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

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

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

SUMMARY:

The promise of a new LPFM service is that of:

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

Two Guiding Principles:

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

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

2. Encourage maximum diversity of voices and viewpoints.

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

We Support a Complete Amnesty for Microradio Pioneers

We Support Allocation of New Spectrum for LPFM

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

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

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

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

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

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STATEMENT OF INTEREST

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

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

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

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

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

INTRODUCTION:

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

The promise of a new LPFM service is that of:

-- Local programming designed for local communities,

-- Diverse and alternative voices and viewpoints,
-- Service to currently unserved communities.

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

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

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

Two Guiding Principles:

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

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

2. Encourage maximum diversity of voices and viewpoints.

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

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

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

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

AMNESTY FOR MICRORADIO PIONEERS

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

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

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

The story since then is well-known to the FCC. Rather than deter Mr. Kantako, the FCC's repressive posture spawned a movement. A thousand transmitters bloomed in communities throughout the U.S. due to the overwhelming public need for a new kind of broadcasting and the courage of these pioneers. These unlicensed "microbroadcasters" were not criminals. They were

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

not seeking to defraud the public, they were seeking to inform the public. They were not seeking to enrich themselves, just to enrich their communities. They had no criminal intent, motive, or purpose. Their purpose was to address clearly felt community needs that had been neglected and abandoned by both the FCC and the licensed broadcasters.

The FCC does not have clean hands in this matter.

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

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

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

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

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

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

I. New Spectrum Allocation

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

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

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

A number of areas of the spectrum may currently have potential for LPFM use. VHF-TV channel 6 is not currently used in many areas of the country. Additional Channel 6 space may open up as television converts to digital. We believe that at least some of that Channel 6 space

[4] NPRM Paragraph 15.

just below the current FM band, might reasonably be opened up to LPFM use.[5] In addition, we have been told that other areas of the spectrum, such as 2300-2305 MHz, 139-140.4 MHz, and 141.5-143 MHz might be available and suitable for an LPFM service.

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

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

II. Non-Commercial Service

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

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

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

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

spectrum. LPFM is an opportunity for an entirely different model of local, community based radio service not based on a profit motive.

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

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

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

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

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

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[6]NPRM Paragraph 69.

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

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

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

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

B. Non-Commercial Form of Organization

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

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

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

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

C. Limitations on Any Commercial Operation

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

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

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

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

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

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

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

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

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

III. Primary vs. Secondary Status:

A. Modified Primary Status: We consider it completely unacceptable for the new LPFM service to have secondary status. In particular, we find it reprehensible that a full-power station

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

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

would be able to "bump" off a community based LPFM station just because it wants to increase its power or relocate its transmitter. This is a complete violation of Principle 2, stated above, to encourage maximum diversity of voices and viewpoints. It assumes that big, commercial stations somehow have greater priority or value than small community stations which have less wattage, but give voice to many more people-- people who truly want to communicate.

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

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

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

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

IV. Status of Repeaters:

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

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

Local Signals: Currently existing translators or repeaters which fill in or contiguously extend a local signal should be "grandfathered" in and not subject to challenge by new applicants. However, for future applications, LPFM applicants who originate at least 75% local programming should have priority over translators and repeaters. We believe that this represents a fair compromise and a reasonable application of our Principle 2, above.

V. Opposition to 1,000 watt LPFMs.

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

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

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

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

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

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

VI. 100 Watt LPFM Service:

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

1. Non-commercial (including no "underwriting" announcements),

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

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

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

VII. 1-10 Watt Service:

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

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

VIII. AM Low Power Radio: We understand the Commission’s reluctance to initiate a low power AM service. AM interference is far more difficult to predict and control than FM.

Nevertheless, given the scarcity of channels available and applying our Principle 2, above, to create maximum diversity, we feel that the Commission should consider a very low power AM service (on the order of 20-50 watts maximum), possibly with daytime only operation. Such a service might be very useful to schools, city governments, and other institutions whose primary need would be during daytime hours. Such a service would likely increase the diversity of local voices, while taking a bit of the pressure off LPFM.

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

X. Minimum Distance Separations:

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

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

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

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

[12] NPRM Paragraph 41.

file for less power than the maximum, thereby reducing mutual exclusivity and allowing for more LPFMs to be authorized.

XI. Second and Third Adjacent Channel Protections:

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

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

XII. Receiver Engineering Study Concerning Second and Third Adjacent Protections:[14]

In response to the request for study in Paragraph 50 of MM 99-25, the National Lawyers Guild Committee for Democratic Communication, the Prometheus Project, the Microradio Empowerment Coalition, Media Access Project, Minority Media and Telecommunications Council, and several private contributors collaborated to commission a broadcast engineering study with respect to the FCC's proposed rules regarding Low Power FM. The engineering study, executed by Broadcast Signal Lab ("BSL") of Cambridge, Massachusetts, studied the selectivity and blanketing susceptibility of commonly available receivers in the United States and, specifically, investigated the implications of relaxing second and third adjacent rules for low power FM.

A. Methodology:

In the Broadcast Signal Lab study, a "desired signal" was created on the test bed and fed directly to the antenna terminals of a receiver. The desired signal level was chosen to approximate that typically encountered by a receiver at the protected contour of a station. The desired signal was set at 97.7 Mhz, close to the 98 Mhz mid-band point frequently used for receiver testing.

The interfering signal (or "undesired signal") was added to the receiver in 10dB incremental steps, until the receiver's reception of the desired signal was disrupted. Receiver

[13]NPRM Paragraphs 42-50.

[14] This section was primarily drafted by Pete tri Dish, of the Prometheus Project, and Alan Korn, of the NLG Committee on Democratic Communications.

overload was a potential consequence of the testing. In the cases of 2nd, 3rd, and 4th adjacent channel interference testing, the reference ratio places the undesired signal 40 dB higher than the desired. The test was conducted with undesired signals as much as 40 dB higher than the FCC reference ration and 70 dB higher than the desired signal. Since the desired signal was set at a nominal 60 dBu value, the undesired signal could be as high as a nominal 130 dBu. FCC blanketing rules apply to individual stations whose levels are greater than 115 dBu. The test plan inherently exercises the radios' response to potential blanketing interference.

Extensive efforts were made to reduce outside interference.

Eleven radio receivers were tested. Four were higher cost receivers, two were car radios, and five were lower cost receivers.

Each receiver was tested for co-, first, second, and third adjacent channel interference. Four receivers were tested for fourth adjacent interference as well. The undesired signal level was established in relation to the FCC ratios for commercial stations. The level of each undesired signal was set to as many as six values per test, ranging from -20dB to +30 dB.

B. Receiver Evaluation Conclusions:

Of the receivers tested, about half performed dramatically better than the FCC interference ratios would suggest. The performance of the other half varied widely, but averaged out at approximately the level of the current FCC interference ratios. Component stereo receivers generally performed very well. Car stereos also performed well in excess of the FCC ratios. Lower priced radios, such as walkmans, boom boxes, and clock radios had slightly more trouble discriminating between the desired and undesired signals as the signal strength went beyond the FCC interference ratio.

Perhaps the most noteworthy results were that, where 4th adjacency was tested, the results were generally similar to those for 2nd and 3rd adjacency. [15] Comparison of test results for 2nd, 3rd, and 4th adjacency as to all radios tested revealed little significant statistical difference. Under current FCC rules, 4th adjacent frequencies are unregulated. These results strongly indicate that, at least for Low Power FM stations of 100 watts ERP or less, regulation of second and third adjacencies should also be eliminated..

Under testing conditions the radios were, of necessity, subjected to levels of signal well above the level of signal considered blanketing by the FCC rules part 73.318. As a result of the high level of signal needed to test, it is believed that the interference found in low-cost receivers was caused not by a failure of selectivity, but by blanketing effects. Given the low power nature of the FCC's proposed service, conditions such as this will only be experienced within a few hundred feet of the transmitter site for LPFM stations. Even in these extraordinary conditions, many low cost receivers performed well in their toleration of interference.

[15] In fact, for the Sony Walkman, one of the least expensive receivers, performance was "worst with fourth adjacent channel signals." (BSL, Exhibit B, p. 12.).

As noted, receivers were divided into three (3) distinct classes:

1. Higher Priced Radio Receivers: Tests showed that higher priced radios will not be affected in any significant way by eliminating 2nd and 3rd adjacency limits on the Commission's proposed LPFM service. The Broadcast Signal Lab report states, "The higher priced radios performed at least 10 dB better than the FCC interference ratio for commercial second adjacent channel signals."[16] With respect to 3rd adjacent, "All the higher priced radios tested entered the transition zone well above the FCC ratio reference level, at undesired levels between FCC+20 and FCC+30dB."[17]

2. Car Radio Receivers: Similarly, test results showed that car radios will not be significantly affected by dropping 2nd and 3rd adjacency limits for LPFM. Regarding 2nd and 3rd adjacency tests, the BSL report states "car radios entered the transition zone above the FCC+20 dB undesired signal level."[18]

3. Low cost FM receivers: The tests indicated wide variance among low cost radio receivers. The Broadcast Signal Lab report states, "The lower priced radios performed better with undesired signals on a third adjacent channel than on a second adjacent channel."[19] However, the following points must be considered when reviewing the data for low cost receivers:

(a) Similarity of 2nd, 3rd, and 4th adjacent results**:**

As we have stated above, the 2nd and 3rd adjacent performance was statistically undifferentiated from 4th adjacent performance, and 4th adjacencies are presently unregulated.

(b) Likelihood that Blanketing Interference rather than selectivity is at issue:

Interference is caused in the immediate vicinity of all radio stations by the extraordinarily high levels of RF signal concentration emitted by the antenna. This high level of power can overload the circuits of the receiver before it can be filtered out in later stages. Large radio stations are required to address this sort of interference within what is known as the blanketing, or 115 dBu, contour. Typically, these stations address this form of interference by giving an inexpensive filter to the affected residence. That filter traps FM radio signals at the station's frequency, before it can overwhelm the receiver.

In the low cost receivers, second adjacent interference was not so different from third adjacent, and third adjacent was not so different from fourth adjacent. Since performance was uniformly mediocre with statistically minor regard for adjacency, the problems experienced by the receivers was more likely a desensing effect than a true lack of selectivity. If the root of the problem was actually selectivity, then there should have been a stronger correlation with adjacency. While lack of receiver selectivity, had it been discovered in this study, could have

[16] Broadcast Signal Lab, Exhibit B, p.10.
[17] Broadcast Signal Lab, Exhibit B, p.11.
[18] Broadcast Signal Lab, Exhibit B, pp.10, 11.
[19] Broadcast Signal Lab, Exhibit B, p.11.

interference implications for the larger listening audience, desensing in the blanketing contour should be of minor concern to the Commission when considering the elimination of second and third adjacent restrictions.

Because low power stations operate with much less power than full power stations, the contour wherein they have potential to cause blanketing interference is much smaller than that of full power stations. As shown in the BSL study (Appendix A, Table 1) the blanketing radius for an LP1000 station would be 394 meters, for an LP100 would be 125 meters, and for an LP10 would be 39 meters. By contrast, a 50,000 watt station has a blanketing radius of 2788 meters. As the analysis in Appendix A shows, a relatively small number of listeners could be affected by blanketing interference from a LP 100 station (the largest urban class of license that we support). Assuming a population density of 30,000 per square mile, an LP100 station could potentially cause blanketing interference to 570 persons.

We believe that LPFM operators should abide by the blanketing rules of full power FM, which guarantee relief for citizens afflicted with blanketing interference. We are certain that blanketing interference will be *de minimis* and should not be a factor in considering the technical merits of LPFM.

(c) In "real world" conditions, actual interference is likely to be *de minimis*:

First, grandfathered, short-spaced, full power stations already exist (47 CFR 73.213 and 47 CFR 73.215). Such stations have not had a history of significant interference.

Second, the FCC is currently considering "point to point" methods of measuring actual interference between stations. Such methods provide a more accurate picture of true interference between stations, as opposed to the current 50/50 curves based on average terrain. That the FCC is considering such methods indicates strongly that current methods are, generally, far too conservative.

(d) Additional factors weigh in favor of dropping 2nd and 3rd adjacency restrictions:

Car radios and high-cost radios would appear to have selectivity more than adequate for the purposes of a new Low Power FM service. We believe it would be inequitable and unjust that the needs of thousands of communities for a new LPFM service should be held hostage to that small number of radio receivers with the worst selectivity that occupy the lowest end of the consumer electronics market. If there is, in fact, an issue with selectivity in those receivers, we believe the market will quickly respond. Twenty years ago it may have been difficult or impossible for manufacturers to significantly upgrade the selectivity of low-end radio receivers without significantly increasing their cost. However, receiver technology is vastly improved over that which existed when the Commission's regulations were first enacted, and quality filters are now available to manufacturers at extremely low cost. Should there be market demand for low-end radio receivers with greatly selectivity, we believe it would not be difficult for manufacturers to meet that demand.

Indeed, it would be quite ironic if FCC "protection" of full power licensees merely results in protection from the marketplace for poor quality radio receivers that could be upgraded with the addition of relatively inexpensive filters. If anything, creation of an LPFM service will provide an incentive for radio receiver manufacturers to improve the quality of lower-end radios. Such a side-effect would be beneficial to all. The NAB and other broadcasters have expressed a deep concern over the "interference environment." Certainly a resulting increase in the quality of radio receivers can only benefit all parties involved.

In addition, a recent New York Times article also reveals that most homes have multiple radios, that radio turnover is high, and that most people do not expect to receive pristine sound from their radio. If the *de minimis* interference that might result from dropping 2nd and 3rd adjacencies should affect a given household, members of that household would reasonably be expected to either use the radio they already own which is least susceptible to the problem, or purchase a new radio with better selectivity.

> "Americans bought more than 58 million radios for the home last year. In fact, the Consumer Electronics Manufacturers Association reports that most homes have at least eight of them. If car radios are included, that number rises to 9 or 10 per home, making radios easily the most ubiquitous consumer electronics device in the nation."
>
> "The average price for the home radios purchased last year was about $17."[20]

C. Issues Relating to Interference Not Subject to Testing:

In addition to issues related to receiver selectivity, several other possible forms of interference have been postulated that could be caused by Low Power FM. However, for the reasons below, we do not believe that these theoretical forms of interference would be a factor in preventing the Commission from authorizing a Low Power FM service. These possible forms of interference include:

1. Spurious harmonics:

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[20] Joel Brinkley, "Listening to Sounds of a Wave", New York Times, Thursday, June 3, 1999, page D1. This article goes on to say:

> "The sale of home radios actually increased by 5 percent last year, suggesting that Americans, by and large, were not convulsed with concern about the quality of sound pouring forth from the little speakers... The explanation seems to be that Americans generally are inured to radios and put them in the same class as refrigerators -- something so taken for granted that you seldom think about it any longer.
>
> . . . .
>
> "As a result, most people have forgotten, or never knew, that FM radio can actually be a high-fidelity source, capable of reproducing music with nearly the sonic range, or frequency response, of a compact disk. They have forgotten, or never knew, because nearly all of the radios purchased last year and over the previous few decades were capable of producing only a narrow slice of musical range." Id.

Since all proposals currently before the Commission would require some type of certification of equipment, this form of interference was not studied, since it could only be created by use of inferior equipment. Spurious harmonics would be no more likely in LPFM than in any other radio service.

2. Overmodulation:

Similarly, MM 99-25 calls for modulation limits and signal processing in LPFM. Therefore, a low power FM radio service does not carry risk of interference through overmodulation significantly different from that risk by full power stations.

3. Interference to IBOC:

Since digital broadcasting using the proposed In Band On Channel ("IBOC") system does not yet have a technical standard and the technology is still proprietary and not available for public scrutiny, the effects of LPFM on IBOC are difficult to predict. Several things are clear about IBOC, however.

As pointed out in the Comments submitted by Curt Dunnam comments before the Commission on RM 9242, the IBOC scheme described calls for redundant data streams on either side of the carrier. Thus, if one stream is corrupted by an LPFM signal on a second adjacent channel, the other could be received and deliver the data. It seems that it would be rare in today's band to find a place where there would be room for a second adjacent LPFM station on either side of a full power station implementing IBOC. If in fact this were to occur, and significant interference potential were discovered, then the Commission could simply allocate a LPFM on either side of the full power station, but not both.

It should be pointed out that the IBOC systems that have been tested thus far have generally performed fairly poorly. We feel that it would be a grave error for the Commission to stall the implementation of LPFM until some sort of workable IBOC system is devised. IBOC may well never work- already radio engineers jokingly refer to the system as IBAOC- In Band, All Over the Channels. Though we are convinced that LPFM can coexist with IBOC on second adjacents, we still urge the Commission to consider other forms of digital radio which are more robust than any of the IBOC systems. A neatly planned new swath of spectrum, with plenty of room for incumbents and new entrants seems a more fitting beginning to a new era of radio. IBOC is a "Frankenstein's monster" of signals tacked onto signals tacked onto signals; and carriers, subcarriers and sub-subcarriers, designed not to maximize spectral efficiency, but to reinforce the market dominance of incumbent broadcasters.

D. Conclusion:

Given the above test results, there appears to be sufficient basis to establish that a new LPFM service should be authorized without restriction on 2nd and 3rd adjacent channels. As noted above, those receivers tested for 4th adjacency displayed little difference in selectivity as between 2nd, 3rd, and 4th adjacenies. At present, 4th adjacency is unregulated.

Car radios and higher priced receivers, in particular, showed a strong ability to select the desired signal. While lower priced receivers did not test as well, this is strongly mitigated by the following factors:

1. The performance of lower priced receivers appears to be more likely due to blanketing interference rather than selectivity,

2. Real word performance is likely to be better than the test results,

3. Marketplace factors will likely lead to improved selectivity in lower priced radios thereby eliminating even the negligible interference that may occur.

4. Interference from spurious harmonics and overmodulation will be controlled by the FCC and there is no greater risk for this type of interference than that currently posed by full power stations.

5. The currently proposed IBOC system does not appear to create an interference issue with regard to LPFM. In addition, the proposed system is not currently testable.

While it is possible there may be *de minimis* degradation in some low-cost receivers, this is more than offset by the increase in diverse community voices, political speech, and cultural expression that will be added to the radio spectrum by LPFM.

Considering the many public benefits of this service and the relatively small population even potentially affected we can see no other rational result other than to authorize a new LPFM service without restriction as to 2nd and 3rd adjacent frequencies.

XIII. Digital Radio:

The Commission also raises the issue of whether a new LPFM service with only same channel and first adjacent channel protections will interfere with the introduction of the proposed new digital radio technology know as In-Band-On-Channel (IBOC) digital radio technology.[21] This digital technology would be introduced on the current FM band and on the same channels now used by analog radio broadcasters.

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

First of all, we believe that the public interest is better served by locating a new digital radio service in a different part of the spectrum. This is being done by nearly all of the

[21] NPRM Paragraphs 47-50.

industrialized countries of the world, including our neighbor Canada. Such a solution would have many advantages, including allowing for LPFM to be engineered in from the start.

Second, as we stated in our comments in RM-9395, our review of the proposal by USADR indicates that, according to USADR's own analysis, it is unlikely that there will be interference between LPFM and IBOC. The Commission staff appears to agree with that reading.[22] In that case, there will be no problem.

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

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

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

XIV. Operator Restrictions:

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

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

1. Licensees of full-power broadcast stations may not operate LPFM stations.[23]

2. No one may operate more than one LPFM station in the same community.[24]

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[22] NPRM Paragraph 47.

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

The Commission asks further questions in Paragraph 58.[25] To each of these questions we refer to Principle 2, stated above: the solution that creates the greatest diversity of operators, voices, and viewpoints should be adopted. There will be enough competition for LPFMs as it is. Operators should be restricted to that 99.99% of the population that has been entirely shut out of mass media participation. Barring that extremely small number of people who already have mass media ownership interests from LPFM does no harm of any sort. Allowing cross-ownership can only increase the already existing inequity, rather than decrease it. In fact, even where a frequency is unused, it is preferable to wait for a diverse user, than allow it to be foreclosed by a user who already has mass media ownership.

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

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

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

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

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

First, as we state in Section XV (below) we strongly urge a requirement of a minimum of 75% locally originated programming. Network programming, news service feeds, and other programming which is not locally originated can have great value and we strongly support its

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

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

development among LPFM stations. But localism is one of the core "benefits" of LPFM programming and must be preserved as one of its major components.

Second, the Commission has extensive experience with the tendency of networks and network type arrangements to seek to usurp the independence and judgment of local operators and affiliates through fairly subtle means.[26] The Commission has acted in the past to prevent such usurpation and should remain vigilant to see to it that such practices do not gain a foothold in LPFM.

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

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

The Commission has noted numerous times how scarce LPFM slots are likely to be in many areas.[27] Why allow multiple operations in the face of such scarcity? This scarce resource should be distributed as widely as possible. Even if a channel remains unused, it is preferable to await a diverse user, than allow it to be foreclosed by one who already has mass media ownership interests.

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

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

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

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

2. Local Residency Requirements: As with multiple operations, and for the same basic reasons, we strongly urge the Commission to adopt a local residency requirement. It is hard for us to understand why the Commission should not adopt such a requirement. Since competition for LPFM licenses may be intense, the Commission should initially do everything reasonable to limit the number of applicants. In most communities, there may not be enough spectrum to accommodate all applicants, even with residency requirements. Why allow additional applicants who are from outside the community and likely to be absentee operators? It just doesn't make much sense.

In addition, the Commission states,[28] "we expect the nature of the service provided by the two smaller class (sic) of stations would attract primarily local or nearby residents in any event." Therefore, the Commission seems to want and desire, at least for LPFM stations of 100 watts or less, local residency as a good thing. Yet the Commission is reluctant to mandate local residency. Commission expectations have proven wrong before, and this is one of those loopholes that we fear could become a ravine. We see little reason why the Commission should not simply mandate local residency if that is seen as a positive.

Frankly, it is the experience with national non-commercial religious broadcast organizations which gives us pause. We have absolutely no problem with local churches and other local religious organizations becoming LPFM licensees. In fact we support and encourage such a result. However, during the last decade a number of national non-commercial religious broadcasters have taken advantage of a loophole in the regulations for FM translator licensing to establish huge networks of stations rebroadcasting the same, identical national programming, with no local content. These translators have already taken much of the spectrum that might otherwise be available for local LPFM's. It is not the religious nature of the programming we object to, it is the absolute lack of localism. We fear that given the way the FCC is structuring the current LPFM proposal, large chunks of the new LPFM service might end up being used in the same manner. This would be a disaster, given the unique potential for LOCAL programming that LPFM promises.

The failure of the FCC to require local operators and local programming, and its allowance of multiple operations may well lead to a similar perversion of the purpose and intent of LPFM and would be, we feel, an absolute disaster. The full-power broadcasters have already largely abandoned local service. LPFM is the last great opportunity to bring back service truly designed for and focused on a local community. A local residency requirement is one of the elements necessary to ensure that this opportunity is not squandered.

3. Integration of "Ownership" Into Management:

For the same reasons as stated above regarding local "ownership", it would make sense that operators be required to be actively involved in the management of the station.. Allowing absentee operators simply does not make sense in the context of LPFM. Again, with the competition for LPFM likely to be heavy why not reduce the number of potential applicants by

[28] NPRM Paragraph 61.

restricting eligibility to those who really want to communicate via radio? Why should one who desires to be an absentee operator get equal treatment with one who truly wants to personally serve their community? Such a restriction is eminently reasonable, will benefit the community, and will serve to pare down the number of applicants to those who most urgently want a local community station, as opposed to those who are schemers and speculators.

The Commission asks whether the decision in *Bechtel vs. FCC* would preclude an integration rule.[29] We do not think that the decision in *Bechtel vs. FCC* precludes an integration rule. In the *Bechtel* cases, the D.C. Circuit court ruled that the FCC's integration preference[30] was enforced in an arbitrary and capricious manner. For instance, the policy behind integrated station "ownership" was significantly mooted by the fact that such a licensee could easily sell the station to a subsequent purchaser who had little day-to-day oversight over station operations. Because a significant public policy is advanced if the operator of an LPFM station is a local resident (i.e., increased diversity of voices and local content), we believe the FCC can establish an integration rule for LPFM provided that such a rule is enforced in a consistent manner. We strongly believe that implementation of the proposals set forth in the CDC's comments would ensure such a result.

XV. Local Programming:

We are extremely disappointed in the Commission's proposal to not impose a local programming requirement. We consider it a major mistake which could undermine the entire LPFM service. The whole point of LPFM is localism-- service to a particular community, designed by and for that community. Frankly, if local programming is not a requirement of the new LPFM service, than we would rather see no service at all.

The Commission states that, "based on our expectation of the nature of the licensees that will populate LPFM... we expect that a significant amount of programming will be locally produced as a matter of course."[31] This would not be the first time that the FCC has had such "expectations" and been wrong.[32] It does not really matter what the current potential applicants for LPFM might be planning. What matters is how this new service will develop ten and twenty years down the road-- will it still be a model of local programming, embedded in and responsive to its community? Or will it be just more generic, bland pap piped in from a "professional" studio somewhere in L.A. or New York. If it's the second, then the entire service in just not worth the effort and we will withdraw our support.

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[29] NPRM Paragraph 62. Bechtel v. F.C.C., 957 F.2d 873 (D.C. Cir. 1992), Bechtel v. F.C.C. 10 F.3d 975 (D.C. Cir. 1993).

[30] "Integration" here refers to the FCC's previous preference for station owners to also be part of the full-time on-premise station management.

[31] NPRM Paragraph 68.

[32] Consider the Prime Time Access Rules, for example.

If the Commission does not require a significant local programming component, then we fear the following result. Those who have no interest in local programming and service to a particular community, but rather in empire building, will be attracted to LPFM as applicants. They will flood the applicant pool, either now or in the future, and push aside those who have fought for many years for LPFM as a local, community service. Additionally, even some of those who sincerely wish to provide local programming will succumb to the inevitable financial pressures and start down the slippery slope of utilizing a variety of network and syndicated programming. Let's face it: network and syndicated programming is usually just a whole lot easier to do and a whole lot cheaper. Without a requirement to keep programming local, even the most dedicated community activist may, five or ten years down the road, be subjected to a mighty temptation to take the easy way.

The entire purpose of LPFM is to give the community a voice, put local people on the air, broadcast local city council meetings, high school football games, local dramatic productions, etc. Those who are not unconditionally dedicated to doing this should simply not be applicants for LPFM. Considering the crush of applications that is expected, why would the FCC wish to open the process to those who are not dedicated to community service? By limiting LPFM to local service, it will reduce the number of applicants and limit the applicants to those who are dedicated to community-based programming. We can see no rational reason for the FCC wishing any other result.

We do not propose that programming be 100% local origination. We propose that programming be a minimum of 75% locally originated.[33] We not only recognize the value of networking and cooperation among LPFM stations to produce regional and national programming, but strongly encourage it. However, such programming should not dominate any LPFM station and should be kept to below 25%.

XVI. Transferability

We absolutely oppose the Commission's proposal to allow for transferability of LPFM licenses and construction permits.[34] We refer to Principle 1, above, that all decisions should be made to encourage those who wish to communicate, and discourage those who wish to profit. Those who wish to communicate will not care if licenses are transferable-- at that point where they cease to desire to communicate they will be happy to vacate their channel to become available again for others. Only those who seek to profit will be concerned that transferability be allowed.

Allowing transferability of licenses will only encourage speculators to apply for licenses or to purchase them for trading purposes. Speculators do not invest in long term development, do not get to know their community, do not see beyond the next year or two. Allowing speculation, especially in community LPFM stations, is simply not in the public interest. A licensee that ceases

[33] We consider pre-recorded music that is individually selected and aired locally to be "local" origination.

[34] NPRM Paragraph 86.

to utilize its channel should simply allow that portion of spectrum to return to the general pool of available channels.[35]

XVII. Applications and Renewals:

We have a somewhat different approach to the application and renewal process than that outlined by the Commission. We would prefer to see a system that more closely resembles a "registration" system than a licensing system. The system would be designed, to the maximum extent possible, so that conflicts among applicants could be resolved through local, voluntary agreements. Conflict resolution by the FCC would be only a last resort. This approach will be applied below to each element of the application and renewal procedure.

In addition, we believe the LPFM service should be entirely non-commercial. Therefore, our comments in this section are addressed primarily toward non-commercial applicants. As the Commission notes,[36] "the Balanced Budget Act of 1997 appears to mandate auctions... if mutually exclusive applications for commercial LPFM facilities were filed." Therefore, even if the Commission were to allow for commercial licensees, the application procedure would appear to be, necessarily, quite different than that for non-commercial licensees.

A. Electronic Filing:

In general, we agree with the FCC's proposal that electronic filing be mandatory.[37] This will certainly lead to a more prompt and efficient processing of applications. We believe that, at this time, nearly all potential applicants have electronic filing available to them. Further, that availability is constantly growing so that by the time the FCC is actually ready to receive applications it should be even more widespread.

However, should even a fairly small number of commenters in this proceeding reasonably indicate that electronic filing is not readily available to them or would add an unfair burden, then we would support an alternative method of filing, such as filing the application via computer disk.

B. Filing Windows:

We agree with the FCC proposal that there should be fairly short filing windows. We believe that a filing window of about 7 business days is reasonable, assuming that sufficient advance notice will be given.

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[35] As stated above, in footnote 6, we do not object to completely formal transfers such as from a partnership to a corporation where control remains the same, or to an heir of a licensee.

[36] NPRM Paragraphs 103 ff.

[37] NPRM Paragraph 91.

1. No First Come, First Served: However, we strongly oppose any system which utilizes a first-come, first-served approach. This will serve no real purpose, and will simply lead to a potential disaster when every applicant attempts to file simultaneously during the first minute that the filing window is open. How can it possibly benefit the public to award a license to the applicant who files at 9:01 AM as opposed to the applicant who files at 9:06 A.M. Such an approach seems inequitable, irrational, and unrelated to any public interest purpose or goals, except for a sort of robotic efficiency.

The Commission might wish to consider having these filing windows roll-out over the United States over a period of a few months so that Commission staff can spread the administrative burden and the system will not be overwhelmed.[38] At a reasonable time after the first round of applications have been completed, a second round might be initiated. After that, applicants could simply file for any channels still available.

2. Amending Applications to Remove Conflicts:

It would be useful if applicants can rapidly receive information that their proposal is mutually exclusive with another proposal, but only if that information is sufficient to allow the applicant to amend their application to remove the conflict.[39] If the information is not sufficient to allow for a useful amendment, or if there is no opportunity to amend, then such information serves no real purpose.

The system should be set up so that applicants can submit an amended application in order to remove the conflict. In fact, there might be an additional period of one or two days to allow for such amendments. However, the amendment should only be processed if it actually places the applicant in a non-conflicted situation. If the amendment would simply create a conflict with yet another applicant, then it should not be processed and the original application should remain in place.

3. No Information to Enable Cross-Filing:

Any information that is given to applicants during an open filing window should not allow them to then design an application which purposefully conflicts with another applicant. This is sometimes called "cross-filing" or "filing on top" of an applicant. It has been done, sometimes extensively, in other FCC proceedings in the past, and is not in the public interest in the context of LPFM.

Rather each LPFM applicant should design the station that best serves an intended audience. Such applications should be designed with no reference at all to other applicants, unless such cooperation is mutual and voluntary.

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[38] NPRM Paragraph 97.

[39] NPRM Paragraph 95.

Otherwise, we fear that some applicants will purposefully wait to see what the plans of the initial applicants are. They may then design their applications to be slightly more in line with some FCC criterion, and then file on top of the earlier applicant in order to eliminate them as a competitor. Such a situation would be inequitable and would not serve the public interest. Therefore, we support a system which gives applicants enough information to allow them to remove conflicts by filing an amended application, but does not give them information which would allow them to design an application that would be intended specifically to compete with another applicant.

4. Impose Extensive Public Interest Qualifications to Reduce the Number of Initial Applicants:

The first thing the Commission should do to make the application process simpler is to impose reasonable public interest requirements on applicants to initially reduce the number of applicants. To the extent that the FCC's proposals do not do this, they appear to us to be irrational and contrary to the FCC's explicitly stated goal of reducing the potential flood of applicants.

In Paragraph 40 the Commission states that it, "expect[s] to receive a very large volume of applications." The Commission repeats this statement in Paragraph 91, and notes the difficulty this poses. This concern is then mentioned numerous times in the following paragraphs. In Paragraph 97 the Commission states that, "We are concerned... about...a flood of applications in a short period that would be so great as to overwhelm any filing system we might be reasonably able to devise."

Further, in Paragraph 106, the Commission notes its statutory obligation, under Section 309(j)(6)(E) of the Communications Act, "in the public interest, to continue to use engineering solutions, *threshold qualifications*, service regulations, *and other means* in order to avoid mutual exclusivity in application and licensing proceedings" (emphases added).

Yet, despite this serious concern and statutory obligations, the Commission has refused to put in place certain obvious limitations on applicants, limitations all of which would serve the public interest and which could significantly reduce the expected "flood" of applicants. We are baffled by the Commission's illogical position in this area.

We will briefly repeat the restrictions we have proposed above:

1. Non-commercial (including no "underwriting" announcements),
2. License (and construction permit) non-transferable.
3. Local programming requirement: 75% local programming.
4. Operator requirements:
   a. One to an operator (local and national),
   b. Local residency and integration requirement,
   c. No operators with full-power radio license (local and national)
   d. No operators with full- or low-power TV license (local and national)

e. No operators with ownership interest in other mass media such as telephone company, cable TV company, satellite broadcaster, daily newspaper, etc.

All of these requirements are in the public interest. We are certain that, even with these requirements, there will be an abundance of applications. Yet these requirements will significantly reduce the number of applicants, thereby easing the application process. In addition, these requirements will fulfill both Principles 1 and 2, above. They will encourage those who are most interested in actual communication, in actually serving their community. They will discourage those interested in profit-making or empire-building. And they will create the maximum diversity of operators, views, and voices. For the FCC to fail to mandate these requirements is for the FCC to invite the very administrative nightmare it claims it wishes to avoid.

5. Local Self-Regulation: The Core of the Application and Regulatory Process

After a window has closed, those applications that are not mutually exclusive should be considered "registered". As long as these applicants construct the station within the time limit, they should be able to go on the air.

Where there is mutual exclusivity, the applicants should all be notified of that fact, told with whom they are in conflict, and given as much information as possible as to exactly wherein the conflict lies. At that point, such applicants should be given three months to negotiate a settlement.[40] An additional three month extension may be granted if the majority of applicants in a group request such an extension.

The FCC should encourage creative solutions and provide assistance wherever feasible and possible. FCC field offices might be enlisted to provide engineering or technical advice. Solutions might include time-sharing, reduction of power at certain times, relocation of transmitter sites, alterations in transmitter elevation, directionalization of signal, etc. More sophisticated modeling than the initial distance separations should be allowed in order to show that conflicts have been resolved satisfactorily.

We suggest that the Commission take the following steps to encourage local and voluntary resolution. Note that we also propose that applicants who follow these steps will eventually be given a priority status if the local negotiations should fail and the next step of the application process becomes necessary.

a. Encourage the Creation of Voluntary, Local Self-Regulatory Organizations

Applicants who are mutually exclusive should be encouraged to form a voluntary local self-regulating organization (LSRO) which will assist with resolution of the conflicts among applications and serve as an ongoing self-regulatory body. Even applicants who are not mutually exclusive should be urged to join such an organization, since the organization will provide on

[40] Such settlements shall NOT include financial payments or other similar exchange of valuable consideration.

going self-regulatory functions. As we describe below, such a non-mutually exclusive applicant might benefit from such membership at renewal time.

Such organizations should be encouraged to initiate processes which will lead to resolution of application conflicts. The organization might initiate mediation or binding arbitration as a means of resolving conflicts. An established local organization might be recruited to be the coordinating body for the LSRO. Public libraries or cable television public access organizations might be the perfect institutions to be at the core of an LSRO. A library might receive an offer of programming time on the member stations in return for its efforts. We also suggest that the FCC might make a small stipend available to libraries that undertake such a function to defray costs and staff salaries. Since the library will be taking on administrative work that the FCC might otherwise do, such a stipend will not be unreasonable. The library staff and board might be requested to assist in mediating or arbitrating conflicts.

In some situations, especially where there is extremely heavy competition for very limited LPFM channel space, a solution might involve creation of a "public access" facility. The library could become the official applicant and run a public access LPFM, based on the principles developed by cable television public access channels. The mutually-exclusive applicants could be guaranteed some priority in public access assignments during an initial period, such as the first five years, in return for voluntarily assigning their application to the library.

These are just a few suggestions as to how an LSRO might organize to resolve conflicts. Each LSRO will be left to determine its own constitution and procedures. But the FCC should grant the LSROs maximum flexibility to resolve issues locally and should support them with whatever information and assistance is reasonably needed.

b. Encourage Cooperation with Local Self-Regulatory Organizations.

Once a majority of mutually-exclusive applicants in any given region have agreed to form an LSRO, they will so notify the FCC, which will recognize the status of that LSRO. Other mutually-exclusive applicants may opt not to cooperate with the LSRO. However, should there be a failure to resolve all issues voluntarily and locally, those applicants who have worked with the LSRO should receive a substantial preference if the FCC must intervene to resolve issues. Whether such intervention requires a weighted lottery, a point system determination, or some other procedure, applicants who have participated at the local level in good faith should receive a strong preference. Such a preference will encourage applicants to participate at the local level, and, therefore, avoid situations in which the FCC must intervene.

c. Ongoing Local Self-Regulation:

The LSRO's role will not end with the application process, but will be ongoing. Any allegations of interference from any user of the electromagnetic spectrum will first be referred to the LSRO for resolution. Only where the LSRO is unable to resolve the issue voluntarily will the FCC be involved.

In addition, the LSRO will play a significant role at renewal time. We discuss this further below.

d. Funding of LSRO

The LSRO, once established, should be allowed to institute mandatory dues from its members to defray expenses, as long as those dues are fairly minimal such as $100 annually. Such funds will, at least, provide some minimal operating expenses. In addition, we would urge the FCC to contribute a small stipend to each LSRO, especially if it has integrated a local institution, such as a public library, at its core coordinating organization. This is justified since the LSRO will be undertaking tasks that would otherwise fall to the FCC. However, we hope and believe that the LSROs, as models of local, self-regulation might be attractive as grantees to private and community foundations and other funders. In particular, the arbitration and mediation services provided might be an attractive program for private funders, and possibly even qualify for some governmental grants. The FCC should do everything possible to encourage such funding. The Commission might even request of Congress legislation, such as tax deductions and funding opportunities, that would assist in fundraising for LSROs.

6. Application Process in Lieu of Voluntary, Local Resolution:

If, for whatever reason, application conflicts cannot be resolved voluntarily at the local level, then the decision must fall to the Commission.

a. Mandated Resolution:

Prior to resorting to a lottery, point system determination, or other such method to resolve conflicts, the Commission has the authority to mandate a resolution. Particularly where there are a fairly small number of mutually-exclusive applications, such a solution would appear to be quite reasonable.

In particular the Commission could mandate time-sharing, lowering of power levels (either in general or at certain times of day), lowering of transmitter height, moving of transmitter to a different location, etc. Some of these methods, particularly time-sharing and power level adjustment, are well established as within the Commission's authority.

We realize that time-sharing has, generally, not been favored by the Commission in resolving conflicts among full-power stations.[41] However, we feel that time-sharing is much more appropriate, and even beneficial, among LPFM stations. Many LPFM stations will be operated by very small organizations which would be hard-pressed to broadcast 24 hours a day, seven days a week. They are likely to be able to provide a higher quality service if they can focus on a limited amount of program production.

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[41] See FCC 98-269, Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Further Notice of Proposed Rulemaking (MM Docket No. 95-31), Adopted October 7, 1998, at Paragraph 26.

Similarly, some stations may be operated by public schools, libraries, churches, or other such organizations interested in operating during the daytime and only on certain days of the week, such as Monday through Friday, or Saturday and Sunday only. Other stations may primarily be operated by people who work on weekdays and would, therefore, wish to operate only at night or on weekends. Time-sharing and other flexible arrangements would seem to perfectly meet these needs. It would maximize the number of operators and voices while utilizing the limited LPFM spectrum most efficiently. In addition, we do not think it would cause the same level of audience confusion that time-sharing in full-power radio might lead to. There may be some initial confusion, but because of the very local nature of LPFM we believe that listeners would quickly learn and understand that a variety of stations were sharing the limited local LPFM channels. They would soon know when the stations they wanted to listen to were broadcasting. The initiation of this new service would likely lead to local newspaper articles and other media coverage which would inform radio listeners of the situation.

b. Last Resort Resolution:

In the event that all of the above methods fail to provide a resolution of application conflicts, then the Commission must resort to a method such as a lottery or point system determination. We hope and believe that such a situation will rarely occur.

In fact the FCC should institute regulations which strongly encourage early voluntary resolution. Licenses which are awarded through last resort resolution should be non-renewable. In addition, those who joined an LSRO should receive a heavy preference in the last resort resolution.

We slightly favor a weighted lottery since the results should be almost the same as a point system and yet it is far simpler to administer. We are more concerned that the point system or weighting factors are truly those which will service the public interest. Again we refer to our two guiding principles: First, encourage those who wish to communicate and serve the community, discourage those whose motive is profit-making or empire-building; second, create maximum diversity of operators, views, and voices.

Therefore, we propose that the following be the primary factors in a point system or a weighted lottery. In addition, they should be given very significant weight.

1A. The applicant pledges non-commercial service,

1B. Non-commercial service which includes a pledge of no underwriting announcements receives additional weight.

2. A pledge not to transfer the station, but rather if the applicant should cease broadcasting, to allow the channel to simply become vacant so that others can apply for its use. Some points, though fewer, may be given to an applicant who pledges to transfer the station only for reasonable and demonstrable recovery

of actual costs.

3. The applicant pledges to provide a minimum of 75% local programming,

4. The applicant pledges to operate only one LPFM station (locally and nationally)

5. The applicant is a local resident (i.e. lives within the secondary service area of the station).

6. The applicant does not have a full-power radio license (local and national)

7. The applicant does not have a full- or low-power TV license (local and national)

8. The applicant does not own other mass media such as telephone company, cable TV company, satellite broadcaster, daily newspaper, etc.

9. The applicant pledges to serve a specific and identifiable community that is otherwise unserved or underserved. We have in mind here primarily non-English language communities which do not receive adequate service in their language. However, other specific communities, such as children, the elderly, the disabled, Native Americans, etc. might also be considered.

10. The applicant joined an LSRO and acted in good faith to achieve a voluntary resolution of the mutually exclusive situation.

In addition, the following programming pledges will also receive weight in the lottery. However, in the initial application these pledges may be made <u>conditional</u> on the application process reaching the last resort resolution stage.

11. The applicant pledges that a minimum of 10% of music programming will be local music programming. [42]

12. The applicant pledges to carry full coverage of the local city council meeting or similar civic event (such coverage need not be live).

13. The applicant pledges to provide at least 30% of its programming in a "public access" mode.

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[42] We would define local music as follows. Local music is:

A. A live or taped broadcast of a performance that occurred in the same state as the LPFM station,

B. A commercial recording where either a. at least one of the primary performing musicians resides in the same state as the LPFM stations, b. at least one of the primary songwriters or composers resides in the same state as the LPFM station, c. the production company is located in the same state as the LPFM station.

Obviously, any of the above criteria which have already been determined as mandatory for applicants would not have to be included again in a point system or weighted lottery. However, if the Commission does not follow our recommendations that the majority of the above be mandatory, then this provides an opportunity to give credit to those who have voluntarily pledged to the above standards.

7. Renewals:

We suggest that LPFM operators must renew their registration every four years. If there have been no significant problems or complaints, registration renewal should be automatic.

All LPFMs in a given state should be required to renew within the same time period, as is now the practice for full-power stations. During that same time period, applicants for new LPFM stations that are mutually-exclusive with existing stations may apply.[43] The same process that has been outlined above will be utilized to accommodate new applicants. Some additional guidelines might be appropriate such as the following:

a. All attempts will be made to accommodate new applicants, within reason, but they may be required to settle for less time than requested,

b. A renewal preference will be given to currently operating LPFM stations to achieve some continuity. However, that preference might be lessened after a ten year period, and might be eliminated altogether after a twenty year period.

c. A renewal preference will be given to an LPFM station that has joined a LSRO.

d. Polling, a referendum or plebiscite, or some other method may be utilized to determine the level of community support for different LPFM operators. Such levels of support may be taken into account in determining whether an LPFM operator must give ground for new entrants. However, such "popularity" measures should not be dispositive or given undue weight, as a high quality service to small communities (such as foreign language communities) may have great public service value, while appealing to only a small number of people.

XVIII. Radio Broadcast Auxiliary Frequencies: All LPFM stations should be permitted to seek authority to use radio broadcast auxiliary frequencies.

XIX. Transmitter Certification:

We agree with the FCC's proposal[44] that all transmitters be certified, i.e. type-accepted, even for any 1-10 watt microradio service.

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[43] Applicants that do not pose any mutual exclusivity conflicts may apply at any time, once the second formal application round has been completed.

[44] NPRM Paragraph 15.

XX. Spectral Emission Masking and Bandwidth Limits: It would appear that somewhat tighter spectral emission masks and bandwidth limits than otherwise normal would greatly reduce the possibility of interference.[45]

However, we are loath to impose such additional restrictions on LPFM stations unless absolutely necessary. Our optimal solution would be to propose that such restrictions not be placed on LPFM licensees initially.

We have proposed, above, that Local Self-Regulating Organizations (LSROs) be the first fora to handle interference issues. We suggest that tighter spectral masks and bandwidth limitations be among the primary tools an LSRO can utilize to resolve interference issues. A solution that is tailored to fit each situation is preferable to a "one size fits all" rule from Washington that applies to the whole country. We prefer such a solution if it is technically feasible and not excessively costly.

However, the loss of subcarriers and stereo capability or a minimal reduction in audio quality is a small price to pay for the ability to broadcast at all. Therefore, especially in dense population areas, we support the use of tightened spectral masking and reduced bandwidth as means for resolving conflicts and allowing more LPFM stations to be on the air.

XXI. Other Public Interest, Service, and Political Programming Rules:

We agree with the Commission's proposals that additional "public interest" and service rules, as outlined in Paragraphs 70-73 should not be applied to LPFM stations with a 100 watt maximum.

We also agree that the political programming rules mentioned in Paragraph 75 would appear to be statutorily mandated. In addition, we believe that, in practice, they will rarely apply to LPFM stations. When they do, their application would appear to be largely unobjectionable.

XXII. Operating Hours:

We agree with the Commission's view that no specific operating hours be required of 100 watt or less LPFM stations. However, our reasoning is somewhat different than the Commission's. We have urged previously in these comments that the Commission emphasize local self-regulation as the first and primary method of regulating LPFM and resolving any disputes. As such, we envision negotiated or mediated time-sharing arrangements as a significant component in LPFM operation and regulation. Therefore we assume that many LPFM stations, especially in congested areas, will be part of a time-sharing arrangement and will not broadcast full time.

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[45] NPRM Paragraphs 51-56.

Of course, the Commission also states[46] that should the situation develop where stations are "wasting" spectrum by controlling it, but not utilizing it, and preventing others from utilizing it, then this issue could be revisited. We agree with that position, but emphasize that with the encouragement of local self-regulation and flexible time-sharing arrangements, such a situation should never occur.

XXIII. Construction Periods:

We suggest somewhat shorter construction periods than the FCC's proposals: for LPFM-100 stations 10 months, and for "microradio" (1-10 watts) 9 months. These stations should be fairly inexpensive and relatively easy technically to put on the air. We do not believe that people should be allowed to tie up unused spectrum indefinitely if they are unprepared to begin operations. A 10 month period for LPFM-100 stations and 9 month period for "microradio" stations should be more than enough time. Of course, as the Commission states,[47] extensions could be granted if the reason for delay were beyond the applicant's control.

Respectfully submitted by,

Philip Tymon
Committee On Democratic Communications
National Lawyers Guild
558 Capp Street, San Francisco, CA 94110
(415) 522-9814

On Behalf Of:

(Signatories)

(Appended Statements of Signatories)

[46] NPRM Paragraph 77.

[47] NPRM Paragraph 81.