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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF
BONNEVILLE INTERNATIONAL CORPORATION

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SUMMARY

Bonneville International Corporation ("BIC") submits these Comments in response to the Federal Communications Commission's Notice of Proposed Rulemaking ("NPRM") concerning the creation of a Low Power Radio Service. For the reasons stated herein, BIC is opposed to the Commission's proposals to establish new classes of FM service.

The FCC's low power FM proposals are fraught with serious technical service problems for existing and future radio service. Nevertheless, the Commission appears to be proceeding without adequate technical review of the implications of the proposals. Contrary to the Commission's hopes, low power FM will not achieve the Commission's objectives of fostering opportunities for minority and female broadcast ownership, ethnic community service or ownership by schools and community groups. Instead, implementation of low power FM radio will result in interference on the FM band, which will diminish important public services being provided by BIC and other FM stations. It will also compromise and delay the introduction of digital radio broadcasting and adversely impact valuable service being provided by FM translators and boosters.

LPFM will be an administrative and enforcement nightmare, leading to increased costs and burdens for the FCC and the public. In addition, the Commission's perceived need for low power service is overstated. Other more feasible, less controversial alternatives to diversifying radio ownership, which will not compromise the FM service, should be explored.

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COMMENTS OF
BONNEVILLE INTERNATIONAL CORPORATION

Bonneville International Corporation ("BIC") hereby submits its comments in the above-captioned rulemaking proceeding concerning the creation of a Low Power Radio Service.

I. INTRODUCTION

BIC is the operator of seventeen radio and television stations located throughout the country, including eleven FM stations.[1] As such, BIC has a strong interest in the instant proceeding and the effect that Low Power FM radio ("LPFM"), if adopted, will have on its existing radio services, as well as BIC's intentions to convert its stations to digital operations. To the extent that the FM Band will be disrupted by the implementation of LPFM, BIC believes the Commission should understand the important public service benefits that will be compromised.[2]

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[1]The BIC stations are licensed to Bonneville Holding Company.

[2] BIC places considerable emphasis on public service. It is one of the company's six core values, and each of the BIC stations helps to fulfill that value through its community-oriented programming, public service announcements and fund raising efforts in which the stations and employees participate. In 1998, BIC divisions and employees contributed community services worth almost $20 million to the five cities in which BIC operates. BIC stations aired more than 121,000 minutes of issues-oriented public affairs programming, donated almost 53,000 minutes of

II. THE COMMISSION'S RUSH TO OBTAIN COMMENTS AND CONCLUDE THIS PROCEEDING BEFORE A FULL TECHNICAL REVIEW OF THE IMPLICATIONS RAISES SERIOUS CONCERNS

Given the major importance of the proposals being contemplated in this proceeding, the potential impact on existing public services, and the highly technical nature of the issues at stake, BIC is very concerned that the Commission is rushing to judgment without an adequate technical record. The NPRM was issued in this docket without the Commission first having conducted in-depth technical analyses to determine whether such a system is even feasible. The Commission proceeded directly to the NPRM stage in this docket without issuing a Notice of Inquiry. Finally, the Commission has declined to grant the National Association of Broadcasters' request to extend the comment period until the completion and evaluation of field testing of In-Band On-Channel ("IBOC") digital radio systems.

In this regard, the most critical tests yet to be performed by IBOC proponents on their systems are the field tests which, among other things but most importantly, will test the interference of the new IBOC systems to 2nd and 3rd adjacent stations. All three IBOC systems that have been proposed extend the frequency band of the broadcasting station, although within the emissions mask, far beyond the existing analog bandwidth. This expanded bandwidth will most likely interfere with 2nd and 3rd adjacent stations. Interference from other 2nd and 3rd adjacent stations could also reduce the viability of the new digital system. This is a serious

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commercial time to air public service announcements regarding community organizations, and aired 11,560 minutes' worth of telethons, radiothons and other on-air community projects. The beneficial results of these efforts risk being jeopardized by LPFM.

matter requiring research prior to implementing LPFM and has major implications for protecting broadcast stations in the digital future.

In contrast to the existing proceeding, over the past two years the Commission has engaged in (and continues to be engaged in) rulemakings of a technical and non-technical nature concerning radio broadcasters, including technical streamlining, non-technical streamlining, and competitive bidding implementation. These were all well thought-out and reviewed by all interested parties, with full consideration being given to all issues. The result is workable changes to the rules which are intended to ease the regulatory burdens on broadcasters and decrease the administrative burdens associated with implementing the Communications Act. BIC urges the FCC to permit the development of a full record in this docket prior to taking any action on these proposals.

III. THE FCC'S LOW POWER FM PROPOSALS ARE FRAUGHT WITH TECHNICAL SERVICE PROBLEMS FOR EXISTING AND FUTURE RADIO SERVICE

A. Low Power FM Interference Protection Standards Will Harm Existing Broadcast Service, Undermine The Technological Integrity Of The FM Band And Compromise The Important Public Service Being Provided By FM Stations

The Commission essentially concedes that its proposals will result in interference to existing FM service. Specifically, the Commission has proposed protecting stations operating only on the same channel or on a 1st adjacent channel from interference caused by LPFM facilities. The FCC is inclined to "authorize low power service without any 2nd and 3rd-adjacent channel protection standards." NPRM at ¶ 42. The Commission asked commenters to assess the level of risk of increased interference to existing FM stations that would result from permitting

LPFM stations to locate without regard to 2nd-adjacent channel spacing for LPFM and to weigh any costs against the additional service to the public that could result. NPRM at ¶ 43. The FCC believes that authorizing LPFM service without a 3rd adjacent channel protection requirement would entail, at worse, little risk of interference to existing radio service, and that those areas of interference would be very small and occur only in the immediate vicinity of the low power transmission facility. Id.

BIC is extremely concerned that these proposals to remove 2nd and 3rd adjacent channel protections will have far-reaching consequences. The NRSC IBOC compatibility testing process, performed two years ago, revealed that all portable and table top radios have little or no 2nd and 3rd adjacent frequency rejection capability. The proposal to eliminate 2nd and 3rd adjacent protections for LPFM requires a new breed of portable and table top receivers that have not yet been designed and are not yet available. Thus the Commission will be changing band protections before the technology has been developed to accommodate such changes.

One example of how 2nd and 3rd adjacent protections already affect BIC occurs in the Washington D.C. area. BIC's WWZZ-FM (104.1 MHz) radio station is enjoyed by many in the Washington D.C. area with no difficulty on boom-boxes and car radios. However, clock radios in some hotel rooms in the Washington D.C. area, for example, cannot even begin to tune in WWZZ-FM due to the signal of WGMS-FM (103.5 MHz) which is 3rd adjacent. This stark difference in the ability of these types of radios to receive 2nd and 3rd adjacent signals will be exacerbated with a band that eliminates the present protections. The public will lose the use of personal and clock radios to receive local radio stations.

It appears that the testing being undertaken by the FCC to evaluate the capability of radio receivers to reject adjacent frequencies may be ignoring a substantial segment of these receivers. Apparently the FCC is conducting frequency interference tests only on a limited type of radios available to consumers, such as car radios, home stereo systems and boom boxes, and such tests are not being conducted on Walkmans, clock radios or smaller hand-held radios. *See Radio Business Report* (July 19, 1999, p. 2). Thus interference issues applicable to radios that are used throughout the day, particularly when people are at work or school, are being ignored. The magnitude of the interference problem that will result from eliminating 2nd and 3rd adjacent frequency protection cannot be assessed by testing merely a subset of the radio receivers in use by consumers.

Similarly, the magnitude of the public service that will be lost by disruption to the FM band should not be underestimated. Interference caused by LPFM to existing stations will interrupt the valuable public service programming delivered by existing FM licensees, such as emergency broadcasting, news, weather, community events and outreach.

B. Low Power FM Will Compromise The Transition Of Existing FM Service From Analog To Digital

At a time when the entire communications industry is transitioning to digital, the FCC is moving forward to institute a new service which could undermine the very ability of existing radio broadcasters to move to digital technology. This action is in direct contradiction to the FCC's expressed support for digital conversion.[3] The industry has expended time and

[3]"While the Commission has yet to formally advance any specific proposal, it has already expressed its support of conversion to digital radio." NPRM at ¶47 citing *Report and Order* in Gen. Docket No. 90-357, 10 FCC Rcd. 2310, 2315 (1995); See also *Public Notice* (released November

resources to study and create viable digital options, proceeding under the assumption that the FCC intends that radio stations transition to digital technology. In this respect, BIC is planning to conduct IBOC studies in conjunction with USADR at WTOP(AM), in Washington, D.C. The LPFM item undercuts all of these efforts. The proponents of IBOC digital radio have been developing their systems based on interference protection standards as they currently exist. Because these IBOC systems use the "sidebands" of the analog signals to transmit digital signals, no additional spectrum is needed. However, any alteration to the 2nd adjacent channel spacing restrictions would harm broadcasters in transitioning to digital and deprive the listeners they serve of the benefits therefrom.

By the FCC's own admission in the NPRM, its "understanding of future IBOC systems is preliminary and it may not be fully aware of any negative impact or restrictions that authorization of low power radio service would have on the transition to a digital IBOC technology for FM stations." NPRM at ¶ 49. It is still unknown, until field tests are performed, what bandwidth IBOC will need to be successful. A determination by the FCC to move forward with the LPFM proposal at this time, without a full and accurate assessment of whether the LPFM service will undermine the development of digital FM, is extremely troublesome. It makes the transition to digital a second priority to the FCC and places existing broadcast service to the public at risk.

6, 1998) announcing Petition for Rulemaking filed by USA Digital Radio Partners, L.P. ("USADR") on October 7, 1998, to permit the introduction of digital audio broadcasting in the AM and FM bands (RM-9395).

It should not go unrecognized that if the United States installs LPFM before IBOC has been field tested, and these tests ultimately prove that the two are not compatible, the U.S. will be the only country in the world left without a local digital broadcast radio system. For government reasons, the use of the L-band is out of the question. There are many engineers in the industry who seriously question the viability of the S-band for use as a local radio broadcast system. IBOC seems to be our only hope for improved quality of radio sound, increased data capabilities and improved EAS capabilities. If adoption of the Commission's proposals damages the future of IBOC by flooding the band with numerous low power interfering signals, the legacy of this proceeding will be an unfortunate one.

C. Low Power FM Will Adversely Impact Valuable Service Being Provided By FM Translators And Boosters

FM translators and boosters provide important service to the public throughout the country. They comprise a low power service on the FM broadcast band (88 to 108 MHz) which complements the primary FM service. The service was first created in 1970 to allow FM stations to provide supplementary service to areas in which direct reception of radio service is unsatisfactory due to distance or intervening terrain barriers (*e.g.*, a mountain).

The FCC proposal to create a LP1000 class with primary status against secondary FM translator and booster stations does a disservice to existing broadcasters and the public. Extending primary status to LP1000 stations means they would not have to protect noncommercial Class D FM stations, FM translator stations and FM booster stations, all of which are secondary services. NPRM at ¶ 27. Not only will this place FM translators and

boosters in an inferior position to LP1000 stations but, in essence, it will make full power FM stations subservient to LPFM.

The Commission is thus wholly ignoring the needs of licensees of full power FM stations and the public who rely on translators and boosters to serve parts of a station's protected coverage area that cannot receive service without translator or booster assistance. For example, FM band frequencies are heavily used by translators in the northern Utah areas, and residents in small towns in the state of Utah and other mountain states rely substantially on translators for EAS warnings, alerts, weather, news and information. In markets served by BIC's California stations, the public similarly relies on the service provided by translators and boosters. To squeeze in new LPFM stations in the FM band could dismantle this translator network and have grave consequences for those residents dependent on the present system.

The Commission should also recognize that FM broadcasters, and others seeking new FM translators or changes to existing translators, have been prohibited from applying for new or major modifications of translators for more than two years due to an FCC freeze on the processing of such applications. Broadcasters (including BIC) have already waited since 1997, when the freeze was imposed,[4] and continue to wait to file new applications and to have FM translator applications processed. Now that auction procedures have been adopted and the freeze eventually will be lifted, the FCC is contemplating making translators secondary to LPFM1000 stations.

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[4]See *NPRM*, Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Fixed Service Licenses, MM Docket 97-234, FCC 97-397 (rel. Nov. 26, 1997).

Accordingly, in the event the FCC licenses LP1000 stations as primary stations, BIC believes that translators and boosters, as well as applications pending for changes to these facilities which pre-date launch of the new service, should, at a minimum, receive "grandfathered" interference protection from LP1000 stations. Furthermore, some accommodation should be made for all of the existing broadcasters who have patiently waited for the opportunity to file for new or modified translators. Moreover, no translator or booster station should be licensed for use in connection with LP1000 stations. NPRM at ¶29. Frequencies for LP1000 and LP100 stations will be very limited; permitting their common ownership with boosters or translators will only complicate further the management of the spectrum.

D. Low Power FM Proposals For 1-10 Watt Stations Are An Inefficient Use Of Spectrum

In 1978, the Commission prohibited further licensing of 10-Watt Class D stations because it determined the spectrum could be used more efficiently by larger stations with the ability to reach more people.[5] The Commission said that "[h]aving balanced the competing equities, it has become clear that these low power operations cannot be permitted to function in a manner which defeats the opportunity for other more efficient operations which could serve larger areas, and bring effective noncommercial educational radio service to many who now lack it." Id. at ¶ 24. The same premise holds true today. Class D stations were intended to serve limited areas, similar to LPFM. Much like LPFM, the intentions for Class D were good; the

[5]See *Second Report and Order* in Docket 20735, 69 FCC 2d 240 (rel. Sept. 1, 1978) (*"Changes in Rules Relating to Noncommercial Educational FM Broadcast Stations"*).

reality was not. BIC believes LPFM is a repeat of the Class D FM scenario, and the Commission should not ignore its past experience.

IV. THE FCC'S LOW POWER PROPOSALS WILL BE AN ADMINISTRATIVE AND ENFORCEMENT NIGHTMARE

By the Commission's own admission, enforcement is to be a key function of the FCC in the 21st Century. Earlier this year, Chairman Kennard outlined his vision for the future of the FCC to Congress, presenting a report that committed the FCC to focus on three core functions -- consumer protection, enforcement and spectrum management.[6] Nevertheless, the Commission in this docket is proposing a service that will sidetrack the Commission from its mission by increasing its role to include licensing and monitoring (and responding to complaints about) low power FM stations.

The FCC has a limited budget and limited resources. It also has numerous major items on its agenda at any given time. Developing, implementing and enforcing a system for low power FM service, with all of its associated problems, is a significant regulatory and enforcement burden.

The Commission itself has noted that it expects "most LP1000 applicants may be relatively inexperienced in building broadcast facilities." NPRM at ¶ 80. Moreover, LPFMs will have few funds to retain legal and engineering counsel to ensure compliance with rules and regulations. Compliance with FCC rules requires at least some amount of capital and infrastructure. LPFM stations likely will have little capital and infrastructure and likely will

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[6]*See* March 17, 1999 News Release: Chairman Kennard Calls for Change, but not Chaos, in Outlining FCC's Pro-Consumer, Pro-Competition Agenda at House Reauthorization Hearing.

employ very few people. In essence, the FCC will be letting inexperienced operators loose in an established broadcast environment with little ability to insure regulatory compliance.

The Commission also proposes that LPFM licensees be subject to reduced and varying levels of rule compliance. This raises obvious issues of fairness. If LP1000 stations are going to benefit from primary status, they should be subject to all of the same rules, including public inspection file requirements and programming and operating schedule requirements. Aside from issues of fairness, varying levels of rule compliance will place additional burdens on the public and the Commission. Implementing an enforcement system and responding to complaints where there are multi-tiered programming and operating schedule requirements will not be feasible for an FCC staff that is getting leaner and busier.

LPFM, therefore, will create a whole new host of regulatory and enforcement burdens for the FCC at a time when its plate is full with other demanding and meaningful projects. It will also further exacerbate rather than resolve the pirate radio problem. Pirate radio operators will continue to exist while the FCC is enforcing rules applicable to a new regime of LPFM stations. Because pirate radio operators and LPFM stations will be broadcasting at the same time, the FCC will have greater difficulties identifying the illegal operators.

V. LOW POWER FM WILL NOT ACHIEVE THE COMMISSION'S OBJECTIVES

The FCC proposed LPFM because of its concern that consolidation and price escalation have made radio station ownership and access too expensive for most individuals, and as a result the public is being deprived of diverse local views. The FCC believes that LPFMs will provide a low-cost means of serving urban communities and neighborhoods, as well as

populations living in smaller rural towns and communities. NPRM at ¶ 1. The FCC hopes LPFM will address unmet needs for community-oriented radio broadcasting, foster opportunities for new radio broadcast ownership, and promote additional diversity in radio voices and program services. *Id.* BIC does not see those objectives being realized with LPFM.

This logic dictates that the greatest demand for low power FM is in urban areas of the country where most consolidators are focused and where entrance prices are highest. However, technical studies have shown that the urban areas are the least likely candidates for low power FM because of the interference problems. Even if no 3rd adjacent channel protection is required, it will still be difficult to place LPFMs in urban centers without causing disruption to stations already on the FM band.

BIC also believes that if the LPFM stations are authorized on a commercial basis, they will need to be auctioned pursuant to the Balanced Budget Act of 1997, § 3002(a)(1). That Act amended the FCC's auction authority under Section 309(j) of the Communications Act to include communication broadcast applicants. If LPFM is implemented and it is commercial, it must be subject to competitive bidding. If auctions are required, then the bidder with the most money, with no regard to race, gender, diversity or promise of community service, will win. Thus, the Commission's goals of minority and female ownership of LPFMs, ethnic community service and ownership by schools and community groups will go unrealized. Accordingly, BIC believes that, if the Commission goes forward with an LPFM service, it must be restricted to a noncommercial service. This is the only way the FCC can hope to place these licenses with entities who will foster the stated objectives of this proceeding.

VI. THE COMMISSION'S PERCEIVED NEED FOR THE LOW POWER FM SERVICE IS OVERSTATED; OTHER ALTERNATIVES THAT WILL NOT COMPROMISE THE FM RADIO SERVICE SHOULD BE EXPLORED

There are numerous sources of radio programming, diverse as the communities and listeners who turn on the radio. In any given metropolitan area, merely surfing the AM and FM dials introduces a listener to a veritable supermarket of format selections. Contrary to the FCC's NPRM, the radio spectrum is filled with diverse programming and viewpoints. Gone is the day when the only source of programming was a DJ and a record. Programming is fed via satellite and cable. It is not even necessary to own a radio to have access to radio news and music. Webcasting and Internet streaming allow people to turn on a personal computer and "listen" to their favorite stations and to interact with the stations, making the broadcaster even more accessible than in the traditional sense.

In addition, opportunities abound for people interested in being a part of radio to do just that through creation of unique programming which can be marketed to existing stations or through employment at a radio station (as a paid employee or volunteer). LMAs, TBAs and brokerage agreements for distinct segments of time in a broadcast day all offer the opportunity for non-licensees to provide programming, and for listeners to benefit from different viewpoints. For example, in many markets, there are community stations that provide access to their facilities for interested members of the public to offer broad-based programming. Similarly, in most locations cable access channels and community newspapers provide opportunities for interested persons to participate in media.

Moreover, with the Internet, each person with access to a personal computer can deliver his or her own messages to people millions of miles away. The world of diversity at a person's fingertips is far greater than any diversity that LPFM will provide. If diversity of viewpoints is the goal of the FCC, then the answer has already arrived via the Internet.

Simply put, substantial sources of programming are available to the public and there are existing mechanisms for interested parties to participate in programming distribution; the need for LPFM is overstated. Accordingly, BIC believes the FCC should explore alternatives to the proposed LPFM service that will not have such an adverse impact on existing FM broadcast service. One suggestion that has been made is to create additional noncommercial service by expanding the FM band as air navigation services migrate to global positioning technology. Such an alternative should be given full consideration. BIC also notes that colleges and universities now use carrier current transmission services for internal radio stations. Perhaps some expanded use of carrier current transmission could be utilized to accomplish Commission objectives. The Commission should not compromise the existing analog radio service that is being provided to the public and it should not jeopardize the transition to digital technology. Instead, other avenues must be considered.

VII. CONCLUSION

For the foregoing reasons, BIC is opposed to the FCC's proposals for the creation of an LPFM service. While the FCC's proposals are well-intentioned, they have far-reaching adverse consequences that cannot be ignored.

Respectfully submitted,

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Dated: August 2, 1999