ownership constraints proposed in the *NPRM*, rather than the relaxed restrictions contained in the 1996 Act.

Similarly, in its pending *Technical Streamlining* proceeding, the Commission proposed to "create an additional intermediate class of stations between Class C and Class C1, to be designated Class C0 . . . ." *Technical Streamlining NPRM* at ¶43.[30] In doing so, the Commission noted that many Class C stations are operating with antenna heights that are significantly less than the maximum permitted HAAT of 450 meters. As a result, the Commission's present allotment structure overprotects a substantial number of Class C stations, and, consequently, unnecessarily precludes proposals to introduce new services and/or expand existing services. *See Technical Streamlining NPRM* at ¶42. Thus, in the event the FCC elects to adopt its proposal in its *Technical Streamlining NPRM* and create intermediate Class C0 stations, then by applying the rationale supporting its ownership proposal in the instant *NPRM*, if it were valid, the Commission conceivably could apply strict local, national, and cross-ownership restrictions to Class C0 stations because, like the proposed LPFM stations, they also did not exist in 1996. The Commission's rationale for applying stricter ownership constraints to LPFM stations than those set forth in the 1996 Act simply proves too much.

Moreover, despite the Commission's rationale for not applying the ownership restrictions mandated by the 1996 Act, the LPFM service also did not exist at the time the Balanced Budget Act

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[30] The Commission's proposal in its *Technical Streamlining NPRM* is not new. In 1983, the Commission established three new intermediate classes of stations: B1, C1 and C2. *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments, Report and Order* in BC Docket 80-90, 94 FCC 2d 152, 155-56 (1983), *modified*, 75 FCC 2d 279 (1984) ("Docket 80-90").

of 1997[31] ("Budget Act") was enacted. The Commission failed to offer any explanation, however, concerning why the ownership restrictions of the 1996 Act would not apply to LPFM stations, but nevertheless the LPFM service would be subject to the competitive bidding requirements contained in the 1997 Budget Act.[32] The FCC's stated reason for not applying the relaxed ownership restrictions contained in the 1996 Act -- that the proposed LPFM service did not exist in 1996 -- does not constitute a sufficient basis for ignoring the express statutory language of the 1996 Act. The Commission's proposed ownership restrictions are violative of the 1996 Act, and, if adopted, will not survive judicial scrutiny.

Furthermore, the FCC's proposed ownership restrictions regarding the LPFM service are in sharp contrast to the Commission's existing ownership rules regarding its LPTV service and other secondary broadcast services. In discussing the anti-collusion rule in the context of broadcast auctions, the Commission stated as follows:

> Given the secondary status, limited coverage areas and restricted power of LPTV and translator stations, no limit has ever been placed on the number of these stations that any person or entity may own, and they are not subject to any of the Commission's broadcast multiple ownership rules, which have the objective of fostering maximum competition in broadcasting [footnotes omitted].[[33]]

The Commission also stated that "these secondary services have minor competitive significance in the media marketplace . . . ." *Id.* Moreover, with respect to bidding credits, the

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[31] Pub. L. No. 105-33, 11 Stat. 251 (1997).

[32] *See NPRM* at ¶104.

[33] *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order* in MM Docket No. 97-234, 13 FCC Rcd 15920 (1988), ("*Auction Order*"), *recon. granted in part,* FCC 99-74, ¶64 (released April 20, 1999) ("*Auction MO&O*").

Commission revised its rules such that attributable interests in existing LPTV and television and FM translator stations will not be counted among the bidder's other mass media interests in determining its eligibility for a new entrant bidding credit in any broadcast or secondary broadcast auction. *Id.* at ¶75.

The FCC's ownership rules governing existing services, together with the relaxed restrictions in the 1996 Act, make clear that the ownership restrictions for the proposed LPFM service must be no more restrictive than those in the 1996 Act. With respect to LP100 and microradio stations, they too -- like LPTV stations and other existing secondary broadcast services -- would have limited coverage areas and operate with restricted power. They also would operate on a secondary basis. Even assuming, *arguendo*, the FCC elects to treat LP1000 stations as a primary service, the Commission has proposed to authorize LP1000 stations to operate with up to 1000 watts, which greatly exceeds the minimum ERP for Class A FM stations. Thus, LP1000 stations potentially may have at least as large a coverage area as certain Class A FM stations. In light of the substantial similarities between (i) LP100/microradio stations and existing LPTV stations and other secondary broadcast services (all of which are not subject to the Commission's multiple ownership rules), and (ii) LP1000 stations and Class A FM stations, there is no basis for applying strict ownership restrictions to the proposed LPFM service. The Commission cannot, consistent with the 1996 Act, apply tighter ownership restrictions to LPFM stations than those that apply to full power radio stations.

B. The FCC Must Resolve All Mutually Exclusive Commercial LPFM Applications Through a Competitive Bidding Process.

In the event the FCC elects to establish a commercial LPFM service, the Commission's proposal must be adopted in a manner that complies with the Budget Act. Section 309(j)(1) of the Communications Act of 1934, as amended (the "Act") (as amended by Section 3002(a) of the Budget Act), makes abundantly clear that if mutually exclusive applications are filed for "any initial license or construction permit," "the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding . . . ." 47 U.S.C. §309(j)(1). Moreover, in its *Auction Order* (establishing standards for auctions of broadcast authorizations), the Commission stated that, based upon the express language of Section 309(j)(1) of the Act, "auctions are mandatory for *all secondary commercial broadcast services* (*e.g.*, LPTV, FM translator and television translator services)." *Id.* at ¶9 (emphasis added). The Commission also stated that Section 309(j)(1), as amended, no longer restricts the type of spectrum license which may be awarded through the competitive bidding process, or requires an affirmative public interest determination that the use of an auction will serve the statutory objectives. *Id.* The Commission further stated:

> Nothing in the statutory language or in the accompanying legislative history indicates that the requirement to use competitive bidding for "any initial license or construction permit" is limited to full power radio and analog television stations, or that Congress intended such a limitation. Nor are secondary commercial broadcast service licenses exempted from the auction requirement under Section 309(j)(2), which enumerates the certain types of spectrum licenses that are not subject to competitive bidding. . . . The Conference Report states that "[a]ny mutually exclusive applications for radio or television broadcast licenses received after June 30, 1997, shall be subject to the Commission's rules regarding competitive bidding, including applications for *secondary broadcast services* such as low power television, television translators, and television booster stations. [footnote omitted]. This list of secondary broadcast service licenses is illustrative rather than exhaustive.

13 FCC Rcd at 15924, ¶10 (emphasis in original).

The Commission properly determined in its *Auction Order* that the list of secondary services mentioned in the Budget Act is "illustrative, not exhaustive." *NPRM* at ¶105, citing *Auction Order*, 13 FCC Rcd at 15924. Although the proposed LPFM service -- if adopted -- would constitute a newly- created service that did not exist at the time the Budget Act was enacted, there is no statutory basis for excluding the proposed LPFM service from the general auction requirements of Section 309(j)(1) of the Act.

Moreover, although the Commission requested comments on "alternatives or modifications to the auction procedure" that would "promote localism and community involvement" by LPFM stations (*NPRM* at ¶107), the Commission should not adopt any alterations or modifications to its auction procedure that will not be applied in the auction process of other broadcast services. Specifically, the Commission should do no more than provide mutually exclusive applicants for LPFM facilities with a brief period after the filing of their short-form applications in which to attempt to resolve the mutual exclusivity between their respective applications.[34] *See Auction MO&O* at ¶64.

Furthermore, as stated in the *Auction MO&O*, the Budget Act creates a presumption that reserve prices and minimum opening bids are in the public interest. *Auction MO&O* at ¶51. The Commission also stated that, in connection with its previous auction proceedings, the Wireless

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[34] One of the original petitioners for a low power radio service, Donald Schellhardt (*see NPRM* at ¶3), now heads The Amherst Alliance, a proponent in this proceeding of the adoption of rules authorizing an LPFM service. In early-filed comments, Amherst Alliance argued for an exemption from auctions even while permitting LPFM stations to sell commercials, so long as the stations were "non profit" (although paying "decent salaries" to station owners). *See* Amherst Alliance Comments, dated April 28, 1999, at pp. 31-34. The Commission could not authorize Mr. Schellhardt's peculiarly designed station without an auction and be in compliance with the law. Under Sections 309(j)(2)(c) and 397(6) of the Act, noncommercial stations are exempt from auctions, not nonprofit organizations operating commercial stations.

Telecommunications Bureau has found that the use of minimum opening bids serves the public interest objectives of Section 309(j) of the Act by promoting competition, disseminating licenses among a variety of applicants, promoting efficient spectrum use, and recovering a portion of the value of the spectrum for the public. *Id.* Thus, because the Commission has elected to use minimum bids in the auction of both full power and secondary broadcast services, including LPTV stations and FM and television translators, minimum bids also should be employed in auctions for LPFM facilities.

C. The FCC's Proposal to Treat LP1000 Stations as a Primary Service is Inconsistent With Section 307(b) of the Act and the FM Allotment Priorities.

The FCC's proposal to treat LP1000 stations as a primary service has the potential to preclude FM allotments in a manner which is inconsistent with Section 307(b) of the Communications Act and the FM allotment priorities.[35] For example, if a party files a rulemaking petition seeking to bring a first local service to a specified community, and that proposal conflicts with a previously filed LP1000 application (or existing LP1000 station), the petitioner's proposal would be precluded by the LP1000 application, regardless of whether the proposed full power FM station would serve a substantially greater area and population, including white or gray areas.[36] Therefore, the Commission's proposal to treat LP1000 stations as a primary service should not be

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[35] *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The criteria for determining the comparative preferability of a proposed FM allotment are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. *Id.* at 91.

[36] This conflict arises in large part because of the Commission's proposal to authorize LPFM stations without first allotting channels by rulemaking. Less directly it arises from the Commission's precedent-shattering proposal to authorize LP1000 stations as a primary service, even though such stations may not serve a "community" as the Commission has always defined community, under Section 307(b), for primary services.

adopted because it would preclude certain FM allotments in a manner that would be inconsistent with Section 307(b) of the Act and the FM allotment priorities.

IV. Policy Considerations.

A. The Proposed LPFM Service Will Not Achieve Its Intended Objectives.

In proposing a new LPFM service, the Commission stated that one of its goals was to "address unmet needs for community-oriented radio broadcasting." *NPRM* at ¶1. The Commission believes that "[l]isteners benefit from local programming, since it often reflects needs, interests, circumstances, and perspectives that may be unique to that community . . . ." *Id.* at ¶68. In referring to the Petition for Rulemaking filed in this proceeding by J. Rodger Skinner, the Commission noted that although certain LPFM stations may not be able to operate on a full-time basis, they "might still offer 'niche' programming and important community event coverage and news and weather bulletins, such as school closing announcements." *Id.* at ¶14.

The Commission also believes that the inquiries and other expressions of interest it has received regarding a low power radio service indicate that an LPFM service could be an "outlet for new voices and program services to serve the public." *NPRM* at ¶11. Accordingly, the Commission requested comments concerning whether a low power radio service could "provide new entrants the ability to add their voices to the existing mix of political, social, and entertainment programming, and could address special interests shared by residents of geographically compact areas." *Id.* at ¶12.

Despite the Commission's intentions, the proposed LPFM service will not meet the Commission's primary objectives of providing an increased opportunity for new entry, enhanced ownership diversity, and new program services (*see NPRM* at ¶57) because the Commission's proposal is at odds with the economic realities of the current broadcast marketplace. Although

LPFM stations may be less expensive to construct and operate than full power stations, they will provide only a very limited opportunity for new entry into the broadcasting business. As demonstrated above, the Commission cannot apply ownership rules to the proposed LPFM service that are any more strict than the restrictions mandated by the 1996 Act. As a result, the proposed LPFM stations must be made available to existing broadcasters, who are likely to apply for LPFM stations as a means to compliment and enhance their existing full power services. Moreover, in the event the Commission elects to establish a commercial LPFM service, existing broadcasters would be in a more advantageous position to bid at auctions for LPFM facilities due to their existing broadcast operations. In any event, the LPFM service would not provide a meaningful opportunity for new entry into broadcasting because the LPFM stations must be made available to existing broadcasters. *See NPRM* at ¶57.

For the same reason, the proposed LPFM service would not promote ownership diversity because the same persons and entities holding full power authorizations are likely to hold the licenses to the LPFM stations. Therefore, although the proposed LPFM service may result in more broadcast stations, it will not promote an increase in viewpoint diversity.

In addition, the proposed LPFM service would not foster localism or result in new program services that would serve the public interest in any meaningful way. The *NPRM* indicates that very few LP1000 or LP100 stations could be authorized in metropolitan areas.[37] *See NPRM* at ¶¶44, 48.

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[37] Appendix D to the *NPRM* demonstrates that if LPFM stations are required to comply with current interference restrictions, there will be few or no licenses available in most major markets. *See NPRM* at ¶50 and Appendix D. For example, an analysis by the Commission's staff indicates that no LP1000 or LP100 stations could be authorized in Denver, Colorado, and no LP1000 and only three LP100 stations could be authorized in Minneapolis, Minnesota. *NPRM* at ¶44. If the Commission were to eliminate third-adjacent channel protection

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If this proves to be the case, the vast majority of LPFM stations would be located in smaller radio markets. Although the Commission suggests that LPFM stations may be able to provide "community-oriented" programming (*NPRM* at ¶1), as demonstrated by the significant consolidation that already has taken place in smaller radio markets, there simply are not enough advertising dollars in small markets to support LPFM stations airing local programming. Due to the limited coverage areas and restricted power of LPFM stations, local businesses are not likely to spend their scarce advertising dollars to buy time on LPFM stations because they know that only a very small portion (if any) of their target audience will listen to an LPFM station. The lack of advertising revenue would diminish an LPFM station's ability to air local programming designed to serve the needs and interests of the local community. Indeed, there is no reason to believe that residents would listen to an LPFM station in a small market when they can get more enhanced news, public affairs, and other non-entertainment local programming from existing full power stations in the community. In light of the substantial financial difficulties that currently plague many daytime-only AM stations and certain Class A FM stations in smaller markets, it is highly unlikely that LPFM stations would operate on anything but a marginal basis. In the event that LPFM stations are able to garner

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[37](...continued)
requirements, one LP1000 or four LP100 stations "might" be authorized in Denver, and perhaps as many as one LP1000 or nine LP100 stations could be located in Minneapolis. *Id.* The Commission stated that two LP1000 stations could be located in Nashville if there were no third-adjacent channel protection requirement, and as many as 10 "might be possible" in Nashville if the second-adjacent channel protection standard also were eliminated. *Id.* at ¶48. Similarly, no LP100 stations could be located in San Francisco if the second-adjacent channel protection were to be maintained. Two such stations could be authorized, however, if there were no second or third-adjacent channel protection standards. *Id.*

As demonstrated above, despite the lack of available spectrum for LP1000 and LP100 stations in certain markets, the Commission should maintain second and third-adjacent channel protection standards for all LPFM stations in order to prevent interference to full power FM stations.

sufficient funds to remain on the air, due to their inherent inability to generate substantial revenue they would constitute nothing more than an additional source of satellite programming and would provide little, if any, local programming. Therefore, LPFM stations would not foster localism because they would not provide news, public affairs, or other non-entertainment local programming designed to serve the unique needs and interests of the local community.

The Commission also suggests that LPFM stations may be able to offer some form of "niche" programming not offered by other stations in the market. Any such programming, however, would result only in an increased diversity of entertainment formats. It would not result in additional news and public affairs programming designed to serve the needs and interests of the local community. Thus, any increase in "niche" programming would not promote the Commission's fundamental objectives of fostering localism or increasing ownership diversity.

Furthermore, the establishment of a commercial LPFM service would have a significant adverse impact upon the ability of independent operators to survive in smaller markets because it would result in an over-abundance of FM stations. As the Commission is well aware, the implementation of Docket 80-90 had a significant impact upon the radio industry because it resulted in an over-abundance of FM stations, particularly in smaller markets. Many of the stations that were allocated as a result of Docket 80-90 have not survived as stand-alone entities due to the limited advertising revenue in smaller markets. The impact of an LPFM service upon independent broadcasters in smaller markets would be similar to that which occurred as a result of Docket 80-90. However, unlike Docket 80-90, which at least resulted in the allotment of additional full power FM stations, LPFM stations would provide substantially fewer public interest benefits because they would operate with restricted power and have very small coverage areas. Moreover, because the

Commission proposed not to require a minimum operating schedule for LP100 and microradio stations,[38] many LPFM stations may operate on a periodic basis or only for limited periods of time. Thus, the proposed LPFM service would provide few countervailing public interest benefits to offset the substantial harm that it would cause to independent broadcasters in smaller markets.

The over-abundance of stations that would result from an LPFM service would be another economic blow to independent operators of daytime-only AM stations and certain Class A FM stations in smaller markets, which already are struggling to survive. Just as was the case with Docket 80-90, LPFM stations would have a significant impact upon the operating revenues of these struggling full power stations such that they no longer may be able to air local programming, or otherwise continue to air news, public affairs, and other non-entertainment programming to the same extent that they do today. Therefore, an LPFM service would reduce, rather than enhance, the amount of local programming in smaller radio markets.

The establishment of an LPFM service also would result in further consolidation in the radio industry. As a result of the over-abundance of stations, struggling full power stations in smaller markets ultimately may be forced to sell out to group owners or even go off the air, both of which would diminish ownership diversity.[39] Thus, in the event the FCC insists upon establishing a

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[38] The Commission proposed not to establish a minimum operating schedule for LP100 and microradio stations "unless and until it is shown to be necessary." *NPRM* at ¶77.

[39] At paragraph 10 of its *NPRM*, the Commission expressed the following concern regarding the consolidation which has occurred in the radio industry since the passage of the 1996 Act:

> [C]onsolidation may have a significant impact on small broadcasters and potential new entrants into the radio broadcasting business by driving up station prices, thereby exacerbating the difficulty of entering the broadcast industry and of

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commercial LPFM service, the Commission must -- consistent with the ownership restrictions mandated by the 1996 Act -- ensure that licensees of daytime-only AM stations have an opportunity to apply for LPFM stations as a means of complimenting their existing daytime service. The opportunity to do so would promote diversity by enabling many struggling daytime-only AM stations to continue to operate as stand-alone entities by enhancing their ability to compete more effectively in their respective market. Permitting daytime-only AM stations to apply for LPFM stations also would promote localism by enhancing their ability to provide news, public affairs, and other non-entertainment programming that would better serve the needs and interests of their respective local service areas.

As demonstrated above, the establishment of an LPFM service would merely exacerbate the already over-saturated conditions in smaller radio markets while providing very few countervailing public interest benefits. Therefore, no matter that good intentions may prompt some LPFM proponents, the proposal does not take into account the economic realities of the current broadcast marketplace, would never achieve its intended objectives, and is likely to reduce, rather than enhance, ownership diversity by causing further consolidation in smaller radio markets.

B. The Proposed LPFM Service Would Effectively Legitimize Pirate Broadcasters.

During the approximate one-year period from May 5, 1998, through May 7, 1999, the FCC issued no less than 21 news releases reflecting its efforts to shut down as many as 56 unlicensed

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[39](...continued)
surviving as an independent operator.

NPRM at ¶10.

radio stations.[40] As the Commission noted in the *NPRM*, unlicensed radio operators not only violate the statutory and regulatory prohibitions against unlicensed broadcasting, but they also utilize equipment of "unknown technical integrity." *NPRM* at ¶65. Illegal radio transmissions are of significant concern not only to the FCC, but to all authorized broadcast stations and the public at large because of the potential for harmful interference to authorized radio operations, including public safety communications and aircraft frequencies.[41] *Id.* Although the Commission has issued repeated warnings to unlicensed radio operators requesting them to cease their unlawful operation, many unlicensed broadcasters have persisted in their unlawful activity. *Id.* at ¶66.

The proposed LPFM service, particularly the LP100 and microradio stations, raises a substantial concern regarding whether authorizing an LPFM service would effectively serve as a veil of legitimacy for unlawful broadcast operations. The Commission acknowledged that many of those who previously have broadcast illegally are likely candidates for LPFM and microradio licenses. *See NPRM* at ¶67. The very nature of the service proposed to be provided by LP100 and microradio stations would make such services extremely difficult to police.[42] If the licensee of an LP100 or

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[40] Attached hereto as Appendix C is a listing of the news releases the FCC issued during the above time period regarding unlicensed broadcast operations.

[41] The Commission noted that in March 1998 it closed down an unlicensed radio operation in Sacramento, California, which had interrupted air traffic control communications on four separate occasions. *NPRM* at ¶65, citing *News Release*, Report No. CI 98-3 (March 20, 1998). The Commission also shut down unlicensed broadcast operations that were causing harmful interference to air traffic control communications at the Miami and West Palm Beach, Florida, airports. *Id.*, citing *New Release*, Report No. CI 97-12 (October 24, 1997).

[42] The FCC proposed that LP100 stations operate with maximum facilities of 100 watts ERP at 30 meters (98 feet) HAAT, which may enable them to achieve a 60 dBu contour distance of 3.5 miles. *NPRM* at ¶30. Microradio stations will operate with a maximum ERP of between 1-10 watts at the same height. The 60 dBu contour of microradio stations will extend only 1-2

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microradio station finds that its station's signal is not covering a desired area, there is very little to prevent the LPFM operator from either moving the station's transmitter to a more advantageous (albeit unauthorized) location, or increasing the station's power above its authorized limit. Due to the extremely limited coverage areas of both LP100 and microradio stations, the unlawful operation of either of these types of stations almost certainly would go undetected unless and until it causes significant interference to other authorized radio operations. Verifying the unauthorized operation of an LP100 or microradio station would be difficult because these stations may operate only on a periodic basis or for limited periods of time. Moreover, unlike the unlicensed radio stations which the FCC currently is attempting to shut down, the LP100 and microradio stations would have the substantial benefit of being able to operate under a veil of legitimacy due to the fact that the station itself is an authorized facility, which would make their unlawful operation much more difficult to detect.

The establishment of a new LPFM service also would likely result in a substantial increase in the number of pirate broadcasters. As stated above, the FCC shut down no less than 56 unauthorized radio stations during a recent one-year period. Many of these unlicensed operators persisted in their unlawful activity despite repeated warnings from the Commission. In light of the substantial number of new LPFM stations that could be authorized as a result of this proceeding, it would be much more difficult to detect the existence of unauthorized broadcast operations. Therefore, because the chances of being caught by the FCC would be substantially less, it is

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[42](...continued)
miles, depending on the station's power. *Id.* at ¶34. The Commission stated that microradio stations would provide "only very limited coverage, such as for schools, small neighborhoods, subdivisions, or town centers." *Id.*

reasonable to believe that the establishment of an LPFM service would result in a substantial increase in the number of unauthorized broadcast operations.

Furthermore, although the Commission has proposed a transmitter certification requirement for microradio stations as a means of preventing adjacent-channel interference, the substantial number of unlicensed radio operations and the stubborn refusal of such operators to terminate their unlawful operation, despite repeated warnings from the Commission, strongly suggests that any "certification" requirement will not prevent the use of uncertified equipment. Indeed, microradio transmitters will be readily available at relatively low cost at many local retail stores. The strong likelihood that many microradio operations will utilize uncertified equipment despite the proposed certification requirement should be of utmost concern to the Commission because "uncertified equipment has on *numerous occasions caused dangerous interference to aviation frequencies.*" *NPRM* at ¶35 (emphasis added).

The FCC simply is not equipped to police the unauthorized operation of LPFM stations. As the Commission is well aware, the Compliance and Information Bureau's ("CIB's") staff has been significantly reduced, such that it is operating with only a fraction of the field offices that previously existed. The staff in the various FCC field offices have more than enough work in trying to police existing full power stations without having the additional responsibility of attempting to police the operations of the substantial number of LPFM and microradio stations that may be authorized as a result of this proceeding. The only means by which the unlawful operation of an LPFM station (in the manner described above) would be discovered is if an affected full power FM station(s) receives a sufficient number of interference complaints from its listeners that it decides to investigate the source of the interference. Assuming the full power station finds that an LPFM station is, in fact,

operating unlawfully, the full power station must then notify the FCC's regional field office and hope that the CIB's staff elects to investigate the unlawful operation in a timely manner. Due to the substantial number of LP100 and microradio stations that conceivably could be authorized as a result of this proceeding, it is not unreasonable to expect that there may be a proliferation of similar complaints regarding other LPFM stations, and that it may be many months before the FCC's field office can act on any one complaint. In the meantime, those listeners of the affected full power FM station(s) would continue to be deprived of at least one source of primary FM service.

As demonstrated above, the proposed LPFM service likely would result in the expenditure of substantial resources on the part of both the Commission and its full power FM licensees in their efforts to police the unlawful operation of LPFM stations. Because the LPFM service has merely been proposed by the FCC, it is not possible to present the Commission with actual illustrations of the unlawful operation of LPFM stations. Nevertheless, the substantial number of unlicensed radio operations that the Commission has shut down over the past year, as well as the strong likelihood that many of those individuals who previously have broadcast illegally will seek LPFM or microradio station authorizations, demonstrates that the Commission's proposal to institute an LPFM service would open the floodgates to a multitude of unauthorized broadcast operations. For this additional reason, the FCC's proposal to establish an LPFM service should not be adopted.

C. The FCC Should Impose a Mandatory Local Program Origination Requirement and/or Restrict the Amount of Network Programming that LPFM Stations May Provide.

In its *NPRM*, the Commission proposed that LPFM stations would not be permitted to retransmit the programming of full power stations and thereby effectively serve as translator stations.

NPRM at ¶68. The Commission also requested comments concerning whether it should impose a minimum local origination requirement. *Id.*

In the event the Commission elects to authorize an LPFM service, the Commission should prohibit LPFM stations from entering into affiliation agreements with national satellite programmers. Due to the limited coverage areas of LPFM stations and their inherent inability to attract a sufficient advertising base or underwriting revenues, there is a strong likelihood that many LPFM stations would enter into affiliation agreements with national satellite programmers, and thereby become nothing more than a means for such programmers to enhance their distribution. In light of the Commission's stated purpose in proposing to establish an LPFM service and the significant countervailing public interests that weigh against such a service, the Commission cannot afford to give LPFM licensees the same discretion as full power stations in determining "what mix of local and non-local programming will best serve" their respective community. *See NPRM* at ¶68. In order to ensure that all LPFM stations attempt to fulfill their intended purpose of airing community-oriented programming that "reflects the needs, interests, circumstances, and perspectives" unique to their community *(id.)*, the Commission must impose a minimum local program origination requirement for all LPFM stations (including microradio stations) such that their overall programming must be comprised of no less than 80% local originated programming.

D. The FCC Should Not Treat LP1000 Stations as a Primary Service, Nor Should It Give LP100 Stations a Priority Over FM Translators and Boosters.

The FCC proposed to treat LP1000 stations as a primary service. *NPRM* at ¶27. The FCC proposed to treat LP100 stations as a secondary service, but suggested that they should receive priority status over FM translators and boosters. *Id.* at ¶¶30, 33.

There can be no dispute that the FCC's proposal to treat LP1000 stations as a primary service and afford LP100 stations equal treatment, or, alternatively, give them priority over FM translators and boosters, would significantly impair the ability of existing AM and full power FM stations to enhance their existing service.[43] Before establishing a new LPFM service, the FCC first should make every effort to support existing full power stations, including AM stations. These full power stations not only serve a substantially greater area and population than the proposed LPFM stations would serve, but they also have been on the air (at least in most cases) for a substantial period of time. In light of the substantial financial investment and service to the public provided by AM and full power FM stations, the licensees of such stations should have the opportunity to utilize FM translators and boosters in an effort to enhance their existing service without regard to the proposed LPFM stations. Indeed, many AM stations have long suffered from a weak signal and poor reception. The ability to use FM translators to provide fill-in service within their existing contours may well provide AM stations with a critical means of enhancing their service. Moreover, if the Commission were to permit daytime-only AM stations to use FM translators at night, this also would help to aid many primary service stations that are in severe financial distress and might otherwise be forced off the air due to their relatively weak signal and inability to operate at night.[44]

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[43] If LP1000 stations were licensed as a primary service, and/or LP100 stations were given priority over FM translators and boosters, the LPFM stations would preclude full power FM stations from using translators or boosters to enhance their existing service where the service provided by the LPFM stations and translators/boosters is mutually exclusive.

[44] In the *NPRM*, the FCC refused to consider a proposal to permit AM stations to use FM translators to provide fill-in service because, according to the Commission, that proposal is not "sufficiently related" to the goals in this proceeding. *NPRM* at ¶3, n. 3. The Commission's refusal to consider the above proposal will have an adverse effect on the ability of AM stations to improve their existing service through the use of FM translators, and should be reconsidered.

In the event the FCC elects to establish a new LPFM service, no LPFM station should be authorized as a primary service. Instead, all LPFM stations should operate on a secondary basis and be subject to displacement by full power FM stations. LPFM stations also should be subject to displacement by FM translators used by any full power station (including AM stations) to fill in gaps in their existing service areas. In the event the FCC insists upon affording LP1000 stations primary status, FM translator and booster stations which pre-date the launch of LPFM service should receive grandfathered interference protection from LP1000 stations. Furthermore, FM translators and boosters should not be treated on a secondary basis *vis-a-vis* LP100 stations. Assuming, *arguendo*, the Commission elects to treat them in such a manner, all existing translators and boosters should receive grandfathered interference protection from LP100 stations.

V. Conclusion.

As demonstrated herein, the Commission's proposal to establish an LPFM service would not serve the public interest. The proposed LPFM service would cause substantial interference to existing full power FM stations both within and outside their protected service contours. Moreover, the Commission's proposal fails to recognize the congested nature of the FM band, and is inconsistent with Commission proposals and newly-adopted rules in other recent rulemaking proceedings concerning the FM service. An LPFM service also would have an adverse impact upon the development of IBOC digital transmission services, and would result in a proliferation of unauthorized broadcast operations.

Assuming, *arguendo*, the Commission elects to establish some form of LPFM service, the Commission must maintain the existing second and third-adjacent channel protection requirements in order to minimize the interference that would be caused to existing full power FM stations.

Moreover, if the Commission elects to authorize a commercial LPFM service, the Commission should not impose any ownership restrictions that are stricter than those mandated by the 1996 Act. Furthermore, all mutually exclusive commercial LPFM applications must be resolved through a competitive bidding process. Finally, the Commission must impose a local program origination requirement to help ensure that all LPFM stations attempt to air community-oriented programming designed to serve the needs and interests of their respective local service areas.

Respectfully submitted,

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