

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

To: The Commission

**MOTION FOR STAY**

**Introduction**

Pursuant to Section 1.43 of the Commission's Rules, 47 C.F.R. § 1.43, National Public Radio, Inc. ("NPR") hereby petitions the Commission to stay implementation of the rules adopted in the Report and Order in the above-captioned proceeding, including the issuance of any public notice commencing the filing of LPFM applications.<sup>1</sup> According to the Report and Order, once the LPFM rules become effective -- April 17, 2000 -- the Commission will promptly release a public notice announcing the first filing window, that public notice will be issued at least thirty days in advance of the initial filing window, and that initial filing window will open in May.<sup>2</sup>

We request a stay of the LPFM Rules pending the later of (1) issuance of a public notice of the Commission's decision addressing the merits of NPR's Petition for Reconsideration and (2) July 15, 2000 to permit completion of tests currently undertaken by the Commission of subcarrier audio ("SCA") receivers and of field tests now being conducted by NPR.

NPR is a non-profit membership corporation that produces and distributes noncommercial

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<sup>1</sup> Creation of Low Power Radio Service, Report and Order, MM Docket 99-25, RM-9208, RM-9242, 65 Fed. Reg. 7616 (Feb. 15, 2000) [hereinafter "Report and Order"].

<sup>2</sup> Id. at ¶ 131.

educational programming through more than 600 public radio stations nationwide. In addition to broadcasting award winning NPR programming, including *All Things Considered*<sup>®</sup>, *Morning Edition*<sup>®</sup>, *Talk Of The Nation*<sup>®</sup>, and *Performance Today*<sup>®</sup>, NPR's Member stations originate significant amounts of news, informational, and cultural programming. NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its Member stations.

As a membership organization of public radio stations and, independently, as a producer of news, cultural, and informational programming that is distributed over public radio stations nationwide, NPR is directly and adversely affected by the Report and Order.

### **Argument**

The Commission evaluates petitions for stay under well-settled principles. To support a stay, a petitioner must demonstrate that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest favors granting a stay.<sup>3</sup> No single factor is dispositive of a petition for stay. The Commission typically balances all four factors in exercising its discretion to grant or deny a stay but does not require a showing as to each single factor in every case.<sup>4</sup>

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<sup>3</sup> Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

<sup>4</sup> AT&T Corp. v. Ameritech Corporation, 13 FCC Rcd. 14508, 14515 (1998).

## I. NPR Is Likely To Prevail On the Merits Of Its Petition For Reconsideration In This Proceeding

As set forth more fully in NPR's Petition for Reconsideration in this matter,<sup>5</sup> the Report and Order is significantly flawed in numerous respects. The decision to revise and reduce long-standing interference protections is premised on the flawed notions that (1) interference to existing radio broadcast stations is unlikely to occur to any meaningful extent and (2) any interference that does occur is justified by the benefits associated with the proposed new service.<sup>6</sup> These premises, and the ultimate conclusion the Commission reached, are demonstrably in error.

In concluding that harmful interference is unlikely to occur, the Commission

- \* established no benchmark against which to measure degraded service;
- \* failed to consider category I receivers -- clock radios, shower radios, and other small, inexpensive receivers with internal antennas -- even though tens of millions of such radios are sold each year;
- \* identified the need for substantial additional testing beyond the limited sample considered in its "Interim Report,"<sup>7</sup> specifically to include digital interference issues, but never conducted additional tests or explained why the additional testing was unnecessary;
- \* without any prior notice or comment, summarily redefined and reduced the area in which the signals of full power stations are entitled to protection;
- \* authorized an entire new category of service -- LPFM travel advisory services -- suggested by a few of the initial commenters, without any consideration of the countervailing considerations; and

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<sup>5</sup> NPR Petition for Reconsideration, Creation of Low Power Radio Service, Report and Order, MM Docket 99-25, RM-9208, RM-9242, filed Mar. 16, 2000.

<sup>6</sup> Id. at 3; see Report and Order at ¶ 93.

<sup>7</sup> Technical Research Branch, Laboratory Division, Office of Engineering and Technology, Federal Communications Commission, Second and Third Adjacent Channel Interference Study of FM Broadcast Receivers, Interim Report at 3 (July 1999).

- \* failed to consider the likely interference to radio reading services for the print-disabled.

To aid in the clarification of potential interference to full power stations, including radio reading services, NPR is in the process of conducting field tests, and we have supplied the Commission with various types of SCA receivers so that it can conduct some analysis of the likely interference problems. Based on these test results, and in any event, the Report and Order cannot stand unrevised.

The Commission's separate determination that any new interference is justified by the benefits associated with the proposed new service fails to properly weigh the significant harm that is likely to occur to existing services, including public radio services. There is a longstanding and substantial Federal interest and investment in public radio. The occurrence of LPFM interference to the reception of public radio services, either individually or in the aggregate, undermines the mandate to extend public radio service to "all citizens of the United States."<sup>8</sup>

LPFM interference to public radio stations is particularly likely and unjustifiable for numerous reasons.

- \* public radio stations operating on reserved FM-band spectrum are more tightly "packed" together, resulting in severe frequency congestion in many parts of the country;
- \* public radio stations are particularly vulnerable to interference because their signals are "lightly process" to preserve the natural dynamic range of the programming rather than to enhance loudness;
- \* statewide public radio networks are vulnerable because the affiliated stations are typically sited to achieve maximum signal coverage to the maximum population based on the actual receipt of a quality signal rather than predicted contour overlap;

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<sup>8</sup> 47 U.S.C. § 396(a)(7).

- \* because of interference from, and the regulatory obligation to avoid interference to, adjacent channel 6 stations, the Report and Order introduces new LPFM stations in a portion of the FM band that is already severely compromised;
- \* the redefinition and reduction of the protected service area of full power stations makes it more difficult for noncommercial educational stations to serve their community of license; and
- \* public radio stations constitute the primary means by which radio reading services are transmitted to the print-disabled.

While we believe both commercial and non-commercial full-power FM broadcast stations are adversely affected by the Report and Order, the foregoing demonstrates the particular vulnerability of public radio stations to LPFM interference. To assure compatibility between LPFM and full power stations, NPR has proposed several modest changes.

First, applications proposing an LPFM station on a 3rd adjacent channel to a full power, translator, or booster station should be subject to challenge and dismissal based on a showing that the LPFM station will create interference to the reception of a regularly received off-the-air service within the existing station's 1.0 mV/m (60 dBu) contour. A comparable process already exists.<sup>9</sup> Instances of actual interference, either during the period of program test authority or at any time thereafter, should also be redressable through an extension of the complaint process that the Commission has already established in the Report and Order.<sup>10</sup>

Second, the Commission should maintain the 3rd adjacency protection and 1.0 mV/m (60 dBu) protected service contour for those stations that offer a radio reading service to the public. In addition, the Commission's rules should explicitly protect reception of radio services, including

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<sup>9</sup> 47 C.F.R. §§ 74.1203-.1204.

<sup>10</sup> See Report and Order at ¶¶ 66-67 (establishing a process to resolve complaints based on interference within a full power station's 3.16 m/Vm (70 dBu) service contour by an LPFM station operating on a co-, 1st, or 2d adjacent channel).

radio reading services, at cable headends to assure the uninterrupted retransmission of such services by cable systems.

Third, to protect and support the Federal interest and investment in translator and booster service, the Commission should permit translator licensees displaced by full power stations to restore service to the area and should authorize translator applications that are the subject of a Federal Public Telecommunications Facilities ("PTFP") grant, without regard for the operation of LPFM stations. As a separate matter, to protect the service of existing translators as the Report and Order purports to do, the Commission should expressly require LPFM licensees and applicants to protect the input channels of translator stations.

Finally, the Commission must do more than hope that the LPFM service will not impede the transition to digital audio broadcasting ("DAB"), whether in the form of an In-band, On-channel ("IBOC") or a new spectrum approach. Specifically, pending additional laboratory and field testing of the IBOC systems, the only appropriate course is either to maintain the existing interference protections or to clarify that LPFM stations are authorized on a secondary basis to all full power stations and translator and booster stations operating pursuant to a DAB authorization.

Based on the manifest flaws in the Report and Order and the modest measures needed to ameliorate the harm to existing services, NPR is likely to prevail on the merits of its Petition for Reconsideration.

## **II. NPR And NPR Affiliated Stations Will Suffer Irreparable Harm If A Stay Is Not Granted**

A stay of implementation of the LPFM rules pending resolution of the Petition for Reconsideration and the additional laboratory and field testing is essential both to protect individual public radio stations and, in the aggregate, the system of Federally supported public radio stations. The loss of existing listeners because their service is impaired cannot simply be repaired by the subsequent amelioration of the interference. Once a listener or a group of listeners in an area lose access to a public radio station signal, they may be lost to that station forever. Magnified across the universe of Federally supported public radio stations, the cumulative effect of the loss of coverage area could be profound.

Based on the foregoing, NPR and NPR affiliated stations will suffer irreparable harm if a stay is not granted

## **III. Other Interested Parties Will Not Be Harmed If The Stay Is Granted**

Other interested parties will not be harmed by a stay pending resolution of the Petition for Reconsideration because they, as much as NPR, would benefit by correction of the flaws in the Report and Order prior to implementation of LPFM. As currently constructed, the LPFM rules will result in the initial licensing of LPFM stations without regard for 3rd adjacent stations, without regard for the 1.0 m/Vm service contour of any co, 1st, 2nd, or 3rd adjacent full power station, without regard for 3rd adjacent channel full power stations that offer radio reading services, and without regard for IBOC or DAB generally. Subsequent window filing periods are intended to, and undoubtedly will, generate applications filling the gaps in coverage left by prior applications. Indeed, the initial window filing period will be restricted to applications for 100 watt LPFM stations, with subsequent filing opportunities for 10 watt LPFM stations, "to provide the

larger (100 watt) stations with their greater service areas the first opportunity to become established."<sup>11</sup> Unless the issues raised in the Petition for Reconsideration are addressed prior to implementation of LPFM service, subsequent remedial measures addressing basic interference protections are certain to disrupt individual LPFM stations and the service generally.

While we recognize the desire of some LPFM proponents to initiate service as soon as possible, we do not believe a slight delay materially undermines those interests. As a threshold matter, the Commission chose not to license low power FM stations for more than twenty years based on the prevailing policy that such services constituted an inefficient use of spectrum.<sup>12</sup> Given the fundamental change in policy, and the significant issues raised first by the NPRM and then by the Report and Order, the only prudent course is for the Commission to take the modest additional time to conduct and consider the laboratory and filed testing and correct its LPFM rules prior to implementation.

Finally, the Commission has now undertaken, with NPR's assistance, testing of SCA receivers, and all interested parties, including the print-disabled will benefit by completion of that testing, the completion of NPR's field tests, and revision of the LPFM rules prior to accepting any LPFM applications.

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<sup>11</sup> Report and Order at ¶ 11.

<sup>12</sup> As the Commission previously explained:

The ratio of service area to interference area is not a constant. Because of the way radio signals propagate, and the way service and interference are determined, the proportion of the region receiving service would be greater if higher power stations were established. Permitting low power facilities . . . would lead to a larger number of stations but less overall service. Simply put, full powered broadcast facilities are more spectrally efficient.

Application for Review of Stephen Paul Dunifer, 11 FCC Rcd 718, at ¶ 17 (1995).

Based on the foregoing, other interested parties will not be harmed if the stay is granted.

#### **IV. The Public Interest Favors Granting A Stay**

NPR believes that LPFM and public radio are complementary services. The scope of the two types of stations and the services they provide are fundamentally different. The largest LPFM stations would only cover three and one half miles. Even given the small coverage areas, the overall lack of available spectrum means that LPFM stations will not be able to operate to any significant extent in urban areas. LPFM stations are also designed to provide service narrow in scope, such as broadcasting a PTA meeting to the residents in the immediate vicinity of the school. Thus, they are intended to serve narrow interests within a community akin to a cable community access channel.

Public radio stations, on the other hand, serve far broader communities and communities of interest across the nation — in urban, suburban and rural markets. The public radio infrastructure is a mature one, reaching over 90 percent of the American people. Public radio stations also serve listeners with a remarkable mix of local and national programming. LPFM stations individually or as a group are not designed to produce a service, such as *Morning Edition*, which provides a national framework addressing news of immediate and broad concern within which individual public radio stations can insert local programming matter to address more localized needs. This service, and its importance, are experienced by millions of Americans every day and in virtually every community.

Because of the complementary nature of the two services, NPR believes the public interest is best served by the initiation of LPFM service in a way that complements, rather than interferes with, public radio services. There is no conceivable basis for favoring LPFM at the expense of public radio or for acting hastily. Accordingly, the public interest favors granting a stay so that

the issues of interference can be addressed prior to implementation of the LPFM service.

**Conclusion**

Good cause having been shown, NPR urges the Commission to stay the implementation of the rules adopted in the Report and Order pending reconsideration of those rules pursuant to NPR's Petition for Reconsideration and completion of the additional laboratory and field testing described above, but, in any event, until July 15, 2000, when the testing is expected to be completed.

Respectfully Submitted,

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