable sources of information and service. Nonetheless, this service is intended to respond to the highly local interests that are not necessarily being met by full-power stations. Furthermore, since LPFM will be a noncommercial educational service, we cannot rely on commercial market forces and business incentives to ensure that local needs are fulfilled. Given the small coverage of LPFM stations, and our intention that the particular needs and interests of these small areas be served, local familiarity is more significant than it might be for a station serving a larger area and population. We thus conclude, after consideration of the comments and on further reflection, that the disadvantages of imposing a requirement that applicants be community-based are outweighed by the benefits to be gained by maximizing the likelihood that LPFM stations are operated by entities grounded in the communities they serve. Accordingly, for the initial and subsequent windows opened within two years after the first filing window for LPFM service has been opened, all LPFM applicants must be based within 10 miles of the station they seek to operate. This means that the applicant must be able to certify that it or its local chapter or branch is physically headquartered, has a campus, or has 75 percent of its board members residing within 10 miles of the reference coordinates of the proposed transmitting antenna. We chose the 10-mile distance as proportionate to most stations' likely effective reach. We are concerned that a larger distance, in many areas of the country, could lead to ownership outside the bounds of the station's real community and the people they will actually serve. We are concerned that a smaller area would too severely and unduly restrict the opportunities presented by LPFM. An organization providing public safety radio services will be considered community-based in the area over which it has jurisdiction.[65] Beginning two years after the first window for LPFM service has been opened, non-local applicants will be eligible to apply in

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59 *See, e.g.*, Comments of Anthony M. Marimpietri, Jr. at 2; Comments of Quinnipiac College at 2; Comments of Amherst at 37; Comments of Salida Colorado Radio Club at 2.

60 *See, e.g.*, Comments of Charles C. Knight at 1; Comments of Joseph T. Norton at 1; Comments of Jonathan Tesser at 2; Comments of American Civil Liberties Union of Massachusetts et al. at 6.

61 Reply Comments of Grid Radio at 23.

62 Comments of Community Broadcasters at 9.

63 10 F.3d 875 (1993). *See, e.g.*, Comments of Morris Broadcasting Company of New Jersey, Inc. at 8; Comments of Creative Educational Media Corporation, Inc. at 9.

64 *See* Comments of Andrew Morris at 9.

65 For example, a Virginia TIS entity would be eligible to apply for an LPFM license anywhere in the state of Virginia but not in any other state.

subsequent windows for those classes of stations pursuant to public notices issued by the Mass Media Bureau. By this approach, we intend to make it more likely that local entities will operate this service. If no local entities come forward, however, we do not want the available spectrum to go unused.

34. We do not find convincing the argument made by some commenters that imposition of a local residency eligibility requirement here would pose the same legal problems as the "integration of ownership and management" factor formerly employed as a comparative criterion in the commercial broadcast service. While that comparative criterion was overturned as arbitrary and capricious in the *Bechtel* case,[66] that case did not invalidate a preference for locally based applicants *per se*. Rather, it rejected a preference for a particular form of business organization -- in which station owners worked more than a certain number of hours per week at their station -- that had not been shown to provide superior service even though the preference had been used for many years. The preference for local licensees here, in contrast, rests on our predictive judgment that local entities with their roots in the community will be more attuned and responsive to the needs of that community, which have heretofore been underserved by commercial broadcasters. We believe that local residence should carry particular weight here because we envision LPFM as a uniquely local service designed to serve local community needs. We note that while the court invalidated the integration criterion in the *Bechtel* decision, it recognized that an applicant who is familiar with the community is likely to be aware of its special needs.[67]

35. Furthermore, we believe that local roots are particularly important in a noncommercial educational service like LPFM. As noted above, we cannot rely on commercial market forces to ensure that LPFM licensees are responsive to local needs because they will be noncommercial entities providing noncommercial program services. Indeed, Congress and the Commission have long recognized the unique role played by local entities in providing noncommercial educational programming, and we have favored local entities in providing other noncommercial educational services.[68]

36. Finally, we do not believe that our preference for local applicants here raises the concerns voiced by the court in *Bechtel*. The court was concerned in *Bechtel* that the integration preference elevated quantitative factors – the number of hours the station owners promised to work at the station – over arguably more important qualitative factors such as broadcast experience and established local residence. In contrast, the community-based requirement that we adopt today does not rest on quantitative factors and is not based on promises of future conduct. Rather, we are adopting a simple, straightforward requirement that applicants be based in the local community. In addition, a primary concern underlying the court's decision was that there was no obligation for a successful applicant in the commercial broadcast service to adhere to its integration proposal, and there was no evidence indicating the extent to which licensees had done so in the past. In contrast, LPFM licenses will not be transferable, so we can be assured that a local entity that is awarded the license will continue to operate the station.

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66 10 F.3d 875 (1993).

67 *Id.* at 885.

68 *See Second Report and Order*, ITFS, MM Docket No. 83-523, 101 FCC 2d 50 (1985) *recon. denied Memorandum Opinion and Order*, MM Docket No. 83-523, 59 R.R. 2d 1355 (1986); 47 U.S.C. § 396.

For these reasons, we do not believe that the community-based requirement that we adopt today suffers from the problems identified by the court in the *Bechtel* decision.

3. National Ownership Limits

37. Background. In the *Notice*, we also sought comment on the issue of a national multiple ownership cap. In particular, we asked whether a limit of five or ten stations nationally would provide a reasonable opportunity to attain efficiencies of operation while preserving the availability of the stations to a wide range of applicants and their essentially local character.

38. Comments. Comments on this issue are wide-ranging in their opinions. Some groups favor an absolute nationwide one-station-per-owner limit, arguing that a one-station-per-entity cap would distribute the low power stations as widely as possible and create the opportunity for the most diverse ownership.[69] The Civil Rights Organizations "disagree in the strongest terms" with the idea that a low power licensee could hold more than one license.[70] UCC, et al., states that the Commission's belief that economies of scale from national ownership will improve service is especially ill-founded.[71] It similarly exhorts us to disallow "agreements" between low power stations.[72] Some commenters support a less strict national cap, arguing that some national cap will promote greater diversity in the service, but that a one-per-owner limit is excessively restrictive.[73] Several commenters agree with the Commission's suggested range of five to ten stations, nationally.[74] Finally, some groups oppose any type of national cap. The NAB does not believe that a national ownership cap is allowed under the 1996 Act, and believes that common ownership will improve efficiency in the service.[75]

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69 *See, e.g.*, Comments of Amherst at 441; Comments of Civil Rights Organizations at 23; Comments of UCC, et al. at 13, 39; Comments of Christopher Conly at 1; Comments of Peter Brinson at 2.

70 Comments of the Civil Rights Organizations at 25.

71 Comments of UCC, et al. at 14-15.

72 Comments of UCC, et al. at 13.

73 Comments of Morris Broadcasting Company of New Jersey, Inc. at 8; Comments of Mid-America Broadcasting Company, Inc. at 7; Comments of Nassau Broadcasting Partners, L.P. at 8; Comments of Creative Educational Media Corporation, Inc. at 8-9. Some commenters proposed specific national caps. *See, e.g.*, Comments of Ronnie V. Miller at 17, Comments of Glenda Brookens at 1; Comments of Anthony M. Marimpietri, Jr. at 2 (3-station cap); Comments of Metro Detroit Broadcasting Corporation at 8 (at least 10-station cap); Comments of Trident Media and Broadcasting, Ltd. at 3 (15-station cap); Comments of Thomas M. Eells at 20 (20-station cap).

74 Comments of Kenneth Bowles at 17 (5 stations or more); Reply Comments of Randall C. Wright at 4 (no more than 10 nationally); Comments of Craig Admunson at 2 (maximum of 10); Comments of Tom A. Bunch at 2 (5 to 10 nationally); Comments of Andrew Morris at 8-9 (5 to 10 nationally); Comments of Scott D. Fowler at v (limit of 10).

75 Comments of NAB at 72.

39. Decision. We are adopting a staged rule, which will initially foster diversity by disallowing any common ownership of LPFM stations, but eventually permit the accumulation of additional stations where local applicants fail to come forward. This will increase the service available to the public and permit the efficiencies that can be achieved by multiple ownership where there is not an immediate local interest in operating a station. To achieve this, we will require that for the first two years of LPFM service, any one entity may own only one LPFM station. The two year-long period will begin on the day that the first LP100 filing window opens for applications. After the first two years, to bring into use whatever low power stations remain available but unapplied for, we will allow one entity to own up to five stations nationally, and after the first three years of this service, we will allow an entity to own up to ten stations nationwide.

40. In addition to ensuring the fullest use of LPFM spectrum in the long term, we believe that this tiered system will balance the interests of local entities, which we expect to be the first entrants in this service, and national noncommercial educational entities, which may be interested in additional local outlets to increase their reach and to achieve certain efficiencies of operation. We note the attribution exception for national or other large entities with local community-based chapters, discussed below in the attribution section, which will allow the local chapters to apply as individual entities and thus not be constrained by this national ownership provision.

41. In the *Notice*, we tentatively concluded that Section 202 of the Telecommunications Act of 1996 (the 1996 Act)[76] eliminating national multiple ownership restrictions for existing full power commercial stations does not apply to a new broadcast service. Given our decision to limit LPFM to noncommercial educational broadcasters, Section 202 clearly does not apply to LPFM and we need not discuss this issue further.[77]

4. Local Ownership Limits

42. Background. In the *Notice*, we proposed to prohibit entities from owning more than one LPFM station in the same community. We were concerned that it would be difficult to achieve wide new entry into the broadcasting market and enhance diversity if more than one low power station in an area were under common control. At the same time, we sought comment on whether such a restriction would inappropriately deny to LPFM licensees the efficiencies achievable through multiple ownership, and on what cooperative arrangements might facilitate the development of LPFM service without unduly diluting its benefits. We also sought comment on the appropriate definition of "market" or "community" for the purposes of LPFM service.

43. Comments. Many commenters agree strongly with the Commission's proposal that LPFM ownership should be limited to one station per community.[78] They argue that allowing multiple

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[76] P.L. 104-104, 110 Stat. 56, § 202 (1996).

[77] *Id.*

[78] *See, e.g.*, Comments of National Lawyers Guild, etc. at 21; Comments of Civil Rights Organizations at 23-24; Comments of Thomas M. Eells at 3.

ownership in a local area would reduce the number and diminish the diversity of new entrants. Most contend that the demand for stations from local owners will be plentiful and that there will be no need to allow outside owners to own low power stations.[79] The NAB opposes the proposed ban on common local ownership, saying that common ownership leads to increased efficiencies.[80] A few commenters address the issue of the definition of "community" for the purpose of determining the limitations of local ownership but none offered specific alternative definitions. Some commenters expressed concern that the current Commission definition of a "community" is ambiguous and therefore subject to inequitable application.[81]

44. Decision. We will restrict local ownership and allow one entity to own only one LPFM station in a "community." We concur with those commenters who expressed concern over the potential for diminution of diversity in ownership if one entity were allowed to control more than one station in their community. The comments opposing the restriction seem directed to and more appropriate in the context of the proposed 1000 watt service, which could have operated commercially. The primary benefit of local multiple ownership, increased efficiency, is less compelling with respect to LP100 and LP10 noncommercial educational stations, particularly as compared to the benefit to a community of multiple community-based voices. As noted above, we use the term community in this *Report and Order* to refer to the very small population group that makes up a station's potential audience. For purposes of the local ownership limits, we will require that no entity own or have an attributable interest in two or more LPFM stations located within 7 miles of each other. That is, to comply with our local ownership limits, the antennas of commonly-owned stations must be separated by at least seven miles. We believe seven miles is appropriate given the approximately 3.5 mile signal reach of LP100 stations. Although the signal reach of LP10 stations is smaller, for the sake of simplicity we will apply the seven-mile ownership separation to both classes of service.

45. In the *Notice* we noted that Section 202 of the 1996 Act permitted significant local multiple ownership of full power commercial radio stations but questioned whether this standard would apply to a new low power service. Our decision here, however, to limit LPFM stations to noncommercial educational service renders this question moot. As discussed above regarding the national multiple ownership issue, Section 202, by its terms, does not apply to noncommercial stations.

46. We note that the attribution exception for local chapters of national entities, discussed in the next section, will allow local chapters to apply as individual entities and thus avoid the bar that the national ownership rules would otherwise impose.

5. Attribution

47. Background. Given the significance we have accorded the ownership of LPFM stations,

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79 *See, e.g.*, Comments of Civil Rights Organizations at 21.

80 Comments of NAB at 72.

81 Comments of University of Dayton at 7; Comments of Positive Alternative Radio, Inc., et al. at 12; Comments of Morris Broadcasting Company of New Jersey, Inc. at 6.

the strict cross- and multiple-ownership rules and the community-based eligibility and selection criteria we are adopting, determining who "owns" or constitutes a low power radio applicant or licensee is critically important. In the *Notice*, we sought comment on what interests or relationships should be attributable in this regard.

48. Comments. Comments on attribution vary widely. Some commenters express concern that if the existing attribution rules were applied to these stations, some entities with large national organizations and small chapters would be unable to hold multiple licenses even though they maintain a local presence and would provide community-oriented programming.[82] Other commenters propose that attribution rules be waived in the case of accredited educational institutions, so that they can hold a full power station and also an LPFM station.[83] Amherst argues that it should be illegal for a subsidiary, affiliate, agent or franchisee of any institution holding a broadcast license to acquire an LPFM license.[84]

49. Decision. We will apply rules similar to the existing commercial attribution rules to determine a licensee's compliance with the ownership limits set forth above. Because many of the entities that will hold LPFM licenses will be non-stock corporations (or other non-stock entities), we will attribute the interests of the applicant, its parents, its subsidiaries, their officers and members of their governing boards. If an entity that holds an LPFM license does have stock, then the existing attribution rules will apply and voting stock interest of 5% or more will be attributable unless the investor is passive in nature, in which case voting stock interests of 20% or more will be attributable. Partners and non-insulated limited partners are attributable, as are officers and directors. Non-voting stock and debt are not attributable unless they satisfy the "equity-debt-plus" standards set forth in our recent attribution order.[85] Thus, for example, if a full-power broadcaster in a community were to invest in an LPFM licensee in that same community and the investment accounted for more than 33% of the LPFM's total capitalization, the investment would be attributable and would violate the cross-ownership ban discussed above. Similarly, if a director of the same full power broadcaster were to act as an officer of the LPFM, the director would be attributed with both stations and would violate the ban. Consistent with the existing commercial attribution rules,[86] however, an exception will apply to certain officers and directors

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82 *See, e.g.*, Comments of National Council of La Raza at 2; Reply Comments of the United States Catholic Conference at 2.

83 *See, e.g.*, Comments of Aaron Read at 8; Comments of Geoffrey M. Silver at 1. Likewise, Salida Colorado Radio Club sought an exception for school districts that may like to have very small wattage licenses for different schools in the same district. Comments of Salida Radio Club at 2.

84 Comments of Amherst at 42-43.

85 *Report and Order* in MM Docket Nos. 94-150, 92-51 & 87-154, FCC 99-207 (August 6, 1999) ("*Attribution R&O*").

86 47 C.F.R. § 73.3555 Note 2(h) ("The officers and directors of a parent company of a broadcast licensee, cable television system or daily newspaper, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the broadcast licensee, cable television system or daily newspaper subsidiary, and a statement properly documenting this fact is submitted to the Commission."); *see also* Attribution of Ownership Interests, 97 FCC 2d 997 (1984), *on recon.*, 58 RR 2d 604 (1985), *on further recon.*, 1 FCC Rcd 802 (1986).

of the parent of an LPFM applicant or licensee. Such an officer or director may hold otherwise attributable interests in a broadcast licensee or other media entity subject to our ownership rules without making the LPFM applicant ineligible, provided the duties and responsibilities of the officer or director are wholly unrelated to the LPFM station and the officer or director recuses himself or herself from consideration of any matters affecting the LPFM station.[87] This exception will avoid making ineligible entities that will serve the purposes of this service well, such as universities or schools, which may have large and diverse board membership, while protecting against control of an LPFM licensee by ineligible media owners. For the same reason, in the LPFM context we will extend the exception to officers and directors of the LPFM applicant or licensee itself, if that entity is a multifaceted organization, such as a university, and the duties and responsibilities of the officer or director are wholly unrelated to the LPFM station and the officer or director recuses himself or herself from consideration of any matters affecting the LPFM station.[88] We emphasize that these exceptions are narrow in scope. An individual holding an attributable media interest may not act as an officer of the LPFM station, nor function in any other attributable role.

50. We will, moreover, include an attribution exception for local chapters of national or other large organizations. In the event that a local chapter can demonstrate that it: (1) is separately incorporated, and (2) has a distinct local presence and mission, the local chapter can apply for a license in its own right and the national entity's "ownership" will not be attributed to it. In order to meet this standard, the local entity must be able to show a significant membership within the community, as well as a local purpose that can be distinguished from its national purpose. For example, the general purpose of raising awareness of the toxic waste problem in the United States would not suffice, but raising awareness of the toxic waste problem in particular local areas would meet the local purpose standard.

6. General Character Qualifications and Unlicensed Broadcasters

51. Background. In the *Notice*, we generally proposed to apply the same standards for character qualification requirements to all LPFM broadcasters as we do to full power broadcasters. The Commission asked if commenters saw any reason to distinguish between full and low power radio licensees for this purpose. In addition, we sought comment on whether to disqualify unlicensed broadcasters who once violated or who still are violating Commission rules. We sought comment on whether the Commission should adopt a middle ground and accept applications from parties who have broadcast illegally, but who either (1) promptly ceased operation when advised by the Commission to do so, or (2) voluntarily ceased operation within ten days of the publication of the *Notice* in the *Federal Register*.

52. Comments. The National Lawyers Guild and the Civil Rights Organizations both argue for amnesty for unlicensed broadcasters.[89] Many individuals insist that without radio "pirates," LPFM

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87 Given the nature of the LPFM service and our goal of limiting the burdens imposed on the service, we will not require the submission of a statement to the Commission documenting this recusal (*cf.* 47 C.F.R. § 73.3555 Note 2(h)), but we expect licensees to effect such a recusal and to abide by it.

88 Unlike in the commercial attribution rule, we will not require the applicant or licensee to seek a waiver under these circumstances. *See* 47 C.F.R. § 73.3555 Note 2(h).

89 Comments of the National Lawyers Guild, etc. at 3-4; Comments of Civil Rights Organizations at 33.

would not have been created.[90] Others, such as Amherst and UCC, et al., support the middle ground set forth in the *Notice*, saying that it is most fair to the interests of future low power broadcasters and to the public.[91] The Alliance for Community Media also supports the Commission's proposed compromise.[92] Many commenters believe that anyone who has operated illegally should not be eligible for a license. NAB believes that because "pirate" broadcasters operated illegally, they should not be excused or granted amnesty.[93] Some object to restricting parties with an interest in a broadcast station from owning an LPFM station, but allowing "pirates" to own them.[94]

53. Decision. We have decided, as we proposed, to apply the same character qualification requirements to low power station licensees as we currently apply to full power licensees. The Commission's character policy is underpinned by our interest in a licensee's truthfulness and reliability. We have a critical need to ascertain whether a licensee will in the future be forthright in its dealings with the Commission and operate its station in a manner consistent with the requirements of the Communications Act and the Commission's rules and policies.[95] No commenter showed a reason to distinguish between full and low power broadcasters on this basis, and we do not believe one exists.

54. The most significant specific question that character concerns raise in the context of this proceeding, as discussed in the *Notice*, is how past illegal broadcast operations reflect on that entity's proclivity "to deal truthfully with the Commission and to comply with our rules and policies,"[96] and thus on its basic qualifications to hold a license. We are persuaded to adopt our original proposal and accept a low power applicant who, if it at some time broadcast illegally, certifies, under penalty of perjury, that: (1) it voluntarily ceased engaging in the unlicensed operation of any station no later than February 26, 1999, without specific direction to terminate by the FCC; or (2) it ceased engaging in the unlicensed operation of any facility within 24 hours of being advised by the Commission to do so. Applicants will be required to make such certifications as part of their applications for an LPFM station. Such certifications will be made with respect to the applicant as well as all parties to the application (*i.e.*, any party with an attributable interest in the applicant). Submission of false or misleading certifications will subject the applicant to enforcement action including fines, revocation of license and criminal penalties.

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90 *See, e.g.*, Comments of Stephen G. Toner at 2.

91 Comments of Amherst at 56; Comments of UCC, et al. at 33.

92 Comments of Alliance for Community Media at 5.

93 Comments of NAB at 74.

94 Comments of Wisconsin Rapids Broadcasting, L.L.C. d/b/a WHFR/WGLX Radio at 3-4. Many others object to "rule-breakers" receiving licenses. Comments of Colorado West Broadcasting, Inc. at 2; Comments of North Cascades Broadcasting, Inc. at 8; Comments of Omni Communications, Inc. at 6; Comments of Association of Islamic Charitable Projects at 1.

95 Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, ¶54-55 (1986); *recon. granted in part and denied in part*, 6 FCC Rcd 3448 (1991).

96 *Id.*

55. Contrary to some commenters' arguments, this rule does not unconstitutionally infringe on the First Amendment rights of unlicensed broadcasters.[97] Disqualification under this rule is based solely on lack of compliance with statutory and regulatory requirements. All parties should note, however, that as licensed broadcasters, ignorance, whatever its cause, is not considered an excuse for violation, and full compliance with our rules will be required. Moreover, as implied by the provisions of the *Notice*, the illegality of unauthorized broadcasting must now be presumed to be well-known, and any unlicensed broadcast operation occurring more than 10 days after the *Notice* was issued will make the applicant ineligible for low power, full power, or any other kind of license and will be subject to fines, seizure of their equipment, and criminal penalties.

E. Technical Rules

1. Spectrum for Low Power Radio

56. Background. In the *Notice*, the Commission stated that it did not intend to allocate new spectrum for a low power radio broadcasting service. The utilization of new spectrum would require listeners to purchase new equipment to receive the service, which would significantly delay the benefits of the service to the public. We proposed to authorize low power radio stations within the FM band only. This determination was based partly on the extent of congestion within the AM band, with numerous existing stations experiencing significant interference. Furthermore, we recognized that low power AM stations were capable of causing significantly higher levels of interference as a result of AM signal propagation characteristics. With regard to the use of the FM band, we concluded that the large number of existing FM stations precluded us from designating any specific frequencies for LPFM service, as no such channels are available throughout the country. Thus we sought comment on whether we should allow LPFM stations to operate throughout the entire band or restrict the reserved portion of the FM band (Channels 201-220) for noncommercial educational (NCE) stations. We also contemplated that low power radio stations would desire to use auxiliary broadcast frequencies, where available -- for example, for studio-to-transmitter links and transmissions of remote broadcasts -- and sought comment in this regard.

57. Comments. No commenters specifically supported the allocation of new spectrum for the proposed service.[98] Many commenters agreed that existing interference within the AM band and the relative complexity of AM facilities should preclude consideration of a low power AM service.[99] Some commenters, however, argue that an AM low power station should be an option in areas where the FM spectrum is too crowded to permit new stations. With regard to the FM band, most commenters support the view that the reserved band should continue to be reserved for NCE use only. However, NPR, CPB

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97 *See National Broadcasting Co. v. United States*, 319 U.S. 190 (1943).

98 One commenter did propose operation on "Channels 198, 199 and 200" (presumably 87.5 MHz, 87.7 MHz, and 87.9 MHz). *See* Comments of American Civil Liberties U, et al at 14. These frequencies are currently allocated for television broadcasting on TV Channel Six (82-88 MHz). Channel 200 is reserved for Class D (secondary) stations relocating to eliminate interference and was not proposed for low power use at this time. *See* 47 C.F.R. § 73.512.

99 *See, e.g.*, Comments of Aaron Reed; Comments of Chuckie Broadcasting Company; Comments of Oklahoma Department of Transportation.

and several other commenters are particularly concerned that the introduction of numerous new stations in the reserved band would potentially increase interference to existing stations, especially in areas beyond their protected contours.[100] At the same time, other commenters expressed the desire to allow NCE low power stations throughout the FM band.[101]

58. Decision. We will authorize low power radio stations throughout the FM band, where the stations will fit, but not in the AM band. Although FM band crowding may preclude or limit LPFM opportunities in certain markets, we are not persuaded that the creation of an AM low power radio service is warranted. Likewise, we acknowledge the concerns of CPB and NPR about the current "crowding" within the reserved band. However, we note that we are adopting minimum distance separations between LPFM and full-service stations based upon the assumption that full service stations operate with maximum height and power for their class. Therefore, an LPFM station would generally provide greater protection to stations operating in the reserved band than that afforded to them by other full service stations, for which station facilities are spaced more closely on the basis of the contour protection methodology.[102] Because LPFM stations will be licensed throughout the FM band, they will not be concentrated in the reserved portion of the FM spectrum. We note, however, that LPFM stations, regardless of their location in the FM band, are reserved to qualified NCEs. We will apply the same interference protection and other technical standards for LPFM operations in the reserved and nonreserved bands. This will facilitate application processing and uniform LPFM technical operating requirements.

59. In view of their relatively smaller service areas, we believe that most LPFM stations will co-locate program origination and transmission facilities. As a result, these stations would not require studio-to-transmitter links (STL) between these facilities. However, we will not foreclose LPFM operators the use of broadcast auxiliary frequencies used by full-service radio stations for this purpose. LPFM stations may also desire to air programming relayed from a remote location, such as an athletic event, or in connection with news gathering. Generally, we will permit entities authorized to operate LPFM stations to use remote pickup frequencies and radio broadcast auxiliary frequencies in the manner in which full-service stations use these frequencies, pursuant to the technical rules and procedures given in Subparts D and E of Part 74 of our rules. However, we will require that LPFM operations on auxiliary frequencies be secondary to that of full-service broadcast stations and other primary users, given the congestion of frequency use in some locales. We note that TV auxiliary frequencies are licensed to low power TV stations on this basis.[103] An entity seeking to operate an LPFM station may apply for broadcast auxiliary license only after it has been authorized to construct the LPFM station.[104]

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100 *See* Comments of NPR (August 2, 1999) at 18; Comments of CPB at 19.

101 *See, e.g.*, Comments of Amherst (April 28, 1999) at 70-71; American Civil Liberties Union of Massachusetts at 13.

102 We have identified a finite number of "superpowered" facilities operating in the reserved band that exceed the permissible maximum class facilities. Such facilities will receive protection in proportion to their operating facilities. *See* ¶ 70.

103 47 C.F.R. § 74.602(f).

104 Broadcast auxiliary applications are filed on FCC Form 600 and are processed by the Commission's (continued....)