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MM 99-25

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December 16, 1999

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W., TW-A306  
Washington, D.C. 20554

Re: Ex Parte Presentation in MM Docket No. 99-25

Dear Ms. Salas:

Pursuant to the Commission's ex parte rules, 47 C.F.R. § 1.1206, representatives of the North Carolina Association of Broadcasters, Minority Members of the North Carolina Association of Broadcasters, and Non-Commercial Educational Members of the North Carolina Association of Broadcasters hereby submit this original letter and one copy disclosing that they met with Commissioner Ness, Commissioner Furchtgott-Roth, and Rick Chessen on December 13, 1999, concerning the matters involved in MM Docket No. 99-25, Creation of a Low Power Radio Service. The substance of the presentations covered subjects already presented in the parties' written comments in the docket which are summarized on the attached sheet. Individuals participating in the meetings were Wade Hargrove, Mark Prak, Jim Rouse, William Hollingsworth, Henry Hinton, Deborah Proctor, and Don Curtis.

Please contact the undersigned should any questions arise in connection with this matter.

Sincerely,

Mark J. Prak

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Enclosure

cc: Commissioner Ness (w/enc.)  
Commissioner Furchtgott-Roth (w/enc.)  
Rick Chessen (w/enc.)

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MM 99-25

The North Carolina Association of Broadcasters

Minority Members of the  
North Carolina Association of Broadcasters

Noncommercial Educational Radio Members  
of the North Carolina Association of Broadcasters

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**Why the Commission Should Abandon Its Proposal to  
Create a Low Power FM Service**

The substantive record evidence in MM Docket No. 99-25 demonstrates unequivocally that not only is LPFM not in the public interest but that implementation of the Commission's LPFM proposals will affirmatively *harm* the public interest. The stark reality of the FM spectrum simply provides no room for LPFM.

A comprehensive cost/benefit analysis reveals the following *costs*:

- (1) LPFM will result in a documented loss of existing service outside stations' protected contours. Customized Arbitron data establish that, on average, more than 4600 actual surveyed listeners reside outside the protected contours of small Class A stations. Nationwide, across all classes of full power FM stations, it is conservatively estimated that at least 35 million listeners could be cut off from their community broadcasters were LPFM implemented.
- (2) More than \$600 million in federal and state taxpayer investments in public radio infrastructure will be jeopardized by the Commission's LPFM proposals. In addition, service to the more than 9 million individuals who receive a public radio signal exclusively through a translator could be adversely affected by LPFM.
- (3) Receiver studies demonstrate that any implementation of LPFM will necessarily create new, objectionable interference to existing service, and, unequivocally, that neither the second nor the third adjacent channel interference protection standards can be reduced or eliminated. Nearly all receivers save automobile receivers—hundreds of millions of existing receivers—will suffer degraded performance from the increase in interference, and some large number, in the millions, in absolute terms, will actually fail to pick up any usable signal at all. The need to purchase new, more expensive receivers merely to continue to enjoy one's currently existing favorite radio stations is a regressive cost to the poor. In addition, the CEMA

Receiver Study showed that LPFM and IBOC DAB systems are mutually exclusive.

- (4) It is conservatively estimated that at least 3 million Americans who are blind or print-handicapped will lose existing radio reading services because of LPFM.
- (5) The Commission should not direct minorities, or *appear* to direct minorities, to what, by definition, will be a second-class service. The creation of a second-class service in which minority broadcasters may become “ghettoized” is, by itself, too high a price to pay for a superficial increase in diversity, notwithstanding the *additional* cost of LPFM occasioned by the loss of *existing* service already provided by minority broadcasters.
- (6) Community-oriented, small market radio may see its demise. Small market stations will be forced to cut staff, turn to satellite programming, sell out to group owners, or go off the air altogether. Moreover, economic analysis shows that the economic effects of LPFM will also be felt by consumers who will ultimately receive lower quality or less local programming.
- (7) Both USA Digital Radio and Lucent Digital Radio make it clear that elimination of third and second adjacent channel interference protection standards could jeopardize the implementation of IBOC DAB. Both essentially implore the Commission not to put the LPFM cart before the IBOC DAB horse. LPFM jeopardizes a decade of research and investment in the radio industry’s conversion to digital radio.
- (8) The Commission will face tremendous budgetary, staffing, and administrative difficulties, and it will be impossible to police LPFM efficiently or effectively. The Commission will simply not be able to police out-of-band emissions, excessive power, or the use of non-certified equipment. Nor will the Commission be able to keep up with the necessary ongoing administrative oversight of thousands of new LPFM stations seeking facility modifications, requests for Special Temporary Authority, changes in ownership, and the like.
- (9) Radio pirates will thrive as a consequence of LPFM. Many pirates are anarchists who reject outright the Commission’s authority to regulate the airwaves. FM broadcasting cannot withstand the onslaught of hundreds of pirate stations, whose chances of successfully evading Commission enforcement action will exponentially increase, camouflaged amidst the introduction of thousands of new LPFM stations, many operating outside technical compliance parameters and perhaps without regard to current second and third adjacent channel interference protections.

In contrast to these enormous costs, the purported “*benefits*” of LPFM amount to these:

- (A) The most significant purported “benefit” of LPFM is that it would bring new “voices” to the airwaves. But these “voices” are quite unquantified and indeterminate. As the North Carolina Association of Broadcasters noted in its opening comments, the 13,000 LPFM inquiries figure (“hits” on the Commission’s website) that the Commission cited in the *Notice* cannot stand as the proxy for these “voices,” and to suppose such a manipulable figure to be so is intellectually dishonest. As laudable as is the idea, in the abstract, of bringing new voices to the airwaves, the idea, unfortunately, founders in the real world of existing radio service. The Commission’s role as steward of the public’s airwaves should permit it to give but one answer to the question of new LPFM voices: The integrity of the FM spectrum simply cannot be compromised to accommodate LPFM.
- (B) The Amherst Alliance earnestly suggests that LPFM can help solve the problems of poverty and crime—although, it concedes, not “singlehandedly.” In this “politically correct” world, it is awfully hard to be against ameliorating crime and poverty, but, of course, all broadcasters are “corporate vultures,” or so the National Lawyers Guild asserts. Obviously, any causal link between the “benefits” of LPFM and reductions in crime and poverty can only be termed tenuous.
- (C) One real benefit of LPFM will be to promote the sales of expensive radios. Hundreds of millions of lower priced receivers will not perform adequately in the increased interference environment caused by LPFM. Indeed, the National Lawyers Guild advances this as an actual benefit:

If anything, creation of an LPFM service will provide an incentive for radio receiver manufacturers to *improve* the quality of lower-end radios. Such a side-effect would be beneficial to all. The NAB and other broadcasters have expressed a deep concern over the “interference environment.” Certainly a resulting increase in the quality of radio receivers can only benefit all parties involved.

Evidently, the NLG is not concerned with the regressive nature of the cost of purchasing new, more expensive analog radio receivers on the poor, who are also expected to buy new digital television and new digital radio receivers.

- (D) The last purported benefit of LPFM is that it would create jobs. It is unlikely there will be a net increase in radio industry jobs flowing from LPFM. First, by their nature, most LPFM stations would be staffed by volunteers. However, undoubtedly some LPFM stations would actually create real jobs, at least initially—that is, until they found that their coverage area is insufficient to support an advertising base. More importantly, as a

consequence of service losses, existing full-service broadcasters would be forced to cut back on staff or, worse, go off the air altogether, resulting in a loss of broadcast industry jobs. On the whole, a greater number of jobs in the broadcast industry are likely to be lost as a result of LPFM than gained.

Considering just the “benefits” of LPFM ought to be enough to convince any rational decisionmaker that the notion of creating a new low power FM broadcast service should be abandoned.

The cost/benefit calculus is simple. The North Carolina Association of Broadcasters, Minority Members of the North Carolina Association of Broadcasters, and Noncommercial Educational Radio Members of the North Carolina Association of Broadcasters respectfully request that the Commission terminate its LPFM proceeding.

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