

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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

**REPLY COMMENTS OF
PROMETHEUS RADIO PROJECT,**

September 26th, 2005

Prometheus Radio Project
P.O.Box 42158
Philadelphia, PA 19101
215-727-9620
petri@prometheusradio.org

Note: these comments are filed late. Prometheus originally planned to get signers on to these comments, and they were written on behalf of a coalition of citizen advocates, but we did not have time to circulate this for signers before the deadline. Thus, support for this petition from other citizen advocates will be filed later as an ex parte.

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1. Introduction

“In the words of the President of New Hampshire Public Radio, “We are all – public radio and LPFM stations – here to serve the public. I believe judgments should be made on the basis of public service.”

Comments of the Station Resource Group Page 2, paragraph 3 (Apparently refers to former President Mark Handley, who built a strong relationship between the public station and a local low power radio station.)

By these reply comments, Citizen Petitioners respond to the objections to and support for improvements in the LPFM service by the National Association Of Broadcasters (NAB), National Public Radio (NPR), the Named State Associations of Broadcasters, Edbgewater/Radio assist Ministries, Public Radio FM Translator Licensees, Saga Communications, Station Resource Group, Educational Media Foundation (EMF), National Translator Association), REC Networks (REC), Pacifica Foundation, Christian Community Broadcasters, and others. Our original requests in the Comment phase of this Further Notice Of Proposed Rulemaking (FNPRM) stand largely unchanged, though in response to some comments we have described our proposals in greater detail.

Contrary to the assertions of some in this proceeding, the FCC has more than adequate record to determine a new balance between translator stations and locally originating LPFMs. And contrary to the assertions of some in this proceeding, the FCC has more than adequate regulatory authority to give low power stations more options when faced with encroachment. There were supporting comments for many of the proposals that

have been put forward by Citizen Advocates, REC, and others. We call upon the FCC to move forward with these proposals to improve the availability and stability of the low power radio service.

2. Encroachment (Get up! Get Out The Way! Move!) ---The Very Real Threat of Encroachment and the Need for Displacement Relief

NPR, the NAB and others claim that because only one LPFM has been displaced by an encroaching full power station so far, there is no cause for the FCC to be concerned about the status of LPFMs relative to full power allocations and modifications.

**Comments of National Public Radio, Inc. Page 14,
Paragraph 2: “In addition, the Second Reconsideration
Order/Further Notice concedes that to date, only one
LPFM station has been forced to cease operations
because it could not ameliorate the interference.”⁵¹**

While only one low power station has been displaced to date, many low power stations are under a significant and substantive threat of encroachment. In a recent study, REC Low Power FM Encroachment Report, 2/15/2005 (www.recnet.com/lpfminfo/encr0205.pdf) found that 86 low power construction permits and licensees are currently at risk of being cancelled completely due to the vacant allotments and pending facilities modifications by full power broadcasters. The study also

found that hundreds more stations face levels of interference ranging from minor to devastating. The problem is much more serious and widespread than the FCC recognized in its FNPRMLPFM, in which it initially judged that use of more sophisticated methods of interference prediction were unnecessary. The peril to these LPFMs is neither speculative nor unquantified; it is imminent and already in process, waiting only for the FCC's approval of various proposed facilities modifications and the disbursement of already planned new allocations. It is a testament to the vigilance of RECNET that this issue has come before the Commission before more than one station has actually physically been displaced. If no policies are changed, 86 low power stations will be forced to shut down with extremely limited (and probably futile) recourse-- and many others will suffer drastic new interference.

Current State of Interference Protection

As a preliminary matter, the NAB mis-states the current state of the FCC's regulations of interference by low power stations.

**Comments of the National Association of Broadcasters
Page 5, Paragraph 3 continuing to Page 6: "The
Commission subsequently revised Section 73.807 of its
rules to re-establish the minimum distance separations
set forth by the RBPA.¹⁴ It did not, however, modify
Section 73.809 to reflect the legislatively mandated third
adjacent channel spacing requirements.¹⁵**

**Section 73.809(a) states: '[i]t shall be the responsibility
of the licensee of an LPFM station to correct at its
expense any condition of interference to the direct
reception of the signal of any subsequently authorized
commercial or NCE FM station that operates on the
same channel, first-adjacent channel, second-adjacent
channel or intermediate frequency (IF) channels as the**

LPFM station, where interference is predicted to and actually occurs within the 8.16 mV/m (70 dBu) contour of such stations.'

47 C.F.R. –§ 73.809(a). Despite this oversight as the specific text of Section 73.809, the Commission has recognized that '[u]nder Section 73.809 ... LPFM stations are responsible for resolving all allegations of actual interference to the reception of a co-channel, or first-, second-, or third-adjacent channel full service station within the full service station's 70 dBu contour.'"

It is true that 73.809 does not address third adjacent channel interference. This was not, however, an oversight. The Commission, in its September 20th, 2000 Memorandum of Opinion and Order of Reconsideration, page 52 established 73.810, the third adjacent channel interference remediation process. Before the Act of Congress, the FCC passed this regulation in the September Order on Reconsideration. This rule is stronger than section 73.809 because it directly includes the possibility of shutdown if interference is not successfully remediated.

(e) If the number of unresolved and disputed complaints exceeds the numeric threshold specified in subsection (d) following an "on-off" test, the full power station may request that the Commission initiate a proceeding to consider whether the LPFM station license should be modified or cancelled, which will be completed by the Commission within 90 days.

It remains a mystery why section 73.810 did not adequately address the concerns of incumbent broadcasters, and it now appears that they have forgotten that it even exists. In their zeal for federal legislation that removed authority from the hands of the FCC, incumbents have ignored all FCC attempts to meet their stated concerns.

FCC Authority to Waive 2nd and 3rd Adjacent Requirements

It is claimed that the FCC does not have the regulatory authority to address this situation, as the result of Congressional action in 2000.

**Comments of the National Association of Broadcasters
Page 7, Paragraph 2: “Because Congress has explicitly stated that LPFM stations “shall” not operate on channels second and third adjacent to full power FM stations, the Commission has no discretion in this matter. As numerous courts have made clear, the word “shall” is interpreted strictly as a mandatory, nondiscretionary duty”.¹⁷**

**Comments of the National Association of Broadcasters
Page 7, Paragraph 2: “Were there any ambiguity in the statute itself (which there is not), the legislative history demonstrates Congress’ intent to preserve “existing protections,” including second and third adjacent channel protections for the FM band: Before the FCC changes existing protections, protections that are as important to radio stations, public and commercial, as they are to radio listeners across America, I think it is imperative that Congress must have the authority to review any FCC changes over existing protections. 146 Cong. Rec. H2303 (daily ed. Apr. 13, 2000) (Statement of Rep. Dingell).**

Moreover: The Commission is directed to maintain the same level of protection from interference from other stations for existing stations and any new full-power stations as the Commission’s rules provided for.... The Committee intends that this level of protection should apply at any time during the operation of an LPFM station. Thus, LPFM stations which are authorized under this section, but cause interference to new or modified facilities of a full-power station, would be required to modify their facilities or cease operations. H.R. Rep. No. 567, 106th Cong., 2d Sess. 4 (2000) at 7-8.

In sum, Congress has rejected any distinctions between existing and subsequently-authorized FM stations.”

In their comments, NPR and NAB simply reiterate that they believe the DC Appropriations Act of 2000, to which the Radio Broadcasting Preservation Act (RBPA), was attached as a rider, prevents the FCC from in any way changing the adjacent channel restrictions. They also claim that any changes in policy based upon the possibility of future modification of this act of congress because the FCC can not regulate based upon speculative scenarios, only on current law. This argument fails on two counts.

First, it is apparent from the provisions of the legislation that Congress did not intend to permanently ban low power radio stations on third adjacent channels, but rather to test their viability. Congress ordered the FCC to report back within one year on the results of this testing so that Congress could make a final conclusion on this issue. It should be noted that the FCC did not comply with this provision of the legislation. The testing has now been completed, and the FCC has recommended that Congress lift the third adjacent channel spacing based upon these tests. In fact, legislation has been introduced in both houses of Congress that would do exactly that. Far from being speculative, the legislation to re-allow low power stations onto third adjacent channels is currently in motion. What is in fact “speculative” (or perhaps cynical) is the hopes of NPR and NAB that Congress will ignore the results of the study that Congress itself ordered and will fail to act on the it’s earlier (2000) commitment to a final evaluation of this issue and action.

The broadcast industry has long argued that the LPFM rules were a relaxation of

interference prevention standards present in FM radio. This is a fallacy created by the imperfectly applicable comparison of LPFM to existing full power radio stations. The interference standards currently used for full power radio stations were designed with higher power facilities at greater heights above average terrain in mind, which cause interference in a larger area. The service presenting the most apt technical comparison to low power radio in pre-2000 broadcast regulations is translator licensing. Translators are available for 10 to 250 watts and use the same exact models of transmitters, antennas and range of HAATs as LPFM stations. The NAB and NPR have claimed to Congress, the FCC and the press that low power stations would create interference by reducing protections, but in fact both NPR and NAB have members that operate hundreds of translator stations across the United States which operate on second and third adjacent channels at power levels and heights greater than LPFMs, without significant interference.

The Possibility of LCFM

LPFM advocates understand that with the flexibility of using the translator methodology for allocations, stations would need to be responsive to complaints of actual interference outside the protected contour of full power stations. It is thus good policy that low power stations are allocated using the minimum distance spacing method, which includes protections for low power FMs outside of the 70 dBu contours of full power stations. However, when low power stations are forced off the air, face massive interference on

their current channel, or never get the opportunity to start up when using the restrictive minimum distance spacing rules, we believe there should be a second way. If imperiled stations are allowed to shift their status to one closer to a translator, the provisions of the DC Appropriations Act would no longer guide the actions of the Commission. Such stations could be called “Local Community FM” or LCFM stations. Incumbent broadcasters should have no objections to this since LCFMs would be allocated *identically* to translators. The exception to this identical nature would be that LCFMs who make and adhere to locally produced programming should be primary to translator stations which are non-fill-in or whose full power station would not meet the local programming standard (and non-local LPFMs).

It cannot be argued that creating a LCFM class of licenses would violate the DC Appropriations Act (DC Appropriations Act Fiscal year 2001, Pub. Law 106-553, &632, 114 Stat. 2762-111 (2000) otherwise specified as the Radio Broadcasting Preservation Act, or RBPA). In the Chevron decision cited by NPR and others, the standard was whether Congress had spoken clearly on the precise issue at hand. Congress was not aware of the limitations or benefits of the minimum distance spacing methodology, nor the possibility of creating a class of new stations (or relief for imperiled stations) that had similar spectrum rights and responsibilities as translator licenses. A reading of the legislative history reveals no mention of these issues, though a clear commitment to exploring options for more low power radio stations so long as they did not cause interference to incumbent services is apparent.

NAB, NPR and other LPFM opponents should no reason to object to this proposal, since it abides by the provisions of the DC Appropriations Act and is clearly within the FCC's authority. By using the same allocation rules as those to which they are already subject, there can be no question of exposing the radio dial to new risks of interference. A preference for LCFMs that commit to produce local programming will also be in harmony with the stated localism goals both NAB and NPR endorse.

Elements of this proposal have found support from some incumbent broadcasters and many translator owners.

Pacifica Foundation, owner of 5 full power radio station and a number of translators, states: "Therefore, the Pacifica Foundation supports: All of the protections to LPFMs recommended by Prometheus et al and other Citizen Commenters ("Citizen Commenters") against encroachment by full power stations. Full-service stations should not be allowed to disregard the harm that they may cause to LPFM stations. At the very least, as the Citizen Commenters suggest, new full-service stations and full-service stations proposing a change of community of license should be required to take LPFM station into account and demonstrate that the public interest will be better served by the proposed full-service station than by the existing LPFM station... LPFMs should be permitted to utilize the contour overlap interference methodology to licensing LPFM stations." Comments of the Pacifica Foundation

Comments of the Educational Media Foundation Page 12, paragraph 2: EMF suggests that the Commission expand its definitions of minor change and minor amendment to permit full-power stations and LPFM stations that are in situations where the LPFM will create a sea of interference and very little service, to negotiate special arrangements outside of the spacing requirements currently set forth in the rules. Specifically, the Commission should permit a new full-

power FM station or a full-power station upgrading its facilities to displace a previously authorized co-channel or first-adjacent LPFM station, with the latter station's consent, to a second- or third-adjacent channel even where the distance separation requirements are not met if the LPFM station provides contour protection... The proposed change would preserve service within the protected contour of the full-power station as well as the service area of the LPFM station, without harming the public interest in any way. To allow the current situation to exist is to make all parties losers. The Commission should allow this win-win situation, upon agreement of all parties, so that the public will be served.

Comments of the National Translators Association Page 6, paragraphs 1 & 2: FM translator applications are still analyzed using protected and interfering contours that take only limited and approximate account of the actual terrain in the span of 3 to 16 km from a station, presumably because the FCC has not put forth the effort to update the interference criteria and the method of calculation. The time is long overdue for the FCC to adopt the best means for analyzing both FM translator and LPFM applications. The NTA submits that the FCC has a public interest obligation to expeditiously adopt interference analysis methods that recognize the actual terrain. As far as making it possible for applicants to craft "do it yourself" applications, it is recommended that the terrain-based interference analysis program be made available on the FCC web site for public use. This will largely overcome the technical complexity issue as it relates to "do it yourself" applications.

LCFMs could not only be a cure for imperiled existing LPFMs, but also an opportunity for those groups that do not have a frequency available under the minimum spacing rules. Under our proposal, LCFMs would be identical to LPFMs, except in the following ways: A station could apply for a LCFM in a second, separate filing window if there are no LPFM licenses available in the area, or if the LPFM licenses available would actually not

perform as well as a LCFM.

LPFM stations could also change their license at any time to a LCFM when threatened with encroachment.

LCFMs would be allocated as per the same contour overlap rules as translators, using any channel that would improve the overall interference picture. If the Commission elected to upgrade the translator methodology to Longley Rice, as per the recommendation of NTA in this proceeding, LCFMs would follow suit. LCFMs would be required to provide the same interference protections as translators.

LCFMs would have similar spectral priority to that proposed for LPFMs as specified in our comments. If the LCFM pledged 8 hours of locally produced programming, they would be primary to translators that are non-fill-in or whose station that they repeat does not meet the 8 hour per day local production standard. They would be secondary in all cases to translator stations that meet both of these standards. If the LCFM did not pledge the 8 hours, they would be secondary to all other stations except for subsequently filed, non-fill-in, non-local translators.

In summary, parties to this proceeding from across the spectrum have come out in favor of the use of more sophisticated, known non-interfering methodology for allocating community radio stations in some circumstances. No parties, aside from the FCC, have objected to the creation of a class of “translator-like” community stations. Since the FCC

preliminarily rejected these ideas in the FNPRM, we would need a second round of public comment to allow all parties fair opportunity to respond directly to this idea. However, we believe the broad base of support cited above from parties that have disagreed on so many other things is indicative that this idea merits a second look by the Commission.

Outdated Claims of Interference to Digital Broadcast

It is asserted by the NAB that low power radio can interfere with IBOC, (now known as HD) terrestrial digital radio.

**Comments of the National Association of Broadcasters
Page 13, Paragraph 2: “Were, however, the
Commission to amend Section 73.809 of its rules, the
result would be a less efficient and less equitable
distribution of radio services, as populations close to
LPFM transmitters could be precluded from receiving
any subsequently authorized full-time FM radio service,
even from first full-time aural or first local services. In
the future, these populations located near LPFM
transmitters could also be precluded from receiving
new and innovative HD Radio service due to LPFM
interference.”**

Digital Radio Comments of USADR (later to become Ibiquity) Corporation from 1999 on LPFM (comments of USADR, 99-25) clearly state that they saw no issue of interference on the third adjacent channel after a round of testing. Results on the second adjacent channel were inconclusive. The FCC took a cautious route at that time and allowed low power radio on third adjacent channels, but not on second adjacent channels. In the highly specific context in which the FCC proposes to grant displacement relief to

low power radio stations, we highly doubt that there would be significant interference from low power stations that might be allowed to short space on 2nd adjacent channels.

Importantly, the Ibiqity study of interference to *incumbent full power stations* from first adjacent channel interference *by other adjacent incumbent full power stations* was found to be an *average* of 0.6% of the protected coverage contour. This interference would affect every station in the market, because HD subcarriers will eventually be installed on all FM transmitters. By contrast, the results of the MITRE study found an absolute maximum of 0.13% interference to the service area of the protected contour of a third adjacent full power incumbent station—and there would never be more than a few low power stations in any given market. MITRE predicted that in most circumstances, interference would be orders of magnitude lower than this theoretical maximum of 0.13%. NAB has given its full support to the implementation of HD radio in spite of the well known increase in interference that HD radio will cause. Apparently, to the NAB, the only difference between acceptable interference and unacceptable interference is whether the transmitter causing it is owned by one of their members. (Docket 99-25Comments of Prometheus et al on the MITRE Technical Report, October 14, 2003)

Issues With the MITRE Report

It is contended by NPR that there is no basis in engineering evidence for the removal of second and third adjacent channel restrictions for certain types of LPFM displacement relief.

**Comments of National Public Radio, Inc Page 16,
Paragraph 2: “Even if the issue were open to reasonable
dispute, the Commission has not offered any
engineering data or analysis to justify eliminating the
second and third adjacent protection.”**

**Page 17, Paragraph 1: “To the extent the Commission
believes the Mitre study established that third-adjacent
channel protections were not necessary, it has never
addressed the study's numerous methodological and
other flaws that were catalogued by NPR and
others.”⁶²**

In the Commission’s report to Congress, the FCC clearly stated that it found the MITRE study credible. While NPR is free to advocate for more endless rounds of testing of minutiae to further their policy goal of preventing low power stations from getting on the air, the FCC is not compelled to find these stalling tactics credible. The phenomenon of second and third adjacent channel interference by small transmitters was well understood before the advent of the low power radio proposals in 1998. NPR can dream up more research projects than a junior high school science fair, but the Commission has stated that the record is abundantly clear to justify moving forward with low power radio on third adjacent channels.

3. Spectral Priority of Translators and LPFM

Claim That There Is No Proof of Problem

Incumbents have stated that since the exact impact of the 2003 translator window has not

been determined, the FCC has no authority to act.

**Comments of Public Radio FM Translator Licensees
Page 6, second footnote: In fact, the 2nd LPFM NPRM
notes: “[I]t is impossible to determine the precise extent
to which the 2003 window-filed FM translator
applications have impacted the potential licensing of
new LPFM stations.” Id.**

**Comments of Named State Broadcasters Associations
Page 8, Paragraph 2: “However, the Commission does
not, and cannot, demonstrate that the demand for FM
translators has actually had any adverse impact on the
availability of LPFM licenses. As the Commission
concedes, 'it is impossible to determine the precise
extent to which the 2003 window-filed FM translator
applications have impacted the potential licensing of
new LPFM stations.'”¹⁶**

In fact, the impact of the translator window filings on potential LPFM stations has been precisely determined by REC, and is listed in their comments.

(REC Comments, 04-233, Media Bureau Broadcast Localism Proceeding, 11/1/2004) **7. REC feels that the recent window that has resulted in over 13,000 non-reserved band FM translator filings has impaired the future growth of LPFM stations in a considerable number of communities. In a study conducted by REC, we have concluded that nationwide, about 16% of all census designated communities serving 32% of the nation's population that would otherwise have LPFM channels available in their community prior to the opening of the translator filing window have been precluded because of the filing window. Even more disturbing, of the Top-100 Census communities where LPFM channels were available prior to the translator window, 58% of those communities representing 66% of this population group have been denied an LPFM future due to these translator applications.**

Extensive statistics on the impact in each state are submitted as a chart in Appendix B of the REC comments on docket on 04-233, Broadcast Localism. The Commission was correct in its observation that significant preclusive impact has occurred. Even if REC had not made this precise determination of the preclusive impact, the record was abundantly clear that a massive number of LPFM opportunities have been lost in communities with any significant population. In fact, even the REC numbers understate the magnitude of the problem because they count the number of communities and the population that lost *all* opportunities. Many communities that may have had several low power opportunities may now only have one, which will lead to protracted mutually exclusive competitions between local applicants for a single remaining channel, while non-local applicants take up multiple channels as translator licensees.

**Comments of the National Association of Broadcasters
Page 11, Paragraph 2: “The Commission’s present
proposal appears to be based on the theory that new
and upgraded full power FM service will dislocate
LPFM service.”**

In addition to the research by RECNET, Prometheus submits comparisons of the projected possible low power stations found by the FCC in 1999 with RECNET numbers from 2003, (Appendix A). This comparison found that while 52 markets studied by the FCC in 1999 had 279 channels available to LPFM, these same markets had 4 channels in a late 2003 study by REC (excluding the third adjacent channel separation. (note that these studies used slightly different methodologies, but the comparative results are broadly indicative of an enormous difference in low power availability). Prometheus has also resubmits as Appendix B a detailed analysis of impact to a representative city,

Portland Oregon April 11, 2004 (EXAMINATION OF POSSIBLE ADDITIONAL LP100 STATIONS, PORTLAND, OREGON URBANIZED AREA, Brown Broadcast Services, Inc.)(originally submitted as Ex Parte on 99-25, February 15, 2005). In this study, where 12 stations potentially could be available in the Portland metro area, as the combined consequence of the third adjacent channel restrictions and translator applications, depending on outcomes of pending Commission processing activity one or none are now available.

Claim That Nothing Has Changed

**Comments of National Public Radio, Inc. Page 5,
Paragraph 2: “Second, the Commission only recently struck the current balance between translator and LPFM stations after thoroughly exploring the issue, and nothing has changed -- including the 2003 translator filing window -- to justify altering that balance.”**

It has been five years since the passage of the low power service. At the time of passage, low power FM was an unproven concept. Now hundreds of LPFMs serve the public. The FCC appropriately chose to re-open this question after five years and numerous requests from the public. The translator window has had an enormous impact for those who would like to start a low power station in the future and those who attempted to apply but were denied because of NPR’s campaign against low power radio. Considering that the days of analog radio are numbered—perhaps only five to ten years of analog radio remain before some form of full digital transition—now would be exactly the appropriate time to make sure local communities get radio service. This service could join in the digital transition and set the beginning of the digital age of radio on a solid

course that adheres to the Commissions goals of broadcast localism.

**Comments of National Public Radio, Inc. Page 13,
Paragraph 2: “While no individual or entity has a right to broadcast, the Administrative Procedures Act requires Federal agencies to engage in rational rulemaking. We submit that summarily dismissing all pending translator applications and subjecting to displacement all current and future translators based on a suspicion that some speculative applications were filed in a recent filing window is the very essence of arbitrary and capricious rulemaking.**

The re-evaluation of the relative merits of translator versus LPFM in determining spectrum priority is in no way arbitrary or capricious. The impact of the translator window has been quantified, as mentioned before, and it is extensive. The question has been called before the Commission by a broad section of the public, in this proceeding and in the broadcast localism proceeding. Dissatisfaction with the current translator licensing system has been broadly expressed by the public, within the engineering community, and both the mainstream and trade press, as cited in our original comments. It is the role of the Federal Communications Commission to balance the interests of the public and investigate ways that its rules can best allocate scarce broadcast spectrum to meet the statutory goals of public service, localism, and protection of the public from interference. The fact that some incumbents benefit from the current order in no way makes moves by the Commission to re-evaluate its policies “arbitrary and capricious.” Because other viable policy options have emerged, Prometheus believes there are ways that the Commission can address our concerns and those of other parties without dismissing all the applications filed in that window. We maintain our position that strong action must be taken to correct the balance between these services.

**Comments of Named State Broadcasters Associations
Page 9, Paragraph 1: “These benefits have become even more pronounced in recent years; if nothing else, the overwhelming demand for FM translators attests to the degree to which there is a the public interest need for such translators. The large volume of FM translator applications demonstrates that the Commission actually underestimated the public interest benefits that stem from the use of translators. The Commission should not now prejudice the use of FM translators, simply because they have proven even more necessary and beneficial than the Commission originally anticipated.”**

The argument of the state broadcasters association here teeters towards preposterous.

The demand for translators in that filing window did not reflect the public interest benefits of translators—*the massive number of applications is no more evidence of public interest benefit than would be the demand for free beer, paid for by the government, distributed on a street corner.* The FCC was giving away free construction permits that could be turned around and sold for tens of thousands of dollars in the marketplace. The fact that one organization put in requests for over 2400 of these permits, which they were able to sell at a profit, in no way demonstrates the public interest benefit of translator licensing or proves the validity of the regulatory framework under which these permits were distributed.

Faulty Translator Application Process

**Comments of Saga Communications, Inc. Page 7,
paragraph 1: Having created an intolerable situation,
the Commission now proposes to flush 8,000 of those
applications down the drain simply because (1) the
applicants weren’t lucky enough to file a singleton
application and (2) because of demand by a service that**

will ultimately destroy FM broadcasting.

Comments of the Station Resource Group Page 11, paragraph 1: The solution is not to throw the translator baby out with the filing window bath water, but to modify filing window procedures so as to give both LPFM and translator applicants more equitable access to available spectrum. SRG believes that the Commission would be better served by addressing the root problems – its filing procedures and those who abuse them – rather than the ancillary problem of the relative status of two secondary services.

We agree with the commenters that the filing procedures for translators need reform.

However, we would characterize as highly speculative the statement that LPFM will

“ultimately destroy FM broadcasting.” The Station Resource Group, while more

conciliatory in tone, misidentifies filing window procedures as the root cause of the

issues at hand. The issues are not limited to abuse by a handful of spectrum speculators.

While improvements in the application process would improve access for all services to

spectrum, the Commission can and should re-evaluate the spectrum priority between

local and non-local services.

Commenters claimed that because the FCC has not finished processing the applications,

the FCC is not fit to make any observations about the nature of those applications.

Comments of National Public Radio, Inc. Page 11, Paragraph 1: “Finally, even though approximately 8,000 of the more than 13,000 remain unprocessed, the Commission blanketly endorses the claim that ‘many of the translator applications were filed by a relatively small number of non-local filers without any apparent connection to the communities specified in the applications.’”³⁸

The pattern of filing is abundantly clear and present in the public record. A single organization in Twin Falls, Idaho with a board of directors of three people filed for over 2400 translator licenses. No evidence of connection to those 2400 communities in which spectrum was applied for has been presented. Many dozens of construction permits have been sold by this organization for profit, even though these construction permits were received for free from the FCC. This organization has profited by selling construction permits in communities where it never built a radio station. 8,000 of the applications have not been processed because the FCC recognized a pattern of abuse and suspended processing in order to investigate before more public property was turned over, free of charge, to private entities.

Comments of the National Translator Association Page 6, paragraph 3: The NTA opposes the use of satellites to feed noncommercial FM stations to FM translators. Further, the NTA has opposed, so far without success, filing rules that fail to restrict speculative filers. To that end, the NTA has supported such restrictions on prospective filings as geographic limits or number-of-application limits, to ensure that only those parties who actually intend to obtain the construction permits, build the facilities, and provide the service, apply.

Page 7, paragraphs 1: The NTA considers those applicants who intend to obtain construction permits and then sell those permits to be simply speculators for profit. Neither LPFM nor FM translator stations are profit-making operations. Those that apply should be those planning to use the facility. To this end, the NTA agrees with those who seek to prevent speculative filers from blocking LPFM stations.

Page 7, paragraph 3, second sentence: First, the Commission should require pending applicants, and all future applicants for FM translators, to certify that they have reasonable assurance of the availability of the use

of the site and/or tower specified in the application.

Page 8, paragraph 1: Next, the Commission should immediately suspend the processing of assignment and transfer applications of unbuilt facilities. Appropriate safeguards can easily be adopted so that an unbuilt FM translator belonging to a commercial or noncommercial radio station that is being sold as part of a transaction involving the station itself could be exempted.

Page 9, paragraph 2, (2nd sentence) Accordingly, the NTA recommends that the Commission reverse the decision made when more spectrum was available and delete the provision that allows the rebroadcast of these satellite signals.

We support all of the above-mentioned measures recommended by NTA. It is telling that the trade association representing translators has requested greater regulation to protect against speculation and translator empire building. It is in the interest of legitimate users of translators that the FCC enact sensible limits and institute a filing system that does not undermine the plans of those entities that have reasonable public interest goals for the use of translators. There has also been support for caps on translator ownership and, an additional proposal for a cap on translator applications—albeit at a higher level than we have proposed.

**Comments of Public Radio FM Translator Licensees
Page 9, paragraph 2 and 3: For example, the FCC could impose a nationwide cap on the number of FM translator stations that may be owned by one entity (or attributable entities). A nationwide cap would function (and service policy rationales) like the cap on LPFM station ownership. Based on the Pub Radio Translators experience with translator ownership, a cap of 100 translator stations per entity would be reasonable (and generous). Second, the FCC could impose a cap on the number of applications that could be filed by a single**

entity (or attributable entities) in any given FM Translator Filing Window. The FCC could apply this cap in the future, or could even apply this cap now – to the frozen, still-pending applications from the March 2003 window. Each applicant would be permitted to specify only a set number of applications to continue to process, and all other applications by that applicant (or related entity) would be dismissed.

Emergency Alert Issues

Some commenters have claimed that changing the relationship between translators and LPFM will somehow undermine emergency services capacity.

**Comments of the National Association of Broadcasters
Page ii, Paragraph 1: “Since the Commission first authorized FM translators in 1970 as a means of providing radio service to areas and populations that were unable to receive FM signals due to distance and terrain, translators have proven to be a critical component for delivering essential news, weather, emergency information and Amber Alerts, as well as entertainment to the communities broadcasters serve.”**

Some commenters in earlier stages of this proceeding have stated that LPFMs do not serve the public interest because they are not required to have EAS encoders, and thus are not required to be capable of originating EAS alerts. However, LPFMs are required to have decoders to relay alerts concerning local emergencies to the public. Translator stations are not required to participate in anyway in the EAS system.

FCC rules, Section 11.11(b) FM broadcast booster stations as defined in Sec. 74.1201(f) of this chapter and FM translator stations as defined in Sec. 74.1201(a) of

this chapter which entirely rebroadcast the programming of other local FM broadcast stations are not required to comply with the requirements of this part.

Translators are merely required to repeat the signal of the originating station. If the originating station is nearby, then this repetition of signals would be helpful in emergency circumstances. However, a translator that is fed from a distant source or through a daisy chain would relay information that may be irrelevant to the translator's broadcast area, and could even be harmful by creating panic in areas unaffected by disaster. Conversely, an alert that might be intended for local radio stations may not be activated if the originating station is distant from the location of the emergency. Thus, while listeners would expect to receive news of an emergency when listening to radio, translators hooked to a satellite may or may not deliver such information. The public interest is clearly better served by locally originating stations that not only can participate in EAS, but can also do live, local emergency programming between alerts. Locally originating LPFMs are, by their nature as defined by regulation, clearly superior in their capacity to serve the public in emergencies than non-fill-in translators.

**Comments of the National Association of Broadcasters
Page 22, Paragraph 5: "Terrain shielding prevents Salt Lake City FM stations from providing reliable service to residents of Park City, Utah, which lies within the stations' protected contours. Many Park City residents commute to Salt Lake City daily and road condition reports from the major Salt Lake City stations, especially in the winter, are critical information."**

Salt Lake City fill-in translators would be protected under our proposal. Other examples cited in NAB comments are in rural areas and would be unaffected by LPFM stations,

where there should be plenty of channels available for both LPFM and translators.

Translators that are fill-in due to terrain would be unaffected by the proposals of Prometheus Et Al, since we recommend that translators of full power stations that make locally produced programming and are “fill-in” translators would be primary to all LPFMs. Thus, Park City translators would be protected. Translators in more rural areas generally have more spectral opportunities than LPFMs because of the greater precision offered by the contour overlap allocation process. Thus, any translator displaced by a LPFM would almost certainly be able to find a replacement frequency, though under existing rules an LPFM might not have many channel options.

Public Interest Arguments

Commenters raise various points claiming that there is no evidence that the public interest will better be served by low power stations.

**Comments of the National Association of Broadcasters
Page 14, Paragraph 2: “There is no basis for any
presumption that LPFM stations better serve their
communities and therefore are entitled to greater status
over any class of FM translators.”**

**Comments of the Educational Media Foundation Page i,
paragraph 2, second sentence: While the Commission
has pointed to the ability of LPFM stations to originate
programming as an advantage of these stations, in fact,
there is no guarantee that LPFM stations will originate
programming and, even if they do, that this
programming will better serve the public interest than
the translator programming that will be displaced.**

Comments of the National Translators Association Page 2, Paragraph 1: Terrestrially-fed translators provide the very valuable service of delivery the signals of local full-service broadcast stations to under-served areas. Full-service commercial radio stations historically have served the public interest by providing, in addition to entertainment, emergency alerts from the EAS system which are of relevance to the area; programming in the public interest that was devised after consultation with the public; information concerning items of safety, convenience, interest and news that develops within the area; traffic information where appropriate; and a whole range of other programming that people have come to rely on. An LPFM station may or may not provide a broad public service. There is more to the value of broadcast service than simply stating the views of its licensee. The purpose of LPFM stations was to provide alternative outlets for ideas. It becomes a far different matter when the Commission is considering allowing LPFM stations to supplant or block FM translators. In effect, blocking or supplanting translators blocks or supplants full-service commercial or noncommercial stations.

National Translators Association Page 4, Paragraphs 1 & 2: Letters that may be received from the public do not have to be made available for inspection under Section 73.1202. LPFMs can operate a minimum of five hours a day, while fullservice stations must operate 12or more hours per day (73.1740). LPFM stations are not required to have an identified operator under Section 73.1870. Although LPFM stations have a general obligation to be nondiscriminatory, the specific requirements of Section 73.2080 of the Commission's Rules are not applicable to LPFMs. In other words, although nondiscrimination is the rule, LPFM operators are not accountable to anyone for their hiring or other employment practices. LPFM stations do not have to maintain local public inspection files, as required of fullservice stations by Sections 73.3526 and 73.3527, where the public has the opportunity and the right to assess the functioning of the station. LPFM applicants do not have to provide local notices, as provided by Section 73.3580, so that the public even knows what they are asking the Commission to approve. The ownership of low power FM stations does

not have to be reported to the Commission, as does ownership of full-service stations as required by Section 73.3615, and critical contracts that affect the public interest do not have to be filed with the Commission as required by Section 73.3613. In short, the LPFM station, while it provides a forum for alternative thought, does not provide the full spectrum of service that is provided by regular broadcast stations, and which the establishment of primacy of service for LPFM would either block or supplant.

We agree that low power stations that have not made a pledge of local origination will not necessarily serve the public better than a translator stations. We only advocate that LPFMs with local origination pledges be given regulatory relief. We dispute the NTA assertion that LPFMs solely serve as “an alternative outlet for ideas.” LPFMs, unlike full power commercial stations, cannot be licensed to individuals. A wide variety of organizations, including schools, churches, highway departments, local governments and others are the licensees of LPFM stations. Many organizations that operate LPFMs air views and have programmers that are different from those of the organization that owns the station. While LPFMs are not required to make ownership reports, LPFMs are required to maintain an updated list of their Board of Directors, who furthermore are barred from ownership of other media. Though the FCC chose to exempt LPFMs from certain paperwork obligations, the most meaningful obligations for public service, elections, and emergency service were retained for LPFMs. Prometheus is on record (in the comment phase of this proceeding) (Comments Of Citizen Advocates, FNPRMLPFM, August 22, 2005 page 57, Appendix B section E). as supporting more stringent requirements for facilitating verification of local origination through LPFM websites with program listings.

Comments of the Educational Media Foundation Page

7, paragraph 3, first sentence: Moreover, even requiring LPFM stations to originate local programming in order to be granted primary status does not resolve the issue.

We are also on record as supporting a requirement for production of local public affairs or news programming in order to be eligible for certain preferences in licensing. (Ibid, Appendix B, Pages 52-55)

Localism

(If a tree fell in a forest and there was no local broadcaster—would it make a sound policy?)- Bertha Venus, Radio Programmer

-As stated in our comments, we believe that a pledge of local origination (and the subsequent fulfillment of that pledge) is more than adequate basis for greater spectral status. Some commenters thought differently.

Comments of Edgewater Broadcasting, Inc., and Radio Assist Ministry, Inc. Page 6, paragraph 3: The FCC's proposal to grant primary status to LPFM stations over FM translator stations is also flawed because the FCC falsely presumes that an LPFM station will better serve local communities. The quality of service as well as the longevity of LPFM stations is at best speculative while commercial FM translators already rebroadcast a locally received over the air signal from a full power local FM station.

Comments of Edgewater Broadcasting, Inc., and Radio Assist Ministry, Inc. Page 7, paragraph 2: Furthermore, LPFM applications should not be given primary status regardless of how many hours of local programming is originated because there is absolutely no empirical evidence in the record to show that locally originated programming better serves local communities. In fact, the FCC has found previously that localism can be enhanced by non-locally originated programming because it facilitates efficiencies and cost savings. *Id.* at paras. 484-486.

Comments of the National Association of Broadcasters Page 25, Paragraph 2: “It is also realistic and appropriate to treat programming as locally relevant, even though it may be produced elsewhere.”

Comments of the National Association of Broadcasters Page 24, Paragraph 2: “Programming need not be locally produced to be highly relevant to a broadcaster’s local community.”

There is ample precedent for a preference such as the ones proposed by Prometheus et al at the Commission. In LPTV, stations that agreed to produce local public affairs programming received preferences in spectrum allocation. (Order and Notice of Proposed Rulemaking, in the Matter of Establishing A Class A TV service, MM docket 00-10 & 99-202. FCC 00-16, 15 FCC Rcd 1173, January 13, 2000). Other precedent can be found right in this LPFM proceeding: with stations that promised to produce 8 hours or more of locally originated programming per day having preference over those that did not make this commitment (LPFM Report and Order, January 20th, 2000). There is also ample basis for this in the public record of the Localism Task Force. Thousands of comments cited the need for local news, public affairs and cultural programming. No one disputes that certain forms of non-locally produced programming can be of interest to listeners.

However, locally produced programming merits particular protection as a part of the mix of programming available to local communities. The economics of radio production give special advantage to non-local programming. Since a radio show that is produced in one place can be rebroadcast in thousands of places for little additional cost, these shows have greater economic value and can draw greater resources for their production through audience aggregation. Programming developed for a specifically local interest has limited market possibilities, *but no less social utility* to listeners in that local area. In the current context of media ownership consolidation, localism is valuable but can not compete in an unregulated marketplace. Just as the government sets aside certain pieces of land as public parks and forbids development on those parcels, the FCC should make sure that local voices have adequate opportunities and priority of use of public spectrum over the non-local voices that are so prevalent today in broadcasting.

Due to this pattern of market failure, in order to fulfill the mandate of localism, the FCC must take special care to provide for adequate opportunities for stations that pledge to produce this form of programming. Stations that air only syndicated programming should not be given these considerations, because their programming has the potential for economic value that can take care of itself in the marketplace. The question of priority of between translators and locally originating LPFMs fits perfectly with the FCC's mandate for promotion of localism in broadcasting.

Despite above cited arguments to the contrary in this proceeding, NAB acknowledges the importance of localism when they find themselves in the position of representing local broadcasters.

Technical Standards For Determining Eligibility For Satellite Delivered Network Signals Pursuant to the Satellite Home Viewer Extension And Reauthorization Act, NAB Comments (ET-05-102), June 17, 2005 --The philosophy behind the latest revision of SHVA the satellite Home Viewer Extension and reauthorization act of 2004 (“SHVERA”) – is captured in Section 204, which is entitled “Replacement of Distant Signals with Local Signals.” That provision reiterates congress’s strong preference for local over distant signals in a variety of ways, including through the implementation of the “if local, no distant” principle. That simple- and sensible- policy is at the heart of SHVERA.

On the radio side, NAB is even stauncher in its commitment to localism.

NAB Petition for Declaratory Ruling, Establishment of Rules and Policies For the Digital Audio Radio Satellite Radio Service in the 2310-2360 MHz Frequency Band Terrestrial Repeaters Network IB Docket No. 95-91 Service GEN Docket No. 90-357

Localism in practice helps bring people to their communities. Stations licensed in local markets play a vital role in the life of the communities they serve, providing an important forum for discussion of significant issues of public importance, a productive catalyst for organization of community activities, local charities and social actions, and an effective vehicle for dissemination of many different types of information of interest to diverse groups. Local broadcasters devote substantial resources to air PSAs, provide coverage of local news, events and political debates, provide detailed local emergency and public safety information, air AMBER Alerts, announce school closings and produce and air remote advertiser broadcasts for local businesses, none of which are aired on satellite radio. Local service is an integral element, and a statutorily-mandated responsibility, of all terrestrial broadcast stations in the United States. Broadcast licenses are awarded for local operations, contingent upon a demonstration of providing continuing service directed to meeting the needs of the community served.

Similarly NPR acknowledges the central role of localism in broadcast policy.

Comments of National Public Radio, Inc. Page 3, Footnote Paragraph 2: “The Communications Act of 1934 also established localism as a touchstone for the allocation of spectrum for over-the-air broadcast use. **47 U.S.C. –§ 307(b)**. See also *Pinellas Broadcasting Co. v. FCC*, 230 F.2d 204, 207 (D.C. Cir. 1956) (“In requiring a fair and equitable distribution of service, Section 307(b) encompasses not only the reception of an adequate signal but also community needs for programs of local interest and importance and for organs of local self expression.”), cert. denied, 350 U.S. 1007.”

Comments of the National Association of Broadcasters
Page 26, Paragraph 1: “As mentioned at the Commission’s localism hearing in Rapid City, a station 'should get credit for programming produced somewhere else, especially if the subject is really local, like interviewing our Congressman in Washington or carrying an away sports game back to the home team audience.’”⁶⁴

We would certainly support “getting credit” for these sorts of non-local programming, but it would be erroneous to assert that these specific forms on non-local programming are representative of all non-local programming, much of which is not directly relevant in these ways. In fact, these exceptions help to validate the premise that there is special, valuable utility to locally produced programming.

Comments of the Educational Media Foundation Page 6, paragraph 2, second sentence: As an initial matter, EMF notes that while LPFM stations are permitted to originate local programming, they are not required to do so.

Comments of the Educational Media Foundation Page 7, paragraph 2, fifth sentence: In most cases, there are other sources of information regarding local traffic and weather, while there may not be other sources of the programming produced by EMF, NPR, MPR, and others.

Comments of Public Radio FM Translator Licensees Page 5, paragraph 2: No LPFM can match the breadth and quality of the programming KPLU provides to

these audiences. In a more specific example, no LPFM can match the resources we allocate to northwest news, and the subsequent regional news programming we produce, which is local, relevant and valuable to the audiences turning to our translators.

We find this statement presumptuous, ill-informed, and speculative. What knowledge of LPFM operations does this commenter have? Has the commenter ever even been to a LPFM station? Has the commenter brought volunteers from the community to do anything but answer phones during pledge drive? On KPLU's website, there is a volunteer sign-up sheet, but the only activity mentioned is pledge drive- participation in news production, public affairs programming, show hosting, technical training or any other form of volunteerism is not mentioned.

Contrast the volunteer page of KPLU with KYRS-LP and the opportunities for community involvement between full power and low power stations becomes clear. Though the resources are scarce, the potential for meaningful, decisionmaking involvement from community members is striking.

http://www.kplu.org/volunteer/volunteer_signup.html
<http://kyrs.org/staticpages/index.php/volunteer>

As a Seattle licensed station, does KPLU intend to broadcast the Port Townsend City Council Meeting? And the Port Angeles City Council Meeting? And the Bremerton City Council Meeting? And the Bellingham City Council Meeting? And the Van Zandt city Council Meeting? LPFMs have been applied for in all these places, that are capable of doing local service that KPLU just can not do.

More than anything low power stations are bringing back imagination and personality to non-commercial radio.

Our proposals would allow room for both KPLU translators and LPFM stations. In fact, they would make KPLUs existing fill-in translators primary to any LPFM, if KPLU indeed meets the 8 hours of local origination per day requirement. However, with our proposals, there is room for more than one kind of NCE radio.

Importantly, the National Translator Alliance has made statements in their comments that recognize the important local contribution LPFM can make, and has acknowledged that localism should play a role in the determination of spectrum priority between LPFMs and translators.

NTA Page 3, Paragraph 1: However, many of the translators of noncommercial FM stations are fed by satellite in the noncommercial band, and they have no nexus to the local community. If the Commission finds sufficient basis to allow some primacy of LPFM over translators, it should limit that primacy to the satellite-fed non-local stations in the noncommercial band.

We agree with the thrust of these comments, but believe that translators in all bands should be evaluated based on the local production of their point-of-origin station.

Furthermore, Calvary Chapel et al has petitioned to expand this satellite feed to commercial band translator in RM 10609. As the NTA has shown, grant of RM 10609 would be very detrimental to localism in FM broadcasting.

Daisy Chain Disruption

Both NPR and NAB raise, once again, the specter of interference to the input signals of translator stations.

**Comments of the National Association of Broadcasters
Page 26, Paragraph 2: “In particular, should an LPFM station be allowed to displace one translator that operates as one station in a series, as is the case with many public radio networks and western areas, the entire series can be wiped out in one swoop.”**

**Comments of National Public Radio, Inc. Page 8,
Paragraph 2: “Because many public radio station licensees, including statewide public radio networks, utilize "daisy chains" of translator stations to extend service economically over wide geographic areas, the displacement of a single translator could eliminate the service provided by a number of translators beyond that point.”²⁷**

Low power advocates, once again, point out that the input signals of translator stations are protected from encroachment by low power stations in Sec. 73.827, (Interference to the Input signals of FM translator or FM booster stations).

(a) An authorized LPFM station will not be permitted to continue to operate if an FM translator or FM booster station demonstrates that the LPFM station is causing actual interference to the FM translator or FM booster station's input signal, provided that the same input signal was in use at the time the LPFM station was authorized.

(b) Complaints of actual interference by an LPFM station subject to paragraph (a) of this section must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations upon the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures. An LPFM station may only resume full operation at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility for the complaint.

[65 FR 67303, Nov. 9, 2000]

Low power advocates, (reiterating our position from 10/14/2003, comments of PRP et al on the MITRE corporation's technical report), recommend that if an input signal which is not inside a protected zone experiences actual interference from an LPFM, the station can simply request a waiver of 74.1203 requiring a terrestrial feed. As a matter of policy, the Commission explicitly states that FM translators' prime purpose is for reception by the public, not for use in daisy chains. Thus, the argument fails that translators should remain primary to LPFMs because some translators may be parts of a daisy chain, since there are options for waivers in such cases and the function of being a link in a daisy chain does not supplant the public need for direct service through Locally originated FM broadcasting.

Speculation on the Future

Some parties have claimed that action by the FCC to insure future spectrum for low power FM is unwarranted, since it is not known what Congress will do.

**Comments of the National Association of Broadcasters
Page 30, Paragraph 1 to Paragraph 2: “NAB urges the Commission to refrain from basing any decisions upon speculation that, if Congress someday modified the FM channel spacing rules, there would be remaining inadequate allocation for LPFM stations on third adjacent channels. Indeed, the Commission has previously declined to alter broadcast allocations based upon speculation as to future events.”**

**Comments of the National Association of Broadcasters
Page 31, Paragraph 1: “Here too, the Commission must limit its analysis to present-day regulations, rather than speculation about future possible congressional action.”**

As argued in our comments (FNPRM99-25 Comments of Citizen Advocates, page 10) and elsewhere, Congress did not order a permanent ban on low power radio on third adjacent channels. Congress mandated further study, to be completed within one year, and a ban lasting until Congress received the study and took further action. A review of the legislative history shows that no mention is made of translator licensing, or the potential for a translator allocation window to supplant frequencies that LPFM stations could broadcast on. The record demonstrates that Congress was not aware of the possibility that potential LPFM channels would no longer be available when Congress returned to the issue. If Congress were aware that most LPFM opportunities could be eliminated through other Commission action, it would have been absurd for them to order

the spending of 2.2 million taxpayer dollars on studying this issue.

Claim of Spectrum Inefficiency of Small Transmitters

Several commenters raised the argument that smaller transmitters create more interference relative to their service area.

Comments of National Public Radio, Inc. Page 17, Paragraph 2: “Will a multitude of LPFM stations, providing both localized service and localized interference, better serve the public interest than fewer, more spectrum efficient full power stations?”

Comments of National Public Radio, Inc. Page 18, Paragraph 2: “The Commission has made no attempt to rationalize the spectrum inefficiency of allowing LPFM stations to cause potentially significant harmful interference to future, otherwise more spectrum efficient full power stations.”

Comments of Named State Broadcasters Associations Page 6, Paragraph 2: “Moreover, this interference would not be offset by sufficient service to the public; the LPFM service is far less efficient use of spectrum than the full-power FM service, as LPFM stations are capable of generating interference areas that are 1000% to 2000% larger than the small areas served.”¹²

While opponents of LPFM claim that the laws of physics are against LPFM, in fact they merely make an argument that looks like physics. Please see our response in Appendix C, reply to the NJAB comments. Our reply shows that abstract analyses of service versus interference areas are an exercise in sophistry in the context of an FM band that is allocated for transmitters at irregular intervals, varying levels of power and interference

protection, multiple adjacencies and wide ranges of HAAT.

**Comments of Named State Broadcasters Associations
Page 6, Footnote: “12 See Amendment of Sections
74.1204(a) and 73.807 of the Commission’s Rules,
Petition for Rulemaking, RM-11099, at 24-24 and
Exhibit 6 (filed by the New Jersey Broadcasters
Association on May 27, 2004).”**

Extension of the Freeze and Expectancy Issues

The FCC did not have sufficient protections in place when it opened the march 2003 translator window. This evidenced itself in the massive abuse that was perpetrated in the filing window. Prometheus et al have petitioned the FCC to move forward on applications by organizations that filed for ten translators or less, but to extend the freeze on all filers that asked for ten translator stations or more. This seems to us to strike a reasonable balance between allowing licensing to go forward while investigating illegitimate filings.

Comments of Edgewater Broadcasting, Inc., and Radio Assist Ministry, Inc. Page 6, paragraph 2: The FCC has recognized the legitimacy of the expectancy interests of existing owners in a variety of contexts.

Comments of Edgewater Broadcasting, Inc., and Radio Assist Ministry, Inc. Page 8, paragraph 2: If the FCC grants LPFM stations and LPFM applications primary status, it would be tantamount to revoking the licenses and permits of any existing and proposed FM translator station that conflicts with such a LPFM station or application since the affected FM translator or application would be forced off the air or unable to bring service to the local community. Such action by the FCC would be contrary to the public interest, convenience and necessity -- especially in light of the fact that the FCC has

never before revoked a license or construction permit from a licensee or permittee who has done no wrong. The FCC is only authorized to revoke a license or construction permit for a bad act that generally requires a “knowing” or “willful” bad act. 47 U.S.C. §312(a)-(b).

It is completely within the authority of the FCC to determine as to whether the grant of licenses is in the public interest, and it is completely within the authority of the FCC to notify a secondary service that it must accept interference from other services. That is what the FCC does.

Even without resolving the pending complaint in connection with trafficking, the FCC has authority to modify licenses pursuant to proper rulemaking proceedings. 47 USC Sec. 303(f), 304, 309(h). It is inconceivable that the Commission has authority to modify or even terminate a license or class of licenses, but is powerless to dismiss pending applications in which an applicant has no actionable expectation of a grant.

To the contrary, the Commission may only issue a license upon application where such license serves the public interest. Section 309(a). If the Commission determines that it cannot grant any of the pending applications because grant of these applications is contrary to the public interest, it has no choice but to dismiss the applications.

With regard to the claim that dismissal of pending applications is arbitrary: as an initial matter, the FCC has pending before it a Petition for Emergency Freeze which documents that the Commission failed in its statutory obligation to prevent trafficking as required by Sections 309(j)(3)(C) and (4)(E). Dismissal and request for a new window is entirely

appropriate where an express statutory provision has been violated. [Cite cancellation of the Nextwave auction after the Supreme Court ruled FCC couldn't cancel licenses of a bankrupt].

Alternative Proposal

We support many of the proposals of REC on the comparative spectrum priority of LPFMs and translators. We believe that at the heart of this matter is the commitment of licensees to public service and production of local programming across all radio services, full power and low power and translator, commercial and non-commercial. Those stations that are willing to go beyond being jukeboxes and repeaters should take spectral priority. If the Commission will not implement Prometheus proposals for using local origination pledges as the basis for its decisions, we encourage the Commission to adopt REC'S proposals. We believe that the REC proposal, through intelligent slicing of the pie of remaining available frequencies, will generally favor operators that are inclined to serve the public in this way. This will be an adequate result of this proceeding if the FCC finds that it must continue to use "first in time" rather than the Prometheus proposal of "local origination" as the guiding star for spectral priority (in addition to distance from origination station, which is present in different forms in both proposals).

4. Less Contentious Matters

Multiple and Local Ownership Requirements for LPFMs

Most comments that mentioned this issue voiced support for retention of restrictions on local and multiple ownership.

Comments of National Public Radio, Inc. Page 4, Paragraph 2:
“Given the specific purposes underlying the LPFM service, as well as the relatively small geographic areas served by an LPFM station, the absence of significant local and multiple ownership rules threatens to alter the character of the LPFM service.”

Some Low Power Stations expressed the desire to be able to own more than one low power station. We believe that the legitimate elements of that desire are best met through use of translators that repeat low power FM signals.

Underwriting Abuse

One commenter, Saga Communications, pointed out that some LPFM licensees have tried to push the limits of the underwriting rules.

Comments of Saga Communications, Inc. Page 8, paragraph 2:
It appears that the Commission bends over backward to assist LPFM operators. As a result, they do not appear to be held to the same stringent requirements as full power licensees. They are sometimes merely admonished for broadcasting commercials.

As we have stated in the past, we reject all attempts by any non-commercial licensees to stretch the boundaries around underwriting. In our statement on underwriting (released for the February 8th, 2005 Low Power Day at the FCC, Appendix D), we make that clear.

We appreciate that the Commission has given some leeway to some operators who seem to be confused about the exact limits of the law (as the Commission often does with licensees in all services), but we will support full enforcement of the underwriting rules for LPFMs, including fines for LPFMs who willfully and repeatedly violate these rules. Commercial advertising undermines the purpose of LPFM, and should in no way be tolerated by the Commission. The vast majority of LPFM stations understand and abide by the underwriting rules, and we encourage enforcement against those who do not.

Christian Community Broadcasters Proposals on Locally Produced Programming

We support, in general principal, the recommendations of Christian Community Broadcasters with regard to hours of locally originated programming. Rather than the 8 hour standard, a more accurate standard would simply count the pledged number of hours per day or per week of locally originated programming. We do think that radio stations being given the option of making a realistic promise that they intend to keep to would be a more nuanced and more effective approach than the current approach simply asking for the 8 hour pledge. We do believe that this proposal could easily be reconciled with some form of our proposal to use the 8 hour pledges of local production for establishing spectral priority. We also stand by our previously mentioned recommendation of a minimum of locally produced *public affairs* programming.

We also support in general principle the idea that 8 hours of locally produced programming should not be optional for points, but should be a minimum standard for new stations. However, we recognize that there are some organizations that applied for low power FMs who would have difficulty meeting that standard. Thus, we do not object to the continued operation of LPFMs that do not meet this standard, but would support stronger standards for the future. We believe that non-pledged LPFMs should not benefit from spectrum priority with regard to translators.

Conclusion

Saga Communications sums up well the position of some of the largest representatives of incumbent broadcasters towards low power radio:

**Comments of Saga Communications, Inc. Page 9,
paragraph 1: The best way to avoid this avoidable situation is to leave LPFM stations in the same legal status in which they now find themselves.**

We thank the Commission for taking up these important issues at this time. We believe that the record shows significant support for some form of using superior engineering methodology to reduce interference, resolve encroachment, and create new opportunities for LPFM groups which are currently imperiled or have been unable to apply for lack of available spectrum. We also believe that the record shows significant support for adjustment of the spectrum priority between translators and LPFMs, with many

commenters acknowledging as a problem the lack of connection between distant translators and communities where they preclude opportunities for LPFMs. Contrary to the assertions of a few incumbents who claim that it is best to “leave LPFM stations in the same legal status in which they now find themselves,” we actually see in the comments that even some incumbents want to see a number of changes that will improve the health and localism of broadcasting. LPFM stations and advocates have identified key inequities sensed by many in today’s broadcast licensing, and will continue to push for a system that promotes the greatest local production and public service in the increasingly consolidated and profit driven environment of broadcasting.

Appendix A:

Number of LPFM Stations Lost to Translators

This chart compares the number of stations the FCC predicted would be available in each market in 1999, and the number available after the current batch of translators are authorized.

City	FCC 2000	REC 2003
New York, NY	0	0
Los Angeles, CA	0	0
Chicago, IL	0	0
Houston, TX	1	0
Philadelphia, PA	0	0
San Diego, CA	0	0
Phoenix, AZ	3	0
Dallas, TX	0	0
San Antonio, TX	13	0
Detroit, MI	0	0
San Jose, CA	2	0
Indianapolis, IN	8	0
San Francisco, CA	0	0
Baltimore, MD	4	0
Jacksonville, FL	8	0
Columbus, OH	13	0
Milwaukee, WI	6	0
Washington, DC	0	0
Boston, MA	2	0
Nashville, TN	7	0
Denver, CO	3	0
Cleveland, OH	2	0
Oklahoma City, OK	13	0
Charlotte, NC	0	0
Tucson, AZ	13	0
Albuquerque, NM	6	0
Atlanta, GA	6	0
Miami, FL	0	0
Las Vegas, NV	14	1
St. Louis, MO	13	0
Cincinnati, OH	9	0
Pittsburgh, PA	4	0
Minneapolis, MN	6	1
Omaha, NE	13	0
Wichita, KS	9	0
Louisville, KY	2	0
Raleigh, NC	1	1
Baton Rouge, LA	6	1
City	FCC 2000	REC 2003
Mobile, AL	12	0
Richmond, VA	23	0
Montgomery, AL	12	0
Spokane, WA	3	0
Des Moines, IA	6	0
Grand Rapids, MI	3	0
Little Rock, AR	3	0
Salt Lake City, UT	0	0
Springfield, MA	6	0
Kansas City, KS	1	0
Peoria, IL	10	0
Manchester, NH	2	0

Santa Barbara, CA	11	0
Trenton, NJ	0	0
TOTAL	279	4

Appendix B:

Brown Broadcast Services

I N C O R P O R A T E D

Michael D. Brown, President 3740 S.W. Comus St. Portland, Oregon, U.S.A. 97219-7418
SBE Certified Senior Radio Broadcast Engineer office:503-245-6065 fax:245-5773 e-
mail:mike@brownbroadcast.com

EXAMINATION OF POSSIBLE ADDITIONAL LP100 STATIONS
PORTLAND, OREGON URBANIZED AREA

Prepared by Michael D. Brown – Brown Broadcast Services, Inc.

April 11, 2004 v3.0

SUMMARY:

This study examines the possibility of additional 100-watt Low Power FM stations within the Portland, Oregon Urbanized Area (2000 Census Boundaries) using various scenarios. It shows that the Congressional imposition of 3rd-adjacent channel protection requirements, combined with the unprecedented avalanche of applications in 2003 translator filing window, has utterly gutted future opportunities for expansion of LPFM service in the Portland UA. The results contained herein are believed to be very typical for a medium-large urbanized area.

BACKGROUND:

The FCC created the Low Power FM Radio Service in January 2000. In response to Congressional action mandating 3rd-adjacent channel protections to other facilities, the FCC imposed such requirements in April 2001. This had the effect of eliminating the vast majority (some estimates put it at 80%) of the LPFM opportunities within medium and large urban areas. What remained were largely rural and outer-suburban channels. The Congressional act also mandated a technical study (the “Mitre Report”), which was completed in May 2003. The FCC issued its recommendation to Congress, based on Mitre, in February 2004, recommending that 3rd-adjacent channel protections be dropped once again.

Meanwhile, in March 2003, the FCC opened a filing window for FM translators, which garnered an unexpected deluge of some 13,000 applications – the vast majority of these by applicants who are not local to the area to be served. Most of these translators are still being processed – only a handful are on the air at this time. These applications had the effect of wiping out the vast majority (our estimates are 80% or more) of the medium-to-large urban area LPFM opportunities. Considering the sequence of events, some LPFM proponents feel that LPFM applications should be able to displace some or all translators, particularly those from the unfortunately-timed 2003 filing window. Other options, such as using ACTUAL contours and/or allowing directional antennas to provide real-world protection to translators, could also increase the opportunities for new LPFM stations.

The Portland UA includes 1.58 million persons and 3340 person per square mile (2000 Census), rating it as a fairly typical medium/large urban area. The total Arbitron-defined radio market size (which includes another 300,000 persons) ranks 24th in the U.S.

This firm has prepared a separate study which shows that only 23 persons are predicted to reside within the 3rd-adjacent “interference” areas for 10 potential additional Portland UA LPFMs.¹ Part 73.810 of the FCC Rules provides a mechanism for documenting and mitigating any problems with third-adjacent interference that may arise. If more than 30 households (or 1% of the households in a 1km radius – whichever is lower) remain unresolved, the affected full-power FM station (“FPFM”) could initiate a proceeding to force the LPFM off the air completely. In nearly all cases, in our experience, such problems can be resolved by simply purchasing a better receiver for the affected listener.

METHODOLOGY & DATA SUMMARY:

We examined the additional LPFM opportunities for the Portland UA by three methods:

- a. with current spacing requirements, and 2003 translators protected
- b. with 3rd-adjacent spacing requirements dropped, and 2003 translators protected
- d. with 3rd-adjacent spacing requirements dropped, and 2003 translators NOT protected (translators with a CP or license prior to the 2003 Filing Window WERE protected)

We plotted a geographic grid within the Portland UA, at one-minute latitude and longitude intervals. Starting at the northern-most extent of the UA, we scanned west to east and southward within the UA, for available channels. The actual number of stations that would actually be built would likely be less – this is an idealized distribution, with some channels sufficiently far away at opposite ends of the UA to allow them to be duplicated.

¹ ANALYSIS: LPFM 3RD- ADJACENT AND BLANKETING INTERFERENCE ZONES, Vs BLANKETING INTERFERENCE OF EXISTING FULL-POWER FM STATIONS PORTLAND, OREGON URBANIZED AREA

Based on even population distribution within the Urbanized Area. The exact locations of the LPFM stations, of course, cannot be known at this time. The interfering contours were determined using the contour “ratio method”.

	NEW			DISTANCE
	CHAN.	CHANNEL		FROM URBAN
SCENARIO	AVAIL	NUMS	LOCATIONS	CENTER
A - NEW W/CURRENT REQ.	0	0	-- none --	-
B - 3rds DROPPED, W/XLTRS	4	273	FOREST GROVE, OR	22mi
		273	NEWBERG, OR	22mi
		225	PORTLAND*	2.4mi
		225	OREGON CITY*	13.5mi
C - 3rds DROPPED, W/O XLTRS	10	243, 249, 251, 273	FELIDA, WA (N of Vancouver WA)	12.5mi
		273	FOREST GROVE, OR	22mi
		273	NEWBERG, OR	22mi
		251	TIGARD, OR	10mi
		251	GRESHAM, OR	11mi
		225	PORTLAND*	2.4mi
		225	OREGON CITY*	13.5mi

*MX with pending Proposed Rulemaking 02-136 – most likely will be lost

As can be seen, all but one of the LPFM opportunities in this chart are in the suburban communities. Both Channel 225 opportunities are Mutually Exclusive with a pending Proposed Rulemaking that is proceeding towards conclusion, and will almost certainly result in this channel being lost.² Channel 251 might be used just within the city limits of Portland (4 miles from the urban center) by sacrificing the suburban co-channel locations. These results are very typical for what we've found in other similar-sized cities. Liberalization of the protection rules, i.e.: allowing the actual-contour method and directional antennas, might allow some central-urban LPFMs in many cities, while still protecting existing facilities from interference.

There currently is one LPFM pending in the Portland UA, at Hillsboro, OR, on channel 242, some 13.5mi from the Portland City Center. Therefore, there might be up to 11 total LPFMs, without 3rds and without the 2003 translators. The total number of LPFM stations in the Portland UA is thus reduced from 11 to 1 - a **91% loss** - by the current situation.

² FCC Docket 02-136 is expected to add channel 226C3 to Gladstone, Oregon. FCC has issued Orders to Show Cause in connection with this expected decision

CONCLUSIONS:

The congressional imposition of 3rd-adjacent protection requirements for LPFM stations, along with the unfortunate timing of the 2003 Translator Window, has utterly decimated the opportunities for LPFM stations in the areas with the highest demand and need for the service. In Portland, Oregon, the effect has been a loss of 91% of the total LPFM possibilities for the metro area. It also means a loss of 100% of the opportunities for NEW LPFMs, beyond the one currently pending in Hillsboro. And finally, unless Docket 02-136 is somehow derailed, it means a loss of 100% of the LPFM possibilities within the Portland city limits (population: 420,000).

The case of Portland is very typical of what has occurred throughout the country, particularly in and around the medium and large cities.

A range of technical and policy changes can be made to rectify this problem, while causing little or no appreciable interference to now-existing facilities. In the case of a potential elimination of 3rd-adjacent interference requirements, the FCC Rules already in place will ensure that any problems that may arise are promptly rectified, with a potential “death sentence” for any LPFM station that does not comply.

Appendix C:

Before the Federal Communications Commission

In The Matter of)	
)	
)	RM11099
Amendment of Sections 74.1204 (a))	
and 73.807 of the Commission Rules)	
)	

Comments Of The Prometheus Radio Project Introduction

- 1)A “Pork Barrel” Allocation Policy For New Jersey Broadcasters Is Not In The Public Interest**
- 2) Privileging “New Jersey Broadcasters” could easily allow them to reach further into NYC and Philadelphia.**
- 3) The Grant of a License Does Not Permit New Jersey Broadcasters To “Build A Moat” Around Their Coverage.**
- 4) LPFM is Not The Problem; But Translators Are Currently Misallocated.**
- 5) Incumbent Broadcasters Cling to Static.**
- 6) NJBA’s Numbers do More to Obscure Interference Questions Than To Support a Request For Preferential Treatment.**
- 7) No Digitization Without Obfuscation: NJBA Misrepresents the Threat of Small Stations to Digital Radio**

Conclusion

Introduction

The Prometheus Radio Project (“PRP”) is a grassroots organization that works to promote a more democratic media by helping community groups at every step of the process as they build their own community radio stations. Our work includes policy

advocacy, assisting civil society groups in navigating the licensing process, building radio stations, training activists, and grassroots organizing. We fight for the right of all citizens to have access to the public airwaves.

This comment is in response to the petition filed by the New Jersey Broadcasters Association (“NJBA”), arguing for special interference protection for broadcasters whose transmission facilities are located in the state of New Jersey. This petition is an attempt by NJBA not to improve radio service to the people of New Jersey, but to ensure no new entry into the marketplace of New Jersey airwaves by LPFM stations. We ask that the Commission adopt none of the measures advocated by the NJBA. However, we do believe that certain reforms made to the translator service rules could alleviate many of the concerns raised in this petition.

1) A “Pork Barrel” Allocation Policy For New Jersey Broadcasters Is Not In The Public Interest.

NJBA argues that there are an unusually small number of stations in New Jersey because the state is in close proximity to the major metro markets of New York City and Philadelphia. If NJBA’s real concern were truly to provide service to the New Jersey communities, it would be encouraging LPFMs into the marketplace rather than fighting them. By nature of their short signal reach and their commitment to produce local content, LPFMs are truly local and serve the immediate communities in which they broadcast. We believe this is consistent with the Commission’s Report and Order MM Docket 99-25, which authorized LPFMs “for new voices to be heard” and to “best serve [] the public interest.” In fact, the only hope for new voices to be heard in these regions *is*

low-power broadcasting, since there are currently few available, viable spaces to grant full-power licenses in the state.

NJBA's position would ask the Commission to give special consideration to incumbent full-power New Jersey stations only. However, radio communications are regulated under federal law (**47 U.S.C. 152**). To divide up the airwaves on a per-state basis is at odds with the role of the FCC in managing the nation's airwaves. Waivers to the rules of broadcasting should be made on a "case by case" basis, not a "state by state" basis.

Further, New Jersey faces a situation that is not unique. Many broadcast markets in the United States are flanked by other metro markets and face competition from them. This may pose a challenge to their programming and marketing departments, but it does not justify treating them differently from broadcasters in other states. To do so would violate substantive due process concerns under the 5th Amendment of the U.S. Constitution. NJBA's complaint is not based on a regulatory framework, nor on the laws of physics, but rather on the NJBA's political structure alone. NJBA's complaint encompasses all of its members within the state. However, radio stations in Camden have little in common with radio stations in Ocean City. NJBA's petition does not reflect supply and demand for radio signals, but rather, it advocates special protection for its members solely because they are all located in New Jersey.

2) Privileging "New Jersey Broadcasters" could easily allow them to reach further into NYC and Philadelphia.

NJBA has attempted to describe its members as trying to serve their communities in the

face of encroaching competition from all sides. But in fact, NJBA's own petition cites that some of its members have made a choice not to serve their communities of license, but rather to broadcast instead with the more lucrative New York City audience in mind.³ Giving special protection to these stations would only seem to perpetuate the problem of an under-served listening community in New Jersey. Low-power stations are reintroducing a level of localism that many of the corporate-owned broadcast chains abandoned long ago. Under the current rules of broadcasting, only low-power radio can add local content to New Jersey's airwaves.

3) The Grant of a License Does Not Permit New Jersey Broadcasters To “Build A Moat” Around Their Coverage.

The fact that broadcasters have become accustomed to being able to reach listeners outside their protected contour does not make it an entitlement. The Commission is free to allow new service in areas that are not currently served by the protected contour of a station. In fact, the Commission is charged with the responsibility to both insure that the public is able to have access to “the widest possible dissemination of diverse and antagonistic voices,” and is also charged to make sure that the spectrum is regulated with the greatest possible efficiency. The Commission is not compelled to give more protected coverage to existing broadcasters. Rather, if space is available in the radio spectrum that can allow more voices, the Commission must use its authority to grant licenses to new entrants.

The history of spectrum management is littered with the corpses of attempts by the broadcasters to get protection for their service beyond the protected contour of their stations. The Commission has always rejected these attempts, because a protected

contour is exactly that- the space in which a broadcast station is protected from harmful interference. For example, in the September 28th Memorandum of Opinion and Order on Reconsideration, (FCC 00-349), section 54, the Commission stated:

“More generally, it is axiomatic that our technical rules protect NCE stations only to their ‘protected’ contours and not some undefined [and] otherwise unprotected contour related to the location of a desired station audience. Requiring greater protection could unduly limit LPFM licensing opportunities and is at odds with protections provided in the full power service. We conclude that this fundamental departure from our license assignment policies is unwarranted.”

While broadcasters have become accustomed to being able to reach listeners outside their protected contour, they do not "own" them and the Commission is free to allow new service in areas that are not currently served by the protected contour of a station.

The Commission rejected identical attempts to extend protection from LPFMs to the 44 dBu contour in the 2000 report and order on LPFM. By virtue of the local service done by LPFMs, LPFMs were granted greater protection than translators with regards to the rules in connection with a” regularly used signal.” No evidence has been presented that would suggest that the Commission should change that policy with regard to LPFMs.

4) LPFM is Not The Problem; But Translators Are Currently Misallocated.

All of the examples cited by NJBA in their exhibits to cause possible interference with full-power broadcasters are not, in fact, allocated LPFMs, but translators. The problem of spectrum crowding in New Jersey is not caused by proposed LPFMs. Spectrum crowding

all over the country has been exacerbated by the misuse of translators by spectrum speculators and satellite networks.

PRP does not believe that broadcast entities should be allowed to build empires of hundreds or thousands of translator radio stations across the country. The translator problem is nothing more than a loophole in ownership requirements that allows for abuse. Translator users have recently introduced a petition for rulemaking that would widen this already-giant loophole in the rules so that satellite-fed broadcasting can grow even more. In RM-10609, Calvary Chapel et al request that the FCC eliminate the rules which require terrestrial feed of translators in the non-commercial band. There can be little doubt that the recent glut of translator applications is due in part to hope that the terrestrial feed requirement might be stripped out of the regulations of translators.

We support *a maximum of twenty translators* owned by the same entity, and also a requirement that no station's signal may be repeated by more than twenty translators. Twenty seems to be a reasonable limit for the legitimate purpose of expanding coverage in the proximity of the community of license to make up for terrain shielding and urban growth. Twenty translators even seems like a reasonable number for building a state network of reasonable size. We believe that rule changes as simple as these would do far more to unclutter New Jersey's airwaves than the NJBA's protectionist proposals.

5) Incumbent Broadcasters Cling to Static.

The NJBA has attempted to trot out the old argument that small stations are an inefficient use of spectrum. This argument was decisively rejected by the Commission in 99-25. The Commission clearly stated its rationale for their decision in Section 31 of the LPFM Notice of Proposed Rulemaking, (FCC 99-6), January 28, 1999.

The Commission clearly recognized that now that most full-power FM opportunities have been used, and that the FM dial is now "mature." The public interest is now best served by using spectrum in a more nuanced way than was done in the initial rounds of

allocations, when unused crevices were not yet considered worthwhile to allocate. For example, in more congested areas where full-power stations require protection, LP-100 stations could fill the gaps between gridlocked full-power stations that cannot upgrade to a higher class.

However, because urban centers are not distributed with the precision of hexagons in a honeycomb, there are often spaces between protected contours of full power stations that can be used to introduce new service when a service with lower power, and thus greater granularity, is introduced. Low power stations fit in much the way that tennis balls can fit in a barrel full of basketballs- no more basketballs can fit, but there is plenty of unused space that can be filled with tennis balls. It is the duty of the FCC to manage the spectrum for the greatest possible efficiency and introduce new service where it can without impinging on the protected service of incumbents. The oversimplified argument of the NJBA has the appearance of physics but lacks the rigor of scientific thought and observation, since this model presented has no relationship to the actual reality to allocations in the FM band. In the real FM band, stations are placed at irregularly spaced geographical intervals, with different powers, at different antenna heights, different levels of protection based on station class, and different adjacencies- let alone the political realities of deadlocked incumbents. Spectrum efficiency is thus best served by a wide variety of station power levels, including very low powers. Unless incumbents are willing to give up their current allocations and locate their stations in a pre-organized grid that optimizes distances from stations to stations and to raze any mountains that may be in the way, incumbent arguments are meaningless against the use of low power stations to fill in spaces that incumbents can not use due to their irregular pattern of site choice.

6) NJBA's Numbers do More to Obscure Interference Questions Than To Support a Request For Preferential Treatment.

In Exhibit 6 of its petition NJBA uses a chart to purportedly show how inefficient LPFM stations are. NJBA claims in its executive summary that an LP-10 station operating at maximum facilities has a service area of 12.36 square miles, with an interference contour ranging from 126.26 square miles with respect to Class A station, and an interference contour of 244.69 square miles with respect to Class B stations. In other words, for a service area of a mere 12.36 square miles, an LP-10 carves out an area of interference that is almost 2000% larger with respect to Class B stations. (See page ii, NJBA petition for rulemaking, May 27, 2004, RM-11099).

But NJBA achieves this result by comparing the area inside service contours to the interference contours. It takes a great deal of gumption to do this only paragraphs after they explain that their stations have listenable coverage out to the 44dBu contour that should be protected by the Commission! Apparently a listenable signal from a LPFM at 44dBu does not provide service, while a listenable signal at 44dBu from a full power station does. This illustrates exactly the problem that occurs when incumbents attempt to obscure the definitions of protected contours and listenable signals.

7) No Digitization Without Obfuscation: NJBA Misrepresents the Threat of Small Stations to Digital Radio

Back in 1999, before digital radio was even implemented, USA Digital Radio (which later became the Iiquity Corporation) evaluated low-power radio and the potential for interference from small stations. They found no significant potential for interference on 3rd-adjacent channels, and they also advised the Commission that they saw no problem with the implementation of LPFM in the form that the Commission ultimately implemented it. (LPFM Report and Order, Section 74):

In this regard, we noted that one IBOC proponent, USA Digital Radio Partners, L.P. (USADR), suggested that 2nd-adjacent channel signals from analog FM stations in the existing radio environment would not pose an interference threat to its digital IBOC signal.

Based on the comments of USADR in 1999, the Commission correctly chose to move forward with LPFM on third Adjacent channels. Because testing was inconclusive on 2nd

adjacent channels, the Commission elected to hold off on LPFM licensing of 2nd adjacent LPFMs at that time. Re-opening this question at this point without some new form of evidence of interference from low power broadcasters to Digital radio signals is baseless.

LPFM Report and Order, January 2000, footnote 145 For example, in the Notice we referenced the view of USADR, an IBOC technology proponent, that “because of the design of the USADR IBOC system, digital reception is essentially not susceptible to 3rd-adjacent channel interference....” Notice Appendix C at ¶ 53. and

LPFM Report and order, January 2000, section 93. " Nor do we believe such operations are likely to have an adverse effect on digital IBOC signals."

8) Conclusion:

In conclusion, PRP believes that the FCC must deny the petition of the New Jersey Broadcasters on all counts. A special set of privileges expanding the broadcast coverage protection of stations with a New Jersey address may be appealing to owners of these stations, but will do nothing to serve the public interest. New Jersey residents *and* broadcasters will be better served by a reform of the translator rules to limit the proliferation of satellite-based translator stations. The desire for more New Jersey-based content in the crevices between New York and Philadelphia will best be served by an expansion of the LPFM service, and by allowing locally originating LPFM stations to allocate in the spaces that are currently deemed usable by translators.

¹ See Footnote 14, page 9, NJBA petition. New Jersey-based stations can clearly be heard in the New York and Philadelphia metropolitan areas.

Appendix D:

Statement of Prometheus Radio Project on Underwriting Enforcement in Low Power Radio

**For more information, contact [pete tridish](mailto:pete.tridish@prometheusradio.org)
petri@prometheusradio.org 215-727-9620**

We commend the FCC decision to uphold the non-commercial nature of low power radio stations in the case of the Technology Information Foundation of Eau Claire Wisconsin.

In Eau Claire, a low power radio station (WLFK-LP), apparently aired a number of underwriting messages that crossed several of the legal boundaries between underwriting and advertisement. Many low power FM stations are not very clear about the distinctions and do not fully understand the law in this regard.

The text of the announcements in question clearly reflects that they were, in fact, advertisements. We appreciate that the FCC chose not to fine this low power radio station for what appears to have been an honest mistake. But we support the FCC's admonition of WLFK-LP. To protect the distinct, non-commercial character of low power radio, enforcement of the distinction between commercials and underwriting is necessary. The misunderstanding of the underwriting rules on the part of WLFK-LP appears to be honest, but we are aware that there are other stations in the world of non-commercial radio who hope to "push the envelope" using ambiguities in the wording of the rules regarding underwriting to undermine the spirit of non-commercial radio.

Most of the ambiguities in the underwriting rules are the result of a certain subset of non-commercial stations that have chosen to interpret the underwriting rules loosely in order to add value for their underwriters. In some cases, the FCC has not received complaints, in others, they have chosen to expand the range of acceptable behavior, and in other cases they have held the line. The fact that there is a range of underwriting behavior currently at play does not mean that there are no rules, or that the rules are meaningless. The persistence of and expansion of "commercial-like" underwriting could ultimately undermine the existence of non-commercial, non-profit radio licensing-- particularly if the lay public can no longer tell the difference.

We remind those who are interested in using low power licenses for commercial purposes that the FCC auctions commercial radio stations and the proceeds are given to the American public in the form of revenue for the United States Of America Treasury, or commercial stations can be bought from radio station brokers. Non-commercial stations like LPFMs are given for free, and the public gets radio programming without being subjected to commercials.

This arrangement, while not very encouraging of small businesses that wish to "make it" in radio, is in the public interest. We have fought for the ability of small commercial businesses to continue to co-exist in the marketplace alongside the radio giants-- we sued to protect the ownership caps and exposing the misdeeds of big communications corporations, and have worked in coalition to protect the integrity of the United States media from monopoly. Despite our sympathy for small mom and pop companies, small businesses should not be disguising themselves as non-profits, and encroaching commercial free space that has been set aside for educational purposes.

The Prometheus Radio Project is happy to help any low power station evaluate whether potential announcements will violate the underwriting rules, as a free service to the LPFM community. While we think that there may be ways that the underwriting rules could be made clearer, we support efforts by the FCC to enforce these rules in a fair way.

