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**REPLY COMMENTS
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C.
Cl. Docket No. 95-6**

The attached reply is in response to comments submitted to the FCC on March 27, 1995 by the San Bernardino Coalition fo Low Power FM Broadcasting. Also included is supporting documentation that lends proof to the need for the included proposal.

The San Bernardino Coalition for Low Power FM Broadcasting wishes reply to each individual comment in the discussion section of the attached comments and proposal. We encourage the FCC to review these documents, and reply to them before implementing their Notice of Apparent Liability fine schedule as a rule, and to give consideration to minor violations as defined in the subsequent documents, and to implement a new program for LPFM. Correspondence with the SBCLFM is welcomed at 1580 No. "D" Street, #6, San Bernardino, Ca., 92404 or by calling Mark Westwood at (909) 384-1940.

s/ Mark Westwood, SBCLPFM Chairmen

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Comments on FCC CI Docket No. 95-6 and
Low Power FM Registration Proposal

written and compiled by
Mark Westwood

for the
SAN BERNARDINO COALITION FOR LOW POWER FM BROADCASTING

submitted to the
Federal Communications Commission
United States of America

I. Introduction

This is a proposal to the Federal Communications Commission to establish a new, reasonable, low powered FM radio service that includes a simple registration program. This proposal also addresses FCC CI docket No. 95-6. The current scheme is vague and confusing to even FCC officials, and it is creating hardships for innocent members of the public through large unreasonable fines. This proposal, along with attached supporting documentation, seeks to bring light to the fact that the FCC does not currently and adequately address a workable LPFM¹ plan, and does not produce reasonable fines for minor violations. This document seeks to provide an intelligent, workable plan and solution to correct this situation. The FCC orders forfeitures against individuals and non-profit organizations on a scale used to impose harm and penalize large broadcasting firms, and does not provide a reasonable means for low power fm broadcast enthusiasts to abide by the law other than abstaining from broadcasts.

Often times, FCC fines and NAL's received are larger than those issued license holders because they have the opportunity to hold licenses in the first place.² The Notice of proposed rule making does not provide a service or program for unwitting and usually innocent minor violators who broadcast under part 15 rules.³ The FCC must address LPFM infractions and create a more reasonable scale of fines for low powered radio before it amends its policy regarding CI Docket No. 95-6. This proposal seeks to correct a situation whereby the FCC's rules, and current rule making proposal are overlooking the public and amateur radio

¹LPFM means low powered frequency modulation. As currently structured, FCC regulations prevent the licensing of any commercial FM station below 100 watts, and provide that no further licenses for non-commercial educational stations below 100 watts may be issued. 47 C.F.R. §§ 73.211 (a) 15.239 (a) 73.511. While the regulations permit certain unlicensed broadcasts, the maximum field strength of 250 mv @ 3 meters addressed is not tangible and barely measurable. Also see 47 C.F.R. § 15.239.

² See attachment #14. Att. per Roberts & Eckard, P.C., Attorneys at Law, Washington D.C. This document provides FCC Media release that shows the majority of fines issued to commercial license holders are consistently less than those received by minor violators who try and broadcast low powered FM signals under 10 watts via part 15. Also see attachments # 1, 2, 3, 7, & 13.

³ See list of attachments. Attachment # 31. FCC Notice of Proposed Rule Making.

enthusiasts, and denying 1st Amendment rights through the absence of a low powered service, and public safety net against large fines.

This document spells out the needs of the public regarding LPFM. It gives a recent history of three San Bernardino, CA. low-powered stations. This proposal is the result of a joint venture and thought process involving radio engineers, radio professionals, university and college educators, college scholars, clergy, elected public officials, and members of the general public. It has taken nearly three years, with many revisions, involving scores of citizens. The involvement of so many individuals clearly lends evidence to the need for a reasonable and accessible LPFM service, and the growing public intolerance towards the FCC's attitudes, and current policies, including the NAL fine schedule, and specifically public access to the public estate of radio.

This new LPFM service would be designed for non-profit organizations only. Such non-profit agencies would include schools, colleges, individual church congregations, hospitals, neighborhood committees, and chamber of commerce organizations. It would also be for public use at large resorts, airports or public transit terminals where the dissemination of specific public information such as parking availability is needed. It is designed as a legal safety net against large fines imposed on groups of people, or individuals, who may willfully and intentionally radiate an LPFM signal, but innocently misunderstand, or be misled by vague, complicated FCC rules and broadcasting laws. This LPFM policy is designed for the group of people who do not have vast resources for lawyers etc., yet may attempt to broadcast with all of the proper intentions, and still wind up becoming entangled in a web of complicated, subjective bureaucratic policy.⁴ In the discussion section of this document, just such a circumstance that includes two colleges and a church in San Bernardino, California will be addressed.⁵

Most importantly, it returns a small portion of the FM airwaves, a public estate, to the public.

It is also a guard against individuals who use the ambiguity of the FCC's rules and guidelines for copious broadcasting. It provides a system for the public to utilize.

This proposal seeks to provide an LPFM service, with registration that is simple to use by its participants, and easy to administer by radio's governing agency, the Federal Communications Commission. This service would be run at no further cost to the Federal Government using current resources already established.

II. Background

Although there has been a low powered TV service in existence for many years in the United States, a workable and reasonable low powered FM radio service under 100 watts does not exist. TV broadcasters have the ability to broadcast to a local specific region, while FM signals are designed for maximum coverage with no specialization in a geographic region. The current FCC broadcasting scheme for radio stations between 88-108 MHz states that no one shall broadcast a signal strength higher than 250mv at 3 meters. This part 15 rule leads people to try and measure about one-tenth of one watt -- the nearly impossible task of measuring the minuscule. The FCC, by its own admittance has determined that 250 mv. at 3

⁴ See list Attachment #17. FCC closes three local radio stations. FCC inspector Jim Zoulek in response to Sun Newspaper reporter; "They can remain off the air, or boost their power and apply for a license, he (Jim Zoulek) said."

⁵ See list of attachments. In particular, att.'s 9, 10, 13, 17, 18, 19, 20

meters is really only for telemetry,⁶ or for garage door openers, wireless microphones or anything that may emit a signal on the broadcast spectrum.

The current rules, unless interpreted through the mindset of individual Federal Communications Commission agents, are vague, and ambiguous, and serve as a double-edged sword carrying unreasonable fines toward any individual or group who may desire to broadcast a low powered FM signal. Depending on what FCC official, or field office with whom a citizen talks to, including the FCC's Washington DC headquarters, individual FCC agency opinions, and interpretations conflict.

Due to the ambiguity, and in reality non-existence, of an LPFM service, many law-abiding citizens are innocently turning into law breakers. From high school kids experimenting with electronics, to churches and colleges, everyone is vulnerable to huge fines due to the absence of an LPFM service. These fines are designed to impose harm on large broadcasting corporations, but spell financial ruin for an individual or non-profit organization who may attempt to broadcast.⁷

Three groups from San Bernardino, CA; San Bernardino Valley College, St. Aelred's Parish, and California State University San Bernardino received large NAL's for \$8,000.00.⁸ San Bernardino Valley College's Part 15 station had been on the air for nearly four and a half years, California State University's part 15 station had been on the air for three years and St. Aelred's part 15 station was on the air for one month, with a previous six months of careful testing. All parties involved believed that they were broadcasting within legal limits. In each case there were no complaints of interference from police, fire or any licensed broadcast entity⁹(many of whom were aware of the two college stations because they received college interns from their programs). In all cases, the citizens, groups, and schools took bold steps to abide by the law, and instead received heavy fines.

Canada has had a low powered FM provision at 5 watts for several years with virtually no problems in its service or execution. The FCC's main argument against low powered FM is that LPFM's would create chaos and clutter. The mere existence of the three San Bernardino LPFM's for several years without the FCC's knowledge, or any complaints of harmful interference, proves that these stations can exist efficiently and operate in the public interest.

Until January and February of 1994, these three LPFM's existed under the notion that they were operating legally. In St. Aelred's case, the FCC was notified prior to operation.¹⁰ No one at the FCC seemed to care about the three San Bernardino LPFM's existence, until the FCC inspector Jim Zoulek of the Cerritos office discovered their existence.¹¹ As of now, all three radio stations have

⁶ Telemetry refers to the operation of broadcast equipment via remote control, or, more definitively, any attached equipment by an electronic signal or by wire to a larger transmitter or device.

⁷ See attachment #31. FCC Notice of Proposed Rule Making.

⁸ See attachment #13. FCC NAL for \$8,000.00 received by St. Aelred's on 2/2/94.

⁹ The FCC discovered St. Aelred's Sarum Episcopal Church broadcast after an inquiry was made to the FCC regarding a published newspaper article. See att. 12, and 20.

¹⁰ See attachment #10. Documented proof via postal receipts of St. Aelred's inquiries and correspondence with the FCC prior to broadcast.

¹¹ In each case, the public was made fully aware of their existence through media publicity etc. In the case of St. Aelred's, the FCC was actually notified via

ceased operation until a legal means of broadcasting can be obtained. Over \$13,000.00 was levied by one inspector, Jim Zoulek against all three stations. These fines have been paid at great cost to the organizations involved without warning, or due process.

III. Discussion

Note: Although this proposal addresses FM radio only. It's applications can be applied to AM radio as well. In fact, the benefits of increased listenership on AM band, already suffering from diminished listener ship, are even greater. Of course a different set of power parameters would have to be developed, but the same administration techniques would prevail.

1. The FCC needs to provide a low powered FM service to the general public in order to provide better access to the public, the real owners of the 5th estate, the broadcast spectrum. The current FCC policy toward Low Power FM broadcasting is based on notion, and not fact, and is a rule that most commonly benefits large corporations with vast financial resources, and not the public. Therefore the current policy is not in the public service, and denies 1st Amendment Speech Rights.

1a. The FCC needs to provide a service for people who do not want to broadcast on the largest scale possible, but rather on a adequate, but effective small scale such as a neighborhood or school campus. The current FCC rules provide for about 200 feet of broadcast, and try to encompass these people under rules for telemetry under part 15 rules. This policy innocently traps people who do not correctly interpret, or utilize the current scheme of 250 mv @ 3 meters, or roughly 9 feet. Most neighborhoods and college campuses are roughly two miles in size, and a broadcast signal strength of 200 feet is entirely inadequate, serves no purpose and is suspiciously inexcusable.

2. The FCC's provision that the number of signals on the dial needs to be kept at a minimum to avoid "chaos and clutter" is addressed by this proposal, and supported by the fact that more efficient technology developed in recent years precludes harmful interference. It is important to note that such a low powered signal would only add to the "clutter" of the dial for approx. two miles

3. In recent years, the technology to broadcast LPFM's has become increasingly available to the public. Therefore the chances of innocent, law-abiding citizens accidentally violating the law through a willful and intentional broadcast has increased. The public needs the protection of a more clear, precise and structured program as to preclude further incidents. Because of this increased technology availability, a low powered service, registration program, along with an appropriate fine is called for.

4. The same NAL fine schedule, with its large fees meant to impose "hurt" on mega-corporations with super-fund backing, should not be applied to individuals or groups in the public that do not have the vast financial resources of these large broadcast entities. The FCC states that its fines are designed to impose hurt on those they are issuing NAL's. However, these fines spell destruction, not hurt on individuals, citizens or

registered mail and phone inquiries of St. Aelred's intentions. There is documented proof that that individual FCC officials have been confused, and have differing opinions on this issue. This proves the lack of a clearly defined policy.

groups who attempt to broadcast a LPFM in the current scheme. It is evident that mega corporations such as Infinity Broadcasting Inc. seem to wag their tongues in the face of such "harm." Therefore, an appropriate NAL fine schedule should also consider the size of the entity the FCC is dealing with, and its signal strength. An appropriate fine schedule should still employ willful intent, a sliding scale for cooperation and ability to pay, but should be set at a per cent basis of fully imposed fines for signals considered to be low powered. Signals 21 watts or above should be considered full powered. However, for unlicensed stations with an output of 20 watts down to 11 watts, these stations should receive a fine that would be 20% of the fine imposed on a full powered operation. Likewise, stations broadcasting at 10 watts or down to 6 watts, would receive a ten percent NAL or fine. Any unregistered station at 5 watts, or below, would receive 5% of the NAL fine figured in with the appropriate reductions if applicable. Of course, it is important to note, that the FCC should first issue a first time offense warning before waging NAL's or garnering large fines of any sort.

5. The notion that order concerning LPFM broadcasting is achieved by the current FCC policy is unfounded and misguided. The current policy serves to enable large "mega-corporate" broadcasting companies, while denying access to the public. No proof can be found that large corporations would be any more responsible than individual citizens, e.g. The FCC v. Infinity Broadcasting. Therefore, the FCC's policy is a notion, not a rule, and unfounded. A low powered FM service, as in Canada, of 5 watts or less should be installed immediately.

5a. The notion that order concerning LPFM is achieved through fewer signals is unfounded and misguided. The current policy enables huge signals while leaving out the possibility of small signals that easily fit into the cracks due to the FCC's current signal spacing requirements. It has been proven through the operations of three San Bernardino California LPFM's from early June of 1989 through February of 1994 that a properly designed LPFM causes no harmful interference, and can be of benefit to the community.

6. One of the chief purposes of government funding of the FCC is to facilitate broadcasting for informational purposes and for the public interest and service. The FCC should not intentionally or unintentionally stand in the way of citizens trying to use the FM band for what it was intended for. It is imperative in a healthy society that many thoughts, views, information, and opinions be heard in order to strengthen the collective. The current scheme provides for a large number of music based programming FM stations, in which a small percentage of community information and news is exchanged. Most information programming on larger FM's is intentionally scheduled in the early morning hours of Sunday morning, and not heard by the public. This is not in the public interest.

7. These proposed LPFM stations can provide a basis of FM radio communication from the public to the public, and can have a positive influence in the communities in which they reside. These stations are not only designed for their listeners, but can provide a great learning opportunity for those involved. LPFM's would not only benefit its listeners in the public, but its public participants as well, e.g. a neighborhood youth station run by a committee of adults with anti-gang and anti-drug messages.

8. LPFM levels the playing field for those organizations who wish to broadcast, but do not have the millions of dollars it takes to purchase a license, or build a higher powered station.

9. LPFM gives the opportunity of broadcasting to newer Colleges and Universities who may have been established as much, or as little

as ten years after the FM radio license boom of the late 1960's and early 1970's. These schools are often in crowded urban areas such as Southern California where current signal spacing does not allow for new licenses. Our Universities and Colleges are a breeding ground of new ideas and thoughts that directly benefit the public. LPFM would provide a further basis for the exchange of these thoughts.

10. The FCC should correct the current issues of LPFM, not the courts. It can be projected that the current policy could cost the taxpayers millions of dollars in legal fees. In a recent decision by a 9th District Federal Court Case, The US/FCC v. Stephen Dunifer, Ninth District Court Judge Claudia Wilken ruled that the FCC has failed to address freedom of speech issues and substantiate harm.¹² In this action the judge stayed an injunction against the FCC by Dunifer. Stephen Dunifer's case, and its cost could have been avoided by a low powered program. The FCC should not pursue a policy of approaching each case individually in the courts costing the taxpayers millions of dollars in legal and court fees annually. The absence of a low powered service is irresponsible fiscally, and makes the FCC vulnerable to legal suits at taxpayers expense. Pursuing this proposed policy will preclude further fiscal harm upon the taxpayers regarding this issue.

12. This new service and program would only enhance FM radio listenership through increased participation by the public. The current program scheme inarguably of the majority of FM broadcasters is a musical jukebox style of "Hit after hit," "The most music." "Less stopless Music." "More Music back to back," etc., etc., and little actual programming content. For FM music stations in Southern California, the overwhelming program choice of these stations is a jukebox style and presentation of music. Few even provide five minutes of news and weather on an hourly basis. LPFM can provide a larger presentation of community based and more localized news and issues.

13. It has long been the topic of discussion in several industry periodicals that the public is becoming less and less interested with the FM band, tuning out and listening to their CD's and cassettes in both the car and at home. One of the chief reasons listed, is that there is a gradual, but growing trend of disinterest and dissatisfaction by the public for FM radio because of little chance of participation. In the cases of the three San Bernardino LPFM's citizens took strident steps to tune in and receive their signals. Hence they also tuned back on to the FM band.

14. The Information Super highway or Internet could obsolete FM radio if the FM band is not made more accessible to the public. It should be recognized that radio, is a two way medium: of communication, and it is primarily a companion medium. To most, companionship is achieved through active participation, not passive listenership. A good example is the growing use and love affair with Internet, it is because Internet allows active participation. Internet has the capabilities of music service, and a radio station style of communication. This alone is the primary and most serious threat to FM radio broadcasters ever, and action must be taken as soon as possible.

15. It should be recognized that due to the large debt loads created by the unrealistic burgeoning values of radio licenses, that commercial broadcasters with larger signals must primarily be concerned with broadcasting programming towards the lowest

¹² FCC v. Dunnifer is further discussed in the attachment section of this document. A copy of the actual court document, the staying of the injunction is attached and listed as attachemt #10.

common denominator. LCD broadcasting allows for little participation by the individual listener in order to maintain the biggest audience possible. It is this double-edged sword that may be the undoing of radio itself, unless the airwaves, or in at least part, are returned to the public. LPFM's can provide more specific programming, and public participation.

16. This program is designed for non-commercial uses, and for non-profit organizations only. It is designed to bring people together into groups for community action etc. It is not designed for individual citizen use. This is a proposal to provide a low maintenance, Low Powered FM registration, program, along with reasonable signal strength as to not interfere with licensed signals, and again make the "5th Estate," a public estate. This proposal also provides for reasonable fines.

17. LPFM's can exist without harmful interference, and a program should be provided by the FCC. The FCC has been derelict in it's duty to the public in the issue of LPFM's. The FCC has taken away access to the public, and its 1st Amendment rights, through its notion of order, which serves only mega-corporate control, and not the public. The rules and interpretation, as well as the implementation of NAL's are viewed by the public to be arbitrary, unclear, and subjective. For example, St. Aelred's was inspected on Jan. 7, 1994, and turned off. The FCC waited the inspection of the other two operations, and NAL issuance a full month, after complete knowledge of the existence of CSUSB and SBVC. FCC inspector Jim Zoulek did not fine or inspect SBVC or CSUSB until Feb. 2nd and 3rd--thus giving them another full month of operation. Furthermore inspector Jim Zoulek misled the local media as to these dates. The NAL documents themselves provide proof of this.

18. A registration program that protects the public from large fines, along with a first-time warning system is immediately needed. It should precludes the large amounts of money, and the painstaking process of obtaining a commercial or educational license for those who do not want to broadcast on a large scale, and is essential to adding order. A program that is simple, such as a registration service would be less overwhelming and encourage wider participation. A registration program would also be far less complicated, with little or no cost to administer. Please see the proposal section of this document.

18a. A registration service, not a licensing service is more appropriate because many of these stations already exist in some form. A registration program would bring these LPFM's into the system and into proper alignment. In addition, it would generate revenue. Registration instead of licensing would preclude large and costly engineering studies, as well as costly licensing and application procedures.

18b. A registration service, not a licensing service is more appropriate because it would save the taxpaying public from costly hearings, and would not increase the burden on the FCC because of such hearings. A registration service would also preclude hearings and the costly procedure of issuing NAL's by field offices, and the ensuing legal battles that already take place due to the current scheme, thus saving the taxpayers money being currently spent on such.

19. Due to the unfair handling of the three LPFM radio stations in San Bernardino, the unfair and unreasonable NAL's and fines levied upon them, including the cost of defense, and the actual building of the stations themselves, and whereas there is no evidence of any harmful interference, and until the FCC can come up with a fair and applicable NAL and LPFM policy, San Bernardino

Valley College, St. Aelred's Church, and California State University San Bernardino should be granted an emergency waiver to resume broadcasting at 5 watts under the FCC's experimental program.

20. This new LPFM policy is good public policy. It makes the FCC an advocate of the public instead of the commonly perceived adversary. It generates a better attitude, and friendlier cooperation in part by all parties involved. It is a more efficient system, through better communication and availability. Implementation of this program would also show the taxpayers the FCC is concerned with saving money in court actions, and erred applications and costs of NAL's.

IV. Proposal

The following is a list of suggestions for an LPFM registration program compiled by Mark Westwood, and The San Bernardino Coalition for Low Powered Broadcasting, and a consensus of its members. The contents of this proposal have also come into existence through consultation with members from California State University San Bernardino, San Bernardino Valley College, and St. Aelred's Parish. It has the support of many members of the community including educators, elected public officials, clergy, radio engineers and professionals.

Note: This program uses local, full powered licensed stations called LPFM mentor stations for better dissemination of information, and to ease any administrative burdens, and added cost to the FCC. The FCC would set the rules, and enforce them when necessary. The LPFM Mentor stations would not determine who could broadcast, but how to broadcast an LPFM. In exchange, the LPFM Mentor Station would receive community service credit, and part of the registration fees collected from the LPFM candidates. LPFM mentor stations would be determined on a first come, first served voluntary basis, or the local lead EBS station could provide the needed information, registration form, and collect the fees.

1. All participants must register their LPFM's through a designated full powered radio station in the community called an LPFM Mentor station. The LPFM mentor station must be licensed to the community involved. Designated stations would be stations who already receive funds from the emergency broadcast service, or they can be volunteer stations in exchange for community service credit.

1a. The only duty and responsibility of a designated LPFM mentor station is to provide information (given to them by the FCC in the form of rules and guidelines), and the proper registration forms.

1b. Licensed full power stations can become mentor stations by writing the FCC and volunteering on a first come, first served basis. If no station volunteers, the local lead EBS station is automatically the LPFM mentor station.

2. This registration is not a license. However registration would serve to act as a reservation for that frequency, and no other LPFM station would then be allowed to

broadcast within a one mile radius, or be allowed to cause any interference to an already registered station.

2a. A short mission statement must be attached to the registration form to determine the purpose, and who is broadcasting. This mission statement will also serve as proof that the broadcast is not copious in nature.

3. The registration is valid only on a first come first served basis, as designated by a fully completed form with a US postal service postmark. A receipt of registration fee payment from the mentor station must be included with the registration form. This registration serves as a reservation, not a license.

4. A registration fee of \$100.00 must be paid to the mentor station. The MENTOR station must send 50% of all individual LPFM registration fees to the FCC Acct. Number.(.....). A receipt of payment must be issued to the LPFM by the mentor station.

5. LPFM registration fees must be paid annually on the anniversary of the date of broadcast. If the fees are more than thirty days past due, registrations are automatically revoked, and the frequency becomes available for re-registration.

6. All LPFM's receive a first time warning regardless of registration status.

7. All fines and fees apply to violations on 2nd offenses according to the current FCC NAL fine schedule.

8. All Equipment must be type accepted. All non type accepted equipment must go through the equipment authorization program, with the exception of the antenna. There are no limits to coax length. The coax must not be leaky. Industry or consumer kit built equipment is acceptable if a prototype has gone through the type acceptance program. Equipment used in part 73 is acceptable and suggested.

9. FM stations must operate in the band of 88-108 MHz. A station must not locate within 4 MHz of an already licensed broadcast station in the community they are based in. This also applies to radio stations in communities that have a common border, but may not be licensed to the community that the LPFM is locating in.

10. These LPFM's would not be for commercial broadcasting, such as radio stations that would sell advertising and broadcast commercials.¹³

10a. Full powered licensed broadcast entities may not operate an LPFM. No more than two LPFM's may be operated in the same community by the same organization or group already broadcasting an LPFM in that community.

10b. An LPFM must not be operated by an individual. LPFM's are for non-profit organizations such as schools, small congregations and parishes, hospitals, transit terminals, chamber of commerce organizations, resorts, camps, or neighborhood committees of no less than seven non related heads of households.

¹³ These radio stations would be allowed to do on air fundraising for their own support in the manner that is already allow stations in the spectrum from 88.1 to 91.9 FM.

10c. These registrations are not transferable, and may not be sold. An LPFM registration permit must be surrendered in writing if the LPFM ceases to operate.

10d. LPFM registrations and reservations are considered to be invalid if the annual fee is more than 90 days overdue, or if by witness of the local LPFM Mentor Station, there has been no broadcast, and no response to any attempts of communications via registered mail, for 90 days. The frequency then becomes available again on a first come first served basis.

11. An LPFM station must not cause harmful interference to any already licensed, full powered, broadcast radio station, and must accept interference caused by a licensed broadcast station. If interference on the part of the LPFM occurs, the LPFM must cease operating immediately.

12. An appropriate frequency should be picked by using a receiver at the center, and at all distal points of the proposed coverage. No stereo pilot light should be visible. Full quieting is optimum, but the least signal noise is the best desirable choice. An LPFM may not block any distinguishable licensed FM signal from being heard.

12a. There is no limit to antenna height or coax length as long as no harmful interference occurs.

13. The LPFM must not broadcast more than 5 watts at 5 meters. The minimum amount of power should be used to cover a two mile radius while still providing a strong continuous signal that is able to be received by an average stereo automobile radio receiver. There should be evidence of significant signal attenuation at 2.5 miles, with sufficient signal loss as to produce an undesirable listening situation at 3 miles, and no signal present at a 3.5 to 4 miles radius.

13a. The bandwidth of the transmission should be within 100 KHz on the chosen frequency, and no more than 200 KHz on that frequency.

13b. LPFM operators and candidates are encouraged to have their signal strength and frequencies measured by an independent firm using a field intensity meter and frequency counter as they are responsible for these requirements. The LPFM mentor station may be able to provide to such information, and is encouraged to provide the name and phone number of the company they use.

14. All registered LPFM stations are bound by all laws pertaining to full-powered stations concerning the monitoring of power levels, programming and public service and community files. They shall operate as licensed stations, keeping the appropriate logs etc. It is not necessary for an LPFM to continuously program or run its carrier signal, however, when there is no programming, the transmitter must be turned off.

14a. The LPFM must identify itself as a "niche or neighborhood radio station" every three hours. This identification must include a name such as "Niche Radio," or "Health Radio," etc., then the words "Neighborhood Radio," and the exact frequency and the organization who is running it-- e.g. "Health Radio, a niche station, 98.3 FM, Humana Hospital, Village City. The LPFM must never use call letters.

15. LPFM stations are considered broadcast entities when their carriers are switched on. They must be able to switch them off with a single switch at a moments notice. When the carrier is on there must be a responsible person in charge over the age of 21 years at the point of transmission.

15a. All radiators must have a copy of the LPFM registration form attached, as well as a responsible contact person's emergency phone number and address visible on site to local law enforcement and civil authorities, LPFM Mentor stations, and FCC officers.

16. In the event of a local disaster, emergency, or EBS event, excluding EBS tests, the LPFM must immediately cease operations. The LPFM must cease operation at the request of local law enforcement or civil authorities due to civil tumult, or copious broadcasts.

17. A registration may be revoked at any time as so deemed by the FCC if the LPFM acts in a consistently irresponsible manner, or is a repeat offender. Irresponsibility is defined as a sum number of three offenses during the registration period, or three like offenses repeated annually in a three year registration period.

V. Cost

The cost of this program would be covered by registration fees of its participants. These fees would more than cover any cost of forms processing or new forms distribution or production.

A tremendous savings in future anticipated litigation, and legal fees incurred on the FCC because the current scheme is easily challengable in the courts. Although any cost incurred by this registration service would be covered through fees, the total cost is minuscule compared to the cost of litigation and attorney fees, along with legal and court fees.

VI. Administration

The administration of this registration program would primarily take place on the local level, with the direction of the FCC. The FCC would not be involved with these LPFM's on a micro level. No large administration scheme need be employed.

The FCC's part in this registration program would only be clerical, and that of record keeping. Local field inspectors would not need to make field inspections unless there is a complaint of signal interference that has not been identified as being corrected. Because this registration service actually adds order and organization to a currently unordered scheme, it would cut the unnecessary use of time, and money wasted through issuing improper NAL's to these stations already in existence, or to stations that may come on to the scene in the future. Because this registration service has a one time warning system automatically built in, time spent issuing NALs would also be greatly reduced.

This program would be activated by a local already licensed volunteer station called an LPFM Mentor Station, or the lead EBS station. If no volunteer station is available, the closest lead EBS station in the community where the LPFM is to operate would be charged with this duty. In exchange for becoming "a friend of the public," a volunteer LPFM mentor station, or lead EBS station would be able to

file their mentor status as already required community service, in their public file, and be able to cut public information programming by one-third.

These LPFM mentor stations would receive 50% of the \$100.00 registration fee. In exchange the larger mentor station would be charged with the distribution of registration forms to an LPFM candidate photocopied from an original. The cost of printing original forms and distribution of these forms could be drastically reduced by making the forms and information, and requirements available on Internet. The mentor station or the LPFM candidate would then be able to access them by downloading them from the Internet. This system would make the forms and information more easily available, and be the most efficient fiscally.

These LPFM mentor stations would act as a liaison between the FCC and the LPFM's. They would provide information and counseling to LPFM candidates through a pre-printed information packet (generated as detailed above), that includes information forms, and a small short registration form.. They would direct these LPFM candidates, and keep a record of their location, and who is operating them. They would also serve as witness if required to, as to if the registered station is actually broadcasting on a regular basis, or if they have abandoned their frequency reservation.

The LPFM mentor station would collect the \$100.00 registration fee, or renewal on an annual basis, and forward the FCC's portion of fines made payable to account number (.....).

An LPFM mentor station must keep record via the LPFM's registration form in their public file.

VII. Conclusion

1. No FCC Notice of Apparent Liability fine or fee schedule should be considered until the situation of how to incorporate minor violations (5 watts or below) on the FM dial, and a reasonable and just LPFM service can be employed.
2. The FCC should amend its policy and procedure to include a first time warning, that includes information on how to conform to the laws and rules being violated before issuing fines or NAL's.
3. Due to the circumstances of the three San Bernardino low-powered FM radio stations, the money already spent, the damages incurred, the improper handling of the situation by the San Diego and Cerritos Field Offices, and the as of current vague and ambiguous rules regarding part 15, and until the FCC can adjust this situation in a proper way, St. Aelred's Parish, San Bernardino Valley College, and California State University San Bernardino should be granted an emergency waiver, and allowed to resume broadcasting at 5 watts without fine or penalty until further notice.
4. The FCC should provide a low powered service for those who do not want to broadcast on a larger scale. Therefore, the FCC should adopt

either all or in part, the proposed registration policy of the San Bernardino Coalition for Low Powered FM Broadcasting.

4a. If it is beyond the scale of the reviewing panel, or commission to adopt this policy, the FCC should demonstrate public service by providing information on how this proposal can be reviewed by the FCC, the public and also be implemented.

4b. If the FCC stands that this proposal would create an unordered situation through technical chaos and clutter, it should show proof that 1) somehow the public would be less responsible than the mega-corporations that now control the public's fifth estate, the airwaves, and 2) that the three San Bernardino Low Powered FM's, or one of the like them have or would cause harmful interference. This proof should include documented complaints received prior to January 7, 1994. Please note that an inquiry, or innocent exchange or information should not be construed as complaint.

5. Due to the fact that in July 1994, a Federal Court found that the FCC issued its NAL fine schedule as a rule without public comment, it is clear that the NAL's and fine amounts were issued improperly against the three San Bernardino Low Powered FM's, as well as the United States Telephone Association. The FCC must review how these small low powered FM's should be held more liable than the U.S.T.A, a large corporation. The FCC should make restitution and refund the NAL fines imposed for \$8000.00 on the Student Activity Fund of California State University San Bernardino, and \$5200.00 should be refunded to the telecommunications Department at San Bernardino Valley College. In addition, the NAL for \$0.00 on record against St. Aelred's Parish in San Bernardino should voided.

6. The FCC should notify directly St. Aelred's Parish, San Bernardino Valley College, and California State University San Bernardino of its decisions, or future actions to be pursued such as public hearings etc.

These comments and the included proposal were prepared by Mark Westwood for the San Bernardino Coalition for Low Powered FM Broadcasting. The contents are true and correct to the best of the preparers knowledge. Any questions or replies may be sent to The San Bernardino Coalition for Low Powered FM Broadcasting, 1580 No. "D" Street #6, San Bernardino, Ca. 92404.

S/ Mark Westwood

(proposed registration form)
Federal Communications Commission
Low Powered FM Radio Station Registration
(5 watts or under)
THIS IS NOT A LICENSE

US POSTAL SEAL

LATITUDE LONGITUDE
(from nearest post office)

FCC SEAL

FREQUENCY _____ FM

City & State of
Broadcast Station _____ PHONE _____

Location of
Transmitter _____
(Address or nearest crossroads)

Organization _____

Address _____
(city, state, and zip code)

MENTOR STATION _____
(CALL LETTERS) (FREQUENCY) (CITY OF LICENSE)

CLOSEST STATION ON
SAME FREQUENCY _____
(CALL LETTERS) (FREQUENCY)

A MISSION STATEMENT MUST BE ATTACHED TO THIS FORM THAT STATES WHO AND WHAT YOUR ORGANIZATION DOES OR SERVES, AND WHY YOU INTEND TO BROADCAST. THIS STATEMENT MUST CONTAIN THE NAMES, ADDRESSES AND PHONE NUMBERS OF AT LEAST FOUR RESPONSIBLE PARTIES.

ATTACH A LIST OF ALL EQUIPMENT USED INCLUDING MODEL, SERIAL NUMBER, ALONG WITH EQUIPMENT AUTHORIZATION NUMBER, OR A STATEMENT OF TYPE ACCEPTANCE.

THIS REGISTRATION IS GOOD FOR ONE YEAR FROM THE DATE OF THE POST MARK, AND MUST BE RENEWED ANNUALLY. IT MAY BE REVOKED FOR IMPROPER CONDUCT.

DECLARATION OF PREPARER. The foregoing information is true and correct to the best of my knowledge. I have received a copy of the FCC's LPFM rules and understand them. My organization agrees to abide by all of the rules in order to participate in this program.

As my groups spokesman, we hereby agree to cease broadcasting if harmful interference is incurred. We agree to accept any interference from a licensed station.

X

DATE _____

LIST OF ATTACHMENTS

3/2/95

1. Newspaper article; (Los Angeles Times). February 2, 1995, by Alexander Cockburn. Article details U.S District Court Case of the FCC v. Stephen Dunifer. Landmark decision by Federal Judge Claudia Wilken on the matter of "neighborhood broadcasting" or Low Power FM Broadcasting. "The reason for restriction has always been chaos." v. "The FCC's notion of order has always been mega-corporate control." Discussion of First Amendment violations as well as the FCC dereliction of duty regarding low power FM.

2. Copy of Official United States District Court Document. Memorandum and order denying plaintiff's motion for preliminary injunction and staying action. U.S & FCC, plaintiff v. Stephen Paul Dunifer, defendant. CS. No. C 94-03542 CW. Defendant is operator of "Free Radio Berkeley" which broadcasts at low power without a license from various locations in the Berkeley Hills and Albany. Defendant can not obtain a license to broadcast because the FCC's regulatory scheme does not allow for licensing of "micro-broadcasting" (ten watts or lower). Defendant criticizes the FCC's refusal to license micro-radio.¹ Defendant argues that by completely prohibiting micro-radio broadcasts, the current FCC regulatory scheme deprives the prospective broadcasters and their licenses of access to the public airwaves in violation of the First Amendment. Defendant argues that micro radio broadcasting can be permitted without the risk of signal interference. (new and improved technology provides for such).² Defendant cites Canadian law which licenses low power FM broadcasters. Conclusion: The Government has so far failed to address constitutional issues in the FCC forfeiture actions and has inadequately addressed them in arguments before the court. While there may be serious questions as to the merits, on the present record, the court does not find that the balance of harm tips sharply in favor of the FCC. Present action is stayed. At the present time Dunifer is on the air broadcasting, the FCC has taken no further action. Stephen Dunifer can be reached on internet at FRBSPD@CRL.COM or pH. (510)644-3779.

3. Radio Industry Newspaper Article: (Radio World) "Courts Will Decide Future of LPFM", December 8, 1993, by Harold Hallikainen. Article refers to the case of William Leigh Dougan (operator unlicensed station KAPW-FM, Phoenix) v. FCC. Author, Harold Hallikainen is president of Hallikainen and Friends a leading manufacturer of transmitter control and telemetry systems. He also teaches electronics at Cuesta Community College, San Luis Obispo. He can be reached at (805)-541-0200. Internet address: ap621@cleveland.freenet.edu.

¹As currently structured, FCC regulations prevent licensing of any commercial FM stations below 100 watts, and provide that no further licenses for non-commercial education stations below 100 watts may be issued. 47 C.F.R. §§ 73.211 (a) , 73.511 (a), 15.239 (a). While the regulations permit certain unlicensed broadcasts, the maximum field strength permitted for such broadcasts precludes reception beyond a 2-block radius. 47 C.F.R § 15.239 (b)

² The FCC currently and for many years has had a program for low power TV broadcasts.. but no such provision for low power radio broadcasts.

In the article, Hallikainen reports that Dougan asserts; "The existence of a license-free, low power broadcast service (by the FCC) would have precluded the need for this conflict." He also criticizes the appeals process to FCC Fines. At the present time, Dougan's fine has not been imposed, and he is on the air broadcasting. The FCC has taken no further action.

4. Original draft of proposal to build a low power fm radio station at California State University San Bernardino. Submitted March 3, 1991. Compiled by California State University San Bernardino Associate Professor Dr. Robert McKenzie, and senior communications student Mark Westwood. Mark Westwood has been a radio broadcaster for ten years. Proposal presented to college faculty and administration on the college's "Media Commission." Document provides proof that well educated, law abiding citizens can be, and are misled by ambiguous rules and regulations. California State University S.B was fined \$8000.00 without warning. Two other low power FM's with similar circumstances also received NAL's from the FCC for \$8000.00 in the same time period. The FCC has consistently demonstrated that they do not give warning regardless of intent or proof of harmful interference. At present time CSUSB'S radio station, KSSB, is no longer on the air. The fine was taken from student activity funds. CSUSB has conducted at least two separate frequency searches for a licensed higher powered radio station. No attempts have been successful. The local cable companies refuse to provide spectrum space on their cable lines for FM cablecasting. California State University Radio Faculty advisor: Brad Lemond (909) 880-5000 or Coyote Radio at (909) 880-KSSB.

5. Newspaper article: (Coyote Chronicle), prior to April 21, 1991. Coyote Chronicle is California State University San Bernardino's school newspaper. Article demonstrates school's intention to broadcast within the law, and at such a power that would only cover a one mile radius, and was conscious not to cause any harmful interference.³

In fact both KSSB, at CSUSB and another LPFM at San Bernardino Valley College have a respective three year history of low power, unlicensed broadcasting. There was never a complaint of harmful interference. The absence of knowledge of their existence by the FCC demonstrate that there is spectrum space for low power broadcasting. Furthermore, they did not create chaos as the FCC contends in the Dunifer case, but added to the community and public welfare.

6. Newspaper Article: (The San Bernardino County Sun). April 18, 1991. Article published further enforces above listed article in the Coyote Chronicle. It further makes knowledge public of California State University's intention to broadcast. It is proof that the broadcast was not meant to be seditious or as a means of pirating the airwaves. Since the Sun is one of the main sources

³ KSSB 106.3 low power FM broadcast from April 21, 1991 to February 1, 1994, two months short of 3 years. There was never any complaint of harmful interference from a licensed broadcast station or citizen. The FCC maintains that it does not investigate broadcasts until there is a complaint. The FCC contends that it received a complaint from St. Aelred's Church. St. Aelred's staunchly denies any complaint. It appears that the FCC uses the innocent exchange of information as a representation of complaint.

of local news in San Bernardino, it is widely read by many local broadcasters. There was never one complaint of interference from any local licensed radio station about KJRP, KSSB, or Pride Radio. In fact the area's radio stations received a considerable amount of unpaid interns from these radio stations, and were well aware of their existence.

7. Newspaper Article: (The Weekly Chronicle).⁴ California State University's school newspaper. March 9, 1994. Article demonstrates the effects of the FCC's irresponsible actions against Coyote Radio. It also demonstrates that the FCC misled or did not make clear their actions even during the inspection. Paul Oei, an FCC engineer, who inspected Cuss's operation denies in the article that they requested the station to stop broadcasting. As if to imply that the school would be fined until they do so, but they don't have to go off the air. Once again, this is proof that they FCC practices shell games, double -talk, and vagueness when it comes to this area of broadcasting. The FCC continues to provide proof that they do not operate in the interest of the public and are derelict of duty in this issue.

8. Pride Radio Promotional Flier. Created some time before June of 1993. The flier demonstrates St. Aelred's, the owner of Pride 102.5 FM's, intention to make public it's broadcasts, and the fact the broadcasts were thought to be legal through research and the knowledge of the other LPFM broadcasts in the area. Pride radio never meant to be seditious, or pirate.⁵ The wording of the flyer and programming that it sought to promote, indicate that St. Aelred's was interested community radio, and the issues concerning it.

9. Correspondence between Mark Westwood and Jim Lyons, District Engineer, Field Operations Bureau of the FCC in San Diego, Ca. November 16, 1993. The Communication was on behalf of St. Aelred's and Pride 102.5 FM. Once again, it is made clear that innocent citizens, were taking strident steps to conform to the law, and still became victims due to the poor attitude of the FCC. Also attached to this letter was a complete description of Pride Radio's operation, and research and steps taken to abide by the rules. The FCC never investigated Pride Radio's operation as a result of this correspondence. Attached to the next document is a copy of a registered mail receipt from the US Postal service that proves that correspondence actually took place on November 18, 1993. Pride radio received response on these issues from the FCC in the form of photocopied rules from the FCC guidebook. Proof of this correspondence is evidenced by a postmarked envelope also attached on the same sheet as att.#10. Previous phone conversations with "Mr. Zouler,"⁶ of the Cerritos Field Office and

⁴ The name of CSUSB's school newspaper was changed from the Coyote Chronicle to the Weekly Chronicle during the 1992 school year. The two names are one in the same, and are not meant to imply that the college is served by two school newspapers.

⁵ Because of engineering delays, Pride Radio 102.5 FM did not begin regular broadcasting until after November of 1993.

⁶ A field agent by the name of Mr. Zouler does not exist at the Cerritos FCC office. However, there is a Mr. Jim Zoulek, and he is the chief engineer in charge. Mr. Zouler made it quite clear that Pride Radio fell under the jurisdiction of the San Diego office even though it was quite clear that Pride Radio was in San Bernardino.--Clearly under the Cerritos jurisdiction. Mr. Lyon's never questioned

referral by "Mr. Zouler," to Mr. Jim Lyons of the San Diego Field Office did not generate any question or concern of illegal activity on behalf of Pride Radio. The only chief concern of Mr. Lyons was that the equipment was "type-accepted." It seems apparent that only one of two factors existed at this point: Was the FCC itself confused on this issue? or did the FCC intentionally mislead Mark Westwood or Pride Radio?

10. Documentation and proof via postal receipts of correspondence with the FCC. Also attached a copy of the FCC Rules and Regulations regarding low power broadcasting. In particular page 571 of the 10-1-92 edition of the FCC rules and guidebook, § 15.239 (a),(b),(c), "Operation in the band 88-108 MHz," seems to indicate a low power program. However the power is so low that it is (1) not easily measurable⁷, thus ineffective, and non-existent. (2) § 15.239 (d) makes a general reference to telemetry (remote control devices) used for experimental purposes and education--not for low power FM broadcasts. Yet further on in this same rule, it is indicated how to comply with the rules in order to broadcast on 88-108 MHz, the band clearly used for FM radio broadcasts. Is there or isn't there a low powered provision?

11. Pride 102.5 FM report by Mark Westwood on 6-5-93. A financial report that shows the cost of such a low powered operation.⁸ Although not all of this equipment is necessary, and less costly substitutions can be used, this report indicates that it does take knowledge and some financial resources to build an efficient operation like Pride Radio, or like the others at the two colleges in San Bernardino. It is important to note, that even though these figures are in the thousands of dollars, low power FM is not out of the reach to groups of people, non-profit organizations, or educational institutions who can pool their resources. This provides a barrier against chaos because they really are beyond the scope of one individual. The FCC's main argument against low powered FM broadcasts is irresponsible broadcasting by copious individuals, and chaos. (e.g. seditious broadcasting in crime ridden areas). LPFM would be more easily available than full power commercial broadcasts. Any single individual who could manufacture such equipment would more than likely be a radio engineer who would (a) not put his/her license on the line with seditious or irresponsible broadcasts and (b) manufacture efficient equipment that would not create interference. It is important to note that the law should protect and provide for society, and not be focused on the exceptions of a few irresponsible people,

why Pride Radio was corresponding with him instead of the Cerritos Office. An investigation was never initiated because of this correspondence. The investigations took place because of inquiry by Inland Empire News Bureau owner, and sole reporter Jim Ness.

⁷ Several different "Field Intensity Meters," a device used to measure the intensity of a broadcast signal were not able to pick up these broadcasts. In effect the indicated 250 mv @ nine meters is so low it is off the scale. During inspections at Pride Radio and S.B Valley College the inspectors themselves did not have the proper equipment to measure the prescribed power because it was lower than one watt.

⁸ All equipment used was donated by radio engineers in the area. All totals are estimated at replacement for current market value.

thus excluding opportunity, and freedom of speech for the people of the United States.

12. Newspaper article: (The San Bernardino County Sun) "Gay Pride takes to the airwaves in San Bernardino" December 6, 1993. Makes public St. Aelred's broadcasts. This article quotes the Rev. Paul Breton and his intention to use St. Aelred's LPFM not only for the issues of his congregation, but also as a means to improve the surrounding neighborhood through education and broadcasting information to fight crime and graffiti. This newspaper article brought St. Aelred's radio station to the attention of news reporter Jim Ness, an active Fundamentalist Christian. Ness working in the area for many years was aware of SBVC's and CSUSB's broadcasts for several years and did not complain. However after learning of a radio station intending to broadcast Gay programming made an immediate report to the FCC.

13. NOTICE OF APPARENT LIABILITY: issued to St. Aelred's Church by the FCC and released on February 2, 1994 after an inspection that took place on Friday, January 7, 1994 at 4:00 PM by FCC inspector Jim Zoulek, engineer in charge, FCC Field Office Cerritos, Ca. NAL Acct. No.415LA0017. Amount of NAL was for \$8,000.00 for 1.5 mv. San Bernardino Valley College and California State University San Bernardino were inspected on February 2, 1994 and respective NAL's issued on February 3, 1994 for \$8000.00 ea.

14. Letter from Roberts and Eckard, P.C, attorneys at law, January 27, 1994. Letter addresses other broadcasters inspected at the same time the San Bernardino area's three LPFM's were inspected. Also attached is a media release generated by the FCC media office. Fines show that full power commercial radio stations received substantially lower fines. Exceptions WHLV (AM) and WHSY AM & FM who received larger fines, but also had a multitude of combined violations. In July of 1994 the District of Columbia Court of Appeals, US District Court in the case of U.S Telephone Assoc. v. FCC Cs. No. 28F3D1232 DC revoked the FCC NAL Fine schedule because the FCC could not substantiate the reasons behind the amounts it had set in the schedule.⁹

15. St. Aelred's response to the Federal Communications Commissions NAL dated Feb. 2, 1994, after the FCC's inspection on January 7, 1994. This response was written and compiled by the Rev. Paul Breton and Mark Westwood. This was the formal appeal to the FCC by St. Aelred's and led to the NAL being lowered to \$0.00 from \$8,000.00. CSUSB's fine remained in tact at \$8,000.00 and SBVC's fine was lowered to \$5,200.00 from \$8,000.00.¹⁰

⁹ A notice of proposed rule making has been submitted on February 10, 1995 for public review and comments. The deadline for submitting comments by the public is March 27, 1995.

¹⁰ The inspection, NAL and forfeiture order were all conducted and authored by the same person, FCC inspector Jim Zoulek. Other than written replies from SBVC and St. Aelred's, no hearing was ever conducted. This process, and sovereign power seems to be in direct conflict with a basic constitutional right....due process. Yet \$13,200 in basic fines plus attorney fees etc. were inflicted on our area by one man.

16. Forfeiture order issued to St. Aelred's by the FCC released on March 25, 1994. Forfeiture was written by Jim Zoulek, engineer in charge at the Cerritos Office. St. Aelred's NAL was reduced to \$0.00 per the article in item 9(a) in part three of the Discussion Section of the forfeiture order: "We do not dispute St. Aelred's claim that they corresponded with the FCC's San Diego office prior to the date of inspection¹¹. However, the FCC did not grant an authorization.....Never the less this is a basis for forfeiture reduction. Other reason listed as a basis of forfeiture reduction listed in part twelve are:

(a) History of overall compliance (b) Voluntary disclosure (c) inability to pay. St. Aelred's Pride Radio is currently off the air while they pursue a legal means of low power FM broadcasting.

17. Newspaper Article, (The San Bernardino County Sun), by David Wahlberg, March 4, 1994. "FCC closes three local radio stations, cites licensing problems."

18. Newspaper Article, (The San Bernardino County Sun), by David Wahlberg, March 4, 1994. "On-air college stations silenced."

19. Newspaper article, (The San Bernardino County Sun), by David Wahlberg, March 4, 1994. "Pride Radio Falleth"....."Station says it cooperated with agency."

20. Newspaper article, (The San Bernardino County Sun), by David Wahlberg, March 5, 1994. "News service denies anti-gay claim."

21. Newspaper article, (The San Bernardino County Sun), by Sun Newspaper Editor, March 14, 1994. "Pride Radio not a victim of Bias."

22. Newspaper article, (The San Bernardino County Sun), letter to the editor by Rev. Paul Breton, dated March 9th, published March 15, 1994.

23. Correspondence: Letter to the Voice of the People section @ Sun Newspaper by Rev. Paul Breton, March 4, 1994. Editorial re: "FCC closes three local Radio Stations.....", "Pride Radio Falleth.....", and "On-Air College Stations Silenced."

24. Correspondence: Letter to the Voice of the People section @ Sun Newspaper by Rev. Paul Breton, March 5, 1994. Editorial re: "News Service Denies Anti-gay Claim." ¹²

25. Correspondence: From St. Aelred's to Dr. Stuart Bundy, Chancellor, San Bernardino Valley College Community College District, March 7, 1994.

¹¹ St. Aelred's not only communicated to the FCC prior to the inspection, but prior to broadcasting.

¹² This editorial, and the previous editorial were written by Paul Breton to point out the misrepresentation of facts by the FCC to the Sun, and to clear up any misnomers by the public about Pride Radio issues and operations at St. Aelred's Church. The two letters were combined and edited by the Sun and the contents and facts changed without permission in an editorial seen as attachment No. 24.

26. Correspondence: From St. Aelred's to Dr. Craig Monroe, Chair, Communications studies, California State University San Bernardino, March 7, 1994.
27. Correspondence: From St. Aelred's to Mr. Thomas Little, Director of Communications and Broadcasting, San Bernardino Valley College, March 7, 1994.
28. Correspondence: From St. Aelred's to Dr. Anthony Evans, President, California State University San Bernardino, March 7, 1994.
29. Correspondence: Letter to the Editor, Coyote Chronicle Newspaper @ CSUSB by Rev. Paul Breton, March 8, 1994.
30. Correspondence: Letter to the Editor, Tom Tom Beat Newspaper, and Student Services @ SEVC by Rev. Paul Breton, March 8, 1994.
31. NOTICE OF PROPOSED RULEMAKING. Public notice of FCC's intention to re-issue the NAL Fine schedule invalidated in the court case, U.S telephone Association v. FCC, in July of 1993. Adopted Jan. 13, 1995. Comment date is March 27, 1995 and reply comment date is April 17, 1995. In the discussion section of this document the FCC provides that "The proposed forfeiture policy guidelines are identical to the 1993 version appended to the Forfeiture Policy Statement, and are attached as Appendix A (see this attachment).

COLUMN LEFT/
ALEXANDER COCKBURN

Rebel Radio Miniwatts Burn the FCC

■ The feds lose a round in trying to keep airwaves free of neighborhood broadcasting.

There's nothing that so horrifies the Federal Communications Commission as freedom of speech, particularly when it's not backed by the billions now usually required to exercise that right on the airwaves.

"You've opened a can of worms," spluttered an FCC attorney, David Silberman, in a San Francisco courtroom on Jan. 20. "You don't realize, your honor, every time there's a broadcast, [it does] irreparable harm . . . and you're giving carte blanche to this group to operate a radio station without a license."

"Why can't everybody operate a radio station without a license?" Silberman asked rhetorically, and then answered with a regulator's stricken cry: "We'd have chaos."

The federal judge at whom Silberman was directing his remarks was Claudia Wilken, who had just rejected the FCC's request for an injunction to silence Free Radio Berkeley. This is the first time the FCC has ever suffered such a defeat.

For more than 60 years, it has been the role of government to restrict access to the airwaves to those powerful enough and rich enough to stake out and hold their slice of this public resource.

The excuse for restriction has always been "chaos." In the eyes of the FCC, chaos is not 5,000 shopping channels or 200,000 easy-listening stations. "Chaos" is radical, possibly seditious, broadcasting. To avoid this we've ended up with the FCC's notion of order—mega-corporate control, with occasional jousts between such apex predators as General Electric (NBC) and Rupert Murdoch (Fox).

At the other end of the food chain from the apex predators we have the micro-radio stations whose low-watt broadcasting capability extends anywhere from a few city blocks to perhaps five miles.

In the past few years they have been springing up across the country, unlicensed and subject to closure by the FCC, which has not hesitated to send in federal marshals to seize equipment and impose hefty fines.

Politics have entered the picture, particularly in poor or black communities. Police forces, for example, don't care for uninhib-

'The excuse for restriction has always been "chaos." In the eyes of the FCC, chaos . . . is political, possibly seditious, broadcasting.'

ited discussion of their operations by son rebel radio in the projects.

Free Radio Berkeley is one of at least a dozen rebel radio stations in the San Francisco Bay Area operating without an FCC license. If you're more than a few blocks from FRB's antenna, your radio can't pick up the programs, a mix of music and talk focused on activism and community issues.

Free Radio Berkeley and its sister station, San Francisco Liberation Radio, went on the air in the spring of 1993, started and owned by Stephen Dunifer, a 43-year-old radio engineer who got interested in community radio when he was protesting the Vietnam War back in the '60s.

Dunifer also publishes a "microcasting" newsletter called Reclaiming the Airwaves, and sells cheap kits—anywhere from \$600 to \$1,000—to people who want to start their own stations.

In November, 1993, the FCC fined Dunifer for airing 24 illegal broadcasts in 10 months. Dunifer filed an administrative appeal with the FCC, but the commission's lawyers asked Judge Wilken for an injunction to silence Dunifer until the matter of the fine was settled.

A court challenge was precisely what Dunifer and his attorney, Luke Hiken, had been hoping for. "We knew what legal things we were getting into," Dunifer says. "Based on the work Luke did, we knew we could move against the FCC." In court, Hiken argued that FCC rules were unconstitutional, arbitrary and a violation of the First Amendment.

Wilken agreed. Saying she had a "serious question about the constitutionality" of the FCC rules, she refused the FCC's request for an injunction.

It won't take long for the FCC to react. Hiken expects an appeal as early as next month. He thinks the long-term picture may well contain a new set of rules for low-watt radio. Hiken says lawmakers thus far have not been interested in pushing the FCC in this direction: "They get upset when they hear that the government runs all the radio in China, but when someone points out that the radio band here is undemocratic, they lose interest."

You can bet one thing. Any rules devised by the FCC or imposed on it by Congress won't please Dunifer or rebel low-watt broadcasters across the country. From the time of Marconi, the issue has always been control. Every community deserves a rebel radio, but such stations will never get an official welcome mat. The best outcome would be for the FCC to keep its mouth shut and recognize that chaos is here to stay.

Alexander Cockburn writes for the Nation

Att # 1

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FILED

JAN 30 1995

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEPHEN PAUL DUNIFER,

Defendant.

No. C 94-03542 CW

MEMORANDUM AND ORDER
DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION AND STAYING
THIS ACTION

For the Northern District of California

BACKGROUND

Defendant is the operator of "Free Radio Berkeley," which broadcasts at low FM frequencies without a license from various locations in the Berkeley Hills and Albany. Defendant cannot obtain a license to broadcast because the FCC's regulatory scheme does not allow for licensing of "micro radio broadcasting" (ten watts or lower). On his broadcasts and in interviews with the press, Defendant criticizes the FCC's refusal to license micro radio.

The United States seeks declaratory and injunctive relief against Defendant for operating a radio station without a licens

Att. #2

