

**APPENDIX A**

**Low Power FM Service Rules**

Part 11 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

**Part 11 – Emergency Alert System (EAS)**

1. The authority citation for Part 11 continues to read as follows:

Authority 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

2. Section 11.11 is amended to read as follows:

**§11.11 The Emergency Alert System (EAS).**

(a) The EAS is composed of broadcast networks; cable networks and program suppliers; AM, FM, Low Power FM (LPFM) and TV broadcast stations; Low Power TV (LPTV) stations; cable systems; wireless cable systems which may consist of Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS), or Instructional Television Fixed Service (ITFS) stations; and other entities and industries operating on an organized basis during emergencies at the National, State and local levels. It requires that at a minimum all participants use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts in accordance with the effective dates in the following tables:

A new column is inserted into the “Timetable – Broadcast Stations” table in §11.11 as follows:

Requirement	AM & FM	TV	FM Class D	LPTV	LPFM
* * *	* * *	* * *	* * *	* * *	N Y Y N Y

(b) Class D noncommercial educational FM stations as defined in § 73.506, LPFM stations as defined in §§ 73.811 and 73.853, and LPTV stations as defined in § 74.701(f) are not required to comply with §11.32. \* \* \*

\* \* \* \* \*

3. Section 11.51 is amended to read as follows:

**§11.51 EAS code and Attention Signal Transmission requirements.**

\* \* \* \* \*

(e) Class D non-commercial educational FM stations as defined in §73.506 of this chapter, Low Power FM (LPFM) stations as defined in §§ 73.811 and 73.853 of this chapter, and low power TV (LPTV) stations as defined in §74.701(f) of this chapter are not required to have equipment capable of generating the EAS codes and Attention Signal specified in § 11.31. \* \* \*

\* \* \* \* \*

4. Section 11.53 is amended to read as follows:

**§11.53 Dissemination of Emergency Action Notification.**

(a) \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) Wire services to all subscribers (AM, FM, low power FM (LPFM), TV, LPTV and other stations.)

\* \* \* \* \*

5. Section 11.61 is amended to read as follows:

**§11.61 Tests of EAS procedures.**

(a)(1)(i) \* \* \*

(a)(1)(v) \* \* \* Class D non-commercial educational FM, LPFM and LPTV stations are required to transmit only the test script. \* \* \*

(a)(2) \* \* \*

(a)(2)(ii)(E)(iii) Class D non-commercial educational FM, LPFM and LPTV stations are not required to transmit this test but must log receipt. \* \* \*

\* \* \* \* \*

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

**Part 73 – Radio Broadcast Services**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336

2. Section 73.209 is amended to include a new section (c), as follows

**§ 73.209 Protection from interference.**

\* \* \* \* \*

(c) Permittees and licensees of FM stations are not protected from interference which may be created by the grant of a new LPFM station or of authority to modify an existing LPFM station, except in instances where the FM station would receive predicted interference from an LPFM station within the FM station's 3.16 mV/m (70 dBu) contour.

3. Section 73.508 is modified, as follows:

**§ 73.508 Standards of good engineering practice.**

(a) All noncommercial educational stations and LPFM stations operating with more than 10 watts transmitter power output shall be subject to all of the provisions of the FM Technical Standards contained in Subpart B of this part. Class D educational stations and LPFM stations operating with 10 watts or less transmitter output power shall be subject to the definitions contained in § 73.310 of Subpart B of this part, and also to those other provisions of the FM Technical Standards which are specifically made applicable to them by the provisions of this subpart.

(b) The transmitter and associated transmitting equipment of each noncommercial educational FM station and LPFM station licensed for transmitter power output above 10 watts must be designed, constructed and operated in accordance with § 73.317.

(c) The transmitter and associated transmitting equipment of each noncommercial educational FM station licensed for transmitter power output of 10 watts or less, although not required to meet all requirements of § 73.317, must be constructed with the safety provisions of the current national electrical code as approved by the American National Standards Institute. These stations must be operated, tuned, and adjusted so that emissions are not radiated outside the authorized band causing or which are capable of causing interference to the communications of other stations. The audio distortion, audio frequency range, carrier hum, noise level, and other essential phases of the operation which control the external effects, must be at all times capable of providing satisfactory broadcast service. Studio equipment properly covered by an underwriter's certificate will be considered as satisfying safety requirements.

4. A new Section 73.514 is added, as follows

**§ 73.514 Protection from interference.**

Permittees and licensees of NCE FM stations are not protected from interference which may be created by the grant of a new LPFM station or of authority to modify an existing LPFM station, except in instances where the NCE FM station would receive interference from an LPFM station within the 3.16 mV/m (70 dBu) contour.

5. "Subpart G – Emergency Broadcast System" is deleted in its entirety (including Section 73.900).

6. A new "Subpart G – Low Power FM Broadcast Stations" is added as follows:

**Subpart G – Low Power FM Broadcast Stations (LPFM)**

7. A new Section 73.801 is added, as follows:

**§ 73.801 Broadcast regulations applicable to LPFM stations.**

The following rules are applicable to LPFM stations:

- Section 73.201-Numerical definition of FM broadcast channels.
- Section 73.220-Restrictions on use of channels.
- Section 73.267-Determining operating power.
- Section 73.277-Permissible transmissions.
- Section 73.297-FM stereophonic sound broadcasting.
- Section 73.310-FM technical definitions.
- Section 73.312-Topographic data.
- Section 73.318-FM blanketing interference.
- Section 73.322-FM stereophonic sound transmission standards.
- Section 73.333-Engineering charts.
- Section 73.503-Licensing requirements and service.
- Section 73.508-Standards of good engineering practice.
- Section 73.593-Subsidiary communications services.
- Section 73.1015-Truthful written statements and responses to Commission inquiries and correspondence.
- Section 73.1030-Notifications concerning interference to radio astronomy, research and receiving installations.
- Section 73.1201-Station identification.
- Section 73.1206-Broadcast of telephone conversations.
- Section 73.1207-Rebroadcasts.
- Section 73.1208-Broadcast of taped, filmed, or recorded material.
- Section 73.1210-TV/FM dual-language broadcasting in Puerto Rico.
- Section 73.1211-Broadcast of lottery information.
- Section 73.1212-Sponsorship identification; list retention; related requirements.
- Section 73.1213-Antenna structure, marking and lighting.
- Section 73.1216-Licensee-conducted contests.
- Section 73.1217-Broadcast hoaxes.
- Section 73.1230-Posting of station license.
- Section 73.1250-Broadcasting emergency information.
- Section 73.1300-Unattended station operation.
- Section 73.1400-Transmission system monitoring and control.
- Section 73.1520-Operation for tests and maintenance.
- Section 73.1540-Carrier frequency measurements.

- Section 73.1545-Carrier frequency departure tolerances.
- Section 73.1570-Modulation levels: AM, FM, and TV aural.
- Section 73.1580-Transmission system inspections.
- Section 73.1610-Equipment tests.
- Section 73.1620-Program tests.
- Section 73.1650-International agreements.
- Section 73.1660-Acceptability of broadcast transmitters.
- Section 73.1665-Main transmitters.
- Section 73.1692-Broadcast station construction near or installation on an AM broadcast tower.
- Section 73.1745-Unauthorized operation.
- Section 73.1750-Discontinuance of operation.
- Section 73.1920-Personal attacks.
- Section 73.1940-Legally qualified candidates for public office.
- Section 73.1941-Equal opportunities.
- Section 73.1943-Political file.
- Section 73.1944-Reasonable access.
- Section 73.3511-Applications required.
- Section 73.3512-Where to file; number of copies.
- Section 73.3513-Signing of applications.
- Section 73.3514-Content of applications.
- Section 73.3516-Specification of facilities.
- Section 73.3517-Contingent applications.
- Section 73.3518-Inconsistent or conflicting applications.
- Section 73.3519-Repetitious applications.
- Section 73.3520-Multiple applications.
- Section 73.3525-Agreements for removing application conflicts.
- Section 73.3539-Application for renewal of license.
- Section 73.3542-Application for emergency authorization.
- Section 73.3545-Application for permit to deliver programs to foreign stations.
- Section 73.3550-Requests for new or modified call sign assignments.
- Section 73.3561-Staff consideration of applications requiring Commission consideration.
- Section 73.3562-Staff consideration of applications not requiring action by the Commission.
- Section 73.3566-Defective applications.
- Section 73.3568-Dismissal of applications.
- Section 73.3584-Procedure for filing petitions to deny.
- Section 73.3587-Procedure for filing informal objections.
- Section 73.3588-Dismissal of petitions to deny or withdrawal of informal objections.
- Section 73.3589-Threats to file petitions to deny or informal objections.
- Section 73.3591-Grants without hearing.
- Section 73.3593-Designation for hearing.
- Section 73.3598-Period of construction.
- Section 73.3599-Forfeiture of construction permit.
- Section 73.3999-Enforcement of 18 U.S.C. 1464-restrictions on the transmission of obscene and indecent material.

8. A New Section 73.805 is added, as follows:

**§ 73.805 Availability of channels.**

Except as provided in Section 73.220 of this Chapter, all of the frequencies listed in Section 73.201 of this Chapter are available for LPFM stations.

9. A new Section 73.807 is added, as follows:

**§73.807 Minimum distance separation between stations.**

Minimum separation requirements for LP100 and LP10 stations, as defined in Section 73.811 and Section 73.853 of this Part, are listed in the following subsections. An LPFM station will not be authorized unless these separations are met. Minimum distances for co-channel and first-adjacent channel are separated into two columns. The left-hand column lists the required minimum separation to protect other stations and the right-hand column lists (for informational purposes only) the minimum distance necessary for the LPFM station to receive no interference from other stations. For second-adjacent channels and IF channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

(a) An LP100 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, timely-filed applications for new and existing FM stations, authorized LP100 stations, LP100 station applications that were timely-filed within a previous window, and vacant FM allotments. LP100 stations are not required to protect LP10 stations. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations.

Station Class Protected by LP100	Co-channel Minimum Separation (km)		First-adjacent Channel Minimum Separation (km)		Second-adjacent Channel Minimum Separation (km)	I.F. Channel minimum separations
	Required	For No Interference Received	Required	For No Interference Received	Required	10.6 or 10.8 MHz
LP100	24	24	14	14	None	None
D	24	24	13	13	6	4
A	67	92	56	56	29	7
B1	87	119	74	74	46	9
B	112	143	97	97	67	12
C3	78	119	67	67	40	9
C2	91	143	80	84	53	12
C1	111	178	100	111	73	20
C	130	203	120	142	93	28

(b) An LP10 station will not be authorized unless the minimum distance separations in the following table are met with respect to authorized FM stations, timely-filed applications for new and existing FM stations, vacant FM allotments, or LPFM stations.

Station Class Protected by LP10	Co-channel Minimum Separation (km)		First-adjacent Channel Minimum Separation (km)		Second-adjacent Channel Minimum Separation (km)	I.F. Channel minimum separations  10.6 or 10.8 MHz
	Required	For No Interference Received	Required	For No Interference Received	Required	
LP100	16	22	10	11	None	None
LP10	13	13	8	8	None	None
D	16	21	10	11	6	2
A	59	90	53	53	29	5
B1	77	117	70	70	45	8
B	99	141	91	91	66	11
C3	69	117	64	64	39	8
C2	82	141	77	81	52	11
C1	103	175	97	108	73	18
C	122	201	116	140	92	26

(c) In addition to meeting or exceeding the minimum separations for Class LP100 and Class LP10 stations in subsections (a) and (b) of this rule section above, new LP100 and LP10 stations will not be authorized in Puerto Rico or the Virgin Islands unless the minimum distance separations in the following tables are met with respect to authorized or proposed FM stations:

(1) LP100 stations in Puerto Rico and the Virgin Islands:

Station Class Protected by LP100	Co-channel Minimum Separation (km)		First-adjacent Channel Minimum Separation (km)		Second-adjacent Channel Minimum Separation (km)	I.F. Channel minimum separations  10.6 or 10.8 MHz
	Required	For No Interference Received	Required	For No Interference Received	Required	
A	80	111	70	70	42	9
B1	95	128	82	82	53	11
B	138	179	123	123	92	20

## (2) LP10 stations in Puerto Rico and the Virgin Islands:

Station Class Protected by LP10	Co-channel Minimum Separation (km)		First-adjacent Channel Minimum Separation (km)		Second-adjacent Channel Minimum Separation (km)	I.F. Channel minimum separations  10.6 or 10.8 MHz
	Required	For No Interference Received	Required	For No Interference Received	Required	
A	72	108	66	66	42	8
B1	84	125	78	78	53	9
B	126	177	118	118	92	18

**Note: Minimum distance separations towards “grandfathered” superpowered Reserved Band stations, subsections (a), (b), and (c) above :**

Full service FM stations operating within the reserved band (Channels 201-220) with facilities in excess of those permitted in § 73.211(b)(1) or § 73.211(b)(3) shall be protected by LPFM stations in accordance with the minimum distance separations for the nearest class as determined under § 73.211. For example, a Class B1 station operating with facilities that result in a 60 dBu contour that exceeds 39 kilometers but is less than 52 kilometers would be protected by the Class B minimum distance separations. Class D stations with 60 dBu contours that exceed 5 kilometers will be protected by the Class A minimum distance separations. Class B stations with 60 dBu contours that exceed 52 kilometers will be protected as Class C1 or Class C stations depending upon the distance to the 60 dBu contour. No stations will be protected beyond Class C separations.

(d) In addition to meeting the separations in subsections (a) through (c) above, LPFM applications must meet the minimum separation requirements in the following tables with respect to authorized FM translator stations, cutoff FM translator applications, and FM translator applications filed prior to the release of the Public Notice announcing the LPFM window period:

(1) LP100 stations:

Distance to FM Translator 60 dBu Contour	Co-channel Minimum Separation (km)		First-adjacent Channel Minimum Separation (km)		Second-adjacent Channel Minimum Separation (km)	I.F. Channel Minimum Separation (km)
	Required	For No Interference Received	Required	For No Interference Received	Required	
13.3 km or greater	39	67	28	35	21	5
Greater than 7.3 km, but less than 13.3 km	32	51	21	26	14	5
Less than 7.3 km	26	30	15	16	8	5

(2) LP10 stations:

Distance to FM Translator 60 dBu Contour	Co-channel Minimum Separation (km)		First-adjacent Channel Minimum Separation (km)		Second-adjacent Channel Minimum Separation (km)	I.F. Channel Minimum Separation (km)
	Required	For No Interference Received	Required	For No Interference Received	Required	
13.3 km or greater	30	65	25	33	20	3
Greater than 7.3 km, but less than 13.3 km	24	49	18	23	14	3
Less than 7.3 km	18	28	12	14	8	3

(f) Existing Class LP100 and LP10 stations which do not meet the separations in the tables in

subsections (a) through (e) above may be relocated provided that the separation to any short-spaced station is not reduced.

(g) Commercial and noncommercial educational stations authorized under Subparts B and C of this Part, as well as new or modified commercial FM allotments, are not required to adhere to the separations specified in this rule section, even where new or increased interference would be created.

(h) *International considerations within the border zones*

(1) Within 320 km of the Canadian border, LP100 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian Station Class	Co-channel (km)	First-Adjacent Channel (km)	Second-Adjacent Channel (km)	Third-Adjacent Channel (km)	Intermediate Frequency (IF) Channel (km)
A1	45	30	21	20	4
A	66	50	41	40	7
B1	78	62	53	52	9
B	92	76	68	66	12
C1	113	98	89	88	19
C	118	106	99	98	28

(2) Within 320 km of the Mexican border, LP100 stations must meet the following separations with respect to any Mexican stations:

Mexican Station Class	Co-channel (km)	First-Adjacent Channel (km)	Second- /Third-Adjacent Channel (km)	Intermediate Frequency (IF) Channel (km)
A	43	32	25	5
AA	47	36	29	6
B1	67	54	45	8
B	91	76	66	11
C1	91	80	73	19
C	110	100	92	27

(3) Within 320 km of the Canadian border, LP10 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian Station Class	Co-channel (km)	First-Adjacent Channel (km)	Second-Adjacent Channel (km)	Third-Adjacent Channel (km)	Intermediate Frequency (IF) Channel (km)
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A1	33	25	23	19	3
A	53	45	43	39	5
B1	65	57	55	51	8
B	79	71	70	66	11
C1	101	93	91	87	18
C	108	102	100	97	26

- (4) Within 320 km of the Mexican border, LP10 stations must meet the following separations with respect to any Mexican stations:

Mexican Station Class	Co-channel (km)	First-Adjacent Channel (km)	Second- /Third-Adjacent Channel (km)	Intermediate Frequency (IF) Channel (km)
A	34	29	24	5
AA	39	33	29	5
B1	57	50	45	8
B	79	71	66	11
C1	83	77	73	18
C	102	96	92	26

- (5) The Commission will notify the International Telecommunications Union (ITU) of any LPFM authorizations in the US Virgin Islands. Any authorization issued for a US Virgin Islands LPFM station will include a condition that permits the Commission to modify, suspend or terminate without right to a hearing if found by the Commission to be necessary to conform to any international regulations or agreements.
- (6) The Commission may, at its option, initiate international coordination of a LPFM proposal even where the above Canadian and Mexican spacing tables are met, if it appears that such coordination is necessary to maintain compliance with international agreements.

10. A new Section 73.808 is added, as follows;

**§ 73.808 Distance computations.**

For the purposes of determining compliance with any LPFM distance requirements, distances shall be calculated in accordance with § 73.208(c) of this Part.

11. A new Section 73.809 is added as follows:

**§ 73.809 Interference protection to full service FM stations.**

- (a) It shall be the responsibility of the licensee of an LPFM station to correct at its expense any condition of interference to the direct reception of the signal of any subsequently authorized commercial or NCE FM station that operates on the same channel, first-adjacent channel, second-adjacent channel or intermediate frequency (IF) channels as the LPFM station, where interference is predicted to occur and actually occurs within the 3.16 mV/m (70 dBu) contour of such stations. Predicted interference within this contour shall be calculated in

- accordance with the ratios set forth in Section 73.215(a)(1) and (2) of this Part. Actual interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the LPFM station.
- (b) An LPFM station will be provided an opportunity to demonstrate in connection with the procession of the commercial or NCE FM application that interference with the 3.16 mV/m contour of such station is unlikely. If the LPFM station fails to so demonstrate, it will be required to cease operations upon the commencement of program tests by the commercial or NCE FM station.
  - (c) Complaints of actual interference by an LPFM station subject to subsection (b) within the 3.16 mV/m contour of a commercial or NCE FM station must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations within twenty-four hours of the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. An LPFM station may only resume operations at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility.
  - (d) It shall be the responsibility of the licensee of an LPFM station to correct any condition of interference that results from the radiation of radio frequency energy outside its assigned channel. Upon notice by the FCC to the station licensee or operator that such interference is caused by spurious emissions of the station, operation of the station shall be immediately suspended and not resumed until the interference has been eliminated. However, short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.
  - (e) In each instance where suspension of operation is required, the licensee shall submit a full report to the FCC in Washington, D.C., after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

12. A new section 73.811 is added as follows:

**§ 73.811 LPFM Power and antenna height requirements.**

**a) LP100 Stations:**

- 1) *Maximum Facilities.* LP100 stations will be authorized to operate with maximum facilities of 100 watts effective radiated power (ERP) at 30 meters antenna height above average terrain (HAAT). An LP100 station with a HAAT that exceeds 30 meters will not be permitted to operate with an ERP greater than that which would result in a 60 dBu contour of 5.6 kilometers. In no event will an ERP less than one watt be authorized. No facility will be authorized in excess of one watt ERP at 450 meters HAAT.
- 2) *Minimum facilities.* LP100 stations may not operate with facilities less than 50 watts ERP at 30 meters HAAT or the equivalent necessary to produce a 60 dBu contour that extends at least 4.7 kilometers.

**b) LP10 Stations:**

- 1) *Maximum Facilities.* LP10 stations will be authorized to operate with maximum facilities of 10 watts ERP at 30 meters HAAT. An LP10 station with a HAAT that exceeds 30 meters will not be permitted to operate with an ERP greater than that which would result in a 60 dBu contour of 3.2 kilometers. In no event will an ERP less than one watt be authorized. No facility will be authorized in excess of one watt ERP at 100 meters HAAT.
- 2) *Minimum Facilities.* LP10 stations may not operate with less than one watt ERP.

13. A new Section 73.812 is added, as follows:

**§73.812 Rounding of power and antenna heights.**

- (a) Effective radiated power (ERP) will be rounded to the nearest watt on LPFM authorizations.
- (b) Antenna radiation center, antenna height above average terrain (HAAT), and antenna supporting structure height will all be rounded to the nearest meter on LPFM authorizations.

14. A new section 73.813 is added, as follows:

**§ 73.813 Determination of antenna height above average terrain (HAAT).**

HAAT determinations for LPFM stations will be made in accordance with the procedure detailed in § 73.313(d) of this Part.

15. A new Section 73.816 is added, as follows:

**§73.816 Antennas.**

- (a) Directional antennas will not be authorized in the LPFM service.
- (b) Permittees and licensees may employ nondirectional antennas with horizontal only polarization, vertical only polarization, circular polarization or elliptical polarization.

16. A new Section 73.825 is added, as follows:

**§73.825 Protection to Reception of TV Channel 6**

LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances in the following table are met with respect to all TV Channel 6 stations.

FM Channel Number	Class LP100 to TV Channel 6 (km)	Class LP10 to TV Channel 6 (km)
201	219	171
202	204	162
203	188	156
204	179	153
205	167	149
206	156	143
207	151	141
208	151	141
209	151	141
210	151	141
211	151	141
212	149	140
213	147	139
214	145	138
215	143	137
216	142	136
217	142	136
218	139	134
219	137	134
220	136	133

17. A new Section 73.840 is added, as follows:

**§ 73.840 Operating power and mode tolerances.**

The transmitter power output (TPO) of an LPFM station must be determined by the procedures set forth in Section 73.267 of this Part. The operating TPO of an LPFM station with an authorized TPO of more than ten watts must be maintained as near as practicable to its authorized TPO and may not be less than 90% of the minimum TPO nor greater than 105% of the maximum authorized TPO. An LPFM station with an authorized TPO of ten watts or less may operate with less than the authorized power, but not more than 105% of the authorized power.

18. A new Section 73.845 is added, as follows

**§ 73.845 Transmission system operation.**

Each LPFM licensee is responsible for maintaining and operating its broadcast station in a manner that complies with the technical rules set forth elsewhere in this Part and in accordance with the terms of the station authorization. In the event that an LPFM station is operating in a manner that is not in compliance with the technical rules set forth elsewhere in this part or the terms of the station authorization, broadcast operation must be terminated within three hours.

19. A new Section 73.850 is added, as follows:

**§ 73.850 Operating schedule.**

(a) All LPFM stations will be licensed for unlimited time operation, except those stations operating under a time sharing agreement pursuant to Section 73.872 of this subpart.

(b) All LPFM stations are required to operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week; however, stations licensed to educational institutions are not required to operate on Saturday or Sunday or to observe the minimum operating requirements during those days designated on the official school calendar as vacation or recess periods.

20. A new Section 73.853 is added, as follows:

**§73.853 Licensing requirements and service.**

(a) An LPFM station may be licensed only to:

- (i) nonprofit educational organizations and upon a showing that the proposed station will be used for the advancement of an educational program; and
- (ii) state and local governments and non-government entities that will provide noncommercial public safety radio services.

(b) Only local applicants will be permitted to submit applications for a period of two years from the date that LP100 and LP10 stations, respectively, are first made available for application. For the purposes of this subsection, an applicant will be deemed local if it can certify that:

- (i) the applicant, its local chapter or branch is physically headquartered or has a campus within 16.1 km (10 miles) of the proposed site for the transmitting antenna;
- (ii) it has 75% of its board members residing within 16.1 km (10 miles) of the proposed site for the transmitting antenna; or
- (iii) in the case of any applicant proposing a public safety radio service, the applicant has jurisdiction within the service area of the proposed LPFM station.

21. A new Section 73.854 is added, as follows:

**§ 73.854 Unlicensed operations.**

No application for an LPFM station may be granted unless the applicant certifies, under penalty of perjury, to one of the following statements:

(a) Neither the applicant, nor any party to the application, has engaged in any manner including individually or with persons, groups, organizations or other entities, in the unlicensed operation of any station in violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. Section 301.

(b) To the extent the applicant or any party to the application has engaged in any manner, individually or with other persons, groups, organizations or other entities, in the unlicensed operation of a station in violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. Section 301, such an engagement:

(1) ceased voluntarily no later than February 26, 1999, without direction from the FCC to do so; or

(2) ceased operation within 24 hours of being directed by the FCC to terminate unlicensed operation of any station.

22. A new Section 73.855 is added, as follows:

**§73.855 Ownership limits.**

(a) No authorization for an LPFM station shall be granted to any party if the grant of that authorization will result in any such party holding an attributable interest in two LPFM stations separated by less than 12 km (7 miles).

(b) Nationwide ownership limits will be phased in according to the following schedule:

(1) For a period of two years from the date that the LPFM stations are first made available for application, a party may hold an attributable interest in no more than one LPFM station.

(2) For the period between two and three years from the date that the initial filing window opens for LPFM applications, a party may hold an attributable interest in no more than five LPFM stations.

(3) After three years from the date that the initial filing window opens for LPFM stations, a party may hold an attributable interest in no more than ten stations.

23. A new Section 73.858 is added, as follows:

**§73.858 Attribution of LPFM station interests.**

Ownership and other interests in LPFM station permittees and licensees will be attributed to their holders and deemed cognizable for the purposes of §§ 73.855 and 73.860 of this Subpart, in accordance with the provisions of §73.3555, subject to the following exceptions:

(a) A director of an entity that holds an LPFM license will not have such interest treated as attributable if such director also holds an attributable interest in a broadcast licensee or other media entity but recuses himself or herself from any matters affecting the LPFM station.

(b) A local chapter of a national or other large organization shall not have the attributable interests of the national organization attributed to it provided that the local chapter maintains a local business office and has a distinct local presence and mission.

(c) A parent or subsidiary of a LPFM licensee or permittee that is a non-stock corporation will be treated as having an attributable interest in such corporation. The officers, directors, and members of a non-stock corporation's governing body and of any parent or subsidiary entity will have such positional interests attributed to them.

24. A new Section 73.860 is added, as follows:

**§73.860 Cross-ownership.**

(a) No license for an LPFM station shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to broadcast ownership restrictions.

(b) A party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest.

(c) No LPFM licensee may enter into an operating agreement of any type, including a time brokerage or management agreement, with either a full power broadcast station or another LPFM station.

25. A new Section 73.865 is added, as follows:

**§73.865 Assignment and transfer of LPFM authorizations.**

(a) An LPFM authorization may not be transferred or assigned except for a transfer or assignment that involves:

(1) less than a substantial change in ownership and control; or

(2) an involuntary assignment of license or transfer of control.

(b) A change in the name of an LPFM licensee where no change in ownership or control is involved may be accomplished by written notification by the licensee to the Commission

26. A new Section 73.870 is added, as follows:

**§73.870 Processing of LPFM Broadcast Station applications.**

- (a) A minor change for an LP100 station authorized under this Subpart is limited to transmitter relocations of less than two kilometers. A minor change for an LP10 station authorized under this Subpart cannot be limited to transmitter site relocations of less than one kilometer. Minor changes of LPFM stations may include changes in frequency to adjacent or IF frequencies, or, upon a technical showing of reduced interference, to any frequency.
- (b) The Commission will specify by Public Notice a window filing period for applications for new LPFM stations and major modifications in the facilities of authorized LPFM stations. LPFM applications for new facilities and for major modifications in authorized LPFM stations will be accepted only during the appropriate window. Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the deadline will be dismissed with prejudice as untimely.
- (c) Applications subject to subsection (b) that fail to meet the Section 73.807 minimum distance separations, other than to LPFM station facilities proposed in applications filed in the same window, will be dismissed without any opportunity to amend such applications.
- (d) Following the close of the window, the Commission will issue a Public Notice of acceptance for filing of applications submitted pursuant to subsection (b) that meet technical and legal requirements and that are not in conflict with any other application filed during the window. Following the close of the window, the Commission also will issue a Public Notice of the acceptance for filing of all applications tentatively selected pursuant to the procedures for mutually exclusive LPFM applications set forth at Section 73.872. Petitions to deny such applications may be filed within 30 days of such public notice and in accordance with the procedures set forth at Section 73.3584 of this Part. A copy of any petition to deny must be served on the applicant.
- (e) Minor change LPFM applications may be filed at any time, unless restricted by the staff, and generally, will be processed in the order in which they are tendered. Such applications must meet all technical and legal requirements applicable to new LPFM station applications.

27. A new section 73.872 is added, as follows:

**§ 73.872 Selection procedure for mutually exclusive LPFM applications.**

- (a) Following the close of each window for new LPFM stations and for modifications in the facilities of authorized LPFM stations, the Commission will issue a public notice identifying all groups of mutually exclusive applications. Such applications will be awarded points to determine the tentative selectee. Unless resolved by settlement pursuant to subsection (e), the tentative selectee will be the applicant within each group with the highest point total under the procedure set forth in this section, except as provided in paragraphs (c) and (d).
- (b) Each mutually exclusive application will be awarded one point for each of the following criteria, based on application certification that the qualifying conditions are met:
- (1) Established community presence. An applicant must, for a period of at least two years prior to application, have been physically headquartered, have had a campus, or have had seventy-five percent of its board members residing within 10 miles of the coordinates of the proposed transmitting antenna. Applicants claiming a point for this criterion must submit the

- documentation set forth in the application form at the time of filing their applications.
- (2) Proposed operating hours. The applicant must pledge to operate at least 12 hours per day.
  - (3) Local program origination. The applicant must pledge to originate locally at least eight hours of programming per day. For purposes of this criterion, local origination is the production of programming within 10 miles of the coordinates of the proposed transmitting antenna.
- (c) *Voluntary Time-Sharing*. If mutually exclusive applications have the same point total, any two or more of the tied applicants may propose to share use of the frequency by submitting, within 30 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as amendments to the time-share proponents' applications, and shall become part of the terms of the station license. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents' points will be aggregated to determine the tentative selectees.
- (1) Time-share proposals shall be in writing and signed by each time-share proponent, and shall satisfy the following requirements: (i) the proposal must specify the proposed hours of operation of each time-share proponent; (ii) the proposal must not include simultaneous operation of the time-share proponents; and (iii) each time-share proponent must propose to operate for at least 10 hours per week.
  - (2) Where a station is licensed pursuant to a time-sharing proposal, a change of the regular schedule set forth therein will be permitted only where an written agreement signed by each time-sharing licensee and complying with requirements (i) through (iii) above is filed with the Commission, Attention: Audio Services Division, Mass Media Bureau, prior to the date of the change.
- (d) *Successive License Terms*.
- (1) If a tie among mutually exclusive applications is not resolved through time-sharing in accordance with paragraph (c) of this section, the tied applications will be reviewed for acceptability and applicants with tied, grantable applications will be eligible for equal, successive, non-renewable license terms of no less than one year each for a total combined term of eight years, in accordance with Section 73.873. Eligible applications will be granted simultaneously, and the sequence of the applicants' license terms will be determined by the sequence in which they file applications for licenses to cover their construction permits based on the day of filing, except that eligible applicants proposing same-site facilities will be required, within 30 days of written notification by the Commission staff, to submit a written settlement agreement as to construction and license term sequence. Failure to submit such an agreement will result in the dismissal of the applications proposing same-site facilities and the grant of the remaining, eligible applications.
  - (2) Groups of more than eight tied, grantable applications will not be eligible for successive license terms under this section. Where such groups exist, the staff will dismiss all but the applications of the eight entities with the longest established community presences, as provided in paragraph (b)(1) of this section. If more than eight tied, grantable applications remain, the applicants must submit, within 30 days of written notification by the Commission staff, a written settlement agreement limiting the group to eight. Failure to do so will result in dismissal of the entire application group.
- (e) Mutually exclusive applicants may propose a settlement at any time during the selection process after the release of a public notice announcing the mutually exclusive groups. Settlement proposals must include all of the applicants in a group and must comply with the Commission's rules and policies regarding settlements, including the requirements of Sections

73.3525, 73.3588, and 73.3589 of this Part. Settlement proposals may include time-share agreements that comply with the requirements of subsection(c), provided that such agreements may not be filed for the purpose of point aggregation outside of the thirty-day period set forth in subsection (c).

28. A new Section 73.873 is added, as follows:

**§73.873 LPFM license period.**

(a) Initial licenses for LPFM stations not subject to successive license terms will be issued for a period running until the date specified in §73.1020 for full service stations operating in the LPFM station's state or territory, or if issued after such date, determined in accordance with §73.1020.

(b) The station license period issued under the successive license term tiebreaker procedures will be determined pursuant to Section 73.872(d) of this Subpart and shall be for the period specified in the station license.

(c) The license of an LPFM station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

29. A new Section 73.875 is added, as follows

**§ 73.875 Modification of transmission systems.**

The following procedures and restrictions apply to licensee modifications of authorized broadcast transmission system facilities.

(a) The following changes are prohibited:

(1) Those that would result in the emission of signals outside of the authorized channel exceeding limits prescribed for the class of service.

(2) Those that would cause the transmission system to exceed the equipment performance measurements prescribed in Section 73.508 of this Part.

(b) The following changes may be made only after the grant of a construction permit application on FCC Form 318.

(1) Any construction of a new tower structure for broadcast purposes, except for replacement of an existing tower with a new tower of identical height and geographic coordinates.

(2) Any change in station geographic coordinates, including coordinate corrections and any move of the antenna to another tower structure located at the same coordinates.

(3) Any change in antenna height more than 2 meters above or 4 meters below the authorized value.

(4) Any change in channel.

(c) The following LPFM modifications may be made without prior authorization from the Commission. A modification of license application (FCC Form 319) must be submitted to the Commission within 10 days of commencing program test operations pursuant to § 73.1620. For applications filed pursuant to subsection (c)(1), the modification of license application must contain an exhibit demonstrating compliance with the Commission's radiofrequency radiation guidelines. In addition, applications solely filed pursuant to subsections (c)(1) or (c)(2), where the installation is located within 3.2 km of an AM tower or is located on an AM tower, an exhibit demonstrating compliance with § 73.1692 is also required.

(1) Replacement of an antenna with one of the same or different number of antenna bays, provided that the height of the antenna radiation center is not more than 2 meters above or 4 meters below the authorized values. Program test operations at the full authorized ERP may commence immediately upon installation pursuant to § 73.1620(a)(1).

(2) Replacement of a transmission line with one of a different type or length which changes the transmitter operating power (TPO) from the authorized value, but not the ERP, must be reported in a license modification application to the Commission.

(3) Changes in the hours of operation of stations authorized pursuant to time-share agreements in accordance with Section 73.872 of this Part.

30. A new Section 73.877 is added, as follows:

**§73.877 Station logs for LPFM stations.**

(a) The licensee of each LPFM station must maintain a station log. Each log entry must include the time and date of observation and the name of the person making the entry. The following information must be entered in the station log:

(1) Any extinguishment or malfunction of the antenna structure obstruction lighting, adjustments, repairs, or replacement to the lighting system, or related notification to the FAA.

See Sections 17.48 and 73.49 of this Part.

(2) Brief explanation of station outages due to equipment malfunction, servicing, or replacement;

(3) Operations not in accordance with the station license; and

(4) EAS weekly log requirements set forth in Section 11.61(a)(1)(v) of this Chapter.

31. A new Section 73.878 is added, as follows:

**§ 73.878 Station inspections by FCC; availability to FCC of station logs and records.**

(a) The licensee of a broadcast station shall make the station available for inspection by

representatives of the FCC during the station's business hours, and at any time it is in operation. In the course of an inspection or investigation, an FCC representative may require special equipment or program tests.

(b) Station records and logs shall be made available for inspection or duplication at the request of the FCC or its representatives. Such logs or records may be removed from the licensee's possession by an FCC representative or, upon request, shall be mailed by the licensee to the FCC by either registered mail, return receipt requested, or certified mail, return receipt requested. The return receipt shall be retained by the licensee as part of the station records until such records or logs are returned to the licensee. A receipt shall be furnished when the logs or records are removed from the licensee's possession by an FCC representative and this receipt shall be retained by the licensee as part of the station records until such records or logs are returned to the licensee. When the FCC has no further need for such records or logs, they shall be returned to the licensee. The provisions of this rule shall apply solely to those station logs and records that are required to be maintained by the provisions of this part.

(1) Where records or logs are maintained as the official records of a recognized law enforcement agency and the removal of the records from the possession of the law enforcement agency will hinder its law enforcement activities, such records will not be removed pursuant to this section if the chief of the law enforcement agency promptly certifies in writing to the FCC that removal of the logs or records will hinder law enforcement activities of the agency, stating insofar as feasible the basis for his decision and the date when it can reasonably be expected that such records will be released to the FCC.

32. A new Section 73.879 is added, as follows:

**§ 73.879 Signal retransmission.**

An LPFM licensee may not retransmit, either terrestrially or via satellite, the signal of a full-power radio broadcast station.

33. A new Section 73.881 is added, as follows:

**§73.881 Equal employment opportunities.**

*General EEO policy.* Equal employment opportunity shall be afforded by all LPFM licensees and permittees to all qualified persons, and no person shall be discriminated against because of race, color, religion, national origin, or sex.

34. Section 73.1001 in Subpart H is modified as follows:

**§73.1001 Scope.**

(a) \* \* \*

(b) Rules in part 73 applying exclusively to a particular broadcast service are contained in the following: AM, subpart A; FM, subpart B; Noncommercial Educational FM, subpart C; TV, subpart E; and LPFM, subpart G.

(c) Certain provisions of this subpart apply to International Broadcast Stations (subpart F, part 73), LPFM (subpart G, part 73), and Low Power TV, TV Translator and TV Booster Stations (subpart G, part 74) where the rules for those services so provide.

(d) \* \* \*

35. Section 73.1620 is modified as follows:

**§73.1620 Program tests.**

(a) Upon the completion of construction of an AM, FM, LPFM, or TV station in accordance with the terms of the construction permit, the technical provisions of the application, the rules and regulations and the applicable engineering standards, program tests may be conducted in accordance with the following:

(1) \* \* \*

(5) Except for permits subject to successive license terms, the permittee of an LPFM station may begin program tests upon notification to the FCC in Washington, D.C. provided that within 10 days thereafter, an application for license is filed. Program tests may be conducted by a licensee subject to mandatory license terms only during the term specified on such licensee's authorization.

\* \* \* \* \*

36. Section 73.1660 is modified as follows:

**§73.1660 Acceptability of broadcast transmitters.**

(a) An AM, FM, LPFM, or TV transmitter shall be verified for compliance with the requirements of this part following the procedures described in Part 2 of the FCC rules.

(b) \* \* \* \* \*

37. Section 73.3533 is modified as follows:

**§ 73.3533 Application for construction permit or modification of construction permit.**

\* \* \* \* \*

(a)(8) FCC Form 318, "Application for Construction Permit for a Low Power FM Broadcast Station."

\* \* \* \* \*

38. Section 73.3536 is modified as follows:

**§ 73.3536 Application for license to cover construction permit.**

\* \* \* \* \*

(b)(6) FCC Form 319, "Application for a Low Power FM Broadcast Station License."

\* \* \* \* \*

39. Section 73.3550 is modified as follows:

\* \* \* \* \*

(f) Only four-letter call signs (plus LP, FM, or TV, if used) will be assigned. The four letter call sign for LPFM stations will be followed by the suffix "-LP". However, subject to the provisions of this section, a call sign of a station may be conformed to a commonly-owned station holding a three-letter call sign (plus FM, TV, or LP suffixes, if used).

\* \* \* \* \*

40. Section 73.3598 is modified as follows:

**§73.3598 Period of construction.**

\* \* \* \* \*

(a) Each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; FM booster; or broadcast auxiliary station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. Each original construction permit for the construction of a new LPFM station shall specify a period of eighteen months from the date of issuance of the construction permit within which construction shall be completed and application for license filed

41. The informational Section 73.3617 is modified to eliminate the reference to the Enforcement Division:

**§73.3617 Broadcast information available on the Internet.**

The Mass Media Bureau and each of its Divisions provide information on the Internet regarding broadcast rules and policies, pending and completed rulemakings, and pending applications. These sites also include copies of public notices and texts of recent decisions. The Mass Media Bureau's address is <http://www.fcc.gov/mmb/>; the Audio Services Division address is <http://www.fcc.gov/mmb/asd/>; the Video Services Division is located at <http://www.fcc.gov/mmb/vsd/>; and the Policy and Rules Division's address is <http://www.fcc.gov/mmb/prd/>.

Part 74 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

**PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

1. The authority citation for Part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336

2. Section 74.432, Subpart D in Part 74 is modified, as follows:

**§ 74.432 Licensing requirements and procedures.**

(a) A license for a remote pickup station will be issued to: the licensee of an AM, FM, noncommercial FM, low power FM, TV, international broadcast or low power TV station; broadcast network-entity; or cable network-entity.

\* \* \* \* \*

3. Section 73.532, Subpart E in Part 74, is modified, as follows:

**§ 74.532 Licensing requirements.**

(a) An aural broadcast STL or an aural broadcast intercity relay station will be licensed only to the licensee or licensees of broadcast stations, including low power FM stations, other than international broadcast stations, and for use with broadcast stations owned entirely by or under common control of the licensee or licensees. An aural broadcast intercity relay station also will be licensed for use by low power FM stations, noncommercial educational FM translator stations assigned to reserved channels (Channels 201-220) and owned and operated by their primary station, by FM translator stations operating within the coverage contour of their primary stations, and by FM booster stations. Aural auxiliary stations licensed to low power FM stations will be assigned on a secondary basis; i.e., subject to the condition that no harmful interference is caused to other aural auxiliary stations assigned to radio broadcast stations. Auxiliary stations licensed to low power FM stations must accept any interference caused by stations having primary use of aural auxiliary frequencies.

4. Section 74.1204 Subpart L in Part 74, is renamed and amended as follows:

**§74.1204 Protection of FM broadcast, FM Translator and LP100 stations.**

(a) An application for an FM translator station will not be accepted for filing if the proposed operation would involve overlap of predicted field contours with any other authorized commercial or noncommercial educational FM broadcast stations, FM translators, and Class D (secondary) noncommercial educational FM stations; or if it would result in new or increased overlap with an LP100 station, as set forth below:

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

## (4) LP100 stations (Protected Contour: 1 mV/m)

Frequency separation	Interference contour of proposed translator station	Protected contour of LP100 LPFM station
Cochannel 200 kHz	0.1 mV/m (40 dBu) 0.5 mV/m (54 dBu)	1 mV/m (60 dBu) 1 mV/m (60 dBu)

\* \* \* \* \*

## APPENDIX B

**Grandfathered Superpowered Stations Operating Within the Reserved Band as of  
December 31, 1999**

Call Sign	Facility ID	Community of License	Class	Class for LPFM Protection Determination <sup>1</sup>
WARY	71709	Valhalla, NY	D	A
WCEB	13942	Corning, NY	D	A
WSIA	65557	Staten Island, NY	D	A
WGEV	23619	Beaver Falls, PA	D	A
WFWM	22791	Frostburg, MD	B1	B
KCEP	50390	Las Vegas, NV	C2	C1
KFLQ	20637	Albuquerque, NM	C	C
WAMC	70849	Albany, NY	B	C1
WBNI-FM	53745	Fort Wayne, IN	B	C1
WDTR-FM	6056	Detroit	B	C1
WERN	63030	Madison, WI	B	C1
WETA	65669	Washington, DC	B	C1
WGBH	70510	Boston, MA	B	C1
WHAD	63901	Delafield, WI	B	C1
WILL-FM	68940	Urbana, IL	B	C1
WKAR-FM	41683	East Lansing, MI	B	C1
WMBI-FM	66063	Chicago, IL	B	C1
WRTI	65190	Philadelphia, PA	B	C1
WUOM	66319	Ann Arbor, MI	B	C1
KPFK	51252	Los Angeles, CA	B	C
KQED-FM	35501	San Francisco, CA	B	C
KUSC	69318	Los Angeles, CA	B	C
WIPR-FM	53860	San Juan, PR	B	C

<sup>1</sup> See ¶ 70.



## APPENDIX C

## FINAL REGULATORY FLEXIBILITY ACT ANALYSIS

As required by the Regulatory Flexibility Act (RFA),<sup>2</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (Notice)*.<sup>3</sup> The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were received in response to the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>4</sup>

**Need for and Objectives of the Report and Order**

The Commission received petitions for rulemaking asking for the creation of a low power radio service. Because they raised similar or identical issues, the Commission coordinated its responses to them. The Commission released public notices of its receipt of three of the proposals and invited public comment on them. In response to significant public support, the Commission released the *Notice* to propose a new, low power FM service.

In the *Report and Order*, the Commission is adopting a 100-watt class (LP100) and a 10-watt class (LP10). Because of the predicted lower construction and operational costs of LPFM stations as opposed to full power facilities, we expect that small entities would be expected to have few economic obstacles to becoming LPFM licensees. Therefore, this new service may serve as a vehicle for small entities and under-represented groups (including women and minorities) to gain valuable broadcast experience and to add their voices to their local communities.

**Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

No comments were received in response to the IRFA.

**Description and Estimate of the Number of Small Entities to Which Rules Will Apply**

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules.<sup>5</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>6</sup> In addition, the term "small business" has the same meaning as the term "small business

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<sup>2</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>3</sup> Creation of a Low Power Radio Service, MM Docket No. 99-25, *Notice of Proposed Rulemaking*, 14 FCC Rcd 2471, 2530-2534 (1999) (*Notice*).

<sup>4</sup> See 5 U.S.C. § 604.

<sup>5</sup> 5 U.S.C. § 603(b)(3).

<sup>6</sup> 5 U.S.C. § 601(6).

concern" under the Small Business Act.<sup>7</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>8</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>9</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>10</sup> "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."<sup>11</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 per cent) are small entities.

The Small Business Administration defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business.<sup>12</sup> A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.<sup>13</sup> Included in this industry are commercial, religious, educational, and other radio stations.<sup>14</sup> The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992.<sup>15</sup> As of December 31, 1998, Commission records indicate that 12,615 radio stations were operating, of which 7,832 were FM stations.<sup>16</sup>

The rules will apply to a new category of FM radio broadcasting service. It is not known how many entities may seek to obtain a low power radio license. Nor do we know how many of these entities will be small entities. We note, however, that in the year since we issued the *Notice*, the Commission's LPFM website has received approximately 100,000 hits, demonstrating the interest of individuals and groups in

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<sup>7</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

<sup>8</sup> Small Business Act, 15 U.S.C. § 632 (1996).

<sup>9</sup> 5 U.S.C. § 601(4).

<sup>10</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>11</sup> 5 U.S.C. § 601(4).

<sup>12</sup> 13 C.F.R. § 121.201, SIC code 4832.

<sup>13</sup> 1992 Census, Series UC92-S-1, at Appendix A-9.

<sup>14</sup> *Id.* The definition used by the SBA also includes radio broadcasting stations which also produce radio program materials. Separate establishments that are primarily engaged in producing radio program material are classified under another SIC number, however. *Id.*

<sup>15</sup> FCC News Release, No. 31327 (Jan. 13, 1993).

<sup>16</sup> FCC News Release, "Broadcast Station Totals as of September 30, 1999" (Nov. 22, 1999).

operating such a facility. In addition, we expect that, due to the small size of low power FM stations, small entities would generally have a greater interest than large ones in acquiring them.

### **Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

The Commission is creating a new broadcasting service that may allow hundreds or thousands of small entities to become broadcast licensees for the first time. This endeavor will require the collection of information for the purposes of processing applications for (among other things) initial construction permits, assignments and transfers, and renewals. We will also require lower power radio stations to comply with some of the reporting, recordkeeping, and other compliance requirements as full power radio broadcasters.

### **Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

The RFA requires agencies to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>17</sup>

The LP100 and LP10 services are likely create significant opportunities for new small businesses. In addition, the Commission has taken steps to minimize the impact on existing small broadcasters.

Creating New Opportunities for Small Businesses. The *Report and Order* adopts a number of rules designed to help small businesses obtain and retain LP100 and LP10 licenses. These include ownership rules, and exemptions from mandatory electronic filing and main studio requirements.

The *Report and Order* adopts ownership rules to assist small entities to acquire or construct LPFM stations. Parties with attributable interests in any full power broadcast facilities are not eligible to have any ownership interest in any low power radio stations; this prevents large group owners (or even large single-station owners) from constructing and operating LPFM facilities that might otherwise be available to small entities.<sup>18</sup> The local and national ownership restrictions of one station per community and, initially, one station, and ultimately, 10 stations, nationwide are intended to ensure that ample LPFM stations are available for small entities.<sup>19</sup> However, the ownership rules also prohibit small entity full power broadcasters from acquiring LPFM licenses.

The *Report and Order* also modifies the application of some of our programming and service requirements for LPFM stations. LPFM stations are not required to maintain a public file, although they must maintain a political file.<sup>20</sup> They also need not create quarterly issues and programming lists or

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<sup>17</sup> 5 U.S.C. § 603(c)(1)-(4).

<sup>18</sup> See *Report and Order* at Part II.D.1.

<sup>19</sup> See *Report and Order* at Parts II.D.3, II.D.4.

<sup>20</sup> See *Report and Order* at Part II.G.3, II.G.6.

maintain a main studio.<sup>21</sup> In addition, while full power and LPFM stations both must participate in the Emergency Alert System (EAS) and have decoding equipment, LPFM stations need not purchase encoding equipment.<sup>22</sup> In addition, LPFM licensees need not comply with any EEO program requirements we adopt in our pending rulemaking proceeding. These exemptions from and modifications of the application of the Commission's programming and service requirements to LPFM stations will reduce administrative burdens and costs for small business licensees.

The *Report and Order* also adopts filing requirements that should help small businesses. Although the *Notice* proposed to mandate electronic filing for LPFM stations, the *Report and Order* declined to do so for the first round of LP100 applications.<sup>23</sup> The Commission made this decision because it recognized that there might be a disparity between applicants for LP100 licenses in terms of computer resources and skills. This result should help small businesses without more advanced technological resources to participate in the LP100 application process. The *Report and Order* adopts a window filing process, as opposed to a first-come, first-served process; some commenters claimed that the latter process would favor applicants with superior financial and technical resources.<sup>24</sup>

Minimizing Impact on Existing Small Business Broadcast Stations. The *Report and Order* has also adopted an alternative that will minimize the impact on existing small business broadcast stations. LP100 and LP10 stations will be noncommercial, educational stations, and so will not compete with small business commercial broadcasters for advertising revenue.

### Report to Congress

The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

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<sup>21</sup> *See id.*

<sup>22</sup> *See Report and Order* at Part II.G.8.

<sup>23</sup> *See Report and Order* at Part II.F.1.

<sup>24</sup> *See Report and Order* at Part II.F.2.

**SEPARATE STATEMENT OF CHAIRMAN WILLIAM E. KENNARD**

*Re: Creation of a Low Power Radio Service (MM 99-25)*

When I first became Chairman of the FCC, I started talking to people about radio. And I encountered a lot of frustration on the part of folks who felt like they had ideas on how to put radio to good use serving their communities, but no way of putting those ideas into action.

I heard this from churches and schools, community groups and public safety officials, civic organizations, and non-English speaking communities, from the Haitians in South Florida to the Vietnamese of South Texas.

In meeting with these groups, I've been struck by all of the different ways they propose to use the airwaves. Some want low power FM to serve as a forum for discussions of issues relevant to local communities. Some want to provide job training for young people seeking to make a career in broadcasting. Some want to emphasize cultural learning, while others want to offer more formal instruction and training over the air. And some want to keep their communities informed of public safety concerns, including weather and traffic conditions.

I have also been struck by the enthusiasm that these groups have when simply discussing the possibility of a low power service. Every day, it seems, we read about a bigger merger and more consolidation, all of which leads to the perception that the interests of small groups and individuals are being lost, and that important voices and viewpoints are being shut out.

The possibility of opening up available spectrum in the FM band has sparked creativity. Among those who propose new uses for the FM spectrum, the excitement is palpable.

And the fact is, there is more room at the table; there is spectrum available for these and other uses. But rather than being able to use the available spectrum to test their ideas in the marketplace, these groups are being shut out, prohibited from serving their communities.

Today we recognize the important role of more modest technical facilities, and throw open the doors of opportunity to the smaller, community-oriented broadcaster.

Now there are those that argue that there is no viable business case for low power FM, that the economics just don't work, and that the FCC should save low power broadcasters from themselves. I am not convinced of this because it is not the business of the FCC to pick winners and losers. We should empower consumers to decide what he or she prefers, rather than ruling out some options on our own and depriving the listener of making that choice for him- or herself.

That's what faith in the marketplace is all about. Remember, there was a time in this country when AM broadcasters said that FM would never make it.

Some argue that the creation of a new FM service means there will be more licensees subject to our broadcasting rules, making enforcement of our rules more difficult and more expensive. I am skeptical when concerns like administrative expense and convenience are invoked to justify the exclusion of new competitors in the market. That's like saying we won't issue any more drivers' licenses because there are already too many speeders. That would penalize those who have not broken the law, but do nothing to crack down on those who have.

The most serious objection to low power FM, and one that I have studied extensively, is the claim that low power FM would cause interference to existing radio stations. I have pledged all along that I would not support any proposal that threatens the integrity of existing radio services. I am pleased to say that my support of today's proposal is consistent with that pledge.

Protecting the current FM radio service is an obligation that cannot be compromised. In a relatively short period of time, the FM band has been transformed from a virtual desert into a vibrant and critical source of news, information, and entertainment in the daily lives of millions of Americans. It needs and deserves our protection.

That is why we have invested so many resources in conducting and analyzing technical studies on the issue of low power FM. I suspect that low power FM has been subjected to as much testing and engineering as any radio service we have ever looked at. And we have learned quite a lot.

The threat of interference has persuaded us to back away from some elements of the original low power proposal. For instance, we are limiting low power FM to 100 and 10 watt stations, even though we initially raised the possibility of 1,000 watt stations as well. Likewise, while we considered eliminating both second and third adjacent channel protections, we will be eliminating only the latter, while retaining the former.

While some studies suggest the possibility of interference even with the limitations we have adopted, the flaws underling these studies seem plain. Some of the studies cited in opposition to a low power FM service start with the premise that most existing FM radios do not provide adequate reception even today, before the creation of a low power service. These commenters suggest that we adopt standards that bear no relation to the choices that consumers have repeatedly made in the market, and that we reject reception standards that the over one-half billion radios now in use implicitly endorse. I see no reason for the FCC to invent standards on its own, when consumers have already voted with their dollars to decide on an adequate level of performance.

Our fundamental obligation under the law, as codified in section 1 of the Communications Act, is to "make available . . . a rapid, efficient, Nation-wide and worldwide wire and radio and communication service." At the heart of this mandate is the notion of opening up new opportunities in a way that protects the integrity of existing services. Today's order does exactly that and I am proud to support it.

**SEPARATE STATEMENT OF COMMISSIONER SUSAN NESS**

**RE: IN THE MATTER OF CREATION OF A LOW POWER RADIO SERVICE (MM DOCKET NO. 99-25)**

Today we establish a new, unmistakably local radio service on the FM band, carefully crafted to ensure that community-based voices are heard, while maintaining the technical integrity of the full powered service. In so doing, we have enabled students, community organizations, churches, and those underrepresented in conventional broadcasting to provide programming of special interest to community and niche populations. I support this decision, but write separately to address the issues that I raised in my statement accompanying the Notice of Proposed Rulemaking last year regarding both the special nature of the service and the potential for interference with full power stations.

***Community Based Service***

The new low-powered service responds to the needs expressed by thousands of individuals and community-based groups who envision a vehicle to provide a very localized service, including high sports and debates, local campaign coverage, and other local public service needs. In no way is this service a miniaturized replica of a full powered station. Rather, it was structured to ensure that the service maintains its unique character. It is a non-commercial educational service. Licenses are non-transferable. A station's power cannot exceed 100 watts, establishing a coverage area approximately 3.5 miles around the transmitter. Local ownership is required for the first two years and during that time, licensees cannot own any other low powered FM station. After two years, they are subject to a low national cap, thus assuring a wide dissemination of ownership. Where there are mutually exclusive applications, priority will be given to those with an established community presence who pledge to provide more local programming over a longer broadcast day. I believe that these requirements and restrictions will preserve the special characteristics of this broadcast service.

***Technical Interference***

One of the most important functions of the Federal Communications Commission is our stewardship of the electromagnetic spectrum. In establishing the FCC, Congress charged this agency with avoiding chaos on the airwaves. Thus, I take very seriously our responsibility not to permit degradation of the FM band.

Moreover, I have long held the view that full powered radio broadcasters should be afforded the opportunity to transition into the digital world. Thus, I insisted that proponents of in-band-on-channel ("IBOC") digital radio broadcast systems have a meaningful opportunity to comment on the impact of

low-power stations on such digital services *before* the record closed in this proceeding.

After an exhaustive review of the technical documentation in this record -- including the filings of those promoting digital IBOC radio systems -- I believe that the technical limitations we have imposed are adequate to protect existing full powered stations from undue interference from low-powered stations. In addition, the record suggests that elimination of third adjacent channel protection does not hamper the deployment of currently proposed IBOC digital radio systems.

The item puts to rest the possibility that we would entertain further reductions in protection through elimination of the second adjacent channel restriction. I feared that the mere mention of the possibility of future action could chill financial investment in the full-powered radio service. This would have a devastating impact --not on the major groups -- but rather, on the small and medium market independent stations which struggle daily to serve their communities. Many of these independent station and small group owners are women and minorities -- the very groups that are under-represented in the full power broadcast service.

Finally, the Bureau has assured me that the 20 km buffer zone is sufficient to ensure retention of audience reach if an FM station is forced to move from its existing tower to another tower, as is often the case when digital television stations commence service.

### *Conclusion*

The new low power FM service was carefully designed to emphasize its unique community benefits, while minimizing the possibility of undue interference with the existing full power FM service. I will be watching carefully whether our hopes and expectations are met as this service is deployed.

**In the Matter of Creation of Low Power Radio Service, MM Docket No. 99-25**  
**Report & Order**  
**Dissenting Statement of Commissioner Harold W. Furchtgott-Roth**

I am relieved that the Commission has not demolished first- and second-adjacent channel protections in this Report & Order. But I can not support, for the reasons set forth below, even the elimination of third-adjacent channel protections. Accordingly, I dissent from these new rules establishing "low power" radio licenses.

I originally dissented from the Notice of Proposed Rulemaking in this proceeding. *See* Notice of Proposed Rulemaking, Creation of a Low Power Radio Service, MM Docket No. 99-25 (Jan. 28, 1999). I did so because the Notice did not simply propose the creation of a new service within existing interference protection standards but went far beyond that, suggesting the elimination of third-, second- and even first-adjacent channel protections. As I explained, such action harms existing license holders and their listeners, while producing very little in the way of countervailing benefits. *See generally* Dissenting Statement of Commissioner Harold W. Furchtgott-Roth, *Notice of Proposed Rulemaking, Creation of a Low Power Radio Service*, 14 FCC Rcd 2471 (1999).

In the intervening twelve months, we have received many comments on this proposal, as well as engineering studies on the level of interference posed by the potential stations. Unfortunately, this entire proceeding has been marked by a rush to judgment. The Commission has simply not taken the time to do the right technical studies, the right way.

Even without studying the engineering studies in the record, we can be sure of one thing. As Commissioner Quello once noted, "it is axiomatic that for each new service introduced, interference to existing service is also introduced." Dissenting Statement of Commissioner James H. Quello, *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, 48 FR 29486, 29512 (1983) (BC Docket No. 80-90). This is true even for 100 watt stations dropped by eliminating "only" third adjacent channel protections. There are real costs -- to existing stations, their listeners, and to public perception of the quality of FM radio as a media service -- here that the Commission has not even attempted to quantify.

But let's consider what the Commission today has actually achieved in terms of benefits to place on the other side of the ledger. According to the NPRM in this proceeding, elimination of third adjacent channel protections for 100 watt stations will allow for the creation of *one* such station -- in Houston, Texas -- in the top five American cities. *No* such stations will be created in New York, Los Angeles, Chicago, Philadelphia, San Diego, Dallas, San Francisco, Washington, Charlotte, or Miami. So much for the goal of creating low power stations to serve urban communities; there will be precious few new licensees in urban markets.

To the contrary, the bulk of new licensees will be smaller markets. In many of these areas, full power stations likely could already be dropped in *without* changing third-adjacent channel standards at all. (At least, there is no indication of an effort on the part of the Commission even to consider such an alternative approach.) Given that there is little existing demand for additional full-power stations in

these markets, there is no evidence of commercial viability. Indeed, the evidence suggests that such stations are not capable of existence as going concerns.

Perhaps there *is* a demand for lower power noncommercial stations. Theoretically, however, any such actual demand could be met by the dispensation of licenses within our existing rules – *i.e.*, by giving out 101 watt licenses consistent with the 100 watt minimum requirement. See 47 C.F.R. section 73.211(a)(3).<sup>1</sup> Yet again, we receive few if any applications for 101 watt licenses, even in the noncommercial arena. Similarly, if somebody really wanted to operate a 50-watt station, they might file a request for waiver of the 100-watt minimum rule. As far as I can tell, though, no such waiver has ever been filed, again suggesting a lack of any real demand for such licenses. In short, there is no evidence in the behavior of license applicants that suggests any pent-up demand for the stations in question.

The Commission has also made clear its intent to create these stations for the use of church groups. See Report & Order at para. 5. Since the relevant regulatory classification now is noncommercial educational (“NCE”), the Commission would seem bound to apply its recently adopted “future guidance” on the meaning of “educational” programming to these religious entities.<sup>2</sup> That guidance would narrow the scope of religious programming that qualifies as educational for purposes of a valid NCE designation. I wonder whether these groups are aware – and how they will feel when they learn – that the broadcast of religious services may not count towards the required amount of educational programming that they must air in order to retain their licenses. See *In re Applications of WQED Pittsburgh and Cornerstone Television, Inc.* MM No. 99-393 (rel. Dec. 29, 1999).<sup>3</sup> I also wonder whether they are aware that under that decision they might be required to serve the needs of the “entire” community, rather than their “small, local” group, Report & Order at para. 17. So much for the goal of creating low power stations for use by churches and church groups.

And will the newly recreated Equal Employment Opportunity rules apply to low power stations with 5 or more employees? See 47 CFR section 73.2080(a) (applying rules to “*all* licensees or permittees of commercially owned or noncommercially operated AM, FM, TV or

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<sup>1</sup> Notably, the rationale for the 100-watt minimum was efficiency in spectrum distribution. It was thought inefficient, unwise, and unmanageable to license radio stations at operating powers any less than this. See 33 Fed Reg 7574. Today’s Order never comes to terms with the Commission’s clear statements about the need for the 100-watt floor.

<sup>2</sup> To be sure, the WQED Order involved television broadcast licenses, as opposed to radio broadcast licenses. But both sorts of licenses are categorized as “noncommercial educational.” I can see no non-arbitrary way to limit the decision on the meaning of the term “educational” to the television context, however. There is nothing about the nature of the media at issue – television versus radio – that could justify the use of two different definitions of the substantive adjective “educational.” Programming does not change its “educational” nature simply because it is received on a radio as opposed to a television.

<sup>3</sup> See also [http://www.fcc.gov/Bureaus/Mass\\_Media/Orders/1999/fcc99393.txt](http://www.fcc.gov/Bureaus/Mass_Media/Orders/1999/fcc99393.txt).

international broadcast stations') (emphasis added). Presumably they must, just as, for instance, the political programming rules do. The required outreach and paperwork for EEO alone, not to mention all other regulations, may prove overwhelming for the operators of low-power radio stations. If these duties are taken seriously by operators and enforced by the Commission, low power operators will spend more time attempting to figure out what Title 47 of the Code of Federal Regulations requires of them than they will spend broadcasting.

The net result of the foregoing is that there is very little evidence – in the form of applications for, say, 101 watt stations or waivers of the 10-watt minimum – indicative of current market demand for the stations now being created. Layered on top of the apparently low state of demand for these licenses today are the many regulations to which the stations will be subject. Any current demand for 100 and 10 watt stations will only be dampened by these regulatory burdens.

In short, the Commission has, at the expense of existing service quality, created: a handful of new stations in primarily non-urban areas; stations that may not meet their licensing requirements if they air religious programming; stations that may well be unlistenable by fixed listeners due to interference received from higher power stations; a threat to the development of digital radio services; a heavy regulatory scheme, including cross-ownership, political programming rules, and EEO outreach duties, to govern these very small operators; and more enforcement and administration burdens for the Commission. This is not a wise balance of interests. I therefore dissent



**STATEMENT OF COMMISSIONER MICHAEL K. POWELL,  
DISSENTING IN PART**

*Re: Report and Order - In the Matter of Creation of Low Power Radio Service  
(MM Docket 99-25)*

This item's goal is to create a class of radio stations "designed to serve very localized communities or underrepresented groups within communities." *Notice of Proposed Rulemaking*, MM Docket No. 99-25, 14 FCC Rcd 2471, 2473 (1999). Attempting to give greater voice to narrower interests is generally laudable and I support the objective. But, the question that gives me pause is what the cost is to existing stations that provide equally valuable service to their communities. Because this *Order* fails to give credence to this concern, I respectfully dissent in part.

I do not quibble with the Commission's objectives. Certainly, the extensive consolidation of radio stations into large commercial groups and the financial challenges of operating full power commercial stations have limited the broadcasting opportunities for highly localized interests. The introduction of a low power FM service may partially address this concern. However, to borrow from the teaching of the medical profession, when trying to treat a problem, we should "first do no harm."<sup>1</sup> There presently exist many small and independent stations across the country that are especially notable for their local focus. This admirable group includes a fair number of stations owned by minorities and women, as well as stations with smaller audiences and limited advertising. These stations have struggled to survive as independent voices against the rising tide of consolidation brought on by the economic stress of small scale production. It would be a perverse result, indeed, if these stations were to fail or the quality of locally originated programming suffer, because new LPFM stations diluted their already tenuous base of support.

There are two interrelated, yet distinct, threats to these small stations that stem from the new LPFM service: 1) signal interference and 2) erosion of economic viability. The first has garnered all the attention. The Commission has endeavored to minimize the dangers of interference in this item. It wrongly has ignored the second concern.<sup>2</sup> I have met with a number of small market broadcasters that tell me that when they raise concerns about the threat of LPFM to their economic viability they are bluntly rebuked—told that such considerations are of no import, that we are only concerned with spectrum efficiency and that we do not pick winners and losers. I, too, heard this line during our internal deliberations. I find the proposition absurd. We regularly consider the economic impacts of our actions on licensees. Just one example is the degree to which we have attempted to balance the need for consolidation to achieve economic efficiency against our goal to foster myriad diverse voices. Indeed,

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<sup>1</sup> Paraphrasing *Of the Epidemics*. Hippocrates. Translated by Francis Adams (found at <http://classics.mit.edu/Hippocrates/epidemics.1.i.html>).

<sup>2</sup> See Comments of John Haring and Harry M. Shooshan III "LPFM: The Threat to Consumer Welfare," *In re Creation of a Low Power Radio Service*, *Notice of Proposed Rulemaking*, MM Dkt No. 99-25 at 24. (Haring & Shooshan) contained in Comments of the National Association of Broadcasters, vol. I ("A station's economic scale of operations is affected both by technical parameters of the broadcast 'machine' it operates and the competitive economic environment in which it operates. The premise of the Commission's LPFM proposal is that the operative constraint on very 'narrowcast' broadcast operations is primarily technical. . . . That is a false premise: In today's operating environment, the constraint on narrowcast programming is primarily economic rather than technical.").

the Commission itself has recognized that the industry's ability to function in the public interest, convenience and necessity is fundamentally *premised on the industry's economic viability*.<sup>3</sup>

The introduction of the LPFM service is not simply a way to get greater use out of the spectrum, regardless of who gets the benefits. It is a policy choice to create stations that allow very small communal and parochial interests to find a voice. We are not agnostic as to whether they proliferate and prosper. Indeed, we have made special accommodations to suit our conception of this service, like eliminating the third adjacency protections normally imposed on FM broadcasters. Indeed, for years small broadcasters have tried to expand their services to the community by seeking more lenient interference restrictions, but to no avail. Similarly, we are minting a unique and distinct definition of "community" in order to facilitate the LPFM service. My view is to make such accommodations for this service, while putting our heads in the sand as to the economic impacts on existing stations is in fact, contrary to the assumption of some, picking winners and losers.

The threat to small independent broadcasters by the introduction of LPFM service is not trivial.<sup>4</sup> While the non-commercial educational LPFM stations will not be direct competitors for advertising dollars to existing commercial stations, they can threaten the economic health of these stations in meaningful ways. LPFM stations might very well siphon financial support away from small market stations. Local support that is presently coming to existing stations in the form of advertising might migrate to one or more LPFM stations in the form of underwriting.<sup>5</sup> Moreover, the presence of one or more LPFM stations will certainly dilute audience share, on which securing advertising dollars is based. I note, for example, that many of the *Order's* protections exist only within the "protected contour" of the existing FM station. We know, however, that many FM stations reach significant audience share outside that contour and garner significant financial support from these areas.<sup>6</sup> Finally, market dilution may make it difficult to secure financial support from lenders or investors.

The proponents of LPFM retort that the number of new stations will be few in a given market, and limited in their reach. Perhaps, in some markets this is true. But, the 41 new station possibilities in Elko, Nevada and Springerville, Arizona, or the 25 new station possibilities in Billings, Montana certainly are not trivial to the established stations in those small, rural markets. In all, the Bureau tells us that there is a possibility of around 1000 new LP100 stations (more if LP10 stations come into the market).

It is important to emphasize that an adverse impact on existing stations directly compromises the public interest. Locally originated programming that we favor is expensive to produce compared to the scale efficiencies of syndicated programming. The erosion of economic return, even slight in small markets, may adversely impact the quantity and quality of local programming, which is unlikely to be replaced by micro stations operating under even greater economic constraints. The link between local

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<sup>3</sup> See *In re* Revision of Radio Rules and Policies, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 7 FCC Rcd. 6387, 6389, para. at 11 (1992) (emphasis added).

<sup>4</sup> See generally, Haring & Shooshan (an economic analysis documenting the economic risks and possible loss to consumer welfare of the LPFM service).

<sup>5</sup> 47 U.S.C. § 399b, 47 U.S.C. § 541(e).

<sup>6</sup> It is true, that they do not enjoy protection from new full power stations outside their protected contours either, but new such stations would be hindered by the third adjacency spacing criteria and other limitations.

programming and economic efficiency is well-established. Former Commissioner Ervin S. Duggan stated it succinctly:

Broadcast stations that can't stay above water economically can't serve their communities. Broadcasters have always borne a fundamental obligation to provide service in the public interest. Most have borne that obligation quite well, despite occasional adversity. But the FCC and the nation cannot expect broadcasters to fulfill that obligation if the structure and economics of the industry don't permit it.<sup>7</sup>

The threat of compromising this maxim of the public interest should have compelled the Commission to fully consider the economic impact of its decision.

Are these threats minimal or serious? We are left to wonder, wait and see for the Commission has refused to seriously consider what might be the economic consequences. I fear that many small and independent stations will find this to be the straw that broke the camels back, or that last "wafer thin mint"<sup>8</sup> forcing them to sell out or cut back its local programming. The result would be a further decrease in independent and perhaps in minority and female ownership of full power stations that we so often bemoan. The lost community value, furthermore, would not simply be transferred to the new LPFM stations. Those stations may serve a very small piece of the overall community, but could not possibly make up for the greater service coverage of the lost full power station, nor the lost opportunity for a minority or women to share in the fruits of the broadcasting business.

#### Signal Interference

I must confess that I have no clear idea as to whether or not existing broadcasters will suffer intolerable interference. The engineering studies on the record reach very different conclusions. When carefully examined, however, one finds that the basic methodologies and analysis are consistent with each other. Where these studies differ, is what the various proponents believe is "acceptable" interference or degradation of service. This I find to be a relatively subjective judgment rather than an engineering one, colored by the self-interest of the various proponents. It is my practice in such a situation to defer to the conclusions of the Offices and Bureaus when not clearly persuaded otherwise. Thus, customarily, I would accept the staff's conclusion that third adjacency protection is unnecessary. I do have some hesitancy, however, because I note that by doing so, we diverge from protections we have insisted on—some say with unbending resolve—with respect to other FM services. Nonetheless, to resolve this lingering doubt I would have introduced the LPFM system another way than that we adopt here.

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<sup>7</sup> "Localism Tied to the Tracks?," remarks of Commissioner Ervin S. Duggan, FCC before the Mississippi Association of Broadcasters (June 27, 1992).

<sup>8</sup> To those unfamiliar with Monty Python, this line comes from the film *The Meaning of Life*. I will not describe the scene other than to say the phrase is spoken by a waiter urging a patron who has over-indulged to have just one last morsel, the infamous "wafer thin mint."

### A Better Way

On balance, I would have taken a different approach to introducing LPFM service. I believe in light of lingering concerns about signal interference and my pronounced concern about the economic impact of the new service we should have introduced this service gradually. It might begin with some experimental licensing in certain communities to assess the real world impact of signal interference. Subsequently, we could have fully introduced the service with third channel adjacency protections. This would have two benefits. First, it would minimize the risk of interference in a manner consistent with existing services and second, it would introduce substantially fewer stations into the market, thereby allowing us to evaluate the economic impacts of these new stations in these markets. Finally, if all went well, we could then move to full service with less adjacency protection, as warranted by our experience. Such an approach strikes me as prudent and preferable to the shotgun introduction which we let loose today.

### Conclusion

For the foregoing reasons, I dissent in part.

**SEPARATE STATEMENT OF COMMISSIONER GLORIA TRISTANI**

*Re: Creation of a Low Power Radio Service (MM 99-25)*

The radio business has undergone unprecedented and gargantuan consolidation over the past several years. Since the 1996 Telecommunications Act was passed, the number of radio station owners has decreased about 12% (and proposed mergers would reduce that number even further), even though the total number of stations has actually *increased* by almost 4%. As radio has become concentrated in fewer and fewer hands -- and as distant owners, national play lists and syndicated programming become more and more prevalent -- I've grown increasingly concerned about the effect of consolidation on localism and the diversity of voices on the public airwaves.

The new low power radio service we are adopting is a partial antidote to the negative effects of consolidation. It promotes localism and diversity not by limiting the rights of existing voices, but by adding new voices to the mix. Under the First Amendment, this is the best kind of response -- the answer is more speech, not less. The new low power service also comports with our statutory obligation to "[s]tudy new uses for radio . . . and generally encourage the larger and more effective use of radio in the public interest."<sup>1</sup>

The public response to the low power radio proposal has been enormous. We've heard from thousands of individuals, schools, churches, community groups and local government agencies who would like to use the public airwaves to serve their communities, but cannot under our existing rules. We've also heard from countless individuals who would like to hear more varied voices over the public airwaves. Providing an outlet for new voices to serve their communities is why I am proud to support this new service.

I have carefully considered the concerns of low power opponents who worry about undue interference in the FM band. Based upon the engineering data in the record, however, I am convinced that nothing we are adopting will jeopardize the technical integrity of the spectrum or the transition to digital radio.

I have also heard the concerns of broadcasters who worry that competition from low power broadcasters could make it harder for them to survive. I would respond as follows. First, we have made low power radio a noncommercial service, so there will be no direct competition for advertising dollars. Second, while I understand broadcasters' competitive concerns, and while many of them have served their communities with distinction over the years, I believe it is the Commission's duty to maximize competition wherever and whenever we can. That's why, for example, the Commission licensed satellite radio -- a potentially significant competitor to terrestrial radio set to debut commercially in the near future. It would be a dangerous precedent for the government ever to declare that there is "enough" competition in any market.

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<sup>1</sup> See Communications Act, Sec. 303(g).

Ultimately, however, the adoption of a new low power radio service has been driven by the scores of Americans who want to use the public airwaves to speak to their fellow citizens, and the scores of Americans who want to hear the additional diversity these speakers could provide. Under the conditions set forth in this Order, I can find no legitimate government interest in denying these citizens what they seek.