EX PARTE OR LATE FILED

MICRORADIO EMPOWERMENT COALITION

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RECEIVED
JUN 28 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No 99-25 [redacted] /

Re: Meetings on Tuesday June 22, 1999 with
Mr. Rick Chessen, Office of Commissioner Gloria Tristani
Ms. Helgard Walker, Office of Commissioner Harold Furchtgott-Roth
Mr. Tom Power, Office of Chairman William Kennard
Ms. Susanna Zwerling, Mass Media Bureau
Mr. Paul R. Gordon, Policy & Rules Division

and on Wednesday June 23, 1999 with
Ms. Kim Mathews, Office of Commissioner Susan Ness
Ms. Marsha MacBride, Office of Commssioner Michael Powell

John Riffer
Federal Communications Commission
Office of the General Council
Administrative Law Division
445 12th Street, SW
Washington, D.C. 20554

June 24, 1999

Dear Mr. John Riffer,

This is a Notice that Ex Parte meetings regarding Low Power FM took place between the FCC staff listed above and Amanda Huron and myself of the Microradio Empowerment Coalition on June 22 and June 23, 1999

The content of our meetings described the widespread support for the legalization of LPFM we are witnessing from the American public and from service which has been conveyed to us through our contact with a diverse array of community groups.

Almost everything we discussed was a recitation of the arguments being prepared for filing as Comment on MM Docket No 99-25 by the National Lawyers Guild Committee on Democratic Communication.

Arguments made during the meetings that are not in National Lawyers Guild Committee on Democratic Communication Comment on MM Docket No 99-25 included our proposal that spectrum being reallocated by NPRM WT Dockett 99-168 be used for low power broadcasting.

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List A B C D E

Materials Given:
Two photographs by Greg Ruggiero showing children learning to use studio equipment (given to Ms. Zwerling)

Ben Kobb's Chart "U.S. Reallocated Bands of Interest" (given to Ms. Zwerling)

The National Lawyers Guild Committee on Democratic Communication's draft Comment on MM Docket No 99-25 (given to Ms. Mathews and Ms. MacBride)

The Cato Institute's draft Comment on MM Docket No 99-25 of (given to Ms. Zwerling and Ms. Walker)

Sincerely,

Greg Ruggiero

cc:
Mr. Rick Chessen, Office of Commissioner Gloria Tristani
Ms. Helgard Walker, Office of Commissioner Harold Furchtgott-Roth
Mr. Tom Power, Office of Chairman William Kennard
Ms. Susanna Zwerling, Mass Media Bureau
Mr. Paul R. Gordon, Policy & Rules Division
Ms. Kim Mathews, Office of Commissioner Susan Ness
Ms. Marsha MacBride, Office of Commssioner Michael Powell

U.S. Reallocated Bands of Interest by Bennett Kobb

139-140.5 & 141.5-143 MHz	To be reallocated 1/2008, but auctioned by 2002.	Widely available technology; relatively small antennas. Awaits business models.
216-220 MHz	To be reallocated 1/2002 and auctioned by 2002. Already contains military radar and some FCC licensed uses.	Has potential for wireless local loop phone and data. Desirably adjacent to commercial mobile service in 220-222 MHz.
746-764 & 776-794 MHz	Used by some TV stations. To be auctioned after 1/2001 for new uses. Incumbent TV stations to be phased out.	Available for free, over-the-air broadcasting and many other uses. FCC considers this spectrum to be especially valuable.
1385-1400 & 1427-1435 MHz	Reallocated 1/99.	Awaits business models.
1670-1675 MHz	Reallocated 1/99.	Contains weather instruments and satellites. Awaits business models.
1710-1755 MHz	Reallocation possible as early as 1999 near major cities. Must be auctioned after 1/2001.	Desirable for industrial communications. New commercial uses must share with some remaining government uses.
1990-2110 MHz	Law (PL 105-33, BBA 1997) requires reallocation of 15 MHz of this band and auction of licenses by 9/30/2002.	Exact frequency range to be auctioned has not been selected. FCC tentatively selected 2025-2110 MHz, but NASA and Defense object.
2110-2150 MHz	Law (PL 105-33, BBA 1997) requires reallocation of this band and auction of licenses by 9/30/2002 unless FCC finds alternative 40 MHz.	Part of broadcast auxiliary spectrum and "Emerging Technologies" spectrum; also used for NASA deep space uplinks. 2110-2120 MHz segment underutilized, according to FCC.
2160-2165 MHz	One of the "Emerging Technologies" bands. Allocated to the Fixed Service.	Awaits business models other than extant fixed operations.
2300-2305 MHz	Reallocated to private sector. Contains some amateur stations.	No primary use is allocated in this band. Awaits business models.
2305-2320 & 2345-2360 MHz	Wireless Communications Service (WCS) auctioned for $13 million 4/97.	Awaits business models. Some licensees have proposed to launch a WCS-based satellite audio broadcasting service.
2385-2390 MHz	To be reallocated 1/2005 but auctioned by 2002.	Currently used for aeronautics. Awaits business models.
2390-2400 MHz	Reallocated to the private sector. Contains some amateur stations.	Intended for unlicensed, low-power data communications but not yet used for any non-amateur purpose.
2400-2450 MHz	Reallocated to the private sector. Contains some amateur stations and products.	Used for industrial processes, unlicensed devices, ovens. No other business models ever proposed.
3650-3700 MHz	Reallocated 1/99.	Large 50 MHz size. Awaits business models. Possible uses include satellite and fixed microwave.
4635-4660 MHz	Reallocated to the private sector.	Will likely be attached to GWCS (see next entry).
4660-4685 MHz	Allocated to General Wireless Communications Service (GWCS), a generic service with no recognized use.	Awaits business models. Military interference possible. FCC will likely expand GWCS to include 4635-4660 MHz before auction.

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

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

COMMENT OF
NATIONAL LAWYERS GUILD,
COMMITTEE ON DEMOCRATIC COMMUNICATIONS
FILED ON BEHALF OF ITSELF AND THE BELOW LISTED MICRO-BROADCASTERS, CONCERNED ORGANIZATIONS, AND INDIVIDUALS

SUMMARY:

The promise of a new LPFM service is that of:

-- Local programming designed for local communities,
-- Diverse and alternative voices and viewpoints,
-- Service to currently unserved communities.

Two Guiding Principles:

Therefore, we propose that all decisions related to LPFM be measured by two guiding principles:

1. Encourage use of LPFM by those who have an urgent desire to communicate above all else-- whether that be communication of information, ideas, art, or culture. Discourage those who wish to use LPFM as a means of making money.

2. Encourage maximum diversity of voices and viewpoints.

Wherever a decision needs to be made regarding implementation of LPFM these two principles should be applied.

We Support a Complete Amnesty for Microradio Pioneers

We Support Allocation of New Spectrum for LPFM

We support the establishment of a 100 Watt LPFM service. We believe the service should have the following features:

1. Non-commercial (including no "underwriting" announcements),
2. License/Registration Non-Transferable,
3. Primary status, modified to allow more liberal receipt of interference,
4. Local programming requirements,
5. Operator[1] requirements:
   a. One to an operator (local and national),
   b. Local residency requirement,
   c. No operation by those with full-power radio license (local and national)
   d. No operation by those with full- or low-power TV license (local and national)
   e. No operation by those with ownership interest in other mass media such as telephone company, cable TV company, satellite broadcaster, daily newspaper, etc.

We urge the Commission NOT to adopt a 1,000 watt LPFM service, with the exception of very rural areas.

We urge an application, regulatory, and renewal system based largely in voluntary local self-regulation.

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[1] We have attempted to use the word "operator" rather than "owner" throughout. This is to emphasize that the electromagnetic spectrum is a public resource. Current full-power "owners" appear to have taken that semantic usage too literally. We have not used the word "licensee" as we favor a regulatory scheme more akin to a "registration" system than a "licensing" system.

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STATEMENT OF INTEREST

The Committee on Democratic Communications of the National Lawyers Guild (CDC) on behalf of itself and the undersigned organizations and individuals, submits this response to the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking.

The National Lawyers Guild was founded in 1937 on the proposition that human rights are more important than property rights. Throughout its 63 year existence it has worked with progressive human rights organizations and individuals to make sure that they have access to the legal system and that it serves rather than impedes their efforts.

The Committee on Democratic Communications focuses on the right of all peoples to a world-wide system of media and communications based upon the principle of cultural and informational self-determination. The Committee formed in 1987 to work for the First Amendment and for the Right To Communicate as an international human right.

The Committee supports independent media organizations and forms of communication, such as micro-radio, public access television, and grass roots cyberspace resources, and works to ensure that they can function free from government or big business control. The Committee offers legal advice and representation to groups and individuals seeking to establish and sustain such forms of communication.

Since 1989 the CDC has actively worked to support the micro-radio movement and has provided legal advice and support to Mbanna Kantako and Free Radio Berkeley as well as other micro-radio broadcasters. After doing the initial research which made it clear that the ban on low power radio is both unconstitutional and a violation of the Right to Communicate under international law, we have trained lawyers in the issues involved in the representation of micro broadcasters, the CDC worked to ensure that micro-broadcasters can find legal representation when challenged by the FCC, and is now committed to making sure that when the FCC adopts low power FM it will be a real change and addition of new voices, ideas, and culture to the radio spectrum.

INTRODUCTION:

The Committee on Democratic Communications of the National Lawyers Guild (CDC) is very pleased that the FCC has initiated this rulemaking to establish a new low power FM (LPFM) radio service. We wholly support, in principle, the establishment of such a service. However, we are deeply concerned that certain elements of the proposal will lead to an LPFM service that does not succeed in addressing the primary needs that led to this rulemaking and may, in fact, simply replicate in miniature the current failures of full-power radio service.

The promise of a new LPFM service is that of:

-- Local programming designed for local communities,
-- Diverse and alternative voices and viewpoints,

-- Service to currently unserved communities.

Current full-power radio has fallen victim to massive consolidation of ownership in a few hands, safe, bland, and homogenized programming designed for the lowest common denominator; and an abandonment of relevant local programming.

Since the advent of radio "broadcasting" in the 1920's, what was once a quite open marketplace of ideas and culture has slowly shrunk into a cramped and restricted corporate model. This corporate model has so pervaded our current consciousness that many are unable to see beyond it, to imagine an alternative form of radio broadcast communication. Yet it is really the corporate model that is bizarrely illogical, for it utilizes one of our main communications mediums not to communicate, but simply to amass audiences and sell them. Can anyone truly say that most current full-power commercial broadcasters are driven by an urgent desire to communicate? To communicate ideas, information, or artistic and cultural expression? Rather, they are simply driven by a desire to make money by selling audiences to advertisers. They might as well be selling shoes or tires or paper towels-- its just a product to them, the content is interchangeable and basically unimportant.

The FCC has gone a good part of the way in envisioning a new type of radio service, an entirely new model. But we urge the FCC to go even further. It appears that a variety of goals and motivations underlie the FCC's current proposal. Some of those goals appear contradictory to us. As such, there is no coherent and cohesive theory that consistently underlies the FCC's proposal. We fear that the contradictions may eventually unravel the entire fabric of this new service and vitiate its dynamic ability to bring fresh, new, vibrant voices to American communities. Without a clear, consistent vision of what this new service should be, we believe there is a great risk that ten years down the road the small loopholes will have grown to freeways, and the same forces that have so enervated the creative spirit of current radio will dominate in LPFM.

Two Guiding Principles:

Therefore, we propose that all decisions related to LPFM be measured by two guiding principles:

1. Encourage use of LPFM by those who have an urgent desire to communicate above all else-- whether that be communication of information, ideas, art, or culture. Discourage those who wish to use LPFM as a means of making money.

2. Encourage maximum diversity of voices and viewpoints.

Wherever a decision needs to be made regarding implementation of LPFM these two principles should be applied.[2]

[2] Of course, other reasonable factors may also be considered. No rigid application of these principles to absurdity is intended. For example, having station operators rotate on a daily basis might lead to maximum diversity of voices and viewpoints, but would be impractical and counterproductive.

We also note that application of Principle 1 is likely to significantly lessen the administrative problems that vex the FCC in this proceeding. If the new LPFM service is designed so that profitmaking is not a significant possibility, then we predict that the number of applicants will be greatly diminished. In addition, those who do apply will not be likely to invest great sums of money in attorneys and engineers to complicate and lengthen the process. Finally, those who are interested in applying will more likely be amenable to negotiated solutions, such as time-sharing, where there are conflicts.

We intend to refer to these two principles throughout our comments. We hope that the FCC will see the wisdom of applying such a coherent theory throughout.

AMNESTY FOR MICRORADIO PIONEERS

Prior to beginning our detailed analysis of the FCC's LPFM proposal, we must address an issue of overriding moral importance-- that of amnesty for those who have steadfastly and bravely brought us to this point by consistently asserting their constitutional rights to free speech.

When Mbanna Kantako opened the modern microbroadcasting era in 1989 by transmitting local news and information to the mostly African-American residents of his housing project in Springfield, Illinois the FCC could have responded by recognizing that a serious need was being addressed and asking how it could help to further Kantako's desire to support his community. After all, the FCC is supposed to work in the public's interest, is it not, rather than in the interests of entrenched broadcasting monopolists? Yet the FCC's reaction then, and for many years following, was simply to try to shut down such operations by whatever legal means possible. Had the FCC enforcement staff succeeded, we would not now be at this juncture.

The FCC initially dealt with Kantako as it had over the years with many unlicensed "pirate" broadcasters-- assuming that an intimidating show of legal force would end the problem. But Kantako was the first of a new breed of unlicensed broadcaster. He was not a scampy, overenthusiastic teenager who wanted to play DJ,[3] but a concerned citizen and community activist who desperately wanted to do something for his community and was intensely frustrated by the complete neglect of the establishment media. He was not going to back down-- he had been told that broadcasting was supposed to operate in the public's interest, not solely to feed the greed of Mel Karmazin, Michael Eisner, Rupert Murdoch and a hoard of other corporate vultures who had clamped their mouths onto this "public" resource.

The story since then is well-known to the FCC. Rather than deter Mr. Kantako, the FCC's repressive posture spawned a movement. A thousand transmitters bloomed in communities throughout the U.S. due to the overwhelming public need for a new kind of broadcasting and the courage of these pioneers. These unlicensed "microbroadcasters" were not criminals. They were not seeking to defraud the public, they were seeking to inform the public. They were not seeking to enrich themselves, just to enrich their communities. They had no criminal intent, motive, or

[3] Not that there's anything wrong with that. We'll bet that more than a few FCC engineers and "respectable" licensed broadcasters had a fling as "pirates" in their dimly remembered youths.

purpose. Their purpose was to address clearly felt community needs that had been neglected and abandoned by both the FCC and the licensed broadcasters.

The FCC does not have clean hands in this matter.

The urgent need for an LPFM service stems from the FCC's absurd notion that a government-created monopoly should be regulated solely by "market forces". The FCC's deregulation of radio in the 1980s eliminated community ascertainment requirements, local programming and news and public affairs requirements, and commercial limits. More importantly, by making license renewal nearly automatic, the FCC effectively insulated broadcasters from any community input or influence. The ability of local citizens and community organizations to enter into a significant negotiating posture with local broadcasters in order to raise and address their concerns was eliminated. Broadcasters now need answer only to their absentee corporate masters.

It was also the FCC's enchantment with corporate visions of empire building that created the problem. The FCC long ago abandoned any vision of building and nurturing small, community oriented radio stations that were closely and keenly involved with their audience. Rather the FCC and entrenched corporate broadcasters continually pushed for higher power stations and multiple ownership both locally and nationally. No more mom and pops who lived and worked in the community. Stations are owned by large, faceless, distant corporations who pipe in canned music via satellite and wire out their cash receipts to national banking centers. The FCC had completely lost the vision of radio as a means of truly communicating ideas and information among people and now saw it as simply a problem in engineering efficiency and cash flow production. The hollow men had triumphed.

As with any form of neglect and repression, there is a backlash. Short of open revolt, that backlash often takes the form of civil disobedience. Civil disobedience harms no one, it is nonviolent, it is not criminal, it is profoundly moral. Civil disobedience comes when people simply refuse to be bullied any further and assert the basic rights which are theirs, though they may have to assert them in the face of governmental force and repression. In the course of American history, those who engage in civil disobedience have nearly always been judged by history as morally justified. The government that had asserted its repressive force is nearly always condemned.

In 1954, Rosa Parks, despite legal prohibition, sat in a seat at the front of a bus in Montgomery, Alabama. Others sat at lunch counters, used drinking fountains, and entered public places and facilities that they were legally barred from utilizing. Would it not be odd, would it not indeed be perverse, if ultimately all African-Americans were given their basic right to sit anywhere in the bus they pleased, <u>except</u> for Rosa Parks? What would we think of the court or government that would say that she, and she alone, should forever be banished to the back of the bus because it was she, and she alone, who dared to confront the authority of the government and to assert and win basic rights and basic dignity for all people? Such a result would be immoral, Kafkaesque, and laughable. Would you Chairman Kennard, Commissioner Ness, Commissioner Powell, Commissioner Furchtgott-Roth, Commissioner Tristani wish to be recorded in history as the ones who kept Rosa Parks sitting in the back of the bus due to alleged "character" issues? We

urge you to think carefully about this decision. There are times to break free of the mind-numbing procedures and forms and language of bureaucracy. This is one of them. A stunted, bureaucratic retreat to the Commission's definition of "character qualifications" would ill-serve this proceeding and this nation. The pioneers who steadfastly brought us to this point have more than enough character to qualify as licensees. In fact, in our eyes, they should be given a licensing preference to reward them for their unselfish civic-mindedness in the face of massive forces of opposition and even ridicule. The FCC must admit that this proceeding is occurring not out of the goodness of the government's heart, but solely because the unlicensed microbroadcasters have refused to back down, have refused to be silenced by unjust and unconstitutional regulations. Had they done what the FCC wanted, and turned off their transmitters upon receiving a warning letter, this proceeding would not exist.

We respectfully ask that the FCC act boldly, wipe the slate clean, grant an unconditional amnesty to all unlicensed microbroadcasters and start afresh. The pioneers of microradio must be given the opportunity to be "LPFM" broadcasters. Any other result would be immoral.

I. New Spectrum Allocation

The Commission states that it will not consider allocation of new spectrum for LPFM in this rulemaking.[4] We can understand the Commission's reluctance to bite off too large a chunk at one time. Yet the Commission concedes throughout the NPRM that a very limited number of channels will be available for LPFM, especially in urban areas. That remains true even if second and third adjacency protections are dropped, LPFM is assigned a secondary status, spectral emission masks are required, transmission bandwidth is limited, and LPFM stations are allowed to receive greater interference than normal. While all of these strategies may increase somewhat the number of LPFM channels available, it will still be severely limited, especially in population centers.

Therefore, we strongly urge that the FCC initiate a separate additional rulemaking, to follow on this one, to consider allocating additional spectrum to LPFM. We believe that the need and demand are great. While we do not want to dwell on this issue at too much length here, but instead look forward to a future rulemaking, we wish to make a few specific points on this topic.

Delay May Be Fatal: There is great competition for spectrum. Spectrum that may be feasibly available for LPFM now may be irrevocably assigned to some other use in the near future. It is urgent that a rulemaking be initiated now before additional opportunities are lost.

A number of areas of the spectrum may currently have potential for LPFM use. VHF-TV channel 6 is not currently used in many areas of the country. Additional Channel 6 space may open up as television converts to digital. We believe that at least some of that Channel 6 space just below the current FM band, might reasonably be opened up to LPFM use.[5] In addition, we

[4] NPRM Paragraph 15.

[5] We note that receivers that can tune those frequencies are already being manufactured and sold in Japan and could easily be brought into the US market at minimal cost.

have been told that other areas of the spectrum, such as 2300-2305 MHz, 139-140.4 MHz, and 141.5-143 MHz might be available and suitable for an LPFM service.

Now Is a Good Time to Introduce New Receivers: Significant changes are happening in radio broadcasting that will impel many listeners to purchase new receivers. Direct broadcasting of radio via satellite has already begun. Digital terrestrial broadcasting is being proposed for the near future. Modern radio receivers are far superior to those of a few years ago. As such, many consumers may be acquiring new radio receivers during the next few years. If a new portion of spectrum is to be assigned to LPFM, the sooner it is determined and can be added to new radio receivers, the better.

Listeners Who are Already Introduced to LPFM May Be More Likely to Purchase New Radio Receivers: Once an LPFM service is introduced in the current FM band, listeners will be more likely to purchase new radio receivers when they learn that the band is being expanded to accommodate further LPFMs. For example, imagine that a channel in a congested urban area is being time-shared by 3 or 4 licensees. If new spectrum opens up and some of the licensees migrate to the new spectrum, it is likely that many of their listeners will acquire new radio receivers in order to continue listening to them. The sale of new receivers will get a sort of "jump start".

II. Non-Commercial Service

A. Entirely Non-Commercial Service is In the Public Interest.

In our previous Comments and Reply Comments in proceeding RM-9208 and 9242 we argued extensively for the need to make LPFM an entirely non-commercial service. In sum, the majority of current full-power radio broadcasting has been given over to commercial service and it has resulted in programming that flows inevitably from commercial imperatives. Even most current non-commercial full power radio is really a form of commercial radio; the average listener cannot distinguish the difference between a "commercial" and an "underwriting acknowledgment". And "underwritten" non-commercial radio has suffered the same effect that commercial support has on commercial radio-- a drift toward blander, toned down, and less local programming. Both advertising and "underwriting" put one in the business of selling audiences to advertisers, and quantity ratings become much more important than quality programming.

A new LPFM service is an opportunity to counterbalance the "quantity over quality" imperative of current full-power radio service. It is an opportunity to allow those to communicate who have a burning need and desire to communicate, not to amass audiences for sale. It is the prime example of Principal 1, above. Completely non-commercial service will only attract those who truly wish to provide a service to their community. Commercial service will attract those who simply wish to increase their bank accounts. The sort of daring, innovative, controversial, experimental, and novel programming that LPFM is perfectly suited for will simply not happen if it is commercial. The commercial media already has control of nearly all of the broadcast spectrum. LPFM is an opportunity for an entirely different model of local, community based radio service not based on a profit motive.

Additionally, a completely non-commercial LPFM service avoids the situation associated with the "highest bidder" auction requirement for commercial licensing in the 1997 Budget Act. Licensing LPFM only to the wealthy would completely defeat the entire purpose of LPFM, which is to bring diverse, local voices onto the air, most of whom are currently priced out.

We know that many of the current commercial microbroadcasters wish only to sell limited amounts of advertising to small local businesses in order to pay their minimal operating expenses. But once commercial LPFM is legalized and opened up, it will attract many who are far less high-minded. There will be no practical way to prevent them from turning LPFM into a junior version of current commercial radio.

In addition, by "non-commercial" we also intend that there be no "underwriting". Public broadcast "underwriting" announcements have become indistinguishable from advertising and basically have the same effect on the resultant programming.

The Commission appears to believe that there are two reasons why commercial service should be allowed: First, that stations will not be able to survive financially without commercials and, secondly, that commercial operation is the only way to allow small, local businesses some access to radio exposure.[6] We do not believe that either of these assumptions is true.[7]

First, a number of currently operating full power stations have existed for a long period of time without either advertising or "underwriting". The primary example of these is the five Pacifica stations.[8] KPFA (Berkeley, CA) has been on the air since 1949 without ads or underwriting, and the others have been on the air for over 20 years. Most of the Pacifica stations now have annual budgets of well over one million dollars. These stations raise their funds primarily through direct listener support. This includes listener subscriptions, donations, grants, attendance at various community events sponsored by the station, purchase of tapes, and purchase of station promotional items such as cups and T-shirts. The Pacifica stations represent a different model of financing for radio stations-- one where the station is directly responsible to its audience and in direct contact with them at all times. It is not necessary for such stations to exist in poverty; in fact there is no reason why a station that is responsive to its audience cannot raise significant funds from various forms of listener support and other innovative funding mechanisms.

While the audience size of LPFM stations will be significantly smaller than the Pacifica stations, similarly their expenses will be greatly scaled down.

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[6]NPRM Paragraph 69.

[7]We note that in the days just before this NPRM was issued we became aware that Commission staff was grossly overestimating the cost of establishing a micro radio station. Apparently staff thought the cost was in the area of $20,000, an overestimation by a factor of ten.

[8]KPFA, Berkeley; KPFK, Los Angeles; KPFT, Houston; WBAI, New York; WPFW, Washington, D.C., all licensed to the Pacifica Foundation, Inc.

Second, there are many ways to involve and promote local businesses beyond on-air advertising. For example, the Pacifica stations publish a program guide in which advertising is accepted. In addition, there is nothing to stop a station from, on its own initiative, designing programming which highlights interesting, positive and worthwhile local businesses and local business owners who benefit the community. A community minded station might very well decide to implement such programming without getting paid for it or getting anything in exchange.

B. Non-Commercial Form of Organization

Current FCC rules regarding applicants for non-commercial stations require that the applicant be a non-profit "organization". Yet, apparently, it is Commission practice to only grant licenses to non-profit "corporations". The Commission, apparently, will not grant a license to a non-profit unincorporated association.

Whatever reasoning and merits for such a policy for full-power stations, we believe it is not appropriate for LPFM stations. The very idea of such stations is that they be run simply and inexpensively by small community organizations with severely limited budgets. To require formal non-profit incorporation is a hurdle that will severely burden many potential LPFM licensees. We note that in a number of states, such as California, non-profit incorporation is not a simple or inexpensive process.

In addition, we note that commercial applicants labor under no such burden. Commercial applicants may be individuals, partnerships, or any other recognized form of organization. Incorporation is not required.

Therefore, we propose that an unincorporated association be eligible for a non-commercial low power license upon a showing that it has adopted by-laws or some other adequate form of organization stating who the responsible parties will be and requiring the association to operate, under applicable local law, on a non-profit basis.

C. Limitations on Any Commercial Operation

We firmly oppose commercial operation of LPFM stations and believe that commercial operation will completely undermine the basic rationale for LPFM. However, if the FCC should proceed to adopt commercial operation, we strongly suggest the following as a means to preserve the unique nature of local, community based radio.

1. Headstart for Non-Commercial: During the first two years after approval of an LPFM service, only non-commercial applicants may apply, and they may apply for any available LPFM channel. Only after two years will commercial applications be allowed, and then only in that part of the FM band not reserved for non-commercial LPFM. This will strongly encourage non-commercial operations.

2. LPFM Licenses Are Non-Transferable: LPFM licenses should not be transferable. If a licensee ceases operations, the spectrum being used should simply be vacated and become available for other applicants.[9]

A speculator is not interested in serving the community, in slowly building institutions over time, in getting to know the heart of the community. A speculator wants to hype a property's value quickly, take a profit, and get out. Speculation will kill LPFM, especially if commercial LPFM with easy license transferability is allowed. We refer again to Principal 1, above. All efforts should be made to encourage those who have an urgent desire to communicate, and to discourage those who only want to make a profit.

3. 80% Reservation for Non-Commercial: In the current FM band, only about 20% of the band is reserved for non-commercial. If the FCC must authorize commercial LPFM, then the reverse percentages should be used to address this imbalance. We favor reserving 80% of the band for non-commercial use.

4. Any Advertising Should be Run-Of-Schedule, Not Program Specific, and be Subject to Time Limits:

If commercial LPFM is allowed, advertising that is program or time specific should not be allowed. All advertising should be aimed at overall support for the station, not at support of a specific program. Therefore, advertising should be run randomly throughout the broadcast day on a run-of-schedule.

The FCC should establish specific time limits on any advertising it allows.

5. Limitations on Business Interests: The FCC should not allow local businesses to be operators of LPFM stations where the local business intends to use the station primarily to promote its own business. We fear that the FCC will be flooded with applications from fast food operations, movie theaters, record stores, etc., whose primary purpose in operating a LPFM is to promote their business to the local neighborhood. Limitations on such operations should be put in place.[10]

III. Primary vs. Secondary Status:

A. Modified Primary Status: We consider it completely unacceptable for the new LPFM service to have secondary status. In particular, we find it reprehensible that a full-power station would be able to "bump" off a community based LPFM station just because it wants to increase its power or relocate its transmitter. This is a complete violation of Principal 2, stated

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[9] Completely formal transfers would be allowed, such as the transfer of a license from an unincorporated association to a corporation where the principals remain the same, or the transfer of an interest in a license upon the death of the licensee to the licensee's heirs.

[10] The new "Radio Disney" which is targeted at children and flooded with little but Disney promotions illustrates that this fear is not excessive.

above, to encourage maximum diversity of voices and viewpoints. It assumes that big, commercial stations somehow have greater priority or value than small community stations which have less wattage, but give voice to many more people-- people who truly want to communicate.

It's as if the traffic rules always gave the right-of-way to large tractor trailers carrying Velveeta over small compact cars carrying people. An approach based simply on "bigger is better" is excessively simplistic. The First Amendment does not give greater status to the louder, richer, or more powerful speaker. It values all speech equally. We see no reason why a slight alteration in the transmission pattern of a full-power commercial station should be allowed to wipe out an entire community's voice. Efficiency is not an element of the First Amendment, while diversity is one of its core elements.

We do not see any reason why the issue need be framed in the polarized dichotomy of "primary" versus "secondary" status. Rather, we suggest that the Commission analyze each element involved separately and determine how each is to be applied.

In particular, we would find it reasonable that LPFM stations be allowed to receive greater interference than they otherwise would under "primary" status. Such a position would allow for a much larger number of LPFM stations and, we believe, the trade-offs would be slight. A small amount of interference at the edges of one's broadcast radius is a small price to pay for station stability and the basic ability to broadcast at all.

B. Class D Stations: We note that there are a number of currently operational Class D stations which were "grandfathered" in prior to the 1978 elimination of Class D. These stations have generally been providing a valuable local, community-based radio service for many years. This rulemaking should in no way endanger the status or existence of those stations. We believe that currently operating Class D stations should receive a status at least equal to the status of the new LPFM service. In addition, new applications for LPFM service should not be allowed to displace an existing Class D station.

IV. Status of Repeaters:

Distant Signals: Low Power FM stations should have a higher status than repeaters or translators which simply rebroadcast a non-local station, including currently existing facilities. [11] This is in accord with our Principal 2, above, to create greater diversity of voices and viewpoints. This is especially in the public interest where the choice is between a locally operated and programmed service versus one which simply repeats a distant signal.

Local Signals: Currently existing translators or repeaters which fill in or contiguously extend a local signal should be "grandfathered" in and not subject to challenge by new applicants.

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[11] There are a number of statewide or countywide public broadcast systems operated by governmental or quasi-governmental units which provide a valuable integrated service, especially to rural areas. We believe that any existing elements of such a system should be "grandfathered" in and not subject to displacement by higher status applicants.

However, for future applications, LPFM applicants who originate at least 75% local programming should have priority over translators and repeaters. We believe that this represents a fair compromise and a reasonable application of our Principal 2, above.

V. Opposition to 1,000 watt LPFMs.

We must admit to being somewhat shocked by the FCC's proposal to initiate a class of LPFMs with a power range of 500-1,000 watts. Very few of those who commented previously in this matter supported such high powered stations.

This is one of those areas where we believe the Commission shows a confusion of purpose which leads to contradictory policy goals. We believe the Commission should follow Principal 1, stated above, to foster the greatest reasonable diversity of voices and viewpoints. The Commission itself notes throughout the Notice how few channels there will be for LPFM, especially in major urban areas. Given this scarcity, every effort should be made to maximize the number of different stations that can exist. In many situations, the licensing of a 1,000 watt LPFM will likely preclude a number of 100 watt and 10 watt LPFMs. Once again, efficiency has little or no place in First Amendment analysis, whereas diversity does.

The Commission apparently sees 1,000 watt LPFMs as an entry point into broadcasting for entrepreneurs and small businesses. While it is true that LPFMs may provide a entry point into full-power broadcasting, we see that as a minor side-effect of this new service, not as a significant purpose. The purpose of LPFM should be to maximize the number of voices and viewpoints that can utilize radio for communications and to give back to communities their voices. We do not think that 1,000 watt LPFMs will aid in achieving that goal.

Only in rural areas where populations are spread thinly and demand for spectrum space is not as intense can we see a role for 1,000 watt LPFMs.

We urge the Commission not to adopt a 1,000 watt LPFM service, with the exception of very rural areas.

However, if, despite our strong objection, the Commission should adopt such a service, we urge that it wait two years to allow 100 watt LPFMs to have first choice of channels. Only after two years would 1,000 watt applicants be allowed on any remaining frequencies.

VI. 100 Watt LPFM Service:

We support the establishment of a 100 Watt LPFM service, with the reservations expressed elsewhere in these comments. In particular, we believe the service should have the following features:

1. Non-commercial (including no "underwriting" announcements),
2. License/Registration non-transferable,
3. Primary status, modified to allow more liberal receipt of interference,
4. Local programming requirements,

5. Operator requirements:
   a. One to an operator (local and national),
   b. Local residency requirement,
   c. No operation by those with full-power radio license (local and national)
   d. No operation by those with full- or low-power TV license (local and national)
   e. No operation by those with ownership interest in other mass media such as telephone company, cable TV company, satellite broadcaster, daily newspaper, etc.

We see no particular reason why there should be a lower limit of 50 watts on LPFM stations. We think each LPFM station should determine what its optimal power should be. Why force a station to operate at 50 watts when it might be quite happy operating at 20 watts, thereby freeing up additional spectrum for other potential users?

Possibly the Commission sees operation at less than a certain power level as being an inefficient use of spectrum. However, we view it as quite the contrary for the following reason. Later in this comment we will discuss registration/licensing in greater detail. However, in general, we urge the Commission to consider a registration/licensing system which allows for a great deal of flexibility for local agreements to maximize the use of this scarce resource. Through local agreements stations can negotiate time-sharing, adjustments in power, adjustments in transmitter height, transmitter siting, directionalization, etc. so that many more LPFM stations can operate in a given area. Many of these small community stations may not wish or need to operate 24 hours a day, or at full power all of the time. A station that is operating at 50 watts during the day may be willing to drop to 20 watts at night so that another station a few miles away can come on the air for nighttime only operation. We prefer to allow maximum flexibility in these matters so that local LPFM operators can work out such arrangements among themselves.

VII. <u>1-10 Watt Service</u>:

We fully support a 10 watt service. We imagine that schools, apartment complexes, churches, small, isolated towns and others might find such a service very useful. We believe such a service should be entirely non-commercial. Otherwise, such a service would be particularly vulnerable to being taken over by local businesses, such as fast-food restaurants, movie theaters, etc., primarily to publicize their businesses.

In addition, we believe that introduction of such a service should be delayed for one year to allow 100 watt LPFM stations to utilize available channels and establish themselves. However, once introduced, 10 watt "microradio" should have the same modified primary status as we support for 100 watt LPFMs in Section III, above.

VIII. <u>AM Low Power Radio</u>: We understand the Commission's reluctance to initiate a low power AM service. AM interference is far more difficult to predict and control than FM. Nevertheless, given the scarcity of channels available and applying our Principle 2, above, to create maximum diversity, we feel that the Commission should consider a very low power AM service (on the order of 20-50 watts maximum), possibly with daytime only operation. Such a

service might be very useful to schools, city governments, and other institutions whose primary need would be during daytime hours. Such a service would likely increase the diversity of local voices, while taking a bit of the pressure off of LPFM.

IX. Event Broadcasting: The Commission has decided not to pursue consideration of "event broadcasting" in this rulemaking. Event broadcasting was the subject of RM-9246 on which comments were solicited in 1998. We believe that low-power event broadcasting has a significant role to play in community development. In addition to its ability to enhance entertainment, sporting, cultural, and civic events it can also play a major role in increasing public safety and welfare during large events. We strongly urge the Commission to initiate a rulemaking to consider authorizing low power event broadcasting.

X. Minimum Distance Separations:

Given the need to process the initial round of applications quickly and expeditiously and with the potential for a very large number of applicants, we feel that the Commission's suggestion of initially using simple station separation requirements rather than "a more sophisticated and spectrally efficient approach"[12] is reasonable. However, a better alternative would be to initially use a more sophisticated approach only in the top markets where competition is likely to be keenest. We would favor this approach if the FCC can implement computer programming which will process such applications without undue or lengthy delay.

In later application rounds the use of more sophisticated interference analysis would be called for where necessary. We would hope that by that time the FCC would be able to make the appropriate software and databases available to community non-profits who cannot afford expensive studies so that they can prepare an adequate application.

In addition, where a number of first-round applicants appear to be mutually exclusive, we strongly urge that they be allowed and encouraged to work out agreements among themselves. Part of that process might involve the development of more sophisticated models which would indicate that, in fact, there is no interference or the interference is less than the simpler model would indicate.

In addition, we note that in Appendix B the minimum distance separations for 100 watt LPFMs are based on the assumption that the station will be operating at maximum power, i.e. 100 watts ERP. We hope that if an applicant is actually applying to operate at a lesser power, such as 50 watts ERP, that its minimum distance separation will be based on that actual power, not on the maximum power. We would only support minimum distance separations if they are based on the actual power, not the maximum power. Such an approach would encourage applicants to initially file for less power than the maximum, thereby reducing mutual exclusivity and allowing for more LPFMs to be authorized.

[12] NPRM Paragraph 41.

XI. Second and Third Adjacent Channel Protections:

We agree with the Commission's proposal to eliminate second and third adjacent channel protections relating to LPFM, both as to their relationship to full-power stations and to other low-power stations.[13] Following our Principal 2, we believe that the enormous gains in diversity will far outweigh any minimal interference that might result.

However, we are certain that full-power broadcasters will object to this proposal. To address their concerns about interference and signal degradation we restate the proposal we made in our previous comments in this proceeding. We believe that LPFM stations should be allowed and encouraged to form local and regional associations. The FCC should allow these associations to be largely self-regulating, in the first instance. Complaints regarding interference will initially be directed to these associations who will attempt to resolve the problem. Only those complaints that cannot be resolved locally will be referred to the FCC. It is our belief and hope that very few such complaints will ever reach the Commission.

We also note that it is within the FCC's authority to require more stringent standards for future radio receivers distributed in the United States. With all of the current ballyhoo over the sound quality that digital radio is promised to deliver, we do not see it as particularly onerous or burdensome to require that radio receivers of the next millennium utilize simple, cheap, and currently available technology to reduce the level of interference between stations on second and third adjacent frequencies.

XII. Digital Radio:

The Commission also raises the issue of whether a new LPFM service with only same channel and first adjacent channel protections will interfere with the introduction of the proposed new digital radio technology know as In-Band-On-Channel (IBOC) digital radio technology.[14] This digital technology would be introduced on the current FM band and on the same channels now used by analog radio broadcasters.

CDC has addressed this issue both in our previous comments filed in this proceeding, and also in our comments filed in RM-9395 in response to the rule making petition of USA Digital Radio (USADR).

First of all, we believe that the public interest is better served by locating a new digital radio service in a different part of the spectrum. This is being done by nearly all of the industrialized countries of the world, including our neighbor Canada. Such a solution would have many advantages, including allowing for LPFM to be engineered in from the start.

Second, as we stated in our comments in RM-9395, our review of the proposal by USADR indicates that, according to USADR's own analysis, it is unlikely that there will be

[13]NPRM Paragraphs 42-50.

[14] NPRM Paragraphs 47-50.

interference between LPFM and IBOC. The Commission staff appears to agree with that reading.[15] In that case, there will be no problem.

However, if there should be any possibility of significant interference between LPFM and IBOC, we maintain that it must be resolved in favor of LPFM. Essentially, we refer to Principal 2, above, calling for greater diversity of voices and viewpoints. IBOC digital radio will have the effect of somewhat increasing the sound quality of music on radio, and providing for the use of additional auxiliary channels to accompany the primary channel. While there is nothing wrong in making such improvements to radio service, they do not address any urgent or pressing need. Their current absence is not keenly felt by the listening public, nor is there any great public demand for these improvements. IBOC does little, if anything, to increase the diversity of voices and viewpoints on the public airwaves.

LPFM does, on the other hand, meet a pressing need for which there is great, and increasing, public demand. Further, it better satisfies the FCC's First Amendment and public interest obligations by greatly increasing the diversity of licensees, voices, and viewpoints in American radio.

While we believe that IBOC and LPFM will prove to be compatible, should any conflict arise, we believe that it must be resolved in favor or LPFM. Additionally, we do not believe that the proposal to authorize IBOC should be allowed to hold up the implementation of LPFM. We would strongly object to any delay in LPFM based on the IBOC proceeding.

XIII. Operator Restrictions:

A. Operator Restrictions On Which We Agree With The FCC's Proposal:

Paragraph 57: We agree with the proposed operator restrictions in Paragraph 57. These are:

1. Licensees of full-power broadcast stations may not operate LPFM stations.[16]

2. No one may operate more than one LPFM station in the same community.[17]

The Commission asks further questions in Paragraph 58.[18] To each of these questions we refer to Principle 2, stated above: the solution that creates the greatest diversity of operators,

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[15] NPRM Paragraph 47.

[16] It is possible that an exception may be worth considering for daytime-only AM stations, or for AM stations subject to drastic power reduction at night. Possibly after a two year waiting period, such stations might be eligible for any remaining LPFM channels in their own or a nearby community.

[17] There may be situations where a translator, booster, satellite station, etc. might be called for and could be approved on a case by case basis. For example geographical features might prevent a small community from being served by only one transmitter. Or a rural community, such as an Indian reservation, that is very spread out may justifiably need multiple transmitters.

voices, and viewpoints should be adopted. There will be enough competition for LPFMs as it is. Operators should be restricted to that 99.99% of the population that has been entirely shut out of mass media participation. Barring that extremely small number of people who already have mass media ownership interests from LPFM does no harm of any sort. Allowing cross-ownership can only increase the already existing inequity, rather than decrease it. In fact, even where a frequency is unused, it is preferable to wait for a diverse user, than allow it to be foreclosed by a user who already has mass media ownership.

Therefore, operators of full-power broadcast stations in other communities should not be allowed to operate an LPFM.

Owners of other mass media, such as cable TV, telephone companies, satellite broadcasters, daily newspapers, etc. should not be eligible to be LPFM operators.

In Paragraph 59 the Commission seeks comments regarding "possible cooperative arrangements (short of attributable interests...) among LPFM licenses that might facilitate the new service's development without unduly diluting its benefits...".

We agree with what would appear to be the basic thrust of this statement. To the extent that such "cooperative arrangements" would include time-sharing, we strongly support that concept, as we state in various places throughout these comments.

To the extent that such "cooperative arrangements" contemplate networking, syndication, shared news services, and other such program and resource sharing, we also strongly support such cooperation, BUT with some major caveats.

First, as we state in Section XIV (below) we strongly urge a requirement of a minimum of 75% locally originated programming. Network programming, news service feeds, and other programming which is not locally originated can have great value and we strongly support its development among LPFM stations. But localism is one of the core "benefits" of LPFM programming and must be preserved as one of its major components.

Second, the Commission has extensive experience with the tendency of networks and network type arrangements to seek to usurp the independence and judgment of local operators and affiliates through fairly subtle means.[19] The Commission has acted in the past to prevent such

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[18] "We seek comment on whether the proposed cross-ownership restriction will unnecessarily prevent individuals and entities with valuable broadcast experience from contributing to the success of the service, or whether it is necessary to keep the service from being compromised or subsumed by existing stakeholders. Commenters should also address the alternative of permitting individuals and entities with attributable involvement in broadcasting to establish LPFM (or microradio) stations in communities where they do not have an attributable interest in a broadcast station. We also seek comment on whether the cross-ownership restriction should be extended to prevent common ownership of LPFM or microradio stations with newspapers, cable systems, or other mass media."

[19] See, for example, National Broadcasting Corporation vs. United States, 319 U.S. 190 (1943) regarding the FCC's "Chain Broadcasting" regulations limiting the control of networks over affiliates.

usurpation and should remain vigilant to see to it that such practices do not gain a foothold in LPFM.

B. Operator Restrictions on Which We Disagree With the FCC Proposal:

1. National Operator Limits- One to an Operator: We strongly disagree with the Commission's proposal that one party may operate multiple LPFMs nationally. We refer to both Principles 1 and 2, above. Multiple operations will tend to attract those whose primary goal is profit, not service. Multiple operations may be more "efficient" in some ways, but at the cost of diversity. That balance has been struck the wrong way too often in other broadcast services. The LPFM service should be different. Efficiency should not be given any significant weight. Diversity should be the primary goal.

The Commission has noted numerous times how scarce LPFM slots are likely to be in many areas.[20] Why allow multiple operations in the face of such scarcity? This scarce resource should be distributed as widely as possible. Even if a channel remains unused, it is preferable to await a diverse user, than allow it to be foreclosed by one who already has mass media ownership interests.

Additionally, multiple operators are necessarily absentee operators at all, except possibly one, of their stations. The entire focus of LPFM is on a station that is strongly imbedded in and involved in its community. It seems to us simple common sense that an operator who lives in the community and has one station to will be more focused on seeing to it that that station truly serves that community.

This is one of the loopholes that we strongly fear could eventually undermine the basic promise of LPFM. Multiple operations will attract empire builders who want to "efficiently" program 10 LPFM stations with the same packaged programming. This would be a disaster. It is completely at odds with the basic purpose of a new LPFM service. We urge the Commission to seriously revisit our two basic Principals-- discourage profiteers, encourage diverse voices. LPFMs should be strictly one to an operator-- locally and nationally. This will likely cut down on the number of initial LPFM applicants-- and that is a good thing. Only those who truly desire to communicate, only those who truly desire to provide service to their community will apply. The others will find sufficient alternative avenues for their empire-building and profit-making schemes.

2. Local Residency Requirements: As with multiple operations, and for the same basic reasons, we strongly urge the Commission to adopt a local residency requirement. It is hard for us to understand why the Commission should not adopt such a requirement. Since competition for LPFM licenses may be intense, the Commission should initially do everything to reasonably limit the number of applicants. In most communities, there may not be enough spectrum to accommodate all applicants, even with residency requirements. Why allow additional applicants

[20] e.g. NPRM Paragraphs 44 and 48.