

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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Creation of a Low)	
Power Radio Service)	MM Docket No. 99-25
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)	RM-9208
)	RM-9242
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**Comments of
THE LIVINGSTON RADIO COMPANY
in opposition to proposed rules for the creation of a low power FM radio service**

August 2, 1999

The Livingston Radio Company (Livingston Radio) is the licensee of WHMI-FM, Howell, Michigan, a stand-alone, Class A FM radio station that has been owned and operated by Livingston Radio for over ten years and serves the Livingston County, Michigan area.

Livingston Radio unconditionally opposes the creation of a Low Power FM (LPFM) Radio Service as proposed by the Federal Communications Commission (FCC or Commission) in its Notice of Proposed Rulemaking (NPRM) in Mass Media Docket 99-25. Our reasons are many.

Livingston Radio believes that the demand for LPFM has been greatly overstated by the Commission. 13,000 “hits” on a website does not equate to 13,000 mutually exclusive inquiries.

Duplicate “hits”, “hits” by casual “websurfers”, “hits” by those monitoring this issue, and “hits” by opponents to LPFM such as Livingston Radio accounted for much of the interest. Livingston Radio concedes that there is a somewhat lessened demand for LPFM but feels that the demand is from would-be operators and not from potential listeners or the general public.

Livingston Radio believes that American radio with its more than 12,000 stations operated by over 4,000 different licensees provides a level of public service unequalled in the world. Market forces ensure that that level of service remains high. We believe that LPFM would not add to that level of service and may indeed precipitously lower it due to technical and competitive issues that will be discussed later in these comments. The existing FM band could very well become filled with the sort of interference generally experienced on the AM band. Aren't 12,000 radio stations enough? The Commission and the Courts have consistently held that there is not a First Amendment right to broadcast. Maximizing service to the public, rather than maximizing the number of stations has always appeared to be the Commission's goal. This was evident in 1978 when the Commission stopped authorizing Class D FM stations, considering them an inefficient use of spectrum. It now appears that there has been a total reversal in thinking at the Commission. Now, in the interest of diversity, the FCC wants to give “everyone” a transmitter. If we are all transmitting, no one is receiving; if everyone has a voice, no one does. Many proponents of LPFM see the issue as a way to oppose “Corporate Radio”- those few giants of the industry that own “all” the radio stations. We all know that the reality is quite different. Most radio stations in the United States are not parts of large groups, but rather small groups, combos, or stand-alones like WHMI-FM. Many of them are locally owned and operated, again such as WHMI-FM. These are the stations that are most likely to be severely harmed if the

Commission succumbs to the LPFM proponents' rhetoric. We hope that the Commission's NPRM is not a knee-jerk reaction to that rhetoric or to the effects of the Telecommunications Act of 1996, which are law and the intent of Congress.

Would-be LPFM operators seem to believe that they not only have a right to broadcast (which they don't) but they can also choose exactly where. For decades we "full-power" FM broadcasters have had to fill a vacant allotment or buy an existing facility. When was the last time that the Commission granted a broadcast license to someone who decided that it would be nice to have a station in midtown Manhattan? Many would-be LPFM operators could probably communicate more efficiently by other means – buying time on an existing station, programming a satellite radio channel, leasing an FM subcarrier, starting an internet website, streaming audio on that website, programming a local access cable TV channel, starting a newspaper or newsletter, or just shouting atop a soapbox. If effective communication with a small, local audience is not really the goal, but rather the "thrill" of broadcasting, the opportunities are there. AM stations, in particular daytimers, are falling silent regularly. Non-Commercial Educational (NCE) FM stations in smaller markets are quite often available at affordable prices. By a recent National Association of Broadcasters (NAB) count, there are over 700 vacant FM allotments available. All of these are opportunities for would-be broadcasters of the sort that we could support, not the kind who wish to broadcast when they want to and where they want to as a sort of hobby. We also wonder why the would-be LPFM operators did not acquire Class D NCE licenses prior to 1978. We understand that some individuals may have been too young, but certainly many of the educational, religious, and community organizations that are seeking LPFM now were in existence at that time.

Livingston Radio believes that those who have not availed themselves of the many legal options available but have taken the airwaves into their own hands -- the pirates -- should be dealt with harshly. In addition to warnings, confiscations and fines, pirates should be barred from ever holding broadcast licenses of any kind. For too many years the Commission ignored this problem which two or three years ago was totally out of hand. We must commend the FCC and its Compliance and Information Bureau for the renewed commitment to enforcement and closing down pirate operations. We must particularly commend the Detroit Field Office for its efforts in shutting down a pirate operation here in our community earlier this year.

In our opinion, the most serious flaws in the FCC's NRPM are technical. For decades the Commission has developed and refined its FM interference standards to the point where they have become almost absolute. Requests for waivers of the table of separations are not granted for distances as small as a fraction of a kilometer. A long-term, considered balance between service and interference seems to have been reached. Because this has been a process, we live with many "grandfathered" situations on the FM band that cause interference today, especially in Zone I (the northeast quadrant of the country and California). For example, WHMI-FM regularly receives interference from first-adjacent WBCT(FM), Grand Rapids. WBCT(FM) is a more than fully-spaced Class B station, but it operates with 320 kw at 238 meters! Our point is that there is already quite a bit of interference on the FM band. Now it appears that the agency that is charged with the responsibility of safeguarding and improving spectrum integrity wants to erode it by reducing or eliminating existing protections -- absolutely unfathomable! The coverage map of an existing FM with LPFM operations on its second and third adjacent channels

would look like a piece of Swiss cheese. If second- and third-adjacent protections are eliminated for LPFM, why not for all FM stations? Aren't the laws of physics universal? Of course they are; spectrum cannot be "created". We are further astounded that the Commission, on the eve of the realization of in-band, on-channel (IBOC) digital audio broadcasting (DAB) would jeopardize that system by suggesting the lowering of standards. DAB will require more energy in the sidebands of an FM signal, farther from the center frequency. This information will be more susceptible to interference from adjacent channels. Also, since this information is digital, sufficient interference will destroy the signal rather than degrade it as would happen in analog broadcasting. Our comments are venturing into technical territory better addressed by other opponents of this LPFM proposal. We feel that the Commission should do everything possible to ensure a smooth technical transition to DAB in America. There are those in the world, including our neighbors to the north, who think that our pursuit of IBOC DAB is ill-advised (see <http://radio.cbc.ca/radio/digital-radio/drri.html>). Livingston Radio hopes that we can prove them wrong. The Commission dropping its NPRM would be a step in the right direction.

Livingston Radio believes that this LPFM proposal has the potential to totally disrupt the competitive structure of radio broadcasting. High revenue stations in larger markets might hardly notice the few LPFM operations that might be squeezed in to their areas – they have survived the many pirate stations that have operated in their markets for years. However, small markets that have a few or maybe only one lower revenue station would be devastated by the generally high number of LPFMs that could populate the band in these more lightly populated areas. Stations outside the larger markets would most certainly have a more difficult time serving their communities or possibly even surviving. Livingston Radio does not fear

competition. We compete daily with over sixty radio stations, over a dozen on-air TV stations, fifty cable TV channels, several newspapers, magazines, outdoor, direct mail, the internet, and soon, satellite radio. However, we want and we demand the level playing field of which the Commission often speaks.

Livingston Radio believes that LPFM would be an administrative and enforcement nightmare for the FCC. The Commission doesn't have the resources to handle the workload it already has. Administrative waiting periods are long and much enforcement comes from the radio industry's self-policing (i.e. state broadcasting associations' mock inspection programs). Livingston Radio does not want to see its tax dollars squandered on the almost unimaginable task of keeping thousands of LPFM operations on the straight and narrow. No matter the outcome of this proceeding, the pirates will not go away anytime soon. The Commission will need every dollar it can budget to fight the problem.

Finally, Livingston Radio believes that this NPRM will not achieve many of the Commission's goals. Even if protections for existing stations are decimated by eliminating second- and third-adjacent separations, very few LPFMs could operate in large markets, where it would seem the greatest demand might be and where the Commission has stated an interest in establishing service. There is no reason to believe that this proposal would in any way increase minority or female ownership. There is no certainty that potential minority or female LPFM operators would actually receive a license as they would be granted on a first-come, first-serve or auction basis. There is no guarantee whatever that a particular new low-power (or full-power for that matter) station will program a certain type of material. It is our contention that the vast

majority of programming would be similar to that currently found in the reserved portion of the FM band (88-92 mhz). Also, the promise of LPFM as an entry into the broadcasting industry for new or young broadcasters is an empty one. The economic viability of LPFM is highly questionable.

In summation, Livingston Radio believes that the implementation of the Commission's LPFM proposal would be a colossal mistake. Damaging the FM band, its 12,000 stations, and the promise of DAB so that the "demand" for LPFM, which in reality is just the rhetoric of a handful of well-organized political, religious, alternative cultural, and musical activists, might be satisfied is unthinkable. Recently the editor of a radio industry trade magazine titled his editorial on the subject of LPFM "If you can't beat 'em, license 'em". Please don't.

Respectfully submitted,

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