INITIAL VERSION

ORAL ARGUMENT NOT YET SCHEDULED

No. 08-1117

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF BROADCASTERS,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
AND UNITED STATES OF AMERICA,
Respondents.

On Petition for Review of an Order of the
Federal Communications Commission

BRIEF FOR PETITIONER NATIONAL ASSOCIATION OF BROADCASTERS

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July 28, 2008

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), Counsel for Petitioner hereby certifies the following:

I. PARTIES, INTERVENORS, AND AMICI IN THIS COURT

1. National Association of Broadcasters (Petitioner)
2. Federal Communications Commission (Respondent)
3. United States of America (Respondent)
4. Prometheus Radio Project (Intervenor)

II. RULING UNDER REVIEW

Third Report and Order, *Creation of A Low Power Radio Service*, MM Docket No. 99-25, FCC 07-204, 22 FCC Rcd 21,912 (2007). A summary of the Third Report and Order was published in the Federal Register on January 17, 2008 at 73 Fed. Reg. 3202.

III. RELATED CASES

This case has not been before this Court or any other court previously. Counsel is not aware of any related cases pending in this Court or any other court.

CORPORATE DISCLOSURE STATEMENT (FRAP 26.1)

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, petitioner National Association of Broadcasters ("NAB") respectfully submits this Corporate Disclosure Statement.

NAB is a not-for-profit, non-stock membership corporation that, as a trade association, promotes the interests of radio and television broadcasters, and represents the interests of broadcasters in legislative, regulatory, and judicial matters. NAB has no parent company, and no publicly held company owns more than 10% of its stock. Because NAB is a trade association as defined in Circuit Rule 26.1(b), it is not required to disclose the names of its members.

STATEMENT REGARDING DEFERRED APPENDIX

Pursuant to Rule 30(c) of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 30(c), a deferred appendix will be used.

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* Authorities upon which we chiefly rely are marked with asterisks.

GLOSSARY

2000 Order: Report and Order, *Creation of a Low Power Radio Service*, 15 FCC Rcd 2205 (2000) [JA __].

2001 Order: Second Report and Order, *Creation of a Low Power Radio Service*, 16 FCC Rcd 8026 (2001) [JA __].

2005 FNPRM: Second Order on Reconsideration and Further Notice of Proposed Rulemaking, *Creation of a Low Power Radio Service*, 20 FCC Rcd 6763 (2005) [JA __].

2007 Order: Third Report and Order and Second Further Notice of Proposed Rulemaking, *Creation of a Low Power Radio Service*, 22 FCC Rcd 21,912 (2007) [JA __].

APA: Administrative Procedure Act, 5 U.S.C. § 500 *et seq.*

D/U: Desirable-to-Undesirable, a ratio-based methodology for evaluating radio signal strength.

FCC or Commission: Federal Communications Commission.

FM: Frequency Modulation, a method for transmitting audio information through a radio signal.

JA: Joint Appendix.

kHz: Kilohertz.

LPFM: Low Power FM radio.

LPTV: Low Power Television.

MHz: Megahertz.

NAB: National Association of Broadcasters, a trade association that advocates on behalf of more than 8,300 free, local radio and television stations. *See* http://www.nab.org.

NPR: National Public Radio, a not-for-profit membership organization that produces and distributes noncommercial news, talk, and entertainment programming. *See* http://www.npr.org/about/.

NPRM: Notice of Proposed Rulemaking, *Creation of a Low Power Radio Service*, 14 FCC Rcd 2471 (1999).

OET: Office of Engineering and Technology, an FCC office that advises the Commission concerning engineering matters. *See* http://www.fcc.gov/oet/.

RBPA: Radio Broadcasting Preservation Act of 2000, Pub. L. No. 106-553, div. B, § 632, 114 Stat. 2762, 2762A-111 (2000).

Reconsideration Order: Memorandum Opinion and Order on Reconsideration, *Creation of a Low Power Radio Service*, 15 FCC Rcd 19,208 (2000) [JA __].

Second FNRPM: Second Further Notice of Proposed Rulemaking, *Creation of a Low Power Radio Service*, 22 FCC Rcd 21,912, _____ (2007) [JA __] (accompanying the 2007 Order).

JURISDICTIONAL STATEMENT

This is a petition for review of the FCC's Third Report and Order, *Creation of A Low Power Radio Service*, MM Docket No. 99-25, FCC 07-204, 22 FCC Rcd 21,912 (2007). A summary of the Third Report and Order was published in the Federal Register on January 17, 2008 at 73 Fed. Reg. 3202. The FCC had jurisdiction over the subject matter pursuant to 47 U.S.C. § 303 *et seq.*

On March 14, 2008, Petitioner NAB timely filed a petition for review in this Court seeking review of the Third Report and Order. This Court has jurisdiction pursuant to 47 U.S.C. § 402(a) and 28 U.S.C. § 2342(1). Venue lies in this Circuit under 28 U.S.C. § 2343.

ISSUES PRESENTED FOR REVIEW

1. Has the FCC violated the Radio Broadcasting Preservation Act by reducing and/or eliminating statutory protections granted to full-power stations against interference from low-power stations?

2. Does the FCC violate the Administrative Procedure Act by relying on a single-sentence, unsupported interference finding as grounds for reversing a previous well-reasoned conclusion protecting full-power stations from interference?

3. Does the FCC's new "presumption" favoring the programming content of certain low-power stations over full-power stations violate the Radio

Broadcasting Preservation Act, lack the required "sound and rational basis," and exceed the Commission's authority?

STATEMENT OF THE CASE

This is a petition to review an order of the Federal Communications Commission ("FCC" or "Commission") that unlawfully eliminated important protections previously afforded full-power FM radio stations against interference from low power FM ("LPFM") stations.

When it created the LPFM service in 2000, the FCC established rules to protect full-power stations against LPFM interference. Congress subsequently concluded that the agency's protections were insufficient. As a result, it enacted a statute that both added greater protections for full-power stations and prohibited the FCC from reducing interference protections without congressional approval.

In the order under review, the Commission eliminated some of the protections it originally had concluded were necessary to protect full-power stations, notwithstanding Congress' command requiring even *stricter* protections. Remarkably, the agency did so without even trying to explain how its actions were consistent with the intervening statute, relegating mention of the statute to two short footnotes. Nor did the agency explain why it was reversing its previous well-reasoned conclusions without any factual basis for doing so.

The Commission's actions violate an Act of Congress, are unsupported by the evidentiary record, and are riddled with procedural flaws. Accordingly, the petition for review should be granted, and the Commission's order vacated.

PERTINENT STATUTES AND REGULATIONS

See attached addendum.

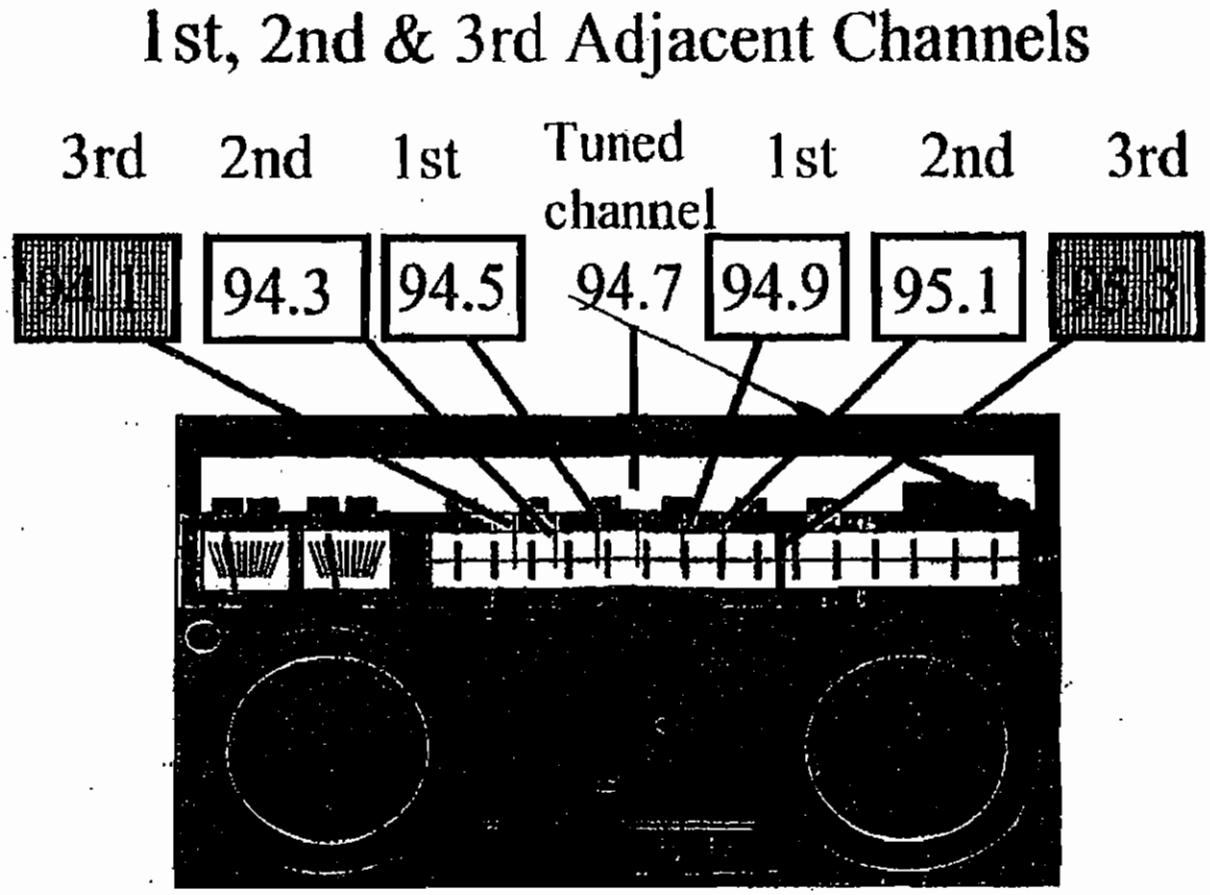
STATEMENT OF FACTS

1. FM Licensing and Interference Protections

The band of electromagnetic spectrum located between the frequencies of 88 and 108 MHz is allocated to broadcast radio stations transmitting via frequency modulation ("FM radio"). The FM band is divided into 100 channels of 200 kHz each. It begins at 88.1 MHz and runs through 88.3, 88.5, 88.7, etc., to 107.9 MHz. *See* 47 C.F.R. § 73.201. FM radios tuned to a particular channel are susceptible to interference from other stations broadcasting on the same frequency. For example, an FM radio listener tuning to a station on 95.5 MHz would receive significant "crosstalk" from any other station also broadcasting on 95.5 MHz (known as "co-channel" interference) within the same geographic area.

Radio reception is also subject to lesser but still significant interference from transmissions on frequencies located at nearby positions on the "dial" (and within the same geographic area). For example, reception of a station broadcasting on 94.7 MHz is subject to progressively less interference from nearby stations

broadcasting on 94.5 and 94.9 MHz (the "first-adjacent" channels), 94.3 and 95.1 MHz ("second-adjacent" channels), and 94.1 and 95.3 MHz ("third-adjacent" channels). A diagram illustrating this is provided in the following:[1]



The FCC's regulation of the radio spectrum, including the licensing of FM radio stations, has historically taken account of the laws of physics and the well-

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[1] *FCC's Low Power FM: A Review of the FCC's Spectrum Management Responsibilities: Hearing on H.R. 3439 Before the Subcomm. on Telecommunications, Trade, and Consumer Protection of the H. Comm. on Commerce*, 106th Cong. 18 (2000) ("Hearing") (prepared statement of Bruce Franca, Deputy Chief, FCC Office of Engineering and Technology). The third-adjacent channel numbers are "greyed" in this diagram because third-adjacent channel interference was at issue in the hearing.

established fact that the number of stations that can operate in the same area without interfering with one another is limited. Protecting against radio interference has been central to the FCC's mission since the inception of modern communications regulation in 1927. *See, e.g., National Broad. Co. v. United States*, 319 U.S. 190, 213-14 (1943); *see also* 47 U.S.C. § 303(f) (Commission is empowered to "prevent interference between stations").

In accordance with the congressional directive to prevent interference, the FCC's rules have required, since the creation of the FM broadcast service in 1940, that there be a minimum distance separating FM stations from one another. *See* Standards of Good Engineering Practice Concerning High Frequency Broadcast Stations (43,000-50,000 Kilocycles), 5 Fed. Reg. 2483 (July 4, 1940). To receive an FM license, a new station (or a station seeking a license modification) must locate its transmitting antenna at least a certain geographic distance away from other stations with which it might interfere. *See* 47 C.F.R. § 73.207(b). The Commission's rules require the greatest distance separation between co-channels, *i.e.*, stations broadcasting on the same frequency. *See id.* The rules require progressively lesser distances between first-, second-, and third-adjacent channels, *see id.*, because radio receivers are better able to filter out signals that are further

away on the dial from the tuned frequency.[2] The distance required between any two stations – typically a figure between 20 and 300 kilometers – is based on both the degree of adjacency (*i.e.,* first- vs. second-adjacent channels) and the operating power of the stations involved. *See id.*

2. Creation of Low Power FM Radio

In 1999, the Commission proposed the creation of a new, "low power" radio service using the FM radio band. Notice of Proposed Rulemaking, *Creation of a Low Power Radio Service*, 14 FCC Rcd 2471 (1999) [JA __] ("NPRM"). Due to their lower power, LPFM stations would serve a much smaller geographic area than full-power FM stations. After receiving several technical studies on the potential of such a service to interfere with full power FM stations in the same geographic area and after conducting a study of its own, the Commission established the LPFM service in early 2000. Report and Order, *Creation of a Low Power Radio Service*, 15 FCC Rcd 2205 (2000) [JA __] ("2000 Order"). The Commission "made clear that [it would] not compromise the integrity of the FM spectrum" and stated its "commit[ment] to creating a low power FM radio service

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[2] *See, e.g.*, Hearing at 15 (testimony of Bruce Franca, Deputy Chief, FCC Office of Engineering and Technology) ("All of the technical studies show that the ability of FM radios to reject interference on third adjacent channels is much better than on second adjacent channels. This is expected since third adjacent channels are further removed from the channel to which you are tuning.").

only if it does not cause unacceptable interference to existing radio service." 2000 Order ¶ 6 [JA __].

Consistent with these objectives and its statutory mandate to prevent interference to licensed services, the Commission licensed LPFM stations on a "secondary basis" to full-power stations. In establishing LPFM, the FCC protected all full-power stations by requiring LPFM stations to observe minimum distance separation requirements between them and full-power stations. 2000 Order ¶¶ 68-70 [JA __-__]; 47 C.F.R. § 73.807 (2007). For subsequently authorized full-power stations – *i.e.*, new stations or modifications of full-power stations licensed to an area with pre-existing LPFM stations – the FCC also adopted an after-the-fact remedy requiring any LPFM station causing actual interference to modify its facilities or else cease operations. 2000 Order ¶¶ 65-67 [JA __-__]; 47 C.F.R. § 73.809 (2007).

The 2000 Order afforded these twin protections – minimum distance requirements and cease-operations – to full-power stations operating on co-channel, first-adjacent, and second-adjacent channels from the LPFM station. Notably, the Commission did *not* afford protection against LPFM interference on third-adjacent channels, even though this was a departure from the Commission's FM service rules. The Commission concluded that third-adjacent protections were unnecessary, finding that "any small amount of interference that may occur in

individual cases would be outweighed by the benefits of new low power FM radio service." 2000 Order ¶ 104 [JA __].

3. The Radio Broadcasting Preservation Act

Congress overruled the Commission's reduction of the interference protections for full-power FM radio service. In the Radio Broadcasting Preservation Act of 2000, Pub. L. No. 106-553, div. B, § 632, 114 Stat. 2762, 2762A-111 (2000) ("RBPA"), Congress put in place a set of rigorous requirements for the Commission to protect full-power radio service. First, it ordered the FCC to require LPFM stations to respect third-adjacent channel interference protections, RBPA § 632(a)(1)(A). Second, it explicitly prohibited the agency from reducing interference protections "except as expressly authorized by an Act of Congress." *Id.* § 632(a)(2). Third, before Congress would consider any changes to third-adjacent channel protections, it ordered the FCC to conduct further studies – using an independent testing entity – of the potential for interference to full-power stations. RBPA § 632(b).

In the meanwhile, NAB had petitioned this court for review of the 2000 Order. *National Ass'n of Broadcasters v. Federal Communications Commission*, D.C. Cir. No. 00-1054 (petition for review filed Feb. 16, 2000). NAB argued, *inter alia*, that the Commission's failure to protect against third-adjacent channel interference violated the agency's obligation under 47 U.S.C. § 303(f) to "prevent

interference between stations." *Id.* (brief of petitioner filed Sept. 29, 2000). Following RBPA's enactment, the court dismissed NAB's petition as moot. *Id.* (per curiam order of Apr. 8, 2002).

4. Subsequent Commission Actions

In 2001, after enactment of the RBPA, the FCC established minimum distance separations for LPFM stations on third-adjacent channels. Second Report and Order, *Creation of a Low Power Radio Service*, 16 FCC Rcd 8026 (2001) [JA __] ("2001 Order"). The FCC later commissioned the MITRE Corporation to conduct a study of the need for third-adjacent channel protections, as required by Congress in the RBPA. MITRE concluded that third-adjacent protections were necessary, albeit to a lesser extent than afforded by the rules adopted in the 2001 Order.[3] Over the objections of NAB and others who submitted comments criticizing the MITRE study's methodology,[4] the Commission forwarded the study to Congress in 2004 along with a recommendation that Congress allow LPFM

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[3] 1 MITRE CORPORATION, EXPERIMENTAL MEASUREMENTS OF THE THIRD-ADJACENT CHANNEL IMPACTS OF LOW-POWER FM STATIONS at xxvi (May 2003), filed in MM Docket No. 99-25, June 30, 2003 [JA __] ("LPFM stations can be operated on third-adjacent channels ... provided that relatively modest distance separations are maintained between any LPFM station and receivers tuned to the potentially affected [full-power] station") ("MITRE Study").

[4] *See, e.g.*, Comments of the National Association of Broadcasters on the MITRE Corporation Report, filed in MM Docket No. 99-25, Oct. 14, 2003 [JA __] ("NAB MITRE Study Comments"); Comments of National Public Radio, Inc., filed in MM Docket No. 99-25, Oct. 14, 2003, at 5-11 [JA __-__] ("NPR MITRE Study Comments").

stations to be located on the channels third-adjacent to full-power stations.[5] Congress has not acted on the Commission's recommendation, and the FCC remains barred from eliminating or reducing third-adjacent protections.

In 2005, the FCC proposed further changes to its LPFM rules "to increase the number of LPFM stations on the air." Second Order on Reconsideration and Further Notice of Proposed Rulemaking, *Creation of a Low Power Radio Service*, 20 FCC Rcd 6763, ¶ 7 (2005) [JA __] ("2005 FNPRM"). The Commission sought comment on whether to restrict the cease-operations protection for newly authorized or modified full-power stations to LPFM interference on only the co-channel or first-adjacent channel, *i.e.*, to eliminate the ***second***-adjacent channel cease-operations protection. *Id.* ¶¶ 37-39 [JA __-__] (proposing modifications to 47 C.F.R. § 73.809).[6]

In the 2005 FNPRM, the Commission rejected suggestions to abandon the "minimum distance separation" approach, noting that the RBPA mandated its use to protect against LPFM interference on co-, first-, second-, and third-adjacent

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[5] FEDERAL COMMUNICATIONS COMMISSION, REPORT TO THE CONGRESS ON THE LOW POWER FM INTERFERENCE TESTING PROGRAM 4 (2004) [JA __] ("FCC Report to Congress").

[6] Although the Commission sought to increase the number of LPFM stations, it did not analyze the number that would be permitted under the existing rules. In fact, NAB calculates that there are over 70,000 potential allocations for LPFM stations under the existing rules. However, to date, only 854 LPFM stations are in operation, with an additional 103 construction permits having been granted and a further 40 applications pending.

channels. *Id.* ¶ 34 [JA __]. The Commission also rejected a proposal from LPFM advocates to prohibit modifications to full-service station licenses if they would reduce the coverage area available to LPFM stations as inconsistent with LPFM's "secondary" status: "this proposal ... *effectively would provide primary status to LPFM stations* with respect to subsequently filed applications for new or modified full service station facilities." *Id.* ¶ 38 [JA __] (emphasis added).

5. The Order Under Review

In its Third Report and Order, *Creation of a Low Power FM Radio Service*, 22 FCC Rcd 21,912 (2007) [JA __] ("2007 Order"), the Commission set out "to increase the number of LPFM stations that are on the air ... and to promote the continued operation of LPFM stations already broadcasting," *id.* ¶ 10 [JA __]. The Commission adopted "a series of wide-ranging rule changes" designed to "strengthen and promote" the LPFM service. *Id.* ¶ 72 [JA __]; *see also id.* ¶ 85 ("The rules and policies adopted herein will promote the continued operation and expansion of LPFM service."). Many of these changes – like allowing LPFM stations to be transferred – are not in dispute here. The three central changes to which NAB objects all relate to reducing the protections afforded to new or modified full-power stations against interference from existing LPFM stations.

First, any LPFM station causing actual interference to a newly authorized or modified full-power station operating on a second-adjacent channel will no longer

have to remedy that interference and/or cease operations, as it has been required to since the inception of the LPFM service. *Id.* ¶ 63 [JA __] (modifying 47 C.F.R. § 73.809).

Second, the Commission announced it would "waive" the minimum distance separation rule (the "spacing" rule) for second-adjacent LPFM stations, allowing them to be "short spaced" to new or modified full-power stations unless the affected *full-power* station can "show cause" why the waiver should *not* be granted. *Id.* ¶¶ 64-67 [JA __] (discussing waivers of 47 C.F.R. § 73.807).[7] The Commission did not explain what showing could be made by a full-power station to prevent a waiver.

These two changes were premised on the Commission's assertion – in a single, unsupported sentence – that the effects of ***second***-adjacent channel interference were minimal.[8] As a result of these changes, the Commission

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[7] In cases where a new or modified full-power station would affect an existing LPFM station, the Commission will first determine whether the LPFM station could be relocated to another channel. If no alternative channel is available, it will then grant a waiver of the minimum distance separation rules. *See* 2007 Order ¶ 66 [JA __] ("These procedures will not be available where an alternate, fully-spaced, and rule-compliant channel is available for the LPFM licensee or permittee.").

[8] 2007 Order ¶ 65 [JA __] ("Based on desired-to-undesired ("D/U") signal strength ratio calculations, in most circumstances [LPFM second-adjacent channel] interference would be predicted to extend from ten to two hundred meters from the LPFM station antenna."); *see also id.* ¶ 63 [JA __] ("As described in more detail below, second-adjacent channel interference to a full-service station is generally predicted to occur only in the immediate vicinity of the LPFM station transmitter site.").

effectively eliminated the requirement that LPFM stations protect new or modified full-power stations against ***second***-adjacent channel interference. (Notably, the Commission did *not* make any changes in the *third*-adjacent channel interference protections.)

Even beyond these two significant changes, however, the Commission made a *third* change in its 2007 Order, altering the well-established primary and secondary status of full-power FM stations and LPFM stations, respectively:

> [W]e believe that it is appropriate to apply a presumption that the public interest would be better served by a waiver of the Commission Rule making LPFM stations secondary to subsequently-authorized full-service stations and the dismissal of an "encroaching" community of license reallotment application [i.e. a full-power license modification] when the threatened LPFM station can demonstrate that it has regularly provided at least eight hours per day of locally originated programming....

Id. ¶ 68 [JA __]. Previously, in situations where a full-power station applies to expand its service area, any LPFM station operating on the same channel (or an adjacent channel) within the modified service area would be required to find an alternate channel or cease operations. Finding that "[i]n certain circumstances no alternative channel will be available for an LPFM station at risk of displacement," the Commission decided that rather than requiring the LPFM station to cease operations, it would instead "presumptively" deny the *full-power* station's application, provided that the LPFM station satisfied certain programming criteria. *Id.* The Commission made all three of these changes despite acknowledging that,

to date, "only one LPFM station has been forced off the air" due to the presence of a new or modified full-power station in the same area. *Id.* ¶ 60 [JA __].

The second and third changes detailed above – *i.e.*, the "waiver" of the second-adjacent spacing rule and the "presumption" making certain LPFM stations primary – were implemented on an "interim" basis pending their incorporation into final rules. *See id.* ¶¶ 64, 71 [JA __, __]. However, any actual "short spacing" of an existing LPFM station to a new or modified full-power station or the denial of a full-power station application will not be interim decisions.[9] At the same time, the Commission issued an accompanying Second Further Notice of Proposed Rulemaking seeking comments on whether to codify these "waiver" and "processing polic[ies]." *Id.* ¶¶ 74-75 [JA __-__] ("Second FNPRM").

Commissioners Tate and McDowell dissented. 22 FCC Rcd at 21,972-74 [JA __-__]. First, Commissioner Tate objected to the reductions in second-adjacent channel protections as "moving beyond" Congress' instructions regarding third-adjacent channel interference. Commissioner McDowell concluded that the

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[9] Where the new or modified full-power station *itself* would be short-spaced to the LPFM station, the LPFM station will be allowed to continue operating and will not be required to correct any resulting interference to the full-power station. *See id.* ¶ 66 [JA __]. However, where a new or modified full-power station would require an affected LPFM station to switch channels (*i.e.*, if the full-power station would receive co- or first-channel interference from the LPFM station), with the LPFM station's new channel resulting in a short-spacing to a *different* full-power station, the Commission will now grant "special temporary authority" ("STA") to the LPFM station to operate on its new channel subject to the adoption of new rules. *See id.* ¶ 67 [JA __].

Commission's action on this issue was "premature" and that the agency "should not make rules through waiver policies or processing policies." Second, Commissioner Tate objected to the Commission's decision to "place[] Low Power FM in a superior position to full power," stating that such a "sweeping change" went beyond the scope of the 2005 Further Notice, and finding "no justification in the record for such a complete shift in well-established policy." Commissioner McDowell likewise objected to this "radical departure from prior Commission precedent," noting that in 2005 the Commission had "recognized and upheld our long-standing policy to treat full-power radio stations as primary to secondary services such as LPFM...."

SUMMARY OF ARGUMENT

1. The 2007 Order eviscerates second-adjacent channel protections for new or modified full-power stations, in violation of the RBPA. In the statute, Congress unambiguously *strengthened* the adjacent-channel protections beyond those established by the Commission and forbade any action by the Commission to reduce them without the express prior consent of Congress. The FCC's reduction of the interference protections for full-power stations is contrary to the text, structure, and purpose of the statute. The Commission cannot, as a matter of basic administrative law, take action that is directly contrary to the mandate of its governing statute.

2. In addition to violating the RBPA, the Commission also violated the Administrative Procedure Act. The FCC had no basis to reverse its previous well-reasoned conclusion that second-adjacent channel protections are necessary to preserve full-power radio service. When it studied the issue in 2000, the Commission considered and analyzed the results of several technical studies and concluded that allowing LPFM stations to operate on the second adjacent channel from full-power stations would result in interference to the full-power station. Its decision now to reverse that well-reasoned conclusion in a *single unsupported sentence* cannot be upheld under the APA.

3. The Commission further undermined its own LPFM licensing regime by abandoning the fundamental premise of LPFM as a secondary service, in violation of the RBPA and the APA. It effectively made certain LPFM stations *primary* to full-service stations based solely on the programming content of the LPFM stations. Such an unwarranted departure is clearly at odds with Congress' decision to ensure that LPFM stations do not interfere with full-power stations. Moreover, the Commission articulates *no* legitimate basis, let alone the required "sound and rational" basis, for why the public interest would be better served by such a radically new licensing regime. The only basis cited by the FCC in support of the "presumption's" special treatment of certain LPFM stations – the content of their programming – exceeds the Commission's authority.

STANDING

NAB meets the requirements for associational standing. *See National Lime Ass'n v. EPA*, 233 F.3d 625, 636 (D.C. Cir. 2000). First, NAB's member stations would have standing to sue in their own right; the order under review reduces or eliminates interference protections for both existing and subsequently authorized full-power stations, and it prevents the authorization of new stations where an LPFM station meeting certain programming criteria would be displaced. Moreover, NAB's interests in this litigation are germane to its purposes, which include promoting the interests of radio and television broadcasters, and representing their interests in legislative, regulatory, and judicial matters. Finally, no claim asserted, nor any relief requested, requires the participation of any individual NAB member station.

ARGUMENT

I. ELIMINATING SECOND-ADJACENT CHANNEL PROTECTIONS VIOLATES THE RADIO BROADCASTING PRESERVATION ACT.

The Radio Broadcasting Preservation Act of 2000 prohibits reductions in the protections afforded to full-power stations against LPFM interference. The 2007 Order violates the statute by reducing – indeed, eviscerating – second-adjacent channel protections for new or modified full-power stations. The Commission's 2007 Order should be vacated under *Chevron* Step One because it violates the plain language of the statute, as well as its purpose, structure, and intent. (*See* Part I.A below.) Moreover, even if there were some ambiguity in the RBPA (which there is not), the Court should still vacate the Order under *Chevron* Step Two because the FCC's decision is entirely unreasonable in light of the obvious purpose of the RBPA. (*See* Part I.B below.)[10] In addition, the Order's provision "waiving" minimum distance separations should be vacated for both these reasons but also because it violates the APA. (*See* Part I.C below.)

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[10] *See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984) ("[i]f the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress ... if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."); *accord Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1239-40 (D.C. Cir. 2007) (applying "familiar two-part test" of *Chevron*).

A. Congress Unambiguously Preserved – And Strengthened – The Commission's Adjacent-Channel Interference Protections.

All of the traditional tools of statutory interpretation – text, structure, purpose, and legislative history – underscore why the Commission's Order should be vacated under *Chevron* Step One. *See Pharmaceutical Research and Mfrs. of America v. Thompson*, 251 F.3d 219, 224-26 (D.C. Cir. 2001) (using these tools at *Chevron* Step One); *see also Bell Atlantic v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997). In enacting the RBPA, Congress did not merely require the FCC to extend interference protections to third-adjacent channels; it barred the FCC from weakening any of the protections its rules provided for full-power stations. The Commission's order does precisely that and must be vacated.

1. Text, Structure, and Purpose

The RBPA provides in relevant part:

> (1) The Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99-25, to—
>
> (A) prescribe minimum distance separations for third-adjacent channels (as well as for co-channels and first- and second-adjacent channels)...
>
> ...
>
> (2) The Federal Communications Commission may not—
>
> (A) eliminate or reduce the minimum distance separations for third-adjacent channels required by paragraph (1)(A)...
>
> ...
>
> except as expressly authorized by an Act of Congress enacted after the date of enactment of this Act.

Pub. L. No. 106-553, div. B § 632(a), 114 Stat. 2762, 2762A-111 (2000).

The RBPA established an unusually specific set of restraints on the FCC. *First*, it required the Commission to *increase* LPFM adjacent-channel interference protections by extending them to third-adjacent channels. RBPA § 632(a)(1)(A). *Second*, it prohibited the Commission from "eliminat[ing] or "reduc[ing]" the required protections. RBPA § 632(a)(2)(A). The Commission has accepted that this unusually stern directive prohibits even *waivers* of its rules. *See* 2007 Order ¶ 66 n.171 [JA __] ("The Commission appears to be without authority to waive third-adjacent channel spacing requirements").[11]

In the Order, the FCC apparently concluded – without *any* analysis of the statutory language – that although Congress denied it authority to reduce *third*-adjacent channel protections, it somehow permitted the agency to reduce or eliminate *second*-adjacent channel protections. *See id.* The Commission did so even though interference from second-adjacent channels will, as a matter of physics, be *greater* than interference from third-adjacent channels. In other words, the Commission would read an ordinance banning bonfires 30 feet from a campground to permit fires 20 feet away.

This cannot be so, because the natural reading of the RBPA, especially when considering the statute as a whole, is to require the FCC to *increase* the protections afforded full-power stations from interference by extending them to third-adjacent

[11] *See also* Second FNPRM ¶ 74 n. 178 [JA __] ("Third-adjacent channel waiver short-spacings appear to be explicitly barred under the [RBPA]").

channels. To read the prohibition as *exclusively* relating to third-adjacent channel protections, as the Commission apparently does, would ignore the fact that Section 632(1)(A) – which sets out the protections the FCC cannot change – specifically assumes the maintenance of protections for "co-channels and first- and second-adjacent channels." *See U.S. Nat'l Bank of Oregon v. Independent Ins. Agents of America, Inc.*, 508 U.S. 439, 455 (1993) (statutory construction "'is a holistic endeavor,' ... and, at a minimum, must account for a statute's full text, language as well as punctuation, structure, and subject matter") (citation omitted).

Congress expressed its understanding that co-channel, first-, and second-adjacent channel protections were "greater included" protections needed to ensure that full-power service would not be affected by LPFM stations. It did so by specifically referencing these protections in the parenthetical to Section 632(a)(1)(A). While Congress did not repeat the parenthetical in Section 632(a)(2)(A), it would make no sense to conclude that Congress meant to prohibit the FCC *only* from eliminating third-adjacent protections, while leaving the Commission free to reduce interference protections from channels closer on the "dial" that would cause even *greater* interference.

Indeed, under such logic, the agency could go even further and reduce co-channel and first-adjacent channel interference protections.[12] But that would defeat Congress' very objective in enacting the statute. The FCC's Order does not even attempt to explain how the language can be interpreted to yield such an irrational and absurd result. *See Mova Pharmaceutical Corp. v. Shalala*, 140 F.3d 1060, 1067-68 (D.C. Cir. 1998) (rejecting statutory interpretation that would yield a result "contrary to common sense" and "demonstrably at odds with the intentions of its drafters.") (internal alterations omitted) (quoting *United States v. Ron Pair Enterprises,* 489 U.S. 235, 242 (1989)).

To be sure, the statute contemplated the possibility that third-adjacent channel interference protections could be reduced or eliminated at some point in the future. Congress required that the Commission retain an independent expert to conduct tests, *see* RBPA § 632(b), and seek Congress' express permission before implementing any changes. *See id.* § 632(a)(2)(A) (Commission may not "eliminate or reduce" third adjacent protections "except as expressly authorized by an Act of Congress enacted after the date of the enactment of this Act"). The fact that this independent study was mandated only if the FCC wanted to change *third*-adjacent channel protections indicates that Congress did not contemplate that

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[12] The Commission has specifically proposed this in its Second Further Notice: "[s]hould these procedures be expanded to include co- and first-adjacent channel situations?" *See* Second FNPRM ¶ 74 [JA __].

weakening of the protections against ***stronger*** interference on second-adjacent channels (or indeed first-adjacent and co-channels) could even be addressed by the Commission.

Requiring the FCC to *return* to Congress for authority to remove third-adjacent protections also explains why Congress found it unnecessary to explicitly include *second*-adjacent protections within Section 632(a)(2)(A). Congress understood that the FCC would have to peel back the outermost layer of protections before reaching the inner layers, and the RBPA's protection of the outer layer thus protected the whole. As the statute's parenthetical reference to protections for "co-channels and first- and second-adjacent channels" indicates, Congress was well aware that the 2000 Order expressly preserved second-adjacent protections. *See* 2000 Order ¶ 104 [JA __]. As a result, Congress had no need to explicitly order the Commission not to eliminate or reduce second-adjacent protections.

Moreover, Congress certainly did not intend to delegate any power to reduce or eliminate second-adjacent protections to the FCC. And "it is only legislative *intent to delegate* such authority that entitles an agency to advance its own statutory construction for review under the deferential second prong of *Chevron.*" *Natural Resources Defense Council v. Reilly*, 983 F.2d 259, 266 (D.C. Cir. 1993) (emphasis added) (citation omitted). Even "[t]o suggest," as the Commission's

reading necessarily would, "that *Chevron* step two is implicated any time a statute does not expressly *negate* the existence of a claimed administrative power (*i.e.* when the statute is not written in 'thou shalt not' terms), is both flatly unfaithful to the principles of administrative law ... and refuted by precedent." *Railway Labor Executives' Ass'n v. Nat'l Mediation Board*, 29 F.3d 655, 671 (D.C. Cir. 1994) (en banc) (emphasis in original).

Finally, the RBPA not only prohibits the Commission from eliminating the second-adjacent *spacing* rule, it also prevents the Commission from eliminating the second-adjacent *cease-operations* rule. *See* Comments of the National Association of Broadcasters, filed in MM Docket No. 99-25, Aug. 22, 2005, at 5 [JA __] ("the Commission lacks authority to amend Section 73.809") ("NAB Comments"). Congress took the Commission's 2000 Order as it found it: Congress' purpose in enacting the RBPA was to *increase* the protections afforded to full-power stations beyond those provided by the Commission. Any attempt to "eliminate or reduce" *any* of the protections prescribed in the 2000 Order – including the second-adjacent cease-operations rule – is therefore unlawful.

Indeed, there would be no reason to mandate a rule to prevent *potential* interference – as the spacing rule does – while simultaneously allowing rescission of a rule that requires elimination of *actual* interference. *See* Part I.B below. This is confirmed by the fact that "Congress in the *RBPA* made no distinction between

existing and subsequently authorized full power FM stations." NAB Comments at 7 [JA __]. Rather, as noted below, Congress intended that "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. 106-567, at 8 (2000) (emphasis added). "Congress' intent with regard to maintaining adjacent channel protections for *all* FM stations is clear, and the Commission 'must give effect to the unambiguously expressed intent of Congress.'" NAB Comments at 7 [JA __] (quoting *Chevron*, 467 U.S. at 842-43); *see also* Comments of National Public Radio, Inc., filed in MM Docket No. 99-25, Aug. 22, 2005, at 15-16 [JA __-__] ("NPR Comments").

2. Legislative History

The legislative history of the RBPA provides overwhelming support for vacating the FCC's order. Congress' unambiguous intent was to prevent *any* reductions of the interference protections the FCC traditionally provided to full-power stations. Moreover, Congress intended to preserve not just the minimum distance separation requirements but also the cease-operations protections afforded to new or modified full-power stations against LPFM interference.

H.R. 3439, as initially introduced by Rep. Oxley in November 1999 – prior to the 2000 Order's adoption – would simply have prevented the FCC from authorizing LPFM altogether. *See* H.R. 3439, 106th Cong. (as introduced Nov. 17,

1999). Following a subcommittee hearing in February 2000,[13] the House Committee on Commerce adopted a substitute authored by Representatives John Dingell and Heather Wilson that was a "bipartisan compromise." 146 CONG. REC. 5,611 (remarks of Rep. Tauzin); *see also* H.R. REP. NO. 106-567, at 5 (Apr. 10, 2000) ("Committee Report").[14] The full House debated and approved H.R. 3439 without further amendment by a vote of 274-110, *see* 146 CONG. REC. 5,611-5,628 (Apr. 13, 2000), and the House language was incorporated into an end-of-session appropriations bill.[15]

The legislative record makes several points abundantly clear. *First*, Congress was well aware of what the 2000 Order did – and did not – do. The FCC's chief engineer on low power FM issues testified that the Commission had taken a "conservative approach" by not adopting its own initial proposal to eliminate *second-adjacent* channel protections. Hearing at 17 (prepared testimony

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13 *FCC's Low Power FM: A Review of the FCC's Spectrum Management Responsibilities: Hearing on H.R. 3439 Before the Subcomm. on Telecommunications, Trade, and Consumer Protection of the H. Comm. on Commerce*, 106th Cong. (Feb. 17, 2000) ("Hearing").

14 The Committee Report and the House of Representatives floor debate on H.R. 3439 are set forth in an addendum to this brief.

15 Pub. L. No. 106-553, div. B § 632(a), 114 Stat. 2762, 2762A-111 (Dec. 21, 2000).

of Bruce Franca).[16] The Committee Report explained that prior to the 2000 Order, "protection exist[ed] on the FM dial *within* three adjacent channel positions. The new FCC Order would lift those third-adjacent channel protections...." Committee Report at 4 (emphasis added).[17] The floor debate likewise reflected members' awareness that the 2000 Order had preserved second-adjacent protections.[18]

Second, Congress understood that second-adjacent protections are even more important to protecting FM stations than third-adjacent protections. As the FCC's top career expert on interference explained during the hearing:

> All of the technical studies show that the ability of FM radios to reject interference on third adjacent channels is much better than on second adjacent channels. This is expected since third adjacent channels are further removed from the channel to which you are tuning.

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16 *See also* Notice of Proposed Rulemaking, *Creation of a Low Power Radio Service*, 14 FCC Rcd 2471, 2488 ¶ 42 (1999) [JA __] ("we are inclined to authorize low power service without any 2nd- and 3rd-adjacent channel protection standards").

17 Committee reports from subsequent Congresses confirm this understanding. *See* S. REP. NO. 108-426, at 2 (2004) ("an LPFM station on the 'first adjacent channel' ... or a 'second adjacent channel' ... must also adhere to distance spacing requirements to prevent interference"); S. REP. NO. 110-271, at 2 (2008) (same).

18 *See, e.g.*, 146 CONG. REC. 5,619 (statement of Rep. Ewing) ("Under current FCC rules for full power radio stations, interference between stations is avoided by preventing stations from sharing the same channel or the first, second, or third adjacent channel. Under the proposed rule, however, low power FM would be allowed to occupy the third adjacent channel to an existing full power radio station."); *cf. id.* at 5,624 (remarks of Rep. Dingell) ("[T]he FCC did several things. *** [T]hey changed so that now we may no longer use the test of the third-adjacent channel.").

Hearing at 15. The FCC's written testimony also cited approvingly an NAB study finding that "radios can generally reject signals on a 3rd adjacent channel that are about six to ten times stronger than signals on 2nd adjacent channels." *Id.* at 20. As one representative stated during the floor debate: "commercial radio signals must be separated by *at least* three adjacent channels in order to prevent interference and crosstalk." 146 CONG. REC. 5,615 (remarks of Rep. Lazio) (emphasis added). Another member explained: "the FCC may go forward ... as long as interference protections to existing stations are maintained, *including* protections to third adjacent channels." *Id.* at 5,619 (remarks of Rep. Ewing) (emphasis added).[19]

Third, Congress specifically acknowledged the importance of the cease-operations protection the FCC provided for new and modified full-power stations against *actual* interference – not just the spacing rules. In its section-by-section analysis of the bill, the Committee Report explained that under the bill:

> 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 such full power stations on January 1, 2000, as provided in Section 73 of the Commission's rules ... in effect on that date. The Committee intends that this level of protection should apply at any time during the operation of an LPFM station. Thus,

[19] *See also id.* at 5,615 (remarks of Rep. Goodlatte) ("There is no question that eliminating the third adjacent channel safeguard, as the Commission is doing, will lead to increased interference."); *id.* at 5,618 (statement of Rep. Sandlin) ("The legislation [protects listeners] by re-establishing previous FCC signal-interference standards").

> 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*.

Committee Report at 8 (emphasis added).

Fourth, Congress intended that the Commission maintain its *pre-existing* standards and required congressional authority before making any further changes:

> [T]he bill maintains Congressional authority over any future changes made to the interference protections that exist in the FM dial today. *** Before the FCC changes existing protections ... it is imperative that Congress must have the authority to review any FCC changes over existing protections.

146 CONG. REC. 5,611 (remarks of Rep. Tauzin). The Committee Report states that "Section (2)(a)(2) of the bill [*i.e.*, RBPA § 632(a)(2)] prohibits the FCC from *further changes* to the minimum distance separation rules for FM stations," Committee Report at 7-8 (emphasis added).

The record is unambiguous. Far from suggesting that the prohibition's scope was somehow limited to third-adjacent channel protections, or limited to the minimum distance separation rules, the legislative history demonstrates that Congress set out to prevent *any* future derogation of full-power stations' interference protections "except as expressly authorized by an Act of Congress." RBPA § 632(a)(2). The Commission failed to even acknowledge these expressions of congressional intent, let alone explain how its Order was consistent with them.

The bottom line is that the Commission's Order is based on a deeply flawed statutory construction and must, therefore, be vacated.

B. The Commission's Construction of the RBPA Is Not Reasonable.

In Part I.A, we demonstrated that the 2007 Order violates the plain language and congressional intent in the RBPA. But even if there were some ambiguity in the statute, this Court should still vacate the Order under *Chevron* Step Two because the FCC's construction was not a "'a reasonable policy choice for the agency to make.'" *See National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 986 (2005) (quoting *Chevron*, 467 U.S. at 845).

As for reducing the minimum distance separations prescribed in 47 C.F.R. § 73.807, the issue is simple. For the reasons described in Part I.A above, a statutory construction under which the FCC can reduce second-adjacent protections but not third-adjacent protections is not only "unreasonable" but also outright absurd. A regulatory regime under which full-power stations receive greater protection against stations *less* likely to cause interference makes no sense.[20]

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[20] To be sure, this incongruity might disappear if Congress accepted the FCC's recommendation to repeal the third-adjacent channel restrictions. *See* 2007 Order ¶ 85 [JA __]. But the FCC cannot adopt a policy in *anticipation* of legislation, particularly in light of Congress' failure to heed the FCC's previous requests. Unless and until the RBPA is repealed, the issue is governed by the rule that "interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." *FTC v. Ken Roberts Co.*, 276 F.3d 583, 590 (D.C. Cir. 2001) (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982)).

Nor is there any reason to differentiate between the reach of the 47 C.F.R. § 73.807's spacing rule and the reach of 47 C.F.R. § 73.809's cease-operations rule. The minimum distance requirements establish a prophylactic rule to prevent interference, while the cease-operations rule provides a remedy for actual after-the-fact interference. They are both designed to prevent the very thing that Congress sought to prevent in the RBPA – interference with full-power radio stations. It would make no sense to promulgate a rule that was intended to prevent second-adjacent channel interference preemptively but eliminate a rule that was intended to mitigate interference that *does* occur notwithstanding the prophylactic rule.

The Commission implicitly recognized this in 2000. Its lengthy examination of second- and third-adjacent channel interference issues never differentiated between – or even discussed – the types of legal protection to be offered, *i.e.*, a spacing rule vs. a cease-operations rule. *See* 2000 Order ¶¶ 73-104 [JA __-__]. Nor did its discussion of an LPFM station's spectrum rights and responsibilities take into account the appropriate degree of adjacent-channel protection to be offered, *e.g.*, second- vs. third-adjacent. *See id.* ¶¶ 60-67 [JA __-__]. Having decided in 2000 to implement both rules, there is no apparent reason – nor has the Commission provided one – why one rule should now be limited to co-channel and first-adjacent channels, *i.e.*, 47 C.F.R. § 73.809 (cease-operations), while the other

should also apply to second-adjacent channels, *i.e.*, 47 C.F.R. § 73.807 (minimum distance separations).

Moreover, the only reasonable construction of the RBPA is that it prohibits any elimination or reduction of the second-adjacent cease-operations protection – just as it does for the second-adjacent spacing rule. As discussed in Part I.A.2 above, Congress intended that "LPFM stations which ... *cause interference* to new or modified facilities of a full-power station, would be required to modify their facilities *or cease operations*." Committee Report at 8 (emphasis added). A court cannot approve a different statutory construction if "'it appears from the statute or its legislative history that the accommodation [chosen] is not one that Congress would have sanctioned.'" *Natural Resources Defense Council v. EPA*, 824 F.2d 1146, 1163 (D.C. Cir. 1987) (en banc) (quoting *United States v. Shimer*, 367 U.S. 374, 383 (1961)).

In addition, restricting the RBPA's scope solely to minimum distance separations would allow the Commission to eliminate *all* of the cease-operations protections, *i.e.*, for co-channel and first-adjacent channels as well. Elimination of the cease-operations protection would place low-power and full-power stations at regulatory parity. As discussed further in Part III.A below, such a result would not have been sanctioned by Congress.

Finally, to the extent the Commission's changes to *either* of its second-adjacent channel interference rules reflect a renewed attempt to "balance the potential for new interference to the full-service station against the potential loss of an LPFM station," 2007 Order ¶ 65, they cannot stand. In 2000, the Commission explicitly weighed the balance between authorizing more LPFM stations and protecting full-power service and concluded that the potential for *third*-adjacent channel interference "would be outweighed by the benefits of new low power FM service." 2000 Order ¶ 104.[21] But Congress struck a different balance between those two competing considerations, concluding that the public interest is better served by protecting full power stations from interference by lower power FM stations.[22] Once Congress reached that determination, the Commission cannot – as it did in the 2007 Order – adopt a different balance. *See Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 374 (1976) (courts "cannot accept an argument

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[21] In 1995, the Commission had reached a very different conclusion. It found that LPFM stations would "lower the quality of the FM broadcasting service," and even "reduce the number of stations and, consequently, the diversity of voices," because the area in which low-power stations cause interference is proportionately far higher than full-power stations in comparison to the area in which they provide service. Memorandum Opinion and Order, *Application for Review of Stephen Paul Dunifer*, 11 FCC Rcd 718 ¶¶ 14, 25 (1995).

[22] Key supporters of the RBPA indeed believed that the statute would restrict the Commission to issuing a limited number of LPFM licenses. 146 CONG. REC. 5,611 (remarks of Rep. Tauzin); *id.* at 5,611-12 (remarks of Rep. Dingell).

that the FCC may nevertheless take action which it thinks will best effectuate a federal policy.").

C. The Commission's Blanket "Waiver" of its Rules Violates the RBPA and the APA.

The Commission's effort to disguise its new rule eviscerating the minimum distance safeguards as a presumptive "waiver" of its spacing rules, *see* 2007 Order ¶¶ 64-67 [JA __] (waiving 47 C.F.R. § 73.807), makes it no more lawful for two reasons: the RBPA does not permit waivers, and the APA prohibits rulemaking by waiver.

1. The RBPA Does Not Permit Waivers

The RBPA is an unusually strict statute – it prohibits any action to "eliminate or reduce" interference protections "except as expressly authorized by an Act of Congress...." RBPA § 632(a)(2); *see* Part I.A above. The Commission itself accepts that it is "without authority to waive third-adjacent channel spacing requirements." 2007 Order ¶ 66 n.171 [JA __] (emphasis added); *see also* Second FNPRM ¶ 74 n.178 [JA __] ("Third-adjacent channel waiver short-spacings appear to be explicitly barred under the [RBPA]"); Reply Comments of the National Association of Broadcasters, filed in MM Docket No. 99-25, Sept. 21, 2005, at 22 [JA __] ("the Commission's 'discretion' is not so broad as to make the requirements of *RBPA* essentially superfluous") ("NAB Reply Comments"). It

erred here in construing the statute to allow it to nevertheless waive second-adjacent channel spacing rules.[23]

To be sure, agencies may promulgate *de minimis* exemptions to statutes they administer. But these situations "must be truly *de minimis*," *e.g.*, situations where "the burdens of regulation yield a gain of trivial or no value." *Shays v. Federal Election Commission*, 414 F.3d 76, 113-14 (D.C. Cir. 2005) (emphasis added) (quoting *Envtl. Def. Fund, Inc. v. EPA*, 82 F.3d 451, 466 (D.C. Cir. 1996)). Here, second-adjacent channel protections are hardly "trivial;" the Commission has repeatedly recognized their importance. *See* 2000 Order ¶ 104 [JA __]; Memorandum Opinion and Order on Reconsideration, *Creation of a Low Power Radio Service*, 15 FCC Rcd 19,208 ¶ 26 [JA __] ("Reconsideration Order"). And even truly *de minimis* exemptions are impermissible in the face of an "extraordinarily rigid" statute such as the RBPA. *Shays*, 414 F.3d at 114 (citing *Ass'n of Admin. Law Judges v. FLRA*, 397 F.3d 957, 962 (D.C. Cir. 2005) and *Envtl. Def. Fund, Inc. v. EPA*, 82 F.3d 451, 466 (D.C. Cir. 1996)).

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[23] Counsel is aware of one previous waiver of Section 73.807's second-adjacent channel minimum distance separations. *See Letter to John Snyder from Peter H. Doyle, Chief, Audio Division, Media Bureau*, 21 FCC Rcd. 11,945 (2006). In granting the waiver, the Commission's Media Bureau decided (in a single paragraph) that while RBPA § 632(a)(2)(A) prohibits the Commission from eliminating or reducing third-adjacent protections, "Congress did not impose a similar prohibition with regard to second-adjacent channel separation requirements." *Id.* at 11,946. In that case, however, the affected full-power station had already granted its consent to the waiver request. *See id.* at 11,945-46.

2. The APA Prohibits "Rulemaking-by-Waiver"

Although the 2005 FNPRM indicated that no changes to the minimum distance separation protections would be considered, *see* 2005 FNPRM ¶¶ 34-35 [JA __-__], the 2007 Order did just that. And it did so, evading the APA's procedural requirements, by casting its evisceration of the second-adjacent spacing rules as a permissive "waiver" process. But an agency "should not make rules through waiver policies," as Commissioner McDowell pointed out in dissent, 22 FCC Rcd at 21,973 [JA __], and certainly should not do so in an attempt to avoid the APA's notice-and-comment requirement.

The limited purpose of a waiver, as this Court has explained, is only to be a "safety valve [that] permits a more rigorous adherence to an effective regulation." *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). And "by definition, a 'safety valve' should only address *aberrant* cases, however broadly this class may be defined." *Association of Oil Pipe Lines v. FERC*, 281 F.3d 239, 244 (D.C. Cir. 2002) (emphasis added); *see also WAIT Radio*, 418 F.2d at 1157 (waivers must address "individualized cases," not a class of cases). Moreover, an agency should not "tolerate evisceration of a rule by waivers;" indeed, "[t]he very essence of a waiver ... is the *assumed validity* of the general rule...." *Id.* at 1158-59 (emphasis added).

There is nothing "aberrant" or "individualized" about the Commission's decision to reduce or abandon second-adjacent channel interference protections. The practical effect of the FCC's presumptive waiver is this: for any new or modified full-power station confronted with an LPFM station that cannot switch to another channel, the second-adjacent channel minimum distance separation protections simply ***no longer exist***.

The Commission itself recognized that its actions effectively constituted a rule change, and it described the change as "interim." 2007 Order ¶ 64 [JA __]. In its accompanying Second Further Notice, the FCC belatedly sought comment on whether to "codify the waiver and processing policies." Second FNPRM ¶ 74 [JA __]. Seeking comment is, of course, a condition precedent for such a change, not a way to cure procedural defects afterwards. *See* 5 U.S.C. § 553(c). The APA contemplates that agencies will seek comment on proposals and address those comments *before* changing its rules. *See, e.g., Am. Radio Relay League v. FCC*, 524 F.3d 227, 236 (D.C. Cir. 2008).

II. THE 2007 ORDER'S EVISCERATION OF SECOND ADJACENT CHANNEL PROTECTIONS WAS ARBITRARY AND CAPRICIOUS.

The Commission's 2007 Order separately violated the APA because it simply had no basis on which to reverse its previous conclusion that second-adjacent channel protections are necessary. Its single-sentence explanation for doing so, unsupported by the record, does not reflect "reasoned decisionmaking."

A. The Commission Has Not Justified Its Reversal Of Course.

The 2007 Order's determination that second-adjacent channel interference is no longer worthy of protection represents a sharp and unexplained departure from its previous findings. When it first created the LPFM service, the Commission studied the science of adjacent-channel interference protections in depth. In its initial Notice of Proposed Rulemaking in 1999, the Commission expressed its "inclin[ation] to authorize low power service without any 2nd- and 3rd-adjacent channel protection standards." NPRM ¶ 42 [JA __]; *see also* 2000 Order ¶ 73 [JA __]. Commenters filed detailed technical studies in response to the Notice; the Commission's Office of Engineering and Technology also completed its own extensive studies of FM receivers' susceptibility to interference. *See* 2000 Order ¶ 75 [JA __].

In its 2000 Order, the Commission devoted over five pages simply to *describing* the results of these studies, *see id.* ¶¶ 76-92 [JA __-__], and another five pages to its own analysis and conclusions. *See id.* ¶¶ 93-104 [JA __-__]. It "retain[ed] 2nd-adjacent channel protection requirements" while eliminating third-adjacent channel protections. *Id.* ¶ 104 [JA __]. On reconsideration, the FCC *re*-examined the issue, concluding again that third-adjacent channel protections were not necessary, but that "there would be increased interference if 2nd adjacent channel protections were eliminated." Reconsideration Order ¶ 26 [JA __].

Congress was *still* not satisfied and ordered the agency to reverse its conclusions about third-adjacent channel interference. RBPA § 632(a)(1)(A).

In striking contrast to the FCC's earlier detailed focus on engineering evidence, the 2007 Order offered only a single cryptic sentence to justify its complete reversal of course:

> Based on desired-to-undesired ("D/U") signal strength ratio calculations, in most circumstances interference would be predicted to extend from ten to two hundred meters from the LPFM station antenna.

2007 Order ¶ 65 [JA __]; *see also id.* ¶ 63 [JA __] ("[a]s described in more detail below, second-adjacent channel interference to a full service station is generally predicted to occur only in the immediate vicinity of the LPFM station transmitter site."). But when an agency changes course, it is "obligated to supply a reasoned analysis for the change beyond that which may be required when [it] does not act in the first instance." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983); *see also Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) ("if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute"). As this Court has recently reminded the Commission, a single-sentence justification, unadorned by citation, is simply "conclusory" and "cannot substitute for a reasoned explanation … for it provides neither assurance that the Commission considered the relevant factors nor a discernable path to which the

court may defer." *Am. Radio Relay League v. FCC*, 524 F.3d 227, 241 (D.C. Cir. 2008).

B. The Commission's Interference Finding is Not Supported By the Record.

The Commission's order should be vacated for the additional reason that it is not supported by – indeed, it is contrary to – the record evidence and basic principles of physics. Notably, the Commission has *not* simply claimed that it struck a new balance between what it saw as competing goals of promoting LPFM and preserving full-power service. (As discussed in Part I.C above, doing so would have been directly contrary to Congress' directive.) Rather, it relied on a new judgment – untethered to any engineering analysis or other record evidence – that second-adjacent channel interference only extends "from ten to two hundred meters" from the LPFM station antenna.[24]

Since the laws of physics have not changed since 2000, it is incumbent upon the Commission to provide some other basis for its determination that second-adjacent interference no longer poses a significant interference problem. The 2007

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[24] Even if the 2007 Order's elimination of second-adjacent channel protection is construed solely as establishing a new "balance" between LPFM and full-power stations, *see* 2007 Order ¶ 65, it must be reversed on APA grounds in addition to the statutory grounds discussed in Part I.C above. The Commission did not respond to – or even acknowledge – arguments that reducing second-adjacent channel protections would result in a less efficient and less equitable distribution of radio services, contrary to the goals of the Communications Act and well-established Commission policy. *See, e.g.*, NAB Comments at 11-14 [JA __-__].

Order, however, cites *no* technical data or studies to justify its conclusion; relies on no new evidence on second-adjacent channel interference submitted by commenters; and bears no indication that the Commission has studied the issue further.[25] With no record evidence supporting its conclusions, the 2007 Order must be vacated.

The only new evidence mentioned anywhere in the 2007 Order is the MITRE study. *See* 2007 Order ¶ 6 [JA __]. To be sure, the MITRE study did indeed find that for *third*-adjacent channels, interference might be confined to a radius around the LPFM station "on the order of tens of meters, to one or two hundred meters," at least in cases where the LPFM station was located within the full-power station's protected service area. MITRE Study at xxvi [JA __].[26] But

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[25] *See* NPR Comments at 16 [JA __] ("the Commission has not offered any engineering data or analysis to justify eliminating the second and third adjacent protection.").

[26] Since "radios can generally reject signals on a 3rd adjacent channel that are about six to ten times stronger than signals on 2nd adjacent channels," Hearing at 20 (prepared testimony of OET chief Bruce Franca), the area affected by second-adjacent channel interference would be larger, even if one were to accept the MITRE Study's methodology (which is flawed). *See* NAB Comments at 10 [JA __] ("because the *MITRE Report* did not even contemplate relaxing second adjacent channel protections ... [a]doption of the Commission's proposal would therefore ... affect[] potentially thousands of listeners within well-populated or growing-populated areas"). Moreover, if the Commission *was* basing its conclusion about second-adjacent interference on a third-adjacent interference finding in the MITRE Study, it understated even that finding. The MITRE Study acknowledged possible interference "more than a kilometer" from the LPFM station in cases where the LPFM station was located at the edge of the full-power station's protected service area. *See* MITRE Study at xxvi [JA __].

MITRE was commissioned to study *third*-adjacent channel interference only, *see* RBPA § 632(b)(1)-(2), and it carefully limited its inquiry only to that issue.[27] Thus, that study simply "cannot be the basis for a regulatory change regarding second-adjacent channel interference," NPR Comments at 17 n.61 [JA __]. The APA requires an agency to "examine the *relevant* data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *State Farm,* 463 U.S. at 43 (emphasis added). Because the Commission failed to even acknowledge that the MITRE Study's conclusions related only to third-adjacent channel interference, it did not offer any explanation (and indeed it could not have done so) justifying application of its conclusions to interference from second-adjacent channel stations.[28]

Further, even accepting *arguendo* that the MITRE study were relevant (which it is not), the Commission "never addressed the study's numerous

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[27] *See* MITRE Study at 1-1 to 1-2 [JA __] (MITRE's tasks included providing conclusions and recommendations on eliminating *third*-adjacent protections); *see also id.* at 1-7 [JA __] (table showing the seven field measurement sites used, all of which involved LPFM stations transmitting on *third*-adjacent channels).

[28] Moreover, the MITRE Study's conclusions about third-adjacent channel interference were based on assumptions about the relative locations of the full-power and LPFM stations. *See* MITRE Study at xxvi (finding interference up to 200 meters from the LPFM station in cases where the stations were in closer proximity, and up to 1100 meters in cases where the stations were more distant). The waivers of second-adjacent channel interference standards granted in the 2007 Order, however, apply to LPFM stations without regard to their distance from affected full-power stations.

methodological and other flaws that were catalogued" by commenters. NPR Comments at 17 [JA __]; *see* n.30 *infra*. But once an agency's technical model is challenged, it must provide a "full analytic defense." *Am. Iron & Steel Inst. v. EPA*, 115 F.3d 979, 1004 (D.C. Cir. 1997) (citing *Eagle-Picher Indus., Inc. v. EPA*, 759 F.2d 905, 921 (D.C. Cir. 1985)).[29] The FCC here provided none, and the mere repetition of a challenged conclusion does not give it greater authority.

The Commission's failure to address the methodological flaws in the MITRE Study might justify a remand under the APA in normal circumstances. But here, the Commission's actions are even more egregious because Congress specifically directed the Commission to solicit public comment on the Study and, further, to provide an "analysis" of those comments. RBPA § 632(b)(3)(A). Many parties, including NAB, submitted detailed, rigorous engineering analyses of the study, including MITRE's reliance on desirable-to-undesirable ("D/U") signal

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[29] This Court recently reaffirmed that "[p]ublic notice and comment regarding relied-upon technical analysis ... are 'the safety valves in the use of ... sophisticated methodology,'" *Am. Radio Relay League v. FCC*, 524 F.3d at 236 (quoting *Sierra Club v. Costle*, 657 F.2d 298, 334 (D.C. Cir. 1981), since commenters may be able "to point out where ... information is erroneous or where the agency may be drawing improper conclusions from it." *Id.* at 236 (quoting *Nat'l Ass'n of Regulatory Util. Comm'rs ("NARUC") v. FCC*, 737 F.2d 1095, 1121 (D.C. Cir. 1984).

strength methodology.[30] The Commission's report to Congress, however, contains a single paragraph of "analysis" that describes, in summary fashion, the *numbers* of commenters supporting any particular outcome. *See* FCC Report to Congress at 3 [JA __].

Although "[t]he substantiality of evidence must take into account whatever in the record fairly detracts from its weight," *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951), the Commission has *never* offered any substantive response to criticisms of the MITRE study. A report on the number of comments filed certainly does not qualify. And as this Court has held, "[u]nless the Commission answers objections that on their face seem legitimate, its decision can hardly be classified as reasoned." *Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001).

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[30] *See* Comments of the National Association of Broadcasters on the MITRE Corporation Report, filed in MM Docket No. 99-25, Oct. 14, 2003 [JA __] ("NAB MITRE Study Comments"). NAB illustrated how MITRE created "reception degradation thresholds" as a tool for translating listening test results into a corresponding "D/U" signal ratio, but that the "thresholds" MITRE created were simply pulled "out of thin air." *Id.* at 14-16 [JA __-__]. NPR similarly highlighted "a number of flaws in the Study's methodology and testing," among them that the study would not use pre-existing standardized procedures designed for subjective listening tests. Comments of National Public Radio, Inc., filed in MM Docket No. 99-25, Oct. 14, 2003, at 5-11 [JA __-__] ("NPR MITRE Study Comments"). Due to budgetary constraints, MITRE never proceeded with actual audience listener testing. *See* FCC Report to Congress at 2-3 [JA __]. NAB reiterated these criticisms in its 2005 comments, with NPR reminding the Commission that the agency had "never addressed" the various methodological flaws catalogued previously. NAB Comments at 9-10 [JA __]; NPR Comments at 17 [JA __].

III. THE 2007 ORDER'S "PRESUMPTION" GRANTING PRIMARY STATUS TO CERTAIN LOW POWER STATIONS IS UNLAWFUL.

The 2007 Order's sweeping changes to the protections afforded to new or modified full power stations go well beyond second-adjacent channel protections. The Commission also reversed the basic premise that low power radio is secondary to full-power radio and that the latter's spectrum needs therefore trump those of the former:

> In certain circumstances no alternative channel will be available for an LPFM station at risk of displacement. *** [W]e believe that it is appropriate to apply a ***presumption that the public interest would be better served*** by a waiver of the Commission Rule making LPFM stations ***secondary*** to subsequently authorized full-service stations and the dismissal of an "encroaching" community of license reallotment application [i.e. a full-service license modification] when the threatened LPFM station can demonstrate that it has regularly provided at least eight hours per day of ***locally originated programming***....

2007 Order ¶ 68 [JA __] (emphasis added).[31] The result of this "presumption" is that a full-power station seeking to expand or alter its service area to better serve its listeners would be barred from doing so if the LPFM station is providing its listeners with programming content that the Commission favors.

The Commission's new "presumption" must be vacated for three related but independent reasons. By granting primary status to certain LPFM stations, the Commission's presumption violates the RBPA. (*See* Part III.A below.) Moreover,

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[31] The Commission limited this rule to "those situations in which no 'suitable' alternate channel is available for the LPFM station." 2007 Order ¶ 68 [JA __].

the factual predicate underlying the presumption – that the public interest would be *better served* by favoring LPFM stations based on their programming content – lacks the required "sound and rational basis." (*See* Part III.B below.) Finally, the "presumption" exceeds the Commission's statutory authority by giving favorable regulatory treatment to certain stations based on the content of their programming. (*See* Part III.C below.)

A. Elevating LPFM Stations to Primary Status Is Incompatible with the Radio Broadcasting Preservation Act.

Allowing LPFM stations to assume primary status violates the unambiguous intent of Congress.[32] As discussed above, in the RBPA Congress required the FCC "to maintain the same level of protection ... for existing stations and any new full-power stations." Committee Report at 8. Moreover, Congress specifically intended that LPFM stations causing interference to "new or modified facilities of a full-power station ... would be required to modify their facilities or cease operations." *Id.* Indeed, "the entire purpose of the Act was to ensure that LPFM would not adversely affect full-service stations." Reply Comments of Cox Radio, Inc., filed in MM Docket No. 99-25, Sept. 21, 2005, at 5 [JA __]. And requiring a station to cease operations when spectrum is needed by a primary user – even a

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[32] *See* NAB Reply Comments at 17-18 [JA __-__] ("Granting primary status to LPFM service over full power FM service ... would contravene the goals articulated by Congress in passing the Radio Broadcast[ing] Preservation Act").

newly assigned primary user – is the hallmark feature of a secondary service.[33] Thus, Congress "clearly contemplated that LPFM would remain a secondary service." *Id.*

Congress' object and purpose in enacting the RBPA confirm this reading. As discussed in Part I.A.2 above, Congress was well aware of exactly what the Commission did in its 2000 Order. The decision to license LPFM only as a secondary service was fundamental to that order: the Commission decided that "LPFM stations ... should not prevent FM stations from modifying or upgrading their facilities, nor should they preclude opportunities for new full-service stations." 2000 Order ¶ 62 [JA __]. In spite of this, Congress still found that "the FCC erred in rushing to adopt LPFM rules," Committee Report at 4, and accordingly, it imposed even *tighter* restrictions on the new service. Against this backdrop, allowing any LPFM station to assume primary status – with the power to *block* new or modified full-service station facilities – is plainly incompatible with the RBPA and its legislative history.

At the very least, it is clear that this result "is not one that Congress would have sanctioned." *See Natural Resources Defense Council v. EPA*, 824 F.2d 1146, 1163 (D.C. Cir. 1987) (en banc) (quoting *United States v. Shimer*, 367 U.S. 374,

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[33] *Cf.* 47 C.F.R. § 2.104(d)(3)(i) ("Stations of a secondary service ... [s]hall not cause harmful interference to stations of primary services to which frequencies are already assigned *or to which frequencies may be assigned at a later date*") (emphasis added).

383 (1961)). Thus, any construction of the RBPA permitting such a result is not reasonable. The 2007 Order's effective reversal of Congress' decision by allowing LPFM stations to *block* full-power station license modifications should be vacated.

B. The Commission's Presumption Violates the APA.

The Commission's presumption also violates the APA. The Commission presumes that "the public interest would be better served" by granting primary status to LPFM stations that provide eight hours per day of local programming. *See* 2007 Order ¶ 68 [JA __]. Courts must review agency presumptions not just "for consistency with their governing statutes," but also "for rationality." *Chemical Mfrs. Assn v. Department of Transp.*, 105 F.3d 702, 705 (D.C. Cir. 1997) (citing *N.L.R.B. v. Baptist Hosp.*, 442 U.S. 773, 787 (1979)). While legislatures are "free to adopt presumptions for policy reasons," *id.* (citing *United Scenic Artists, Local 829 v. NLRB*, 762 F.2d 1027, 1034 (D.C. Cir. 1985)), an agency "may only establish a presumption if there is a sound and rational connection between the proved and inferred facts." *Baptist Hosp.*, 442 U.S. at 787 (1979).

The Commission has identified the "public interest" goals it sought to further: "diversity and localism." 2007 Order ¶ 70 [JA __]. But simply announcing those objectives will not suffice. For presumptions are only appropriate when "proof of one fact renders the existence of another fact '*so probable* that it is sensible and timesaving to assume the truth of [the inferred] fact

... until the adversary disproves it." *NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 788-89 (1990) (quotation omitted); *Chemical Mfrs. Assn.*, 105 F.3d at 705 (citing *Curtin Matheson*). Certainly, the record evidence offers no basis for why it is "so probable" that the interests of diversity and localism are "*better* served" by LPFM stations offering eight hours of local programming than by full-power stations seeking license modifications.[34] The Commission did not define the "local" programming that would qualify an LPFM station for the presumption. It could include a local disc jockey playing nationally available music or other programming that, while locally sourced, may have little local orientation or interest. Preferring an LPFM station on that basis to a full-power station that may offer high quality local news, public affairs or sports programming was simply irrational.

The 2007 Order offers *no* basis – let alone a "sound and rational" one – for its conclusion. To be clear, NAB does not dispute that LPFM stations may serve the public interest. But the Commission may not properly refuse to consider record evidence that full-power stations serve larger audiences and also provide

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[34] Granting primary status to LPFM stations may disproportionately *harm* niche broadcasters, including minority owners and religious operators, since they often buy more affordable stations on the fringe of a market and rely on upgrades and other facility improvements to reach their intended service areas. *See* NAB Reply Comments at 15-16 [JA __-__].

valuable programming serving the Commission's public interest objectives.[35] The 2007 Order does not include any indication that the Commission has "take[n] [these comments] into account," *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951). The Commission conducted no systematic analysis of the service provided by LPFM stations. Nor did it cite to any research concerning the service provided by full-power stations that could be compared to LPFM service, both in terms of quality and in the number of listeners served. Instead, the Commission merely "presumed" that LPFM was more desirable. That unsupported assumption violates the APA.

In addition, the Commission's decision to effect a major change by relying on a new "presumption" is another unsuccessful attempt to evade the APA's notice-and-comment requirement. *See* Part I.C.2 above. In 2005 the Commission considered a request by LPFM advocates that it "adopt a 'processing policy' [to

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[35] *See, e.g.*, NAB Reply Comments at 10 [JA __] (full power stations "provide a broad mix of entertainment and informational programming to listeners in local communities throughout the country"); NAB Comments at 17 [JA __] (such programming includes "the valuable coverage that broadcasters devote to politics and civics discourse"); Comments of Cox Radio, Inc., filed in MM Docket No. 99-25, Aug. 22, 2005, at 3 [JA __] ("The Commission has determined time and again that full power FM stations 'make more efficient use of the spectrum than low-power stations'") (quoting Notice of Inquiry, *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 3 FCC Rcd 3664 ¶ 32 (1988) (internal alteration omitted)); Reply Comments of National Public Radio, Inc., filed in MM Docket No. 99-25, Sept. 21, 2005, at 8 [JA __] ("LPFM stations do not bear many of the public interest obligations imposed on full power stations").

deny] a full service FM station's modification application if 'grant of the application will deny a local community content by reducing the coverage area available to LPFM stations.'" 2005 FNPRM ¶ 38 [JA __] (quoting Letter from Harold Feld, Media Access Project, to Marlene H. Dortch, Secretary, Federal Communications Commission, Feb. 15, 2005). The Commission recognized the sweeping, generalized nature of this request, while simultaneously *rejecting* it: "we disagree with the basic thrust of this proposal, which effectively would provide primary status to LPFM stations with respect to subsequently filed applications for new or modified full service station facilities." *Id.*

The 2007 Order reversed course without warning. Although there was a belated request for comment in the Second Further Notice that accompanied the 2007 Order, *see* Second FNPRM ¶ 75 [JA __], that was not sufficient to solve the APA problem. As Commissioner McDowell observed: since the Commission "did not seek comment on this issue," it therefore "should not have reversed this precedent without at least seeking further public comment." 22 FCC Rcd at 21,974 [JA __].

C. The Presumption Exceeds the Commission's Authority.

By granting favored status only to LPFM stations that "regularly provide[] at least eight hours per day of locally originated programming," 2007 Order ¶ 68 [JA __], the Commission exceeded its statutory authority. Although the Commission is

charged with ensuring a "fair, efficient, equitable distribution of radio service," 47 U.S.C. § 307(b), this Court has made clear that the FCC has no general authority to regulate programming content absent a specific statutory mandate. *See Motion Picture Ass'n of America v. FCC,* 309 F.3d 796, 804-07 (D.C. Cir. 2002). To the contrary, "Congress has been scrupulously clear when it intends to delegate authority to the FCC to address areas significantly implicating program content." *Id.* at 805.

Any requirement that "broadcasters ... air minimum amounts of locally-produced and local public affairs programming obviously implicate[s] program content." NAB Reply Comments at 10 [JA __]. Indeed, under the Commission's new "presumption," a low power broadcaster opting to program as the government desires finds itself in special favor – and completely without that valuable benefit if it chooses otherwise.[36] There is no "scrupulously clear" statutory basis for making such a distinction. The 2007 Order thus exceeds the Commission's authority.[37]

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[36] *See* NAB Reply Comments at 10 [JA __] (such a scheme "expressly implicates content-based regulation because it gives greater regulatory interference protection solely to parties that pledge to re-transmit specific types of programming").

[37] *See id.* at 9-10 [JA __] ("the Commission's statutory authority to adopt such [a] content requirement is very much in doubt") (discussing *MPAA v. FCC*).

CONCLUSION

The petition for review should be granted and the challenged order should be vacated.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Fed. R. App. R. 32(a)(7)(B) because this brief contains 12,336 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and Circuit Rule 32(a)(2).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Circuit Rule 32(a)(1), and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2000 in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July 2008, I caused copies of the foregoing Brief For Petitioner National Association of Broadcasters (Initial Version) to be served by first class mail, postage prepaid, upon the following:

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ADDENDUM – STATUTES AND REGULATIONS

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Radio Broadcasting Preservation Act of 2000

Pub. L. No. 106-553, div. B, § 632, 114 Stat. 2762, 2762A-111 (2000)

(a) **(1)** The Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99-25, to—

> **(A)** prescribe minimum distance separations for third-adjacent channels (as well as for co-channels and first--and second-adjacent channels); and
>
> **(B)** prohibit any applicant from obtaining a low-power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934 (47 U.S.C. 301).

(2) The Federal Communications Commission may not—

> **(A)** eliminate or reduce the minimum distance separations for third-adjacent channels required by paragraph (1)(A); or
>
> **(B)** extend the eligibility for application for low-power FM stations beyond the organizations and entities as proposed in MM Docket No. 99-25 (47 CFR 73.853), except as expressly authorized by an Act of Congress enacted after the date of the enactment of this Act.

(3) Any license that was issued by the Commission to a low-power FM station prior to the date on which the Commission modifies its rules as required by paragraph (1) and that does not comply with such modifications shall be invalid.

(b) **(1)** The Federal Communications Commission shall conduct an experimental program to test whether low-power FM radio stations will result in harmful interference to existing FM radio stations if such stations are not subject to the minimum distance separations for third-adjacent channels required by subsection (a). The Commission shall conduct such test in no more than nine FM radio markets, including urban, suburban, and rural markets, by waiving the minimum distance separations for third-adjacent channels for the stations that are the subject of the experimental program. At least one of the stations

shall be selected for the purpose of evaluating whether minimum distance separations for third-adjacent channels are needed for FM translator stations. The Commission may, consistent with the public interest, continue after the conclusion of the experimental program to waive the minimum distance separations for third-adjacent channels for the stations that are the subject of the experimental program.

(2) The Commission shall select an independent testing entity to conduct field tests in the markets of the stations in the experimental program under paragraph (1). Such field tests shall include—

(A) an opportunity for the public to comment on interference; and

(B) independent audience listening tests to determine what is objectionable and harmful interference to the average radio listener.

(3) The Commission shall publish the results of the experimental program and field tests and afford an opportunity for the public to comment on such results. The Federal Communications Commission shall submit a report on the experimental program and field tests to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than February 1, 2001. Such report shall include—

(A) an analysis of the experimental program and field tests and of the public comment received by the Commission;

(B) an evaluation of the impact of the modification or elimination of minimum distance separations for third-adjacent channels on—

(i) listening audiences;

(ii) incumbent FM radio broadcasters in general, and on minority and small market broadcasters in particular, including an analysis of the economic impact on such broadcasters;

(iii) the transition to digital radio for terrestrial radio broadcasters;

(iv) stations that provide a reading service for the blind to the public; and

(v) FM radio translator stations;

(C) the Commission's recommendations to the Congress to reduce or eliminate the minimum distance separations for third-adjacent channels required by subsection (a); and

(D) such other information and recommendations as the Commission considers appropriate.

5 U.S.C. § 553

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

5 U.S.C. § 706

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

28 U.S.C. § 2342

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

(1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 47;

****

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

28 U.S.C. § 2343

The venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

47 U.S.C. § 303

Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

(a) Classify radio stations;

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;

(d) Determine the location of classes of stations or individual stations;

(e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this chapter: *Provided, however*, That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this chapter will be more fully complied with;

(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;

(h) Have authority to establish areas or zones to be served by any station;

***

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

***

(y) Have authority to allocate electromagnetic spectrum so as to provide flexibility of use, if—

> **(1)** such use is consistent with international agreements to which the United States is a party; and
>
> **(2)** the Commission finds, after notice and an opportunity for public comment, that—
>
> > **(A)** such an allocation would be in the public interest;
> >
> > **(B)** such use would not deter investment in communications services and systems, or technology development; and
> >
> > **(C)** such use would not result in harmful interference among users.

47 U.S.C. § 307

(a) Grant

The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this chapter, shall grant to any applicant therefor a station license provided for by this chapter.

(b) Allocation of facilities

In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

****

47 U.S.C. § 402

(a) Procedure

Any proceeding to enjoin, set aside, annul, or suspend any order of the Commission under this chapter (except those appealable under subsection (b) of this section) shall be brought as provided by and in the manner prescribed in chapter 158 of Title 28.

****

47 C.F.R. § 2.104

International Table of Frequency Allocations.

***

(d) Categories of services and allocations.

***

(3) Stations of a secondary service:

(i) Shall not cause harmful interference to stations of primary services to which frequencies are already assigned or to which frequencies may be assigned at a later date;

(ii) Cannot claim protection from harmful interference from stations of a primary service to which frequencies are already assigned or may be assigned at a later date; and

(iii) Can claim protection, however, from harmful interference from stations of the same or other secondary service(s) to which frequencies may be assigned at a later date.

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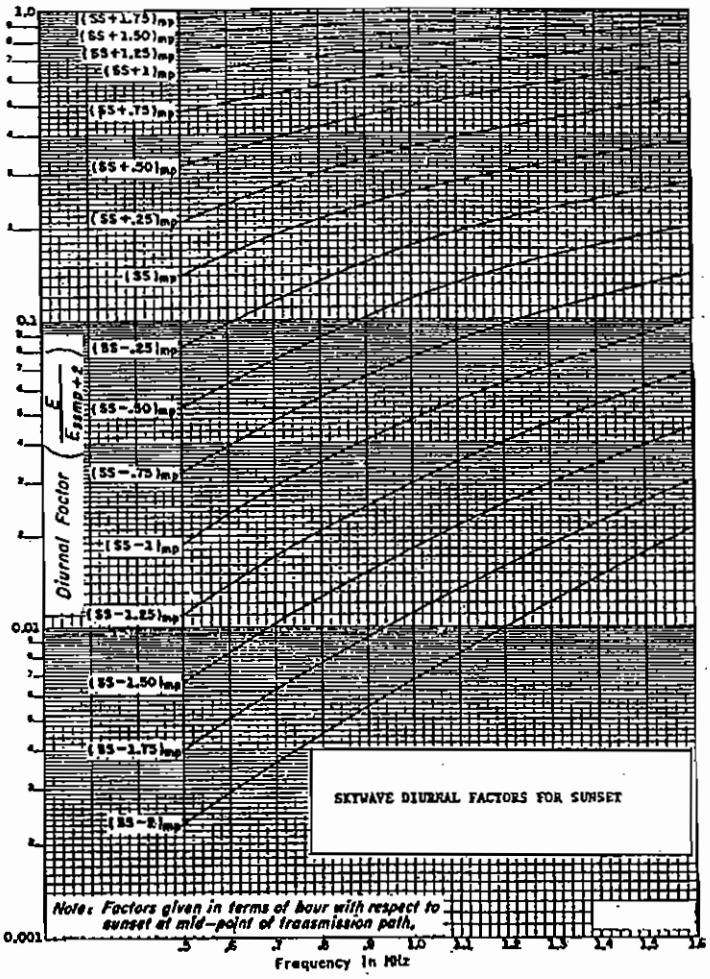

FCC §73.190 Figure 13

[28 FR 13574, Dec. 14, 1963, as amended at 30 FR 12720, Oct. 6, 1965; 33 FR 15420, Oct 17, 1968; 48 FR 42959, Sept. 20, 1983; 49 FR 43963, Nov. 1, 1984; 50 FR 18844, May 2, 1985; 51 FR 4753, Feb. 7, 1986; 52 FR 36879, Oct. 1, 1987; 56 FR 64869, Dec. 12, 1991]

Subpart B—FM Broadcast Stations

§73.201 Numerical designation of FM broadcast channels.

The FM broadcast band consists of that portion of the radio frequency spectrum between 88 MHz and 108 MHz. It is divided into 100 channels of 200 kHz each. For convenience, the frequencies available for FM broadcasting (including those assigned to noncommercial educational broadcasting) are given numerical designations which are shown in the table below:

Frequency (Mc/s)	Channel No.
88.1	201
88.3	202

Frequency (Mc/s)	Channel No.
88.5	203
88.7	204
88.9	205
89.1	206
89.3	207
89.5	208
89.7	209
89.9	210
90.1	211
90.3	212
90.5	213
90.7	214
90.9	215
91.1	216
91.3	217
91.5	218
91.7	219
91.9	220
92.1	221
92.3	222
92.5	223
92.7	224
92.9	225
93.1	226
93.3	227
93.5	228
93.7	229
93.9	230
94.1	231
94.3	232
94.5	233
94.7	234
94.9	235
95.1	236
95.3	237
95.5	238
95.7	239
95.9	240
96.1	241
96.3	242
96.5	243
96.7	244
96.9	245
97.1	246
97.3	247
97.5	248
97.7	249
97.9	250
98.1	251
98.3	252
98.5	253
98.7	254
98.9	255
99.1	256
99.3	257
99.5	258
99.7	259
99.9	260
100.1	261
100.3	262
100.5	263
100.7	264
100.9	265
101.1	266
101.3	267
101.5	268
101.7	269
101.9	270
102.1	271
102.3	272
102.5	273
102.7	274
102.9	275
103.1	276
103.3	277
103.5	278
103.7	279
103.9	280
104.1	281
104.3	282
104.5	283
104.7	284
104.9	285
105.1	286
105.3	287
105.5	288
105.7	289
105.9	290
106.1	291
106.3	292
106.5	293
106.7	294
106.9	295
107.1	296
107.3	297
107.5	298
107.7	299
107.9	300

NOTE: The frequency 108.0 MHz may be assigned to VOR test stations subject to the condition that interference is not caused to the reception of FM broadcasting stations, present or future.

[28 FR 13623, Dec. 14, 1963, as amended at 30 FR 4480, Apr. 7, 1965; 52 FR 10570, Apr. 2, 1987]

§73.202 Table of Allotments.

(a) *General.* The following Table of Allotments contains the channels (other than noncommercial educational Channels 201–220) designated for use in communities in the United States, its territories, and possessions, and not currently assigned to a licensee or permittee or subject to a pending application for construction permit or license. All listed channels are for Class B stations in Zones I and I–A and for Class C stations in Zone II unless otherwise specifically designated. Channels to which licensed, permitted, and "reserved" facilities have been assigned are reflected in the Media Bureau's publicly available Consolidated Data Base System.

(1) Channels designated with an asterisk may be used only by noncommercial educational broadcast stations. The rules governing the use of those channels are contained in part 73, subpart C of this chapter. An entity that would be eligible to operate a noncommercial educational broadcast station can, in conjunction with an initial petition for rulemaking filed pursuant to part 1, subpart C of this chapter, request that a nonreserved FM channel

meridian to the 43.5° parallel; thence east along this parallel to the United States-Canada border; thence southerly and following that border until it again intersects the 43.5° parallel; thence east along this parallel to the 71st meridian; thence in a straight line to the intersection of the 69th meridian and the 45th parallel; thence east along the 45th parallel to the Atlantic Ocean. When any of the above lines pass through a city, the city shall be considered to be located in Zone I. (See Figure 1 of §73.699.)

(b) Zone I-A consists of Puerto Rico, the Virgin Islands and that portion of the State of California which is located south of the 40th parallel.

(c) Zone II consists of Alaska, Hawaii and the rest of the United States which is not located in either Zone I or Zone I-A.

[29 FR 14116, Oct. 14, 1964, and 31 FR 10125, July 27, 1966, as amended at 48 FR 29504, June 27, 1983]

§73.207 Minimum distance separation between stations.

(a) Except for assignments made pursuant to §73.213 or 73.215, FM allotments and assignments must be separated from other allotments and assignments on the same channel (co-channel) and five pairs of adjacent channels by not less than the minimum distances specified in paragraphs (b) and (c) of this section. The Commission will not accept petitions to amend the Table of Allotments unless the reference points meet all of the minimum distance separation requirements of this section. The Commission will not accept applications for new stations, or applications to change the channel or location of existing assignments unless transmitter sites meet the minimum distance separation requirements of this section, or such applications conform to the requirements of §73.213 or 73.215. However, applications to modify the facilities of stations with short-spaced antenna locations authorized pursuant to prior waivers of the distance separation requirements may be accepted, provided that such applications propose to maintain or improve that particular spacing deficiency. Class D (secondary) assignments are subject only to the distance separation requirements contained in paragraph (b)(3) of this section. (See §73.512 for rules governing the channel and location of Class D (secondary) assignments.)

(b) The distances listed in Tables A, B, and C apply to allotments and assignments on the same channel and each of five pairs of adjacent channels. The five pairs of adjacent channels are the first (200 kHz above and 200 kHz below the channel under consideration), the second (400 kHz above and below), the third (600 kHz above and below), the fifty-third (10.6 MHz above and below), and the fifty-fourth (10.8 MHz above and below). The distances in the Tables apply regardless of whether the proposed station class appears first or second in the "Relation" column of the table.

(1) Domestic allotments and assignments must be separated from each other by not less than the distances in Table A which follows:

TABLE A—MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS (MILES)

Relation	Co-channel	200 kHz	400/600 kHz	10.6/10.8 MHz
A to A	115 (71)	72 (45)	31 (19)	10 (6)
A to B1	143 (89)	96 (60)	48 (30)	12 (7)
A to B	178 (111)	113 (70)	69 (43)	15 (9)
A to C3	142 (88)	89 (55)	42 (26)	12 (7)
A to C2	166 (103)	106 (66)	55 (34)	15 (9)
A to C1	200 (124)	133 (83)	75 (47)	22 (14)
A to C0	215 (134)	152 (94)	86 (53)	25 (16)
A to C	226 (140)	165 (103)	95 (59)	29 (18)
B1 to B1	175 (109)	114 (71)	50 (31)	14 (9)
B1 to B	211 (131)	145 (90)	71 (44)	17 (11)
B1 to C3	175 (109)	114 (71)	50 (31)	14 (9)
B1 to C2	200 (124)	134 (83)	56 (35)	17 (11)
B1 to C1	233 (145)	161 (100)	77 (48)	24 (15)
B1 to C0	248 (154)	180 (112)	87 (54)	27 (17)
B1 to C	259 (161)	193 (120)	105 (65)	31 (19)
B to B	241 (150)	169 (105)	74 (46)	20 (12)
B to C3	211 (131)	145 (90)	71 (44)	17 (11)
B to C2	241 (150)	169 (105)	74 (46)	20 (12)
B to C1	270 (168)	195 (121)	79 (49)	27 (17)

TABLE A—MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS (MILES)—Continued

Rotation	Co-channel	200 kHz	400/600 kHz	10.6/10.8 MHz
B to C0	272 (169)	214 (133)	89 (55)	31 (19)
B to C	274 (170)	217 (135)	105 (65)	35 (22)
C3 to C3	153 (95)	99 (62)	43 (27)	14 (9)
C3 to C2	177 (110)	117 (73)	56 (35)	17 (11)
C3 to C1	211 (131)	144 (90)	76 (47)	24 (15)
C3 to C0	226 (140)	163 (101)	87 (54)	27 (17)
C3 to C	237 (147)	178 (109)	96 (60)	31 (19)
C2 to C2	190 (118)	130 (81)	58 (36)	20 (12)
C2 to C1	224 (139)	158 (98)	79 (49)	27 (17)
C2 to C0	239 (148)	176 (109)	89 (55)	31 (19)
C2 to C	249 (155)	188 (117)	105 (65)	35 (22)
C1 to C1	245 (152)	177 (110)	82 (51)	34 (21)
C1 to C0	259 (161)	196 (122)	94 (58)	37 (23)
C1 to C	270 (168)	209 (130)	105 (65)	41 (25)
C0 to C0	270 (168)	207 (129)	96 (60)	41 (25)
C0 to C	281 (175)	220 (137)	105 (65)	45 (28)
C to C	290 (180)	241 (150)	105 (65)	48 (30)

(2) Under the Canada-United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Canadian allotments and assignments by not less than the distances given in Table B, which follows. When applying Table B, U.S. Class C2 allotments and assignments are considered to be Class B; also, U.S. Class C3 allotments and assignments and U.S. Class A assignments operating with more than 3 kW ERP and 100 meters antenna HAAT (or equivalent lower ERP and higher antenna HAAT based on a class contour distance of 24 km) are considered to be Class B1.

TABLE B—MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS

Relation	Co-Channel	Adjacent Channels			I.F.
	0 kHz	200 kHz	400 kHz	600 kHz	10.6/10.8 MHz
A-A	132	85	45	37	8
A-B1	180	113	62	54	16
A-B	206	132	76	69	16
A-C1	239	164	98	90	32
A-C	242	177	108	100	32
B1-B1	197	131	70	57	24
B1-B	223	149	84	71	24
B1-C1	256	181	106	92	40
B1-C	259	195	116	103	40
B-B	237	164	94	74	24
B-C1	271	195	115	95	40
B-C	274	209	125	106	40
C1-C1	292	217	134	101	48
C1-C	302	230	144	111	48
C-C	306	241	153	113	48

(3) Under the 1992 Mexico-United States FM Broadcasting Agreement, domestic U.S. assignments or allotments within 320 kilometers (199 miles) of the common border must be separated from Mexican assignments or allotments by not less than the distances given in Table C in this paragraph (b)(3). When applying Table C—

(i) U.S. or Mexican assignments or allotments which have been notified internationally as Class A are limited to a maximum of 3.0 kW ERP at 100 meters HAAT, or the equivalent;

(ii) U.S. or Mexican assignments or allotments which have been notified internationally as Class AA are limited to a maximum of 6.0 kW ERP at 100 meters HAAT, or the equivalent;

(iii) U.S. Class C3 assignments or allotments are considered Class B1;

(iv) U.S. Class C2 assignments or allotments are considered Class B; and

(v) Class C1 assignments or allotments assume maximum facilities of 100 kW ERP at 300 meters HAAT. However, U.S. Class C1 stations may not, in any event, exceed the domestic U.S. limit of 100 kW ERP at 299 meters HAAT, or the equivalent.

TABLE C—MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS

Relation	Co-Channel	200 kHz	400 kHz or 600 kHz	10.6 or 10.8 MHz (I.F.)
A to A	100	61	25	8
A to AA	111	68	31	9

TABLE C—MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS—Continued

Relation	Co-Channel	200 kHz	400 kHz or 600 kHz	10.6 or 10.8 MHz (I.F.)
A to B1	138	88	48	11
A to B	163	105	65	14
A to C1	196	129	74	21
A to C	210	161	94	28
AA to AA	115	72	31	10
AA to B1	143	96	48	12
AA to B	178	125	69	15
AA to C1	200	133	75	22
AA to C	226	165	95	29
B1 to B1	175	114	50	14
B1 to B	211	145	71	17
B1 to C1	233	161	77	24
B1 to C	259	193	96	31
B to B	237	164	65	20
B to C1	270	195	79	27
B to C	270	215	98	35
C1 to C1	245	177	82	34
C1 to C	270	209	102	41
C to C	290	228	105	48

(c) The distances listed below apply only to allotments and assignments on Channel 253 (98.5 MHz). The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any TV Channel 6 allotment or assignment are not met:

MINIMUM DISTANCE SEPARATION FROM TV CHANNEL 6 (82–88 MHz)

FM Class	TV Zone I	TV Zones II & III
A	17	22
B1	19	23
B	22	26
C3	19	23
C2	22	26
C1	29	33
C	36	41

[48 FR 29504, June 27, 1983, as amended at 49 FR 10264, Mar. 20, 1984; 49 FR 19670, May 9, 1984; 49 FR 50047, Dec. 26, 1984; 51 FR 26250, July 22, 1986; 54 FR 14963, Apr. 14, 1989; 54 FR 16366, Apr. 24, 1989; 54 FR 19374, May 5, 1989; 54 FR 35338, Aug. 25, 1989; 56 FR 27426, June 14, 1991; 56 FR 57293, Nov. 8, 1991; 62 FR 50256, Sept. 25, 1997; 65 FR 79776, Dec. 20, 2000]

§ 73.208 Reference points and distance computations.

(a)(1) The following reference points must be used to determine distance separation requirements when petitions to amend the Table of Allotments (§ 73.202(b)) are considered:

(i) First, transmitter sites if authorized, or if proposed in applications with cut-off protection pursuant to paragraph (a)(3) of this section;

(ii) Second, reference coordinates designated by the FCC;

(iii) Third, coordinates listed in the United States Department of Interior publication entitled Index to the National Atlas of the United States of America; or

(iv) Last, coordinates of the main post office.

(The community's reference points for which the petition is submitted will normally be the coordinates listed in the above publication.)

(2) When the distance between communities is calculated using community reference points and it does not meet the minimum separation requirements of § 73.207, the channel may still be allotted if a transmitter site is available that would meet the minimum separation requirements and still permit the proposed station to meet the minimum field strength requirements of § 73.315. A showing indicating the availability of a suitable site should be sumitted with the petition. In cases where a station is not authorized in a community or communities and the proposed channel cannot meet the separation requirement a showing should also be made indicating adequate distance between suitable transmitter sites for all communities.

(3) Petitions to amend the Table of Allotments that do not meet minimum distance separation requirements to transmitter sites specified in pending applications will not be considered unless they are filed no later than:

(i) The last day of a filing window if the application is for a new FM facility or a major change in the non-reserved band and is filed during a filing window established under section 73.3564(d)(3); or

(ii) The cut-off date established in a Commission Public Notice under § 73.3564(d) and 73.3573(e) if the application is for a new FM facility or a major change in the reserved band; or

Section 73.1610 Equipment tests.
Section 73.1620 Program tests.
Section 73.1650 International agreements.
Section 73.1660 Acceptability of broadcast transmitters.
Section 73.1665 Main transmitters.
Section 73.1692 Broadcast station construction near or installation on an AM broadcast tower.
Section 73.1745 Unauthorized operation.
Section 73.1750 Discontinuance of operation.
Section 73.1920 Personal attacks.
Section 73.1940 Legally qualified candidates for public office.
Section 73.1941 Equal opportunities.
Section 73.1943 Political file.
Section 73.1944 Reasonable access.
Section 73.3511 Applications required.
Section 73.3512 Where to file; number of copies.
Section 73.3513 Signing of applications.
Section 73.3514 Content of applications.
Section 73.3516 Specification of facilities.
Section 73.3517 Contingent applications.
Section 73.3518 Inconsistent or conflicting applications.
Section 73.3519 Repetitious applications.
Section 73.3520 Multiple applications.
Section 73.3525 Agreements for removing application conflicts.
Section 73.3539 Application for renewal of license.
Section 73.3542 Application for emergency authorization.
Section 73.3545 Application for permit to deliver programs to foreign stations.
Section 73.3550 Requests for new or modified call sign assignments.
Section 73.3561 Staff consideration of applications requiring Commission consideration.
Section 73.3562 Staff consideration of applications not requiring action by the Commission.
Section 73.3566 Defective applications.
Section 73.3568 Dismissal of applications.
Section 73.3584 Procedure for filing petitions to deny.
Section 73.3587 Procedure for filing informal objections.
Section 73.3588 Dismissal of petitions to deny or withdrawal of informal objections.
Section 73.3589 Threats to file petitions to deny or informal objections.
Section 73.3591 Grants without hearing.
Section 73.3593 Designation for hearing.
Section 73.3598 Period of construction.
Section 73.3599 Forfeiture of construction permit.
Section 73.3999 Enforcement of 18 U.S.C. 1464—restrictions on the transmission of obscene and indecent material.

§ 73.805 Availability of channels.

Except as provided in §73.220 of this chapter, all of the frequencies listed in §73.201 of this chapter are available for LPFM stations.

§ 73.807 Minimum distance separation between stations.

Minimum separation requirements for LP100 and LP10 stations, as defined in §§73.811 and 73.853, are listed in the following paragraphs. An LPFM station will not be authorized unless these separations are met. Minimum distances for co-channel and first-adjacent channel are separated into two columns. The left-hand column lists the required minimum separation to protect other stations and the right-hand column lists (for informational purposes only) the minimum distance necessary for the LPFM station to receive no interference from other stations assumed to operating at the maximum permitted facilities for the station class. For second- and third-adjacent channels and IF channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

(a)(1) An LP100 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP100 stations, authorized LP100 stations, LP100 station applications that were timely-filed within a previous window, and vacant FM allotments. LP100 stations are not required to protect LP10 stations. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations.

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second- and third-adjacent channel minimum separation (km)	I.F. channel minimum separations
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility	Required	10.6 or 10.8 MHz
LP100	24	24	14	14	None	None
D	24	24	13	13	6	3
A	67	92	56	56	29	6
B1	87	119	74	74	46	9
B	112	143	97	97	67	12
C3	78	119	67	67	40	9
C2	91	143	80	84	53	12
C1	111	178	100	111	73	20
C0	122	193	111	130	84	22
C	130	203	120	142	93	28

(2) LP100 stations must satisfy the second-adjacent channel minimum distance separation requirements of paragraph (a)(1) of this section with respect to any third-adjacent channel FM station that, as of September 20, 2000 (the adoption date of this *MO&O*) broadcasts a radio reading service via a subcarrier frequency.

(b)(1) An LP10 station will not be authorized unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP10 stations, vacant FM allotments, or LPFM stations.

Station class protected by LP10	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second- and third-adjacent channel minimum separation (km)	I.F. Channel minimum separations
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility	Required	10.6 or 10.8 MHz
LP100	16	22	10	11	None	None
LP10	13	13	8	8	None	None
D	16	21	10	11	6	2
A	59	90	53	53	29	5
B1	77	117	70	70	45	6
B	99	141	91	91	66	11
C3	69	117	64	64	39	8
C2	82	141	77	81	52	11
C1	103	175	97	108	73	16
C0	114	190	99	127	84	21
C	122	201	116	140	92	26

(2) LP10 stations must satisfy the second-adjacent channel minimum distance separation requirements of paragraph (b)(1) of this section with respect to any third-adjacent channel FM station that, as of September 20, 2000 (the adoption date of this *MO&O*) broadcasts a radio reading service via a subcarrier frequency.

(c) In addition to meeting or exceeding the minimum separations for Class LP100 and Class LP10 stations in paragraphs (a) and (b) of this section, new LP100 and LP10 stations will not be authorized in Puerto Rico or the Virgin Islands unless the minimum distance separations in the following tables are met with respect to authorized or proposed FM stations:

(1) LP100 stations in Puerto Rico and the Virgin Islands:

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second- and third-adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
A	80	111	70	70	42	9
B1	95	128	82	82	53	11
B	138	179	123	123	92	19

(2) LP10 stations in Puerto Rico and the Virgin Islands:

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second- and third-adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
A	72	108	66	66	42	8
B1	84	125	78	78	53	9
B	126	177	118	118	92	18

NOTE TO PARAGRAPHS (a), (b), AND (c): Minimum distance separations towards "grandfathered" superpowered Reserved Band stations are as specified.

Full service FM stations operating within the reserved band (Channels 201–220) with facilities in excess of those permitted in §73.211(b)(1) or §73.211(b)(3) shall be protected by LPFM stations in accordance with the minimum distance separations for the nearest class as determined under §73.211. For example, a Class B1 station operating with facilities that result in a 60 dBu contour that exceeds 39 kilometers but is less than 52 kilometers would be protected by the Class B minimum distance separations. Class D stations with 60 dBu contours that exceed 5 kilometers will be protected by the Class A minimum distance separations. Class B stations with 60 dBu contours that exceed 52 kilometers will be protected as Class C1 or Class C stations depending upon the distance to the 60 dBu contour. No stations will be protected beyond Class C separations.

(d) In addition to meeting the separations (a) through (c), LPFM applications must meet the minimum separation requirements with respect to authorized FM translator stations, cutoff FM translator applications, and FM translator applications filed prior to the release of the Public Notice announcing the LPFM window period:

(1) LP100 stations:

Distance to FM translator 60 dBu contour	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second- and third-adjacent channel minimum separation (km) required	I.F. Channel minimum separation (km) 10.8 or 10.8 MHz
	Required	For no interference received	Required	For no interference received		
13.3 km or greater	39	67	28	35	21	5
Greater than 7.3 km, but less than 13.3 km	32	51	21	28	14	5
7.3 km or less	26	30	15	16	8	5

(2) LP10 Stations:

Distance to FM translator 60 dBu contour	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second- and third-adjacent channel minimum separation (km) required	I.F. Channel minimum separation (km) 10.6 or 10.8 MHz
	Required	For no interference received	Required	For no interference received		
13.3 km or greater	30	65	25	33	20	3
Greater than 7.3 km, but less than 13.3 km	24	49	18	23	14	3
7.3 km or less	18	28	12	14	8	3

(e) Existing Class LP100 and LP10 stations which do not meet the separations in paragraphs (a) through (e) of this section may be relocated provided that the separation to any short-spaced station is not reduced.

(f) Commercial and noncommercial educational stations authorized under subparts B and C of this part, as well as new or modified commercial FM allotments, are not required to adhere to the separations specified in this rule section, even where new or increased interference would be created.

(g) *International considerations within the border zones.* (1) Within 320 km of the Canadian border, LP100 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1 & Low Power	45	30	21	20	4
A	66	50	41	40	7
B1	78	62	53	52	9
B	92	76	68	66	12
C1	113	96	89	88	19
C	124	108	99	98	28

(2) Within 320 km of the Mexican border, LP100 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second-third adjacent channel (km)	Intermediate frequency (IF) channel (km)
Low Power	27	17	9	3
A	43	32	25	5
AA	47	36	29	6
B1	67	54	45	8
B	91	76	66	11
C1	91	80	73	19
C	110	100	92	27

(3) Within 320 km of the Canadian border, LP10 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1 & Low Power	33	25	20	19	3
A	53	45	40	39	5
B1	65	57	52	51	8
B	79	71	67	66	11
C1	101	93	88	87	16
C	111	103	98	97	26

(4) Within 320 km of the Mexican border, LP10 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second-third adjacent channel (km)	Intermediate frequency (IF) channel (km)
Low Power	19	13	9	2
A	34	29	24	5
AA	39	33	29	5
B1	57	50	45	8
B	79	71	66	11
C1	83	77	73	18
C	102	96	92	26

(5) The Commission will notify the International Telecommunications Union (ITU) of any LPFM authorizations in the US Virgin Islands. Any authorization issued for a US Virgin Islands LPFM station will include a condition that permits the Commission to modify, suspend or terminate without right to a hearing if found by the Commission to be necessary to conform to any international regulations or agreements.

(6) The Commission will initiate international coordination of a LPFM proposal even where the above Canadian and Mexican spacing tables are met, if it appears that such coordination is necessary to maintain compliance with international agreements.

[65 FR 7640, Feb. 15, 2000, as amended at 65 FR 67299, Nov. 9, 2000; 65 FR 79779, Dec. 20, 2000; 66 FR 23863, May 10, 2001]

§ 73.808 Distance computations.

For the purposes of determining compliance with any LPFM distance requirements, distances shall be calculated in accordance with §73.208(c) of this part.

§ 73.809 Interference protection to full service FM stations.

(a) It 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 occur and actually occurs within:

(1) The 3.16 mV/m (70 dBu) contour of such stations;

(2) The community of license of a commercial FM station; or

(3) Any area of the community of license of an NCE FM station that is predicted to receive at least a 1 mV/m (60 dBu) signal. Predicted interference shall be calculated in accordance with the ratios set forth in §§73.215(a)(1) and 73.215(a)(2). Intermediate Frequency (IF) channel interference overlap will be determined based upon overlap of the 91 dBu F(50,50) contours of the FM and LPFM stations. Actual interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the LPFM station.

(b) An LPFM station will be provided an opportunity to demonstrate in connection with the processing of the commercial or NCE FM application that interference as described in paragraph (a) of this section is unlikely. If the LPFM station fails to so demonstrate, it will be required to cease operations upon the commencement of program tests by the commercial of NCE FM station.

(c) Complaints of actual interference by an LPFM station subject to paragraphs (a) and (b) 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 within twenty-four hours of the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. An LPFM station may only resume operations 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.

(d) It shall be the responsibility of the licensee of an LPFM station to correct any condition of interference that results from the radiation of radio frequency energy outside its assigned channel. Upon notice by the FCC to the station licensee or operator that such interference is caused by spurious emissions of the station, operation of the station shall be immediately suspended and not resumed until the interference has been eliminated. However, short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

(e) In each instance where suspension of operation is required, the licensee shall submit a full report to the FCC in Washington, DC, after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

[65 FR 7640, Feb. 15, 2000, as amended at 65 FR 67302, Nov. 9, 2000]

§ 73.810 Third adjacent channel complaint and license modification procedure.

(a) An LPFM station is required to provide copies of all complaints alleging that the signal of such LPFM station is interfering with or impairing the reception of the signal of a full power station to such affected full power station.

(b) A full power station shall review all complaints it receives, either directly or indirectly, from listeners regarding alleged interference caused by the operations of an LPFM station. Such full power station shall also identify those that qualify as *bona fide* complaints under this section and promptly provide such LPFM station with copies of all *bona fide* complaints. A *bona fide* complaint:

(1) Is a complaint alleging third adjacent channel interference caused by an LPFM station that has its transmitter site located within the predicted 60 dBu contour of the affected full power station as such contour existed as of the date the LPFM station construction permit was granted;

(2) Must be in the form of an affidavit, and state the nature and location of the alleged interference;

(3) Must involve a fixed receiver located within the 60 dBu contour of the affected full power station and not more than one kilometer from the LPFM transmitter site; and

(4) Must be received by either the LPFM or full power station within one year of the date on which the LPFM station commenced broadcasts with its currently authorized facilities.

(c) An LPFM station will be given a reasonable opportunity to resolve all interference complaints. A complaint will be considered resolved where the complainant does not reasonably cooperate with an LPFM station's remedial efforts.

(d) In the event that the number of unresolved complaints plus the number of complaints for which the source of interference remains in dispute equals at least one percent of the households within one kilometer of the LPFM transmitter site or thirty households, whichever is less, the LPFM and full power stations must cooperate in an "on-off" test to determine whether the interference is traceable to the LPFM station.

(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. Parties may seek extensions of the 90 day deadline consistent with Commission rules.

(f) An LPFM station may stay any procedures initiated pursuant to paragraph (e) of this section by voluntarily ceasing operations and filing an application for facility modification within

ADDENDUM – LEGISLATIVE HISTORY

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RADIO BROADCASTING PRESERVATION ACT OF 2000

APRIL 10, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

REPORT

[To accompany H.R. 3439]

[Ineluding cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 3439) to prohibit the Federal Communications Commission from establishing rules authorizing the operation of new, low power FM radio stations, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

70 006

AMENDMENT

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Radio Broadcasting Preservation Act of 2000".

SEC. 2. MODIFICATIONS TO LOW-POWER FM REGULATIONS REQUIRED.

(a) THIRD-ADJACENT CHANNEL PROTECTIONS REQUIRED.—

(1) MODIFICATIONS REQUIRED.—The Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99 25, to—

(A) prescribe minimum distance separations for third-adjacent channels (as well as for co-channels and first- and second-adjacent channels); and

(B) prohibit any applicant from obtaining a low-power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934 (47 U.S.C. 301).

(2) CONGRESSIONAL AUTHORITY REQUIRED FOR FURTHER CHANGES.—The Federal Communications Commission may not—

(A) eliminate or reduce the minimum distance separations for third-adjacent channels required by paragraph (1)(A), or

(B) extend the eligibility for application for low-power FM stations beyond the organizations and entities as proposed in MM Docket No. 99 25 (47 C.F.R. 73.853),

except as expressly authorized by Act of Congress enacted after the date of enactment of this Act.

(3) VALIDITY OF PRIOR ACTIONS.—Any license that was issued by the Commission to a low-power FM station prior to the date on which the Commission modify its rules as required by paragraph (1) and that does not comply with such modifications shall be invalid.

(b) FURTHER EVALUATION OF NEED FOR THIRD-ADJACENT CHANNEL PROTECTIONS.—

(1) PILOT PROGRAM REQUIRED.—The Federal Communications Commission shall conduct an experimental program to test whether low-power FM radio stations will result in harmful interference to existing FM radio stations if such stations are not subject to the minimum distance separations for third-adjacent channels required by subsection (a). The Commission shall conduct sucb test in no more than 9 FM radio markets, including urban, suburban, and rural markets, by waiving the minimum distance separations for third-adjacent channels for the stations that are the subject of the experimental program. At least one of the stations shall be selected for the purpose of evaluating whether minimum distance separations for third-adjacent channels are needed for FM translator stations. The Commission may, consistent with the public interest, continue after the conclusion of the experimental program to waive the minimum distance separations for third-adjacent channels for the stations that are the subject of the experimental program.

(2) CONDUCT OF TESTING.—The Commission shall select an independent testing entity to conduct field tests in the markets of the stations in the experimental program under paragraph (1). Such field tests shall include—

(A) an opportunity for the public to comment on interference; and

(B) independent audience listening tests to determine wbat is objectionable and harmful interference to the average radio listener.

(3) REPORT TO CONGRESS.—The Commission shall publish the results of the experimental program and field tests and afford an opportunity for the public to comment on such results. The Federal Communications Commission shall submit a report on the experimental program and field tests to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than February 1, 2001. Such report shall include—

(A) an analysis of the experimental program and field tests and of the public comment received by the Commission;

(B) an evaluation of the impact of the modification or elimination of minimum distance separations for third-adjacent channels on—

(i) listening audiences;

(ii) incumbent FM radio broadcasters in general, and on minority and small market broadcasters in particular, including an analysis of the economic impact on such broadcasters;
(iii) the transition to digital radio for terrestrial radio broadcasters;
(iv) stations that provide a reading service for the blind to the public; and
(v) FM radio translator stations;
(C) the Commission's recommendations to the Congress to reduce or eliminate the minimum distance separations for third-adjacent channels required by subsection (a); and
(D) such other information and recommendations as the Commission considers appropriate.

Amend the title so as to read:

A bill to require the Federal Communications Commission to revise its regulations authorizing the operation of new, low-power FM radio stations.

PURPOSE AND SUMMARY

Low Power FM (LPFM) refers to a new FM Radio service adopted by the FCC on January 20, 2000. This new radio service is to provide a class of radio stations to serve very localized communities, or under represented groups within those communities, with a new, localized radio broadcast service in order to enhance community-oriented radio broadcasting. However, some questions exist as to the amount of interference that these new stations will bring to the signals of currently operating radio broadcasters.

The purpose of H.R. 3439, the Radio Broadcasting Preservation Act of 2000, is to modify the FCC rules authorizing the operation of low-power FM radio stations. In response to the new service proposed by the FCC, the bill requires Congressional authority for the FCC to eliminate or reduce any interference standards on the radio dial. Further, the bill establishes a pilot program to study the amount of interference that such new low power FM radio stations will cause to existing broadcasters under the interference standards contained in the FCC's original Order, and requires a report to Congress no later than February 1, 2001.

BACKGROUND AND NEED FOR LEGISLATION

The FCC's Order (Mass Media Docket No. 99 25) authorized two new classes of noncommercial LPFM radio services, (1) LP 100, with power from 50 100 watts reaching a radius of about 3.5 miles; and (2) LP 10, with power from 1 10 watts reaching a radius of about 1 2 miles. The Order requires that new stations must be offered by a noncommercial entity, which may include: (1) government or private educational organizations, associations or entities; (2) non-profit entities with educational purposes; or, (3) government or non-profit entities providing local public safety or transportation services. No existing broadcaster, or any other media entity may have an ownership interest, or enter into any program or operating agreement with any LPFM station.

The FCC's original intent in creating the LPFM service was to create a class of radio stations "designed to serve very localized communities or under represented groups within communities." The Commission found that the recent extensive consolidation of radio stations into large commercial groups, combined with the fi-

nancial challenges of operating full power commercial stations, has limited the broadcasting opportunities for highly localized interests.

The controversy regarding this new service revolves around whether or not this new class of radio stations will cause interference to existing broadcasters' signals. Currently, protection exists on the FM dial within three adjacent channel positions. The new FCC Order would lift those third adjacent channel protections in order to allow for the introduction of more low power FM radio stations on the dial.

At the hearings held by the Subcommittee on Telecommunications, Trade and Consumer Protection, the Subcommittee heard testimony that contradicted the FCC studies that supported elimination of third adjacent channel interference protection, as well as evidence that the new LPFM stations may interfere with Radio Reading Services carried on subcarriers of full-power FM stations. The Subcommittee also received testimony that the introduction of LPFM service may have a deleterious effect on the service now provided to listeners by many small market and minority-owned radio stations.

The Committee concludes that these concerns are well-justified and that the FCC erred in rushing to adopt LPFM rules. The bill, therefore, requires the FCC to revise its LPFM rules to maintain preexisting levels of interference protection. It further requires the FCC, using an independent testing entity, to conduct further studies of the potential for interference from LPFM stations and of the impact of LPFM service.

HEARINGS

The Telecommunications, Trade, and Consumer Protection Subcommittee met and held a legislative hearing on February 17, 2000 on H.R. 3439, the Radio Broadcasting Preservation Act. The Subcommittee heard testimony from one panel of witnesses, comprised of: Mr. Bruce Franca, Deputy Chief, Office of Engineering and Technology, Federal Communications Commission; Mr. Eddie Fritts, CEO, National Association of Broadcasting; The Honorable Harold Furchtgott-Roth, Commissioner, Federal Communications Commission; Mr. Charles L. Jackson, CEO, Jackson Telecom Consulting; Mr. Kevin Klose, President and CEO, National Public Radio; Mr. Dirk Koning, Executive Director, Grand Rapids Community Media Center; Mr. David Maxon, Founder, Broadcast Signal Lab on behalf of The Lawyers Guild; Dr. Theodore S. Rappaport, Professor,Virginia Polytechnic Institute and State University; Mr. Bruce T. Reese, President and CEO, Bonneville International Corporation; and Mr. Don Schellhardt, National Coordinator, The Amherst Alliance.

COMMITTEE CONSIDERATION

On March 23, 2000 the Subcommittee on Telecommunications, Trade and Consumer Protection met in open mark up session and approved H.R. 3439, the Radio Broadcasting Preservation Act of 1999 for Full Committee consideration, without amendment, by a voice vote.

On March 30, 2000 the Committee met in open markup session and ordered H.R. 3439 reported to the House, as amended, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3439 reported. A motion by Mr. Bliley to order H.R. 3439 reported to the House, as amended, was agreed to by a voice vote, a quorum being present.

The following amendment was agreed to by a voice vote:

> An amendment in the nature of a substitute by Mrs. Wilson, No. 1, prescribing third adjacent channel protections on the FM radio dial, requiring Congressional authority for future changes to these protections, mandating the FCC to conduct a pilot program administered by an independent testing entity to test whether low power FM radio stations will result in harmful interference to existing FM radio stations, if third channel protections are not in place, and requiring the FCC to report its findings to Congress by February 1, 2001.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3439, the Radio Broadcasting Preservation Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 10, 2000.

Hon. TOM BLILEY,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3439, the Radio Broadcast Preservation Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp (for federal costs), Shelley Finlayson (for the state and local impact), and Jean Wooster (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3439—Radio Broadcasting Preservation Act of 2000

H.R. 3439 would establish guidelines and procedures for licensing low-power FM radio stations. This newly created service would allow noncommercial and educational entities to broadcast radio signals at 10 watts to 100 watts, subject to a requirement that the new station not interfere with existing FM radio broadcasts. This bill would direct the Federal Communications Commission (FCC) to modify its rules to prescribe certain technical and legal standards outlined in the legislation. H.R. 3439 also would require existing applicants to comply with standards required by the bill and would limit eligibility for new stations. Finally, H.R. 3439 would direct the FCC to conduct field studies and other experiments on the minimum distances needed between channels to prevent interference to existing radio stations and translator stations.

Based on information from the FCC, CBO estimates that conducting the studies and regulatory proceedings required by the bill would cost about $1 million in fiscal year 2001, subject to the appropriation of the necessary amounts. We estimate that this additional expense would have no net effect on discretionary spending, however, because the FCC assesses and collects fees from the communications industry to offset the amounts appropriated for such expenses. CBO estimates that H.R. 3439 would not affect direct spending or receipts; therefore pay-as-you-go procedures would not apply.

H.R. 3439 would impose both a private-sector and an intergovernmental mandate, as defined by the Unfunded Mandates Reform Act (UMRA). CBO estimates that the mandate would not impose any significant costs, and thus, would not exceed the thresholds established by UMRA ($109 million in 2000 for private-sector mandates and $55 million in 2000 for intergovernmental mandates, adjusted annually for inflation).

A great deal of uncertainty surrounds the timing and the number of expected applicants under FCC's current plan to establish low-power FM radio stations. However, based on information from industry sources and the FCC's final rule, 47 CFR Parts 11, 73, and

74, CBO assumes that the FCC would issue licenses for up to 400 privately or publicly owned noncommercial stations. The FCC plans to accept the first of five rounds of applications for the low-power radio stations in May and to grant the licenses in September. If H.R. 3439 were enacted after September, any licenses that the FCC issued in September that do not comply with the bill's requirements would be invalid. It is unclear how many licenses would be issued or how many of them would be invalidated by the new requirements in H.R. 3439, however, the invalidation of any licenses would constitute a mandate as defined by UMRA. There would be no new mandate as defined by UMRA if the bill is enacted before any licenses are issued. CBO estimates that the mandate imposed by invalidating licenses would not result in any significant costs. Moreover, assuming that the time between the issuance of licenses and the enactment of the bill would be short, it is unlikely that new license holders would have made any significant expenditures, such as radio equipment, associated with the licenses.

The CBO staff contacts are Kathleen Gramp (for federal costs), Shelley Finlayson (for the state and local impact), and Jean Wooster (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides the short title of the legislation, the "Radio Broadcasting Preservation Act of 2000."

Section 2. Modifications to low-power FM regulations required

Section 2(a)(1) of the bill directs the FCC to modify its rules authorizing LPFM service to provide for minimum separations be-

tween LPFM stations and other stations operating on the same channel, or the first, second, or third adjacent channel from the LPFM station. 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 such full power stations on January 1, 2000, as provided in section 73 of the Commission's rules (47 C.F.R. 73) in effect on that date. 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.

The Commission is further required to amend its rules to bar issuance of an LPFM license to any applicant that previously engaged in unlicensed broadcasting in violation of section 301 of the 1934 Communications Act (47 U.S.C. § 301). The Committee concludes that the operation of an unlicensed station demonstrates a lack of commitment to follow the basic rules and regulations which are essential to having a broadcast service that serves the public, and those individuals or groups should not be permitted to receive licenses in the LPFM service.

Section 2(a)(2) of the bill prohibits the FCC from further changes to the minimum distance separation rules for FM stations, or from permitting commercial entities to be licensed in the LPFM service, without express authorization by Congress.

Section 2(a)(3) of the bill provides that any license issued by the Commission for an LPFM station prior to the time when the rules are modified pursuant to section 2(a)(1) will be invalid if the LPFM station's facilities would not provide to other stations the interference protections established in the bill.

The bill directs the Commission to conduct tests of the interference effects of LPFM stations. Section 2(b)(1) requires that the Commission conduct an experimental program in no more than nine radio markets by waiving the minimum distance separations for third adjacent channels for the stations that are the subject of the experimental program. The Commission must authorize experimental licenses for LPFM stations in various types of markets which may have differing interference environments.

Section 2(b)(2) mandates the selection of an independent testing entity that is not associated with the Commission to conduct field tests in the markets in the experimental program. The Committee expects there to be a meaningful opportunity for the public to comment on the structure and methodology of the field tests. The independent entity must, at a minimum, accept comments from the public on the extent to which the experimental stations create interference, and conduct audience listening tests in order to establish the level of interference that is objectionable to the average radio listener. In making the latter determination, the Committee intends that the independent testing entity take into account the effects of interference on all kinds of radios in the market, and further, to rely, as appropriate, on international and academic standards for determining interference.

Following completion of the work of the independent testing entity, the Commission will be required under section 2(b)(3) to publish the results of the experimental program and to solicit comments from the public. It must then submit a report to this Committee and the Committee on Commerce, Science and Transportation of the Senate which includes an analysis of the experimental program, the field tests, and the public comments the Commission received. The FCC's report must also assess the impact (using the same standards for establishing the levels of objectionable interference established for the independent testing entity) which modifying or eliminating the protection against third adjacent channel interference would have on listening audiences, on incumbent broadcasters (particularly minority and small market stations and the economic impact that an increased number of LPFM stations would have on those broadcasters), on the transition of terrestrial radio broadcasters to digital service, on stations that provide reading services for the blind, and on FM translator stations generally. The report must also include any recommendations the Commission may have with respect to modifying or eliminating the LPFM rules concerning protection against third adjacent channel interference from LPFM stations, and such other information or recommendations as the Commission may wish to provide.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

○

GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 3615, the bill just considered.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Is there objection to the request of the gentleman from Virginia?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1283

Mr. TALENT. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H.R. 1283.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

RADIO BROADCASTING PRESERVATION ACT OF 2000

The SPEAKER pro tempore. Pursuant to the order of the House of today and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for consideration of the bill, H.R. 3439.

□ 1812

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3439) to prohibit the Federal Communications Commission from establishing rules authorizing the operation of new, low power FM radio stations, with Mr. LAHOOD in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the order of the House, the bill is considered as having been read the first time.

The gentleman from Louisiana (Mr. TAUZIN) and the gentleman from Michigan (Mr. DINGELL) each will control 30 minutes.

The Chair recognizes the gentleman from Louisiana (Mr. TAUZIN).

□ 1815

Mr. TAUZIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to take this moment to inform the House that I intend to make a formal request upon the Department of Justice regarding a potential criminal violation of our statutes to the extent that the FCC, through its director and associate director of their political offiee, has apparently transmitted faxes to Subcommittee on Telecommunications, Trade and Consumer Protection legislative assistants and legislative directors urging support or opposition to the bill that is before the House today, in direct contravention to 18 U.S.C., section 1913, which provides that no part of the monies appropriated by Congress shall in the absence of express authorization be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device intended or designed to influence any Member of the United States Congress.

Mr. Chairman, today the House considers H.R. 3439, the Radio Broadcasting Preservation Act. At the outset, let me commend the sponsor of this bill the gentleman from Ohio (Mr. OXLEY) for his work on this legislation. Credit is also due to the gentlewoman from New Mexico (Mrs. WILSON) and the gentleman from Michigan (Mr. DINGELL), the ranking member of the Committee on Commerce, for their extraordinary work in presenting the bipartisan compromise legislation that is before us today.

This language passed our full Committee on Commerce by voice vote last month.

Mr. Chairman, this bill represents a true compromise. It allows for the FCC to proceed with plans to implement a low-power FM radio service to address the community needs of many localities.

The original legislation introduced in January, which gained the support of over 120 cosponsors, would have prevented the FCC from issuing any of these low-power FM licenses and would have effectively killed the FCC's low-power program altogether.

The language that the House considers today offers the FCC significantly more latitude than the original bill would have.

First and foremost, the bill allows the FCC to immediately begin issuing licenses to low-power FM stations under the current interference standards used today to allocate spectrum on the FM dial. The FCC will thus be ahle to issue about 70 of these new licenses.

Furthermore, the bill institutes a pilot program to test the possible signal interference in nine geographic areas under the relaxed interference standards that the FCC recommends now.

Finally, and this is an important point, the bill maintains Congressional authority over any future changes made to the interference protections that exist in the FM dial today.

Let me take a minute to expand on this issue. The FCC has proceeded full steam ahead to implement this new service, even after learning about substantial concerns from both Republican and Democratic members of the Committee on Commerce.

We held a hearing to address these technical interference issues back in February. At that time, many members of our committee urged the Commission to proceed slowly with this program in order to carefully study the potential harmful effects on our Nation's airwaves. Without regard to these Congressional concerns, the Commission forged ahead and began implementing the program.

The bill correctly recognizes the need for Congressional oversight when it comes to such important issues as spectrum management. 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.

I will strongly oppose any amendment offered that would strip the Congress of its rightful oversight authority.

I trust the House will agree with me and recognize the tremendous movement that has been made in this compromise language to give the FCC authority to roll out low-power FM where there will be no interference and yet to do a pilot program before Congress gives it authority to indeed change its interference rules and allow further roll out of the program.

I urge my colleagues to vote in favor of the bill and against any amendments that would weaken it.

I want to point out again, Mr. Chairman, when the FCC uses money appropriated to it to lobby this Congress, my colleagues all ought to pay a lot of attention. It is a criminal violation, I believe, and I will ask the Department of Justice to investigate it. But when they go so far as to break the criminal laws of a country that prohibit this form of lobbying, we ought to really think ahout giving them authority to move forward before Congress says go forward on this important roll-out program.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The gentleman from Michigan (Mr. DINGELL) is recognized.

Mr. DINGELL. Mr. Chairman, yield myself 3½ minutes.

Mr. Chairman, the bill under consideration today, H.R. 3439, represents an extremely constructive and wise compromise reached in the Committee on Commerce over the future of low-power FM radio service.

I particularly want to commend my colleagues, the gentlewoman from New Mexico (Mrs. WILSON), the gentleman from Ohio (Mr. OXLEY), the gentleman from Virginia (Chairman BLILEY), as well as my good friend the gentleman from Louisiana (Mr. TAUZIN) for a reasonable, common sense solution to the problem which existed.

The compromise, which was entirely bipartisan, allows some low-power stations to be licensed under existing interference standards immediately,

some 70, and it then requires the FCC to establish a pilot program in a limited number of markets to determine precisely what the effects would be if these interference standards are relaxed in the future.

This is to protect broadcasters. It is to protect licensees. And it is, above all else, to protect the listeners of the FM radio spectrum.

By moving this theoretical question from the laboratory to the real world, all of us will be better able to judge whether or not permanent service, as envisioned by the FCC, should be permitted to move forward.

It should be noted that the FCC has here moved without any consideration of fact and without any careful scientific work. They have no understanding of whether or not or how much interference will be caused by the order which they have brought forward.

Great outrage existed throughout both the listener community and also through the broadcasting community. We are trying to see to it that a diversity of voices and views will be available to the American people, including a new low-power service. This, I believe, is beneficial.

We do not debate the question of whether low-power service would be beneficial to our communities. I happen to believe so. I have not heard any of my colleagues on either side of the aisle to dispute the value of adding more diversity to the airwaves.

Furthermore, I would note that neither the National Association of Broadcasters nor National Public Radio, both of whom are proponents of this legislation, have taken issue with the underlying goal of the FCC's recent order. But I would note that the legislation, as amended, does allow the project envisioned by the FCC to go forward under careful controls and under good understanding of the basic underlying scientific questions which have to be addressed.

The issue under debate here is simply whether the FCC's order would cause an unacceptable level interference and thereby disenfranchise large numbers of existing radio stations and, more importantly, their listeners. Because it is the listeners that we protect.

Put simply, we want to make sure that the FCC has done its homework and that it will do its homework and that no harmful interference will result from these new stations. The result, I think, is one that is in the public interest.

In any event, the bill, as originally introduced by my friend the gentleman from Ohio (Mr. OXLEY), simply would have repealed the FCC's order. That, I believe, was unwise. Many members of the Committee on Commerce, including myself, were not convinced that that was a proper solution. So we have come forward with a compromise which allows the matter to go forward and ensures that the FCC will act wisely and well upon the basis of science and fact.

Again, I want to compliment my colleagues who have made this possible, especially the gentlewoman from New Mexico (Mrs. WILSON).

Mr. Chairman, I reserve the balance of my time.

Mr. TAUZIN. Mr. Chairman, I yield 6 minutes to the gentleman from Ohio (Mr. OXLEY), my friend, the principal author of the legislation, the vice chairman of the Subcommittee on Telecommunications, Trade and Consumer Protection.

Mr. OXLEY. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, before I begin my remarks, I want to join the distinguished gentleman from Louisiana (Mr. TAUZIN), the chairman of the Subcommittee on Telecommunications, Trade and Consumer Protection, in expressing my concern also for some of the overt lobbying that is going on from the FCC regarding this issue.

Virtually every Member of Congress has received this information from the FCC, which says, "10 Reasons to Support Low Power FM Radio Service and to Oppose H.R. 3439, the Radio Broadcasting Preservation Act of 2000."

This, basically, is lobbying no matter how we paint it and it is clearly, as the gentleman from Louisiana (Mr. TAUZIN) pointed out, against the law. This is something very, very serious when an independent agency can try to influence and ask for opposition to a particular piece of legislation.

But not only did they talk about the 10 reasons to oppose my bill, but then they added a letter from a labor union, the Federation of Labor and Congress of Industrial Organizations Legislative Alert, saying, "Oppose the Legislation. Oppose the Oxley Bill."

I do not think I can see any time in the 20 years I have been here a more blatant attempt to lobby this body by a so-called independent agency. It is an absolute outrage. I support the chairman for what he is trying to do in his referral to the Department of Justice.

Mr. Chairman, when we teach our children about good behavior, we teach them not to interfere with what other people are doing. We teach them not to step on other people's toes. And there is a lesson there for us today as we consider the direction of the low-power FM program.

The Chairman of the FCC, Mr. Kennard says he created this new, low-power FM licensing program to add new voices to radio. Well, that is great. And I will enjoy the option of having more choices in radio. And clearly, many of us on the committee supported the advent of low-power television. It has been a huge success.

But we also have to consider what happens to the incumbent stations, those people who have made an investment, many times their life savings, in a small radio station and what happens when those new stations may be developed impinge on their signal.

First, to address the so-called diversity issue, have my colleagues ever heard such a wonderful cacophony of voices that we hear in this democracy? Have we ever had more information, more kinds of media, or more outlets for our views? Anyone who takes an objective look must conclude that our country is rich in information and rich in public debate, as it should be.

So we are looking to add choices, not to subtract them. Remember, we are seeking to add choices in the consumers market without interfering with other existing services.

What our bill sought to do, clearly and concisely as I can say, was to say to the FCC, before they run full speed ahead in granting these licenses, make certain that the interference standards are adhered to, the interference standards of long tradition.

It is clear to me by the order of the FCC that they have ignored these requirements of making certain that we have a solid and significant sound for these people.

The private studies that have raised the questions time and time again have indicated that the growth of these stations in some areas may very well impinge upon viewers' ability to listen to these new voices and to the old voices, as well.

Clearly, there is enough evidence against the FCC's actions to be concerned. And that is why we have asked for this study.

People are attaehed to their radios. I grew up listening to the Detroit Tigers baseball games, as the gentleman from Massachusetts well knows. I think that every person has a right to listen to that particular broadcast without fear of being overrun by another signal.

Who would be harmed? Let us take a look at who would be harmed.

I was initially contacted before I introduced this bill by several locally-owned radio stations in my district, one in particular, WDOH in Delphos, Ohio, an independent, locally owned station very proud to serve the needs of that community. Yet, these are the kinds of stations that the chairman of the FCC says he wants to encourage and they would be clearly vulnerable to interference.

NPR is concerned ahout its member station and says that crowding leaves it vulnerable to interference. Kevin Klose said yesterday in a letter to the editor that the reading services for the sight-impaired are threatened.

This, of course, would be the case for thousands and thousands of radio stations across the country. So I think we have to be very careful as to how we proceed and the FCC proceeds.

This bill allows the FCC to proceed with a low-power program. It insists

that the Commission reinstitute the third-channel protections that are so important for current broadcasters and listening services and requires the FCC to conduct a pilot study on the impact on the study of radio broadcast and radio listeners.

□ 1830

It directs the FCC to place low-power radio in areas where there is plenty of room on the FM dial. This is solid legislation.

Mrs. ROUKEMA. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I yield to the gentlewoman from New Jersey.

Mrs. ROUKEMA. I thank the gentleman for yielding. I hope we have the time for a colloquy between us. I thank him for his assistance in this matter as I brought it to his attention several months ago. As the gentleman knows, there was a technicality that did not permit this amendment to be considered in this bill. However, I am hoping that the gentleman will agree that this is a matter that can well be addressed in the conference. We are talking Bergen County, New Jersey, which is in a very unusual, if not absolutely unique situation with regard to the availability of FM radio. While there are dozens of FM stations across the Hudson River in New York City, there are no commercial FM stations in Bergen County, which is one of the most densely populated counties in the Nation.

This is a unique situation because the New York stations provide all kinds of information and music and entertainment, but there are no local news and no public service data or emergency information for anything in this densely populated area, Bergen County. A little over 5 years ago, this lack of local radio was partially remedied by the creation of Juke Box Radio. The gentleman knows the details of Juke Box Radio. We do not have time to go into it now, but it is highly regarded in this area and serves definite purposes. Despite that fact of the definite purpose it serves, it is not able under this legislation to operate. I believe Juke Box Radio clearly serves the public interest in the community; and if any way can be found to address this issue in conference, I would appreciate it if the gentleman could pursue it.

I had hoped to offer an extremely limited amendment supporting this arrangement. Unfortunately, the Office of the Parliamentarian determined my amendment to be technically non-germane because Jukebox is a commercial station and the LPFM service is strictly non-commercial. Despite that fact, I believe Jukebox Radio clearly serves the public interest in my community. If a way can be found to address this issue in conference, I would very much like to pursue it.

I would ask the Chairman for his assistance and state that to my knowledge, Jukebox has never been accused of causing interference to any other station and is operating on a frequency where interference should not occur.

Mr. OXLEY. Reclaiming my time, I thank the gentlewoman from New Jersey for pointing this out. The legislation before us deals primarily with safeguarding the existing full-power FM stations against interference from low-power stations.

Let me say to the gentlewoman from New Jersey that we will address that in the conference committee.

I can assure you that nothing in this bill is intended to create a disadvantage for any existing broadcaster or for radio service to any community. I recognize the importance of local radio in providing timely news and information, particularly emergency information and would be happy to work with you as this legislation moves forward.

Mr. Chairman, I ask unanimous consent that the entire colloquy be made a part of the RECORD.

The CHAIRMAN. The gentleman is advised that colloquies must be spoken, not inserted.

Mr. DINGELL. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Chairman, we need to keep this bill in context. The worst part, the most unhealthy part of the 1996 Telecommunications Act was the provision which allowed for the consolidation of the radio industry. Up until 1996, no one could own more than two AM and two FM radio stations in the same city, and no one could own more than 40 radio stations across the whole country. Because of the 1996 Telecommunications Act, this worst provision in it, we now have one group owns 512 stations, another 443 stations, another 248 stations, and another 163 stations. It is harder and harder for minorities to gain access to the airwaves, to own them. It is harder and harder for women. It is harder and harder for smaller voices to independently speak on the airwaves of our country.

What the chairman of the FCC, what the commission was trying to do was to make it possible for 100-watt stations to be licensed, not the 50,000-watt stations that we are all familiar with in our hometowns. 100-watt stations. This is the kid across the street with an antenna. This is not rocket science. This is just radio. It has been around for 80 years and the Federal Communications Commission has been doing a good job in sorting out these issues, these interference issues. The FCC's job is to supplement, not supplant competition. That is what they are trying to do here, supplement it.

What are we talking about? Is your car radio going to be affected by this? No. Is your stereo going to be affected by this? No. Maybe the radio in the shower will have a little bit more interference, but we have the FCC to work it out. They have been doing it for 80 years. By the way, since the 1960s, 300 radio stations around the country have operated within the third adjacent channel proposed for low-power FM. By the way, those were full-power radio stations inside the third adjacent channel. Since the late 1960s, the FCC has worked it out. This is not a good bill. I urge my colleagues to oppose it.

Mr. TAUZIN. Mr. Chairman, I am pleased to yield 2 minutes to the gentlewoman from New Mexico (Mrs. WILSON).

Mrs. WILSON. Mr. Chairman, I want to thank the gentleman from Michigan (Mr. DINGELL), the gentleman from Ohio (Mr. OXLEY), the gentleman from Louisiana (Mr. TAUZIN), and the gentleman from Virginia (Mr. BLILEY) for working together on a compromise substitute that we have worked on in committee to allow low-power radio to go forward.

Our first obligation here is to protect the radio listeners. That is listeners with all kinds of radios whether they are in their shower or they are listening as I do on an old radio that I had when I was a kid that still has one of those really teeny-tiny switches on it to tune into my favorite station. We should not all have to have stereos and new cars to be able to hear the stations that we want to hear. We had hearings in the Committee on Commerce where the engineers did not agree on whether putting stations closer together would cause static and cross-talk and hums and things that would be really annoying to everyday people. But we do want to hear more voices on the radio.

The idea of low-power radio is really kind of a neat idea that could open up radio to a lot more voices. So we have worked what I think is a good compromise in the committee. It is a little delicate, but I do not think it needs another amendment. It says, let us go forward with low-power radio with the existing interference standards; let us set aside nine cities where we are going to test it to see if we ean have these stations closer together and not have interference, we are not going to let pirates have licenses, and we are going to have the FCC in this independent review come back and tell us how it went in those nine stations, find out how it goes and see if it is okay, and then maybe we will be able to open up more low-power stations.

I think this is a pretty good compromise. The FCC was moving too quickly and I believe compromising the quality of the radio reception that we get in our communities. We found an acceptable balance. I thank the chairman and the ranking member and my other colleagues for working together towards this solution.

Mr. DINGELL. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from New Jersey (Mr. PALLONE).

Mr. PALLONE. Mr. Chairman, I want to urge support for this bill. I signed on as an original cosponsor not because I wanted to curb diversity or local interest but rather because I wanted to protect them. My home State of New Jersey is completely dominated by New York radio to the north or Philadelphia radio to the south and in between are the small local radio stations which strive to remain distinctly New Jersey in focus and content.

Obviously, this makes for a fairly crowded radio dial already. Unilaterally adding more stations in my opinion is not the solution. In fact, in my State, low-power FM may even cramp local New Jersey stations and disrupt consumers by interfering with local broadcasts or by duplicating local services and formats. Even National Public Radio has concerns that the low-power FM program will hamper its broadcasts. Accordingly, NPR supports the bill.

Mr. Chairman, I have no quarrel with the goals of the low-power FM program. However, its application needs to be examined and evaluated by the Congress. The compromise we fashioned in the Committee on Commerce allows the FCC to move forward with the low-power FM as long as it protects existing third-channel interference protections. The compromise then allows for an independent party to determine once and for all how these pilot programs will affect current radio listeners, small market broadcasters and blind radio reading services. The FCC will then report back to Congress in 2001. I think this compromise is a good one. It passed the Committee on Commerce by a voice vote and in my view is the most responsible way to proceed with the low-power program. I would urge my colleagues not to support any amendments.

I want to compliment the hard work of the gentleman from Michigan (Mr. DINGELL), our ranking member, in forging the compromise and the gentleman from Ohio (Mr. OXLEY) and again urge support of the bill.

Mr. TAUZIN. Mr. Chairman, I yield 2 minutes to the gentleman from Missouri (Mr. BLUNT).

Mr. BLUNT. I thank the gentleman for yielding me this time and thank the gentleman for bringing this bill to the floor. This is important legislation that has real potential impact on many small businesses in America as well as many listeners to radio stations throughout the country.

In January of this year, the five-member FCC issued rules creating a new low-power radio service. That is what we are talking about today. But two of those five members did not think this was a good idea. One dissented completely, one dissented in part, understanding as many Members of this body do that what this legislation really does is move the FCC into an area that is not yet ready. It moves many owners of radio stations, some part of large radio chains, some part of a station that a family has founded that they run, that they have done their best to build over the years, they have created identity with their signal, into an area that no one quite knows whether their station continues to work the way it has in the past or not, creating holes in the radio signal area, where if you are driving across the country and you are listening to a station and you suddenly come into one of these new low-power areas and you assume the station you were listening to is gone, not knowing that a few miles down the road it would be right back, is a very harmful thing to businesses that have been built on a guarantee from the Federal Government and the FCC that they would have a position on the dial, that they would have a position on the band and on the spectrum that worked for them, that was theirs, that they could really gain listener respect, listener loyalty and a place that they knew they could be found.

Inexpensive and older radios are particularly vulnerable to interference, meaning the proposal could have the effect of denying low-income and elderly listeners clear reception of their favorite stations. This is important legislation. I am glad it is on the floor. We need to pass it today.

Mr. DINGELL. Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from Ohio (Mrs. JONES).

Mrs. JONES of Ohio. Mr. Chairman, I would like to thank the ranking member, the gentleman from Michigan (Mr. DINGELL), for yielding me this time and for his hard work on trying to make this a fair bill. I still, however, must rise in opposition to H.R. 3439. The title itself is deceptive. The act seeks to preserve the status quo and to prevent others from having access to the airwaves.

It is a fact that the four top radio groups own the majority of the Nation's radio stations and according to the Congressional Research Service between 1995 and 1998, the number of radio station owners decreased 18.8 percent. With the number of radio station owners decreasing and the consolidation of radio ownership growing, LPFM allows underrepresented groups and communities an opportunity to enter into the radio broadcast area. I support this new initiative because it will open doors of opportunity for our Nation. It adds to radio diversity and encourages alternatives to current commercial formats that dominate the radio.

I have heard others say that we need to protect radio listeners, but we must also protect those who do not have stations to listen to. I am confident if LPFM were put in place that many would listen to the radio, if they had something to listen to. I contemplate in my own jurisdiction many of the wonderful stations that are on my son likes, the kids older than him like; but there are seniors and people who attend churches throughout my community who do not like any of it, and they should have an opportunity to be heard on radio as well.

Who are we to delay or deny opportunity to community-based groups who have more than earned the right to take advantage of the technology? I have met with the members of the industry, and I understand their concerns; but here in the land of the free and the home of the brave, everyone should be able to reach the table, and they can do it by low-power radio.

Now, low-power FM radio has the support of the Leadership Conference on Civil Rights, the AFL-CIO, the Communication Workers of America, the United States Catholic Conference, and the United Church of Christ Office of Communications.

Mr. TAUZIN. Mr. Chairman, I am pleased to yield 2 minutes to the distinguished gentleman from New York (Mr. FOSSELLA).

Mr. FOSSELLA. Mr. Chairman, I thank the gentleman for yielding me this time and the gentleman from Ohio (Mr. OXLEY) for his efforts as well as members of the minority.

There are two important aspects as I see it to this bill. One is that it will allow low-power radio to proceed. It will protect listeners, and it will prevent interference, which is something I think the American people are accustomed to and frankly want. That has been expressed through the Members of Congress in the last couple of years. Why we are here today in a somewhat expedited way is because the FCC overruled the will of the people. They overruled the will of Congress, which leads to a second and probably more disturbing portion of this debate and that is what the gentleman from Louisiana and the gentleman from Ohio alluded to at the very beginning. The FCC, for a lot of Americans who do not know, is a regulatory body and many businesses have to go before this regulatory body for satisfaction, for answers to really carry out their business plan, to bring products to the American people.

□ 1845

What we see too often, especially lately, is that good honest business people have to go on bended knee before the regulators, and if they do not get their way, the regulators, they take it out on those good honest American business people. We talk about the land of the free and the home of the brave, that is not the American way.

The American people deserve honesty from people holding public office. They deserve to be treated fairly and openly, and not to be subject to idle or explicit threats.

With that, I urge the adoption of this bill.

Mr. DINGELL. Mr. Chairman, I yield 1 minute to the distinguished gentlewoman from Connecticut (Ms. DELAURO).

Ms. DELAURO. Mr. Chairman, I rise in opposition to the Radio Broadcasting Preservation Act. The bill would postpone the FCC's efforts to open our airways to small local community groups, churches, schools, volunteer fire departments, civic organizations. It would deny these groups the right to provide their communities with information of unique local concern. It would smother movements towards diversity on our airwaves.

These are stations that would broadcast local ball games, municipal meetings, or anything else they think would be good for their communities and their communities wanted to hear.

Low-cost, small-scale FM stations would play a vital role in the Hispanic community in my district by expanding the opportunities for local Spanish language radio service. Such stations would help to strengthen this community, unite it behind common goals.

I have worked with the FCC on this issue for over 2 years. Exhaustive engineering studies have been completed. The experience of actual low-power radio stations has been reviewed. The results are conclusive. These new stations will not interfere with the existing large radio companies that currently dominate our airways. This bill discourages expanding our educational and culture horizons. I urge Members to oppose it.

Mr. TAUZIN. Mr. Chairman, I am pleased to yield 2 minutes to the very distinguished gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Chairman, I would like to commend the gentleman from Ohio (Mr. OXLEY) for introducing and pushing this legislation and the gentleman from Louisiana for his leadership in bringing it to the floor today.

In January, the five member Federal Communications Commission issued rules creating this new low-power FM radio service with two members dissenting, two of the five, in whole or in part dissenting. In his comments, Commissioner Powell focused on the economic repercussions of low-power FM and the possibility that many independent and minority-owned full-power stations could be forced out of business. Commissioner Furchtgott-Roth's dissent focused on interference and the Commission's uncharacteristic alacrity in considering low-power FM.

This matter has not been properly reviewed by the FCC, and this legislation is vitally needed to stop this action from taking place.

Existing broadcasters oppose the FCC's decision, with good reason. In establishing low-power FM, the FCC significantly relaxed its interference standards, meaning increased interference with existing radio services and a devaluation of the investments of current license holders.

There is no question that eliminating the third adjacent channel safeguard, as the Commission is doing, will lead to increased interference. While the FCC claims that the weakened standards will not result in unacceptable—watch that word—levels of interference, this assertion is challenged by private sector studies.

While the desire to provide a forum for community groups is laudable, a multitude of alternatives exist. Groups may obtain non-commercial licenses, use public access cable, purchase broadcast air time, publish newsletters and utilize Internet web sites and e-mails, among many other options.

This is a country in which there are many ways to express yourself, but we should not do it at the expense of those who have already made investments and are already providing valuable services to citizens in this country.

I urge the Members to support this legislation.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from New Jersey (Mr. ROTHMAN).

Mr. ROTHMAN. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I want to address this colloquy, if you will, to the gentleman from Ohio (Mr. OXLEY) and thank him for agreeing to participate.

As the distinguished chairman of the Subcommittee on Finance and Hazardous Materials knows, I am extremely disappointed that the Federal Communications Commission's recent approval of non-commercial low-power LPFM radio stations did not address existing commercial low-power FM translators operating in counties where there are no allocated commercial FM stations and no commercial FM stations can be allocated.

Although the residents of northern New Jersey can choose from dozens of New York City FM stations, those stations ignore Bergen County, New Jersey's need for local news, traffic reports, school closings, public service announcements and other important local information.

Even though Bergen County, New Jersey, gave birth to FM radio in the 1930's, Bergen County has no commercial FM station of its own and none can be allocated to Bergen County under present Commission rules.

Commercial FM translator W276AQ in Fort Lee, New Jersey, in my district, Jukebox Radio, brings valuable local news, traffic, weather, public service annonncements, school closings, and other important information unavailable from any other source on the FM broadcast band. It is translated into a Class A FM signal 75 miles away from Bergen County. Bergen County residents should not be forced to depend on FM service in this manner.

I would say to the gentleman from Ohio (Chairman OXLEY), I believe that existing commercial low-power FM translators licensed in counties with a population of 800,000 or more, and where there is no licensed or commercial FM station, such as that in Bergen County, New Jersey, should have the opportunity to immediately begin broadcasting with local origination.

Although we were not able to resolve this issue in this bill, I urge the gentleman to raise this issue in conference and include language to this effect when the House and Senate conferees meet. With that hope, I am going to support the bill, and thank the distinguished gentleman.

Mr. OXLEY. Mr. Chairman, if the gentleman will yield, I will be pleased to work with the gentleman in the conference on that very issue.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. ROTHMAN. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, I want to observe to the gentleman I think his complaint is a very legitimate one and thank him for raising it, and indicate that I know that the distinguished chairman of the subcommittee and my good friend the gentleman from Ohio (Mr. OXLEY) also and I will be trying to look after his concerns on this business of New Jersey having better and more adequate service, not only in the area of FM and AM, but also on broadcast television, which is very much in short supply from stations indigenous to that State.

Mr. ROTHMAN. Mr. Chairman, reclaiming my time, I thank the distinguished gentleman.

Mr. TAUZIN. Mr. Chairman, I am pleased to yield 2 minutes to my good friend, the gentleman from New York (Mr. LAZIO).

Mr. LAZIO. Mr. Chairman, I want to rise in support of H.R. 3439. I want to compliment the gentleman from Louisiana (Mr. TAUZIN), the gentleman from Ohio (Mr. OXLEY), the gentleman from Michigan (Mr. DINGELL), and the gentleman from Virginia (Mr. BLILEY) for their help in moving this bipartisan effort forward.

Mr. Chairman, there is an impression in some quarters that this legislation will stop low-power FM licensing or prevent it from ever getting to the air. Nothing could be further from the truth. The simple fact is that the radio spectrum is finite in size. Within this limited universe, commercial radio signals must be separated by at least three adjacent channels in order to prevent interference and crosstalk.

Obviously, two stations serving the same market cannot be licensed to occupy the same frequency. Radio bandwidths can only be sliced up so many ways. We rely on the FCC to ensure that the radio pie is fairly divided. The FCC ensures that every radio station gets a slice of the pie with enough

calories to sustain its signal. This is the only way to make sure that we, the listeners, can receive our favorite programs without hinderance or hurdle.

I take no issue with the FCC's goal of trying to add a new class of lower stations. Indeed, say adding more voices to the airwaves is a commendable goal. But, Mr. Chairman, not all radios are created equal. They are not endowed by their manufacturer with inalienable rights. A simple clock radio or a Walkman will not contain the same sophistication and filtering technology to combat interference between stations as would a hi-fi nor should they.

This bipartisan substitute reported out of the Committee on Commerce strikes a reasonable compromise. If we are going to have low-power FM service, it needs to be done right. We want to give these micro-radio stations an opportunity, but we have an obligation to maintain the integrity of the existing spectrum. New Yorkers want to continue to listen without interference to stations such as Z–100, WBLI, and public radio, such as 91.1 FM.

If the FCC is right and low-power FM does not cause interference on third adjacent channels, then they can proceed with this new service on a national scale. I am confident that should the test demonstrate listeners have nothing to fear from relaxing the interference standards, this body will look favorably to giving the green light for an expanded low-power FM service.

I want to urge my colleagues to support this bipartisan bill, and oppose the amendments that seek to undermine the consensus that has been reached.

Mr. DINGELL. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Wisconsin (Mr. BARRETT)

Mr. BARRETT of Wisconsin. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I have an amendment that I will be offering in several minutes with the gentleman from Illinois (Mr. RUSH), but I just want to address some of the concerns that I heard raised here tonight.

The first one is several of the speakers talked about people driving their cars and how this would affect their driving. They would go into a neighborhood, they would lose a station, it would come out. Even the radio owners that I have talked to in my district have acknowledged that radios in cars are very, very precise and that that is not going to be a problem.

The gentleman from Massachusetts (Mr. MARKEY) before referred to the radio in the shower. Yes, if it is a very old radio, you might have a problem. But most of the radios in this country are going to be radios in cars. That is not where the problem lies.

We have also heard a lot of FCC bashing, and I think that the FCC has responded to a lot of the concerns that have been raised here. This proposal that they have attempted to move forward on is a scaled-back version of their initial proposal. I think even the proponents of this bill would acknowledge that we are talking about very low-watt radio stations, 100-watt stations, and in some situations, maybe even 10-watt stations. We are not talking 50,000-megawatt stations. We are talking small, neighborhood, churches, minority, college stations. These do not present a serious threat to the large stations.

I will address this in my amendment, but I am sensitive to the technical issues that have been raised regarding this, and I think that the amendment that the gentleman from Illinois (Mr. RUSH) and I will propose in several minutes addresses that, but does not strip the authority of the FCC. We are talking about micro-stations here. I do not think Congress should be micromanaging these micro-stations.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Illinois (Mr. RUSH).

Mr. RUSH. I thank the ranking member for yielding me this time.

Mr. Chairman, I want to say that, first of all, that I have heard a lot of comments regarding the FCC and actions of the FCC, and I want to go on the record to inform everyone that I believe that the FCC has done a great service to the American people. I am an unmitigated supporter of the FCC, and I think that the FCC has done an outstanding job in terms of trying to ensure that all Americans have access to the airwaves of this Nation.

□ 1900

Regarding the low power FM stations, Mr. Chairman, I just want to ensure that people understand that the American people and the Members of this Congress understand that the LPFM is a new noncommercial community-based radio service that will benefit local communities all across this Nation.

It gives media access and broadcast voices to local churches, to schools, colleges, State and local governmental agencies, musicians, and nonprofit community organizations, those same organizations that have been excluded heretofore regarding having access to the air waves.

LPFM adds to radio diversity and encourages alternatives to the commercial formats that currently dominate our radio.

Mr. Chairman, as has been stated earlier, it is a fact that the top four radio groups own the majority of this Nation's radio stations, and according to the Congressional Research Service, between 1995 and 1998 the number of radio station owners decreased by 18.8 percent.

Mr. Chairman, with the number of radio station owners decreasing and the consolidation of radio ownership growing, LPFM allows underrepresented groups and communities the opportunity to enter the radio broadcast market.

Mr. Chairman, just 2 weeks ago Chairman Kennard visited my district, the Chairman of the FCC. We went to a high school, the Dunbar High School located in my district on the South Side of the city of Chicago. I just wish that Members of this body could have observed students who had never had the opportunity to participate in broadcast fields, the broadcast profession, who never had an opportunity to run a radio station nor a television station.

These students were aggressively engaged in learning all that they could. What they asked us at that time, at that visit, they asked this body to give them an opportunity to really run a radio station, 100 watts, that would have a radius of 2 miles within that high school. That is all they are asking for, so they in fact can learn more about the broadcasting industry.

Mr. Chairman, this bill I think does not address that concern, and the gentleman from Wisconsin (Mr. BARRETT) and I will introduce an amendment to this bill in order to try to allow opportunities for unrepresented groups and citizens to engage in this process.

Mr. DINGELL. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. TAUZIN. Mr. Chairman, I yield myself such time as I may consume to close.

Mr. Chairman, Members of the committee, let me place this in perspective. The bill we are discussing today does not stop the FCC from moving forward with this low power program. It simply says the FCC must only move forward with the 70 licenses that will clearly not interfere with current radio broadcast.

It says, in those cases where the licenses may in fact interfere with current radio broadcasting, they have to do a pilot in nine different geographic regions of the country and then report to Congress about the results.

What we are going to hear in just a minute is an amendment that would say, when that report comes to Congress, whether or not the report indicates interference, the FCC can then proceed to issue as many licenses as it wants to under its original proposal. I hope that we will defeat that amendment.

The compromise carefully crafted in the Committee on Commerce, with the great work of the gentlewoman from New Mexico (Mrs. WILSON) and the gentleman from Michigan (Mr. DINGELL) says in effect that the Commission must submit independent testing of interference, and then we get to say, based upon that report, whether they can move forward.

Let me tell the Members why that is so critical. I want to read Members a

letter from the Hispanic Broadcasting Corporation to our chairman. They are writing to express concern about the implementation of low power FM, and ask strong support for this bill, as we have compromised it.

The author indicates, "The FCC is moving forward with a low power FM plan that has not been thoroughly thought through. First, radio is on the verge of converting to digital." For television, we gave television new spectrum to move into digital. We did not do that for radio. Radio has to move to digital in the same spectrum they are currently located. That is going to be a tough trick.

Before that happens, if the FCC moves forward with this low power FM radio issuance and in fact those stations interfere with that digital transmission of the radio stations that currently exist, like the Hispanic radio station, like the public radio stations, not just the private corporate radio stations, if the FCC moves forward and then the digital conversion does not work, there is all kind of interference. We just will not get static on the radio, we will get no signal at all. In digital, it just cuts out totally.

We were told by the Commission that they would wait for the digital report to come out before doing this FM low power rollout, but they went ahead anyhow and did it regardless of that report. It is still not done. Hispanic radio is asking us, please pass this bill. Make sure there is no interference.

They go on to point out, "Furthermore, less expensive and older radios used disproportionately by minorities and older Americans," the walkmen, the boom box, the radio beside our beds, not just the radio in the shower, the radio beside our beds, for many older Americans, "are more susceptible to interference from low power stations. Millions of Americans rely on low quality radios as their main source of news, weather, and sports," 65 million, to be precise.

I am concerned that low power FM will disenfranchise the very people it seeks to empower, underserved communities like the Spanish language audience that we serve.

See, this is the problem, Mr. Chairman. It was minority radio stations and public radio stations, not just the private corporate radio stations represented by the NAB, who came to us and said, do not let this happen to disenfranchise our audiences and our radio stations. Make sure there is no interference.

I wish Members had been in our committee room to hear the potential interference. As a beautiful song was playing, we could hear people talking over it. As a heautiful opera perhaps was being presented by National Public Radio, we could hear talking over it. As perhaps a Spanish language station was trying to do some cultural work in the community, we could hear somebody else talking over it.

In digital, we would not even hear it at all. It would block the signal completely.

Mr. Chairman, we have worked out a delicate compromise. This lets the FCC go forward where we know there will be no interference. It requires private, independent testing to make sure there will not be interference. If they want to go further, it requires them to come back and get permission from us after we know there will not be that interference.

The gentleman from Wisconsin (Mr. BARRETT) will offer an amendment in just a little while that will tell the FCC it can do what it wishes to do after 6 months, regardless of the interference problems. I hope we defeat that amendment. I hope we pass this good bill. The gentleman from Ohio (Mr. OXLEY), the gentlewoman from New Mexico (Mrs. WILSON), and the gentleman from Michigan (Mr. DINGELL) have done some good work and put together a good compromise.

Ms. BROWN of Florida. Mr. Chairman, these new Low powered stations will offer a voice to those who deserve to be heard, and will promote greater diversity and allow nonprofit organizations, community groups, and churches an opportunity to reach their local constituents without paying huge fees to commercial radio stations.

As more and more radio stations are bought up by large companies, it becomes more and more difficult for minorities and women to own or access a station. Its obvious to me why these commercial radio stations are opposing these additional stations, they just don't want any competition.

It amazes me that the same people who chastised the FCC for trying to limit religious broadcasting are the same ones that stand on the floor here today trying to prevent churches and community groups access to the media. Its dishonest, and I encourage my colleagues to let the FCC do their job and defeat this bill.

Ms. ROYBAL-ALLARD. Mr. Chairman, I rise in opposition to H.R. 3439, the Radio Broadcast Preservation Act of 2000. The House is rushing to judgment on this important issue and I regret we are considering this bill at this time.

This bill would block the Federal Communications Commission from going forward with its plan to establish Low Power Radio which is a non-commercial, community-based radio service to give churches, non-profit community groups, colleges and universities and state and local government access to the public airwaves. These stations would serve an audience within a 1.5 to 3.5 mile radius, which is not a very large area.

Low Power radio is important because it will allow the sharing of the public airwaves with local community voices, voices left off the air because of the massive consolidation of the broadcast industry.

I do not agree that broadcasters would be hurt by a local government's 100-watt radio station trying to inform its constituents about important local government services or events.

I do not agree that anyone would be hurt by a college or university radio station that tries to inform its students about campus events.

I do not agree that anyone would be hurt by a 10-watt church radio station wanting to offer mass over the airwaves to parishioners who cannot attend services.

Nor do I believe that anyone could be hurt by a non-profit organizations' efforts to inform language minority groups about important community events or services available to them.

It seems ironic that we would be voting here today on a bill to suppress the voices of those we've pledged to give a voice to. Voices that, had this bill been given a proper hearing, we would have heard from, such as the National Council of La Raza, the League of United Latin American Citizens, the U.S. Catholic Conference, the United Methodist Church, the National League of Cities, the US Conference of Mayors, among many others.

Low Power Radio is critical and comes at a time when our communities are losing out to the massive consolidation taking place in the radio broadcast industry. This merger mania has left many of us with little choice about who or what gets to be heard today. We have to do something to protect the diversity of voices and opinions that are often suppressed by the giants in the field.

I urge my colleagues to vote against this bill and help protect low power radio and the communities that would most benefit from this service.

Mr. COSTELLO. Mr. Chairman, I rise today in strong support of H.R. 3439, the Radio Broadcast Preservation Act of 2000, of which I am a co-sponsor.

Mr. Chairman, I am pleased that this legislation would assure that the necessary steps are taken as the Federal Communications Commission begins licensing Low Power FM Radio stations. Low Power FM licenses are an opportunity for churches, schools, and other community groups to begin broadcasting their information to local listeners. While these licenses would open up the broadcasting industry to individuals and groups previously excluded, they should not be given out at the expense of existing stations and their listeners.

The experimental program this bill establishes would study nine test markets to determine the impact of Low Power FM on radio broadcasters and radio listeners. I believe that testing the market is an important method of implementing and improving the Low Power FM program.

Mr. Chairman, H.R. 3439 promotes a more responsible method for the FCC to license Low Power FM and adopts the necessary safeguards for the radio broadcasters and listeners in my district.

I urge my colleagues to support this legislation which will protect radio broadcasters and listeners from excessive static interference and which will promote the responsible licensing of Low Power FM.

Mr. BONILLA. Mr. Chairman, I am in strong support of the Radio Broadcasting Preservation Act. This bill ensures that free over-the-air radio will remain free and uninterrupted.

All too often, I hear from folks in my district concerned about the power grab of the Federal Communications Commission (FCC). Unfortunately, this is just the latest example. The FCC is moving forward with a low-power FM plan they have not thought through. The FCC

believes that this decision will allow the "little guy" to become a radio broadcaster. In reality, this decision will cause massive interference problems for FM listeners.

The FCC's low power FM plan was approved without proper consideration of technical and other concerns raised by this new service. Radio is on the verge of converting to digital. Has the FCC really thought about the effect of low-power FM on the digital conversion process? No. Wouldn't it make more sense to rollout digital radio—which is even a larger project than the digital television rollout—and then focus on how to accommodate low-power FM? Yes.

Has the FCC really thought about how the millions of Americans who rely on low quality radios as their main source of news, weather, and sports? No. Less expensive and older radios, used disproportionately by minorities and older Americans, are more susceptible to interference from low-power stations. Low-power FM will disenfranchise the very people that the FCC claims it seeks to empower, undeserved communities (including the blind and Spanish language groups).

Did the FCC consider low power stations' interference with out public broadcasters? No. In yesterday's Washington Post, Mr. Kevin Klose, president of National Public Radio, made clear public radio's opposition to the FCC's "rush to add low-power radio stations to the crowded FM dial." This year, we are spending more than 60 million taxpayer dollars on public radio. And the FCC is ready to throw that money down the drain.

The FCC's low power proposal is a true disservice to current broadcasters' outstanding community service. Local radio and television stations provided $8.1 billion in public service just last year. That is more money than the total annual giving of the top 100 U.S. foundations. Full power radio stations across this country provide life-saving information on natural disasters, preventing drinking and driving, curbing drug and alcohol abuse, crime and violence prevention, just to name a few areas.

The FCC proposal presumes that local radio stations no longer provide local service. That assumption is completely false. The FCC should be reined in and local broadcasters should be allowed to continue their good work.

Mr. SANDLIN. Mr. Chairman, I rise in strong support of the Radio Broadcasting Preservation Act and the compromise bill reported out of the Commerce Committee. This approach will allow low power FM (LPFM) to move forward with proper safeguards against interference.

I support providing new opportunities for community, public interest, civil rights and educational groups to be heard in the public forum. I do not dispute the potential that LPFM stations provide for under-represented community and educational groups. However, we must ensure that in the process of providing a voice for these groups, we do not impair radio listeners' access to locally originated information and entertainment. By calling for a careful review of the LPFM plan, H.R. 3439 allows low-power FM to move forward while protecting listeners from increased interference on the FM radio dial. The legislation does this by re-establishing previous FCC signal-interference standards and commissioning the FCC to study the extent to which signals of such low-power stations interfere with the signals of existing stations.

Millions of Americans depend on the radio for important information and entertainment programming. Thirty percent of this population, especially low-income and elderly listeners, access this programming via inexpensive and older radios. The level of interference these individuals will encounter due to LPFM is unknown. H.R. 3439, therefore, calls for field tests to determine how LPFM without third-adjacent channel protection would affect current listening audiences. The FCC would then be required to submit a report to Congress on the results of these tests by Feb. 1, 2001, along with any recommendations for modifications to signal-interference standards.

Also unknown is the impact of LPFM on existing public stations and small and independent commercial stations which already provide valuable services such as emergency warnings, weather and traffic information, community news and entertainment. Many of these stations depend on local resources to meet operating expenses through underwriting or advertising and may be placed into direct competition with LPFM stations in their struggles to stay afloat. This bill requires the FCC to conduct an economic impact study on incumbent broadcasters (particularly the economic impact on minority and small broadcasters), the transition to digital broadcasts, FM radio translator stations, and stations that provide reading services to the blind.

I would like to see localized groups have station access and believe this communication will strengthen community bonds. However, I do not want new access to be gained at the expense of pre-existing stations. I am encouraged to know that the House Commerce Committee was able to work out this compromise. H.R. 3439 not only provides new opportunities for station access but also protects existing community broadcasters from interference.

Mr. DICKEY. Mr. Chairman, despite objections raised from many corners, the FCC has charged ahead with plans to immediately implement low-power FM. In the process it has ignored legitimate concerns about interference and the continued viability of small and independent commercial stations and existing public stations. H.R. 3439, the Radio Broadcasting Preservation Act, pulls the FCC back from the edge without completely halting its authority to pursue low-power FM.

The potential for interference has been a primary concern from the beginning. The available spectrum only stretches so far. While the FCC claims its plan will not cause interference on car radios and high-fidelity stereo component systems, it does admit some interference will occur on clock radios and portable radios like the boombox and walkman. Considering these types of radios account for 65 percent of all radios in America, it makes sense that we should step back, take a breath and carefully consider all the consequences before taking drastic actions. We must also ensure that in its haste to implement low-power FM, the FCC does not overtook the impact on inexpensive and older radios, which are highly vulnerable to interference and are most commonly used by low-income and elderly individuals. H.R. 3439, therefore, requires a test of nine markets be conducted by an independent third party to determine how low-power FM without third-adjacent channel protections would affect current listening audiences.

Another potential problem not explored by the FCC is interference with services for blind individuals. The International Association of Audio Information Services uses frequencies located on the outer edge of radio stations' spectrum to read books and newspapers to over 1 million blind individuals, who listen to this service with special radios. The FCC did not test these radios. This bill, therefore, requires the FCC to explore the impact of low-power FM on stations that provide this important service.

Interference is not the only issue about which we must be concerned. Small and independent commercial broadcasters who rely on local advertising to meet operating expenses face questions about their continued economic viability. These existing stations could be undercut by low-power stations siphoning off limited local resources for underwriting purposes. These existing local stations already provide many of the services low-power FM stations purportedly are being created to provide, including community news and emergency information. Many public radio affiliates share these concerns about increased competition for limited local resources. H.R. 3439 addresses these concerns by requiring the FCC to conduct an economic impact study of low-power FM on "incumbent FM broadcasters in general, and minority and small-market broadcasters in particular."

Finally, this bill ensures former "pirate" or unlicensed broadcasters are not eligible for low-power FM licenses. These individuals should not be rewarded for previous unlawful acts that interfered with authorized FM broadcasts.

Considering the many concerns at play here, the FCC should take a step back and reevaluate its plan for low-power FM. H.R. 3439 is a sensible approach to such a reevaluation. It protects existing stations from serious harm, guards against interference experienced by the listening audience, all while allowing new community broadcasters to enter local markets.

Mr. UDALL of Colorado. Mr. Chairman, I rise in opposition to this bill.

I was encouraged to hear last year that the FCC was initiating efforts to bring back community radio. After engaging in a public process that took into account thousands of comments from citizens all over the country, and after conducting extensive technical tests, the FCC issued its rule to establish lower power FM radio, a rule that many see as conservative. The FCC scaled back its proposal significantly in order to protect existing stations from interference, while at the same time maximizing the ability of local groups to gain access to the public airwaves.

The FCC's rule is meant to help bring community radio to millions around the country, and thereby to address a need that is not met by mainstream broadcasters. It is meant to bring the voices of community groups, churches, educational institutions, and local governments to radio. Many of these voices have been lost through media consolidation—figures I've seen show the number of radio station owners decreased by nearly 20 percent

between 1995 and 1998. So at a time when even fewer voices are being heard, it is even more critical for us to be thinking about how to let more voices in, not keep them out.

Although critics of the FCC claim the rule was made in haste, Chairman Kennard has said publicly that "no service ever considered by the FCC has been as extensively studied as low power radio." He has said time and again that this was a "responsible public interest decision that will not impact the existing radio service." I believe that if low power radio does end up having a negative impact on existing service, the FCC will step in to correct the situation.

In the meantime, we should stop trying to legislate technical details. The FCC is charged with maximizing the public's use of the airwaves, encouraging the provision of new technologies and new services to the public, and providing new access to the airwaves for more people. We should let the FCC do its work, and oppose this bill.

Mr. EWING. Mr. Chairman, on January 20, 2000 the FCC adopted rules creating a new, low power FM radio (LPFM) service. This service creates two classes of radio service to operate within the FM radio frequency band with power levels from 1–10 watts (LP 10) and from 50–100 watts (LP 100).

The rationale for creating this new class of radio service is to bring diversity to radio broadcasting and enhance community-oriented radio broadcasting. Those eligible for licenses for this type service can be noncommercial government or private educational organizations, non-profit entities with educational purposes; or government or non-profit entities providing local public safety or transportation information, as long as they are based in the community in which they intend to broadcast.

The problem with this new service is not with its intent. Seeking to promote diversity in broadcasting and enhancing community-oriented radio broadcasting are both honorable goals. The problem is these new stations will operate on the FM radio frequency band currently occupied by full power radio stations, and there is the possibility that these low power stations will interfere with these existing stations.

Under current FCC rules for full power radio stations, interference between stations is avoided by preventing stations from sharing the same channel or the first, second or third adjacent channel. Under the proposed rule, however, low power FM would be allowed to occupy the third adjacent channel to an existing full power radio station.

The FCC officially contends that allowing low power FM stations to occupy the third adjacent channel will not cause unacceptable levels of interference to existing radio stations. However, these claims have been questioned by various groups such as the National Association of Broadcasters, the Consumer Electronics association, and the Corporation for Public Broadcasting (led by National Public Radio). Even the International Association of Audio Information Services, whose members employ local volunteers to read the local newspapers on air to over one million blind listeners nationwide, has expressed concern that these new low power stations could cause interference with their services.

There is even some concern among several FCC commissioners that these new stations will cause interference. In the FCC's Report and Order concerning this ruling 2 of the 5 FCC commissioners expressed concern that these low power stations would interfere with existing stations. In dissenting statements regarding both the proposed rule and the final rule, Commissioner Harold W. Furchtgott-Roth stated that although he was not opposed to the creation of low power radio service, he could not support the rule because he believed that suspension of the third adjacent channel protection would cause interference with existing stations. He feels the entire process was rushed to judgment and that the commission had not taken the time to do the right technical studies the right way. Furthermore, he believes any demand for lower power noncommercial stations could be met by the dispensation of licenses within existing rules—i.e., by giving out 101 watt licenses consistent with the 100 watt minimum requirement or get a waiver to the 100 watt minimum rule if someone really felt compelled to operate a 50-watt station.

In his dissenting opinion Commissioner Powell echoed sentiments similar to those expressed by Commissioner Furchtgott-Roth. In light of lingering concerns about signal interference and his concern about the economic impact of the new service, Commissioner Powell regrets the "shot gun introduction" of the rule and believes the service should have been introduced gradually with third channel adjacency protections intact. In his opinion, this would minimize the risk of interference in a manner consistent with existing services and it would introduce substantially fewer stations into the market, thereby allowing for the evaluation of the economic impacts of these new stations. If all goes well, he suggests a move to full service with less adjacency protection, as warranted by experience.

H.R. 3439 follows the suggestions of Commissioner Power. Under the bill, the FCC may go forward immediately licensing LPFM stations as long as interference protections to existing stations are maintained, including protections to third adjacent channels. At the same time, the legislation requires the FCC to set up an experimental program in nine markets to test whether LPFM will result in harmful interference to existing stations if third channel protections are eliminated. Additionally, the legislation provides that an independent party will conduct a study of the affect of LPFM without third-adjacent channel on digital audio broadcasting and radio reading services for the blind.

While the spirit of the rule allowing the creation of low power FM service may be commendable, we must not act in a rash manner and allow it to be implemented before we are positive that it will not negatively impact existing stations. Radio, particularly in rural areas, is an important source of information. For some individuals it is the only source of local news they receive. If we allow these new low power stations to co-exist with established stations without ensuring that there is no interference we may be doing more harm than good.

H.R. 3439 provides an effective balance by allowing new low power FM stations to be established while simultaneously protecting existing stations from interference. Furthermore, the bill provides for an experimental program, in nine separate markets, to test the interference that will result if third adjacent channel protection. If the results of this test are successful it is foreseeable that these restrictions may be lifted sometime in the future. However, until we have conclusive proof that these low power stations do not significantly interfere with existing stations, we simply cannot allow them to share the same frequencies with existing stations. Existing stations provide services as valuable as those proposed by the new low power stations and individuals are entitled to receive them as clearly as possible. The channel adjacency rules apply to full power stations because of this and it should apply to low power stations until we can prove that the interference they generate is minimal to say the least.

Mr. BARR of Georgia. Mr. Chairman, I rise in support of the Radio Broadcasting Preservation Act of 1999, H.R. 3439.

This legislation sends a strong message that there will be no interference to free radio. H.R. 3439 would require the Federal Communications Commission (FCC) to maintain third-adjacent channel protection, and to consider independent analyses of potential Low Power FM (LPFM) interference before proceeding.

In January 2000, the Federal Communications Commission voted to implement an expansive licensing process. Congressman MIKE OXLEY and JOHN DINGELL working with Congresswoman HEATHER WILSON, have fashioned legislation which would slow licensing from 400 stations to roughly seven. The FCC will then test and determine whether the broadcasts cause interference with mainstream stations. I want to commend these Members for their hard work on this very important legislation.

Mr. Chairman, in today's easy access to communication, there exists great belief that the average American should have the ability to "speak out and be heard." Talk radio, newspapers, magazines, television, public television and radio, and the Internet, all allow anyone to get a message across. How can the FCC say—with a straight face—there is "no access?"

"Low Power FM" is a "social" agenda based on the idea that everybody can own their own radio station. Of course this appears enticing—but the laws of physics have not been repealed and it cannot be accomplished. Low power radio stations signals will only cause interference to the radio stations already located on the spectrum. This latest effort being made will come only at the cost of severely damaging the most successful broadcasting system in the world—American FM radio.

If you want to know that chaos is, then turn across the AM band and hear the vast amount of interference the FCC has allowed to creep into that brand. No wonder everyone wants FM; the FCC has virtually ruined AM band.

The FCC was founded on administering basic principles of engineering. However, to meet the Administration's "social agenda," the FCC has thrown engineering and testing out the window. The FCC promises it will "guard" this new experiment. Mr. Chairman, you and I

both know the FCC does not have the manpower to take care of the radio stations currently out there, much less hundreds more. In addition, the FCC could severely hurt the long-awaited entry into "digital" radio by American broadcasters. Low Power FM is a bad decision that should be reversed.

Mr. Chairman, today's legislation is a step in the right direction to protect the FM radio stations in Georgia and across the Nation. The importance of this issue came to my attention from my good friend, and a leader in the field of radio broadcasting, Mike McDougald, of Rome, Georgia. On behalf of all the individuals who have dedicated their lives for the advancement of FM radio, I call on my colleagues to support the Radio Broadcasting Preservation Act, H.R. 3439.

Mr. TAUZIN. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. Pursuant to the order of the House, the committee amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment and is considered as read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 3439

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Radio Broadcasting Preservation Act of 2000".

SEC. 2. MODIFICATIONS TO LOW-POWER FM REGULATIONS REQUIRED.

(a) THIRD-ADJACENT CHANNEL PROTECTIONS REQUIRED.—

(1) MODIFICATIONS REQUIRED.—The Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99-25, to—

(A) prescribe minimum distance separations for third-adjacent channels (as well as for co-channels and first- and second-adjacent channels); and

(B) prohibit any applicant from obtaining a low-power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934 (47 U.S.C. 301).

(2) CONGRESSIONAL AUTHORITY REQUIRED FOR FURTHER CHANGES.—The Federal Communications Commission may not—

(A) eliminate or reduce the minimum distance separations for third-adjacent channels required by paragraph (1)(A), or

(B) extend the eligibility for application for low-power FM stations beyond the organizations and entities as proposed in MM Docket No. 99-25 (47 C.F.R. 73.853),

except as expressly authorized by Act of Congress enacted after the date of enactment of this Act.

(3) VALIDITY OF PRIOR ACTIONS.—Any license that was issued by the Commission to a low-power FM station prior to the date on which the Commission modify its rules as required by paragraph (1) and that does not comply with such modifications shall be invalid.

(b) FURTHER EVALUATION OF NEED FOR THIRD-ADJACENT CHANNEL PROTECTIONS.—

(1) PILOT PROGRAM REQUIRED.—The Federal Communications Commission shall conduct an experimental program to test whether low-power FM radio stations will result in harmful interference to existing FM radio stations if such stations are not subject to the minimum distance separations for third-adjacent channels required by subsection (a). The Commission shall conduct such test in no more than 9 FM radio markets, including urban, suburban, and rural markets, by waiving the minimum distance separations for third-adjacent channels for the stations that are the subject of the experimental program. At least one of the stations shall be selected for the purpose of evaluating whether minimum distance separations for third-adjacent channels are needed for FM translator stations. The Commission may, consistent with the public interest, continue after the conclusion of the experimental program to waive the minimum distance separations for third-adjacent channels for the stations that are the subject of the experimental program.

(2) CONDUCT OF TESTING.—The Commission shall select an independent testing entity to conduct field tests in the markets of the stations in the experimental program under paragraph (1). Such field tests shall include—

(A) an opportunity for the public to comment on interference; and

(B) independent audience listening tests to determine what is objectionable and harmful interference to the average radio listener.

(3) REPORT TO CONGRESS.—The Commission shall publish the results of the experimental program and field tests and afford an opportunity for the public to comment on such results. The Federal Communications Commission shall submit a report on the experimental program and field tests to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than February 1, 2001. Such report shall include—

(A) an analysis of the experimental program and field tests and of the public comment received by the Commission;

(B) an evaluation of the impact of the modification or elimination of minimum distance separations for third-adjacent channels on—

(i) listening audiences;

(ii) incumbent FM radio broadcasters in general, and on minority and small market broadcasters in particular, including an analysis of the economic impact on such broadcasters;

(iii) the transition to digital radio for terrestrial radio broadcasters;

(iv) stations that provide a reading service for the blind to the public; and

(v) FM radio translator stations;

(C) the Commission's recommendations to the Congress to reduce or eliminate the minimum distance separations for third-adjacent channels required by subsection (a); and

(D) such other information and recommendations as the Commission considers appropriate.

The CHAIRMAN. During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment, and may reduce to a minimum of 5 minutes the time for voting on any postponed question immediately following another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

Are there any amendments to the bill?

AMENDMENT NO. 1 OFFERED BY MR. BARRETT OF WISCONSIN

Mr. BARRETT of Wisconsin. Mr. Chairman, I offer a preprinted amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 printed in the CONGRESSIONAL RECORD offered by Mr. BARRETT of Wisconsin:

Page 4, beginning on line 9, strike paragraph (2) through line 20 and insert the following:

(2) REQUIRED DURATION OF MODIFICATION: PERMANENT CONDITIONS.—The Commission shall not modify such rules to eliminate or reduce the minimum distance separations for third-adjacent channels required by paragraph (1)(A) until 6 months after the date on which the Commission submits the report required by subsection (b)(3). No such elimination or reduction may remove such separations with respect to third-adjacent channels occupied by stations that provide a radio reading service to the public. The Commission shall not extend the eligibility for application for low-power FM stations beyond the organizations and entities as proposed in MM Docket No. 99-25 (47 C.F.R. 73.853).

Page 6, line 19, insert before the period the following: ", or 6 months after the date of enactment of this Act, whichever is later".

Mr. BARRETT of Wisconsin. Mr. Chairman, I want to put this debate into perspective.

We have heard a lot about a compromise tonight. The party, of course, missing from this compromise is the administration. The President has told this body that he is strongly opposed to this bill and will veto it. I think that is something, when we talk about compromise and how there is peace in the valley, that we have to remember that there is something else that is going on here that is not really being fully explored tonight.

What I am trying to do tonight, along with the gentleman from Illinois (Mr. RUSH), and I am pleased that he has worked with me on an amendment, is to offer an amendment that really is a compromise, that tries to respond to what I consider to be some of the legitimate concerns that have been raised by radio station operators in this country, but at the same time, not to have Congress step in, strip the FCC of its authority, and micromanage microradio.

Mr. Chairman, this debate is really the legislative equivalent of, your mother wears army boots. We have had fights for the last several months between the proponents of low power radio and the opponents of low power radio. They are fighting over a study. The FCC does not like the study that has been prepared by the industry. The industry says that the FCC has not done a good enough job in studying this issue. So they go back and forth, back and forth, yelling at each other.

So the amendment that was offered by the gentleman from Michigan (Mr. DINGELL) and the gentlewoman from

New Mexico (Mrs. WILSON) I think is a constructive amendment. It recognizes that in order for Congress to act intelligently on this issue, it has to have an independent study.

I have no quarrel with that. I think it addresses the legitimate technical concerns that have been raised by people who run radio stations in this country. I say that as someone who is a strong supporter of low power FM radio. I want Congress to have an independent analysis of this issue.

But this is where we separate, because the Barrett-Rush amendment makes one change and one change only to this bill. It would give Congress 6 months to act after the FCC submits its report. After 6 months, if Congress has not acted, the FCC may proceed with low power licenses.

Why is this amendment important? The reason why this amendment is important is because we do not have a level playing field here. On the one hand we have the radio stations, who have made it very, very clear that, regardless of the outcome of this study, they oppose having any type of expansion to low power FM stations.

On the other side we have the FCC, but the FCC really is speaking for groups that have no voice, by definition. They do not have radio stations. They do not have a powerful lobbying organization. They are the churches, the high schools, the neighborhood organizations.

What the bill does in its current form is it says even if this independent study comes back and says there are no interference problems, even if there are no interference problems, the FCC cannot continue to do the job it has done for the last 80 years, which is to make sure that the spectrum is filled in a fair way.

Instead, it says that Congress has to act first. I do not think there is a person in this room who believes that the opponents of low power FM radio are going to come back and say, okay, go ahead, change the law. Because even though we have this study here, the bill ultimately still builds a very strong fence. This is a "fence me in" bill.

It says to those people who currently have stations, we are going to build this big fence around you and we are not going to let anybody else in. That is wrong. The people in this Chamber who say they are in favor of competition, the people in this Chamber who say they believe in advances in technology I think should say, wait a minute, wait a minute.

We recognize if this study comes back and says that there are problems with interference, this Congress can act in a week. It is not going to take us 6 months. If there is a problem this Congress is going to act very quickly, because frankly, we are going to have powerful forces, just as we have powerful forces right now saying, quick, make sure there is no problem.

If there is no problem, my concern is those same forces are going to come in and say, yes, well, maybe it does not show this, it does not show that, but we are still concerned about that.

What this amendment does is it allows this bill to move forward. Under its current form, it is going to be vetoed by the President of the United States. I think we should be addressing the legitimate concerns, the legitimate technical concerns. That is why I am offering this amendment.

We have two choices, we can go forth with this bill right now, face a certain presidential veto, or we can accept this amendment. I think the President and the Senate will say, all right, that makes sense. Of course we want to have an independent study. Of course we want the FCC to continue its role. But there is no reason in the world that Congress should be micromanaging these stations.

I would bet, Mr. Chairman, that the radio stations themselves would rue the day that they wanted this Congress to get involved in the small, technical matters of the FCC. They do not want us to do that, generally speaking. They want us to stay out of it. But in this instance, they think that they can benefit.

Mr. Chairman, this is a reasonable amendment. I certainly ask my colleagues to support it.

Mr. OXLEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me first indicate this bill was reported by the committee in a bipartisan voice vote. It was an amendment that we finally came to with the gentlewoman from New Mexico (Mrs. WILSON), the gentleman from Michigan (Mr. DINGELL) leading the way, that really set out, I think, the parameters of what this program is all about.

It allows the LPFM to go forward in areas where it does not infringe on existing interference protections: in a lot of rural areas, in the New Mexico example, in many areas of the country that are underserved by FM radio. We bent over backwards to make certain that that could go forward.

Then we also said, but it is important in these areas that potentially have interference problems to have a pilot study done and find out once and for all whether in fact these interference standards are adequate, or whether in fact the incumbent radio stations will have problems with interference and their listeners will have interference with that.

□ 1915

This is really what this argument is all about. The Barrett amendment undercuts the purpose of this legislation by allowing the commission to go forward with full implementation of its lower-power FM rule, including the weakening of interference protections following the pilot program regardless of what the results of that program are.

So we are saying there is the FCC. The Barrett amendment simply says, do not confuse us with the facts. No matter how that pilot program comes out, one can go forward just as one is going forward now.

Now, there is a certain reason why congressional intent is important, and that is why we are debating this today. Is it really realistic to have an FCC, an unelected Federal bureaucracy, a so-called independent agency set these kinds of important standards against the obvious intent of the Congress? I do not think so.

The amendment allows the FCC to proceed with its rule as currently ordered, unless Congress enacts legislation to overturn this in a 6-month period. Well, I have perhaps a little less faith in the alacrity with which this Congress could act or any Congress could act perhaps than the gentleman from Wisconsin (Mr. BARRETT). As a matter of fact, everybody knows that in this town it is a lot easier to play defense than it is to play offense.

So my colleagues are asking the Congress to pass a bill that would or would not be vetoed by the President in that 6-month period. We do not know whether that happens or not.

But to allow the FCC to go forward with the test and then, say, essentially thumb their nose at the test results and move forward with granting these licenses is the height of irresponsibility.

So I would ask the Members to defeat this Barrett amendment, to support the bipartisan compromise that was crafted so well in this committee, and understand that this bill came out on a bipartisan voice vote in the Committee on Commerce with strong support on both sides of the aisle.

Let us defeat the Barrett amendment and get to the real issue here, which is protecting incumbent stations from potential interference from these new low-powered FM stations.

Mr. RUSH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the issue of whether these low-power FM stations cause interference must be addressed. We sat in the committee, observed and listened to both the FCC and the broadcasters. We were privy to the dehate, the unsettled debate about whether or not low-power stations actually cause interference.

I am in support of a middle ground. I am in support of finding a middle ground, Mr. Chairman, so that we can move forward. The amendment, the Barrett-Rush amendment that we are offering today reaches a fair compromise. I think that it is fair, not only to the low-power radio, FM radio

station advocates, but it is also fair to the broadcasting industry. It is fair to the American people, and it is fair to the Members of this body. It provides 6 months for the FCC to conduct its pilot study and 6 months for the Congress to create the study's results.

Mr. Chairman, as the bill of the opponents of this amendment, the bill that they have crafted, if it goes forward, it does not give the FCC any opportunities to activate and to allow community organizations, hospitals, students across this Nation access to the airwaves.

Unfortunately, Mr. Chairman, the way that the bill is drafted now, the FCC would have to conduct a study by February 1, 2001. That is just a mere months away. If the FCC study or report indicates that there is no interference, the FCC still would not be allowed to act unless Congress specifically authorizes new legislation. So what this bill in fact does, Mr. Chairman, this bill actually kills low-power radio stations in this Nation.

Again, Mr. Chairman, the Barrett-Rush amendment is fair. I would like to just remind my colleagues that low-power radio stations enjoy broad support from the AFL-CIO, Communications Workers of America, the United States Catholic Conference, the United Church of Christ Office of Communications, the Consumers Union, the Minority Media Telecommunications Council, the National Federation of Community Broadcasters, the National League of Cities, and nationally known musicians, including Eilis Marcalis and Bonnie Raitt.

I urge my colleagues on both sides of the aisle, Mr. Chairman, to vote for this fair and reasonable amendment.

Mr. BONIOR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the amendment by the gentleman from Illinois (Mr. RUSH) and the gentleman from Wisconsin (Mr. BARRETT). Not long ago, not very long ago, I read about a 21-year-old man who built his own radio transmitter. He was able to broadcast a signal of a distance of just 2 miles. This was far enough to reach everyone in his community. The problem was, of course, he was the only one who had a receiver. That was back in 1895. The name of that gentleman was Guglielmo Marconi, who invented the radio.

But if he were here today, he would have to overcome a lot more than just that obstacle of one receiver. For instance, he would have to come up with $80,000 to $100,000 before the FCC would even consider giving him a license. He would have to overcome something else that the gentleman from Massachusetts (Mr. MARKEY) alluded to on the floor, and that is the continuing concentration of power in the broadcast industry.

In recent years, the number of radio station owners in this country has shrunk by almost 20 percent. That is why the measure that we are considering today is so important and why this amendment is important. To the credit of the FCC and Bill Kennard, some new life is being breathed into a very old idea, an important idea, the public airwaves should be the public's interest. That is what the FCC did when it carved out a small piece of the broadcasting spectrum for community-level low-power FM stations.

Who will it help? It will help many community organizations who are now shut out, ethnic groups who want to broadcast their culture to the community, senior citizens who want to broadcast their concerns to the community, colleges and universities who want to talk to their students, city councils and villages who might want to broadcast what is going on in their committees and in their council meetings. It goes on and on of the groups that will have an interest in this issue that will be able to get into broadcasting that cannot today.

Musicians who are locked out in a very profound way from experimenting and expressing themselves on radio today would have an opportunity to do so as well.

So a forum for new music and new talent and new ideas, that is what radio should be all about. That is what the FCC plan I think will help achieve. That is why, as the gentleman from Illinois (Mr. RUSH) said, low-power radio has earned the support of the cross-section of organizations throughout America today, including the Consumers Union, the United States Catholic Conference, the NAACP, the AFL-CIO, the U.S. Conference of Mayors.

These are organizations that represent grassroots people who need a voice, who often do not have a voice, and who are now hopefully going to get a voice if they are not denied that hy the powerful lobby that they are up against in this fight.

It is time that we tune out the static and that we listen to the facts. This is a reasonable solution, as the gentleman from Wisconsin (Mr. BARRETT) and the gentleman from Illinois (Mr. RUSH) have indicated, because the research shows that, even under the worst circumstances, low-power radio would create little interference and no cross-talk for conventional broadcasters.

There are already almost 400 full-power FM stations authorized prior to November of 1964 who do not meet the current channel separation requirements. These full-power stations which operate with only one or two channels between them and the next station on the dial have consistently met the FCC's criteria for distortion-free signals.

So I ask my colleagues to support this amendment. It is good. It is fair. It meets the needs of our communities.

Mr. BURR of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Wisconsin (Mr. BARRETT) and the gentleman from Illinois (Mr. RUSH). This amendment deals with the crux of the problem Congress is facing on low-power FM interference.

The FCC chose to eliminate decades-old third-channel interference protections in order to shoehorn in more low-power FM stations. The House Committee on Commerce said wait a minute. After hearings and debate in subcommittee and full committee, my colleagues and myself said low-power FM can go forward and should go forward immediately, but Congress must protect all radio listeners by maintaining third-channel interference protections.

Now, the gentleman from Wisconsin (Mr. BARRETT) and the gentleman from Illinois (Mr. RUSH) have agreed that we should put into law third-adjacent channel protections for any radio station that sublets, if you will, some of their spectrum to very important blind reading services, services that the FCC ignores in their ruling.

So the authors of this amendment are saying that the FCC got third-channel protections wrong for these unique and critically vital blind reading stations. But for all other broadcasters who may cover local high schools, sports, or provide Spanish language broadcasts, or our public radio affiliates, one cannot, and I repeat, cannot have third-channel protections under the law.

What if stations decide to offer some of their auxiliary spectrums to blind reading services? Does the FCC then have to go back and protect the third-channel from interference and shut down existing low-power FM stations?

This amendment is ill conceived and flawed. I urge my colleagues to vote no.

Mr. WAXMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment. This amendment by the gentleman from Illinois (Mr. RUSH) and the gentleman from Wisconsin (Mr. BARRETT) is a good amendment, and I ask my colleagues to accept it. It is a modest change to H.R. 3439. It is a good amendment, and I only wish it went further.

The promotion of competition and diversity in broadcast has been the guidepost of American communications policy for over 50 years. We are currently experiencing unprecedented consolidation in this industry, however; and we cannot ignore its implications. Today, broadcast remains the

way most Americans get their local news and information. Yet, there are fewer and fewer companies that control the content of the information they receive.

That is why more than 2 years ago, FCC Chairman Bill Kennard proposed a new low-power FM radio service. It is a noncommercial serviee that will allow local churches, schools, community-based organizations, and governments to strengthen the ties in their communities. It is localism and diversity in the purest democratic sense.

The FCC took its responsibility to protect the signals of incumbent broadcasters very seriously. They spent more than a year conducting lab tests and reviewing the potential for signal interference. It also extended its comment period in the rulemaking proceeding and scaled back its original proposal in an effort to address the incumbent broadcasters' concerns. For any objective viewpoint, the FCC bent over backwards to accommodate the concerns broadcasters raised.

The FCC's extensive tests have shown that low-power radio will not harm existing signals. Chairman Kennard has vowed publicly time and again to proteot every incumbent FM service from interference.

H.R. 3439 effectively kills low-power radio. It prevents the FCC from issuing all but a small number of licenses and requires more studies into next year. New legislation would be required to permit the program to move forward once the studies are completed.

The Barrett-Rush amendment would simply permit the FCC to implement the program 6 months after the new round of studies is completed, and it has demonstrated again that interference is not a problem.

Passage of H.R. 3439 without the Barrett-Rush amendment will end the promise of greater localism and diversity that noncommercial low-power radio can bring.

□ 1930

I urge my colleagues to vote for this amendment and to vote against the legislation if this amendment is defeated.

Mr. WALDEN of Oregon. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today first to declare a conflict of interest. I am a community radio broadcast station owner and operator and have been for 14 years. My father started in this business in the late 1930s. There has never been more diversity on the dial and more stations than there are today.

Now, my stations are in a small community; 20,000 in the county and 23 in the other. We do the very things that my colleagues are talking about today that they want: Spanish programming, programming for seniors, and so do my colleagues in the industry. And that is what I am standing up here today to talk about, is the public service and community service that is today provided to people in America by their community broadcasters.

This amendment, though, is bad. Now, I am not a radio engineer, although I have spent time inside transmitters with my engineer. My engineer is a fan of low-power FM. He is very supportive of it. He and I disagree on this. But when it comes to the technical issue of LPFM, I want to read my colleagues what he said to me.

"My position on this is not to kill LPFM, but to pressure the FCC to consider revising at least the rules that would be most harmful to full-power FM stations. This rule appears to be the worst. Protecting against interference to a station's protected contour has been a bedrock issue with the FCC." He says, "Perhaps most disturbing were the rules for future full-power FM's. It appears that predicted and actual interference would have to be caused within a future station's 70dBu 'eity grade' contour, before the full-power station could have any relief from LPFM interference. Interference from there on out to the 60dBu contour would just have to be tolerated by the full-power station."

That is why the FCC was created in the beginning, was to sort out these technical interference problems. That is why this amendment is not a good one and why it ought to be defeated and why we ought to run out the test the way the bill envisions and do it in that respect.

I have heard from community broadcasters; I have heard from Jefferson Public Radio concerned about the potential interference with their translator system on public radio. We have a great opportunity to move forward with the legislation that the chairman and the ranking member has offered, and I think this amendment is the wrong direction to go. From a technical standpoint, it is flawed and it will hurt the process.

Mr. MARKEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the Barrett amendment. If we were going to take all of the red herrings that have been spread before this body in this debate, we would have to put an aquarium in the middle of the well. This is absolutely one of the most misrepresented Federal Communications Commission efforts of all time.

Now, how do we know this? We know this because we have to test the hypocrisy coefficient. Now, how would we apply that in this particular instance? Well, what we would do is we would look at the 300 high-powered FM radio stations that the National Association of Broadcasters asked to be grandfathered by the Federal Communications Commission in 1997.

Now, we are not talking about 100-watt radio stations, these small nonprofit community-based radio stations. Hundred watts. No, we are talking about 50,000 watt radio stations, 10,000 watt radio stations, 5,000 watt radio stations that all operate within the second and third adjacent channels, just with these 100-watt stations.

So the NAB did a big study of these 300, 50,000, 10,000 and 5,000 watt stations. And after a completely detailed eye-watering analysis of the science of these radio stations, here is what they found: that every one of those 300 stations was a dues-paying member of the National Association of Broadcasters and they shall be grandfathered, regardless of their interference that they were going to be causing in the second and third adjacent channels.

Now, who are these channels? Well, my colleagues might have heard of some of them: KCBS, KLAX, KBCD, KYCY. Fifty, 50, count them, 50 high-powered radio stations in California, 24 in Illinois, 25 in North Carolina, 28 in Ohio, 24 in New York, 17 in New Jersey. Go right down the list. So KCBS, operating within the second and third adjacent channel, that is no problem. But a 100-watt station operated by a community church in South Central L.A., oh my God, stop the presses. Let us get the FCC out of this business and have an independent study, says the NAB. The NAB.

Now, why is this? Well, it is very simple. Here is their philosophy. They already got theirs. They are in. They are the incumbents. Pull up the gang plank. There is no room for these poor community groups, churches, minority groups. Oh, my God, how can we figure this out? Let us study it for a year, and then even if they find there is no interference, and, by the way, if they use the same standard that the NAB used with these 300, and that is all we are really talking about here in low power, by the way, only about 300 low power, if they use the same standard they will not find any interference.

But what does the Oxley bill say? Even if they do not find any interference, they still have to come back to Congress. They still have to come back and get permission. And when will that be? When do my colleagues think the NAB will let that happen out here?

So what the Barrett amendment says is, study it. But if they do not find any interference, if they find the same thing that the NAB found in 1997, when they analyzed whether or not their 300 radio stations, the huge 50,000, 10,000, 5,000-watt radio stations caused interference, then license the little 100-watt community-based radio station. Why not do that? But, no, even the Barrett amendment is unacceptable to the NAB.

My colleagues, unless we want to completely ignore the facts, unless we want to completely ignore the history

of FM radio in our country, and by the way these 300 stations that got their licenses back in the 1960s, they were only grandfathered. So they have been causing this interference or, more accurately, not causing this interference for 30 years now. So what is the likelihood that the FCC is going to be unable themselves, in order to determine whether or not 100-watt radio stations are causing this problem?

So, my colleagues, I think if right now these 50,000-watt stations are not provoking any complaints in L.A.; if we are not hearing it on KCBS, if we are not hearing it on KLAX, we are not going to hear it on the 100-watt stations. The consumer complaints are not out there.

So I urge a very strong "aye" on the Barrett-Rush amendment. It is wise, it is timely, it is important for us to get these small voices out into the communities of our country with the ever-consolidating huge radio industry making it harder and harder for minorities, women, and for smaller voices in our society to have their independent voices heard.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, my friend, the previous speaker, indicated the Barrett amendment provided that this test would go forward, and then if the commission did not find any interference, it could move ahead and grant these low-powered stations. That is not what the Barrett amendment says.

The Barrett amendment says that in 6 months, regardless of whether the Commission finds interference, it can move forward with the issuance of these low-powered station licenses.

Let me say it again. The bill says they have to do this study and report back to Congress and then Congress will say yes or no, proceed, based upon the results of that study. The amendment by the gentleman from Wisconsin (Mr. BARRETT) says to the FCC that they can proceed in 6 months regardless of whether the independent study produces a finding of interference. Do we really want to vote for that?

Incredibly, the Barrett amendment makes one exception. It says even in 6 months the Commission cannot remove the protections against interference for radio reading services to the public. Now, that is a very important service, but if radio reading services to the public deserve this protection from interference, do we not think other minority stations deserve that protection? Do we not think National Public Radio deserves that protection? Do we not think the local radio broadcasting station deserves that protection? Or would we rather have this report come back to Congress saying there will be all kinds of interference, but the commission is going to move ahead anyhow whether or not it interferes with the local station, with the minority station, with the community broadcast station, or any other station that exists in our communities?

The FCC came up with this proposal. This is not a legislative proposal. The FCC decided to propose this new service. The FCC decided to propose it and then decided to implement it in spite of the fact that radio stations across America expressed concerns to the Members of Congress, whom the FCC is supposed to be answerable to, to check it out first to make sure it would not interfere with listening audiences around the country.

When we invited Chairman Kennard to come and tell us about it, he declined the offer to testify. He sent an engineer instead. So we had a battle of engineers. We listened to the FCC lab test, which said that it is okay to do this stuff. And then we heard from other engineers, who had test results that indicated all kind of talk-over, all kinds of interference problems on all kinds of cheap inexpensive radios; the Walkman, the boom boxes, the radios next to the bedside. And the FCC's answer was, oh, those radios are inexpensive. They are not designed well; and, therefore, we do not care whether it interferes with those radios. It is okay to interfere with those radios. To 65 million Americans, it is okay to interfere with their radio listening because they bought an inexpensive radio. Shame on them. That is the attitude of the FCC here.

If we adopt this amendment, we give the FCC authority to move forward in spite of the fact that it interferes with these less expensive radios. We give them the authority to move forward in spite of the fact it might jam up in a digital age and completely block out the signal of National Public Radio stations in our communities, or our community broadcasters in our communities, perhaps our minority language broadcasters in our communities. We give them the go-ahead and say it does not matter that they are supposed to be subject to Congress; they can do what they want, when they want to do it.

And guess what? Tick off the 6 months with me. This bill gets through the House tonight, and it goes over to the Senate. Maybe the Senate passes it in May. Count them off for me. All of a sudden we are in December. Are we in session? No. We are not in session in December. The FCC even may go out of office next year. We do not know who will be in the FCC next year. But in December the FCC proceeds with the issuances of all these licenses whether they interfere or not. We come back in session next year, and we have to start shutting licenses and radio stations down. Do we really want to be in that pickle? Do we really want to start shutting radio stations down across America because they were licensed incorrectly?

We have an obligation in Congress. We have an obligation to direct the FCC when it comes to the way the spectrum is used in America. We have an obligation to every radio listener not to let them issue licenses that are going to interfere with their listening. And yet the FCC is asking us in this Barrett amendment to do what they want regardless of the test results, except to protect one small little provision of service called radio reading.

I suggest to my colleagues this is an ill thought-out amendment. This undoes the bill. The bill does not shut down FM low power. It lets 70 stations go forward immediately. Immediately. And it simply says for the rest, go the through not the lab test, the field test.

I urge my colleagues to reject this amendment.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, if we like careful regulation, if we like responsible behavior by the regulatory agencies, if we expect the regulatory agencies to do their job carefully, then we have no choice but to oppose the amendment offered by my good friends, the gentleman from Wisconsin (Mr. BARRETT) and the gentleman from Illinois (Mr. RUSH).

The simple fact of the matter is the FCC did several things. First of all, they changed the standard which was previously signal-to-noise ratio, which covered and described whether or not there was interference that was unacceptable. Second of all, they changed so that now we may no longer use the test of the third-adjacent channel.

My friend, the gentleman from Massachusetts (Mr. MARKEY), said that the FCC was not opposed to this in that event by the broadcasters.

□ 1945

In point of fact, the broadcasters oppose the grandfathering of those higher powered stations.

Now, the issue here, and I want my colleagues to understand this very clearly, is not the question of interference as it impacts upon the broadcasters. Although that is important. It is the interference as it impacts upon the listener.

In 1927, the Radio Act was set up to assure that we restored order to the broadcast channels by eliminating the wild interference and the wild placement of stations, which made the entire spectrum almost useless and impossible to listen to.

What the traditional standard was, then, was the third adjacent channel. In addition to that, it was signal-to-noise ratio, which enables them to tell what in fact is going on from the standpoint of the listener. No test on these points was made by the FCC.

The FCC simply wants to disregard the traditional standards and the traditional methods of measuring whether

or not interference exists and will impact upon the listeners.

Now, everybody is making the great pitch that this bill here is going to hurt minorities. In point of fact, it is going to impact most heavily upon benefitting, if we pass this legislation, minority listeners and minority broadcasters because they will receive the assurance that they will get proper protection of both broadcasting and the listeners' concern.

Now, the point has been made, well, if they have got an expensive radio, they do not have to worry. Well, that is an argument that I find very distasteful, because the simple point of fact is that the minorities and the poor and the people who have most need of radio service are the people who can least afford an expensive radio.

We are not talking about shower radios or things of that kind. We are talking about clock radios, inexpensive radios, radios that are used by minorities and by people of limited means.

What the amendment does is it assures that the FCC will have to make a proper test and that the test will be accomplished by an independent testing entity. I think that is fair and proper. And then it lets the Congress make the decision.

Now, I want to remind my colleagues of something that Sam Rayburn told the chairman of the FCC when he got out of hand. He said, Now, son, remember that you work for us and everything will be all right.

The Congress is the body that has created the FCC to function under delegated authority. It is our responsibility to look after the FCC and see to it that their proceedings are fair, to see that their proceedings consider all the questions and are conducted in the proper fashion, and to see to it that the people who are dependent upon radio service get fair treatment.

Remember, at stake here are rights of minorities, people of limited means, and public broadcasting. That is what really is in question, and the question of whether or not proper service is afforded the people.

There will be literally hundreds of stations which will go on the air of low-power character. There will be at least 70 of them in major centers. And in areas below 50,000 markets, we will find that there will be an awful lot of broadcasters who will go on and utilize these low-power systems.

That is the way it should be done. And then we can have a fresh look; we can come to a judgment as to whether or not the test says that we ought to permit the FCC to go forward. At that point a proper decision can be made.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I appreciate the gentleman from Michigan (Mr. DINGELL) and the gentleman from Louisiana (Mr. TAUZIN) and their interest in protecting the minority community. And I am sure they are sincere. I just happen to disagree with them on this issue about whether this is protective of the minority community or not. But that is not the point that I rose to make.

Actually, some of my very best friends are owners of commercial radio stations and own interests; and they deserve to have their signals protected, which is why the underlying purpose of the bill is a good purpose. There needs to be a study.

But I will guarantee my colleagues that, at the end of that study, those same friends of mine will, regardless of the outcome of that study, even if it says that there is no interference, they will be here saying do not take action because they will be trying to protect their own economic interest. And I do not have any problem with that.

But I know that they have enough power in the process to keep any kind of bill from coming that will allow these low-power FM stations to go forward even if the study says there is no interference. And that is why I support the amendment of the gentleman from Wisconsin (Mr. BARRETT) and the gentleman from Illinois (Mr. RUSH). Because this is really a question of who is going to play offense and who is going to play defense.

I know the commercial stations have the power to play offense. If this study shows that there is any kind of interference, this Congress will respond to the commercial radio stations, and I know that.

But I do not have that same kind of assurance about the minority community and small institutions and small colleges having the power to move Congress to do something to respond. And I think we ought to put the burden on the commercial stations, which is exactly what the amendment of the gentleman from Illinois (Mr. RUSH) and the gentleman from Wisconsin (Mr. BARRETT) does.

If there is a finding that there is really interference, I guarantee my colleagues they will be here and their interest will be protected. And I will probably be on their side because a lot of them are my good friends, and my supporters I might add.

But in the absence of some overwhelming finding, the burden should be on them and not on the community. The airwaves belong to the community in the final analysis.

PARLIAMENTARY INQUIRY

Mr. OBEY. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. OBEY. Mr. Chairman, does the Chair think that we might obtain the vote faster if it were indicated that a number of us are inclined to vote for whichever side stops talking first?

The CHAIRMAN. The gentleman has not stated a parliamentary inquiry.

Mr. WYNN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, recognizing my colleague's last statement, I certainly will not take the entire 5 minutes. But I do believe I would like to comment on this bill.

I sat in on the committee hearing and I listened intently. This is a very important issue. Clearly, we do need more diversity of voices in the media.

Mr. Chairman, at the same time, however, it came to light in the committee that there were concerns and legitimate concerns about the quality of signals and the possibility of interference. And so, the concept of a study I think makes eminent good sense.

The concern I have, as has been articulated by my colleague the gentleman from North Carolina (Mr. WATT), is simply this: Why should we absolutely have to come back to Congress before any action can be taken?

Let us put the burden on the broadcasters to say this is a bad idea. If the study comes back and shows that we can have diverse voices think low-power radio without any significant interference, then we ought to move forward.

My father is blind. He listens to the radio as his primary source of communication with the outside world and certainly wants a clear signal. But I think I also want the opportunity to have other voices heard if they could be done without interfering with my father's portable radio.

With that in mind, I support this amendment. I believe it is a fair and reasonable approach that will allow us to move forward if there is no interference with the signal and allow these diverse voices.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise in strong support of the Barrett/Rush Amendment to the Radio Broadcasting Preservation Act. I believe that the Barrett/Rush Amendment will strongly expedite the availability of low-power licenses to local communities.

This Radio Broadcasting Preservation Act would require the FCC to modify its low-power FM rule by establishing signal interference standards for low power FM stations that are equal to existing standards for full power FM stations. On January 20, 2000, the FCC adopted a new category of radio services that permits the issuance of licenses for low-power, non-commercial community FM radio stations. Under the FCC's rule, the new service would consist of 10-watt and 100-watt stations with a broadcast radius of about 1–2 miles and 3.5 miles.

For many years, the FCC received thousands of inquiries annually from individuals and groups wishing to start low-power radio stations for small communities. The FCC decision to offer low-power licenses will enhance community oriented radio and increase diversity in our Nation's communities.

Local communities and historically underrepresented groups such as, civil rights groups, students and educational organizations, labor

unions, churches and religious groups, and many other community organizations have expressed support. In addition, many nonprofit entities providing public safety announcements and local transportation have also expressed support.

However, organizations and some broadcasters are opposed to the low-power FCC license rule, because hey have expressed concerns that low-power frequencies will cause interference with existing broadcasters. For instance, many popular FM stations may experience static and unclear reception. Opponents have stated that the FCC acted hastily to appease the groups applying for low power licenses and that they did not fully consider the technical as well as economic consequences to established broadcasters.

I believe that the granting of low-power licenses by the FCC will offer significantly more opportunities for average Americans to become involved in broadcasting and spread their messages. In fact, many local minority broadcasters will have the chance to provide information to the communities where they operate. The Barrett/Rush Amendment will address the interference issue and speed up the availability of these coveted frequencies to those who may greater benefit from low-power access.

The Barrett/Rush Amendment permits the FCC to proceed with its plans to issue low-power licenses six months after the conclusion of the interference test period, unless Congress expressly takes action to prohibit it. The Radio Broadcasting Protection Act was introduced in order to curtail the FCC's ability to provide new licenses for non-commercial low-power FM radio stations to empower churches, schools, and other community groups to gain access to the airwaves.

The FCC proposal is intended as a response to the alarming trend of ownership consolidation in the radio industry, which has drastically decreased the number of local broadcasters on the air.

The Commerce Committee adopted a substitute to the Radio Broadcasting Preservation Act that would allow the FCC to grant low power radio licenses only in those 70 markets which satisfy the "third adjacent channel" protection from interference that applies to existing full power stations, and to test 9 markets whether low-power radio causes interference without the "third adjacent channel" protection. Once this testing is completed, the FCC must report the results to Congress.

The bill in its current form does not allow the FCC to act on issuing new low-power licenses, unless Congress specifically authorizes further action with additional legislation; even if the FCC studies find no interference is found in independent testing.

This bill also fails to recognize and inhibits the FCC's expertise in analyzing FM radio issues, including signal interference and spectrum management. Without the Barrett/Rush Amendment this bill is nothing but an unnecessary infringement on the FCC's ability to adapt decades-old rules to ever changing technology. This amendment is a fair compromise: it provides for Congress to exercise timely oversight, but removes an unfair impediment to legitimate action by the FCC with an issue clearly under its jurisdiction.

We can do better and we must do better. We owe it to the many churches, schools, non-profit community groups, colleagues, as well as state and local government agencies to go forward with providing access to low-power frequencies and to increasing diversity among our Nation's airwaves.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I rise in support of the Barrett/Rush Amendment and in support of the FCC's Low-Power FM radio station proposal. The Barrett/Rush amendment is a reasonable compromise to this legislation that would allow the FCC to continue work toward establishing these important communications tools.

Mr. Chairman, low-power FM stations would give churches, schools and local community groups access to the radio spectrum at a cost they can afford. These stations will only reach a couple of miles, but the message they will carry will reach many people. These stations will give churches a greater voice in the community. These stations will allow schools to set up in-house radio stations. Schools can train kids for a career in the radio industry, as well as provide announcements of school closures and after-school events. Local community groups will be able to contribute to the diversity of voices in their community while providing important information.

The bill we are considering today will effectively give Congress the ability to kill the low-power FM program. The Barrett/Rush amendment forces Congress to act on this proposal instead of allowing it to wither away. My colleagues and I have heard the concerns of broadcasters that these new stations will interfere with existing stations. This amendment will allow for further study to ensure that the integrity of the spectrum is maintained. However, it mandates that Congress will act on this proposal after the independent study on interference is completed. This amendment represents a more responsible compromise to allay the concerns of broadcasters while giving the FCC the ability to move forward with this program.

Mr. Chairman, I urge support of this amendment and low-power FM radio.

Let's give new strength to the voice of the people.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin (Mr. BARRETT).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BARRETT of Wisconsin. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 142, noes 245, not voting 47, as follows:

[Roll No. 129]

AYES—142

Abercrombie	Blumenauer	Clyburn
Ackerman	Bonior	Conyers
Andrews	Brady (PA)	Coyne
Baca	Brown (FL)	Crowley
Baldwin	Brown (OH)	Cummings
Barrett (WI)	Capps	Davis (FL)
Becerra	Capuano	Davis (IL)
Bentsen	Cardin	DeFazio
Berman	Carson	DeGette
Bishop	Clayton	Delahunt
DeLauro	Kucinich	Payne
Dicks	LaFalce	Pelosi
Dixon	Lantos	Petri
Doggett	Larson	Pomeroy
Dooley	Lee	Reyes
Doyle	Levin	Rivers
Ehlers	Lewis (GA)	Rodriguez
Engel	Luther	Rothman
Eshoo	Maloney (CT)	Roybal-Allard
Evans	Maloney (NY)	Rush
Farr	Markey	Sabo
Filner	Mascara	Sanders
Frank (MA)	Matsui	Sawyer
Gejdenson	McCarthy (NY)	Schakowsky
Gephardt	McDermott	Scott
Gonzalez	McGovern	Serrano
Gutierrez	McKinney	Sherman
Hastings (FL)	McNulty	Slaughter
Hilliard	Meehan	Smith (WA)
Hinchey	Meek (FL)	Snyder
Hinojosa	Meeks (NY)	Stabenow
Hoeffel	Menendez	Tauscher
Holt	Metcalf	Thompson (CA)
Hooley	Millender-McDonald	Thompson (MS)
Hoyer	Minge	Thurman
Inslee	Moakley	Tierney
Jackson (IL)	Moore	Towns
Jackson-Lee (TX)	Moran (VA)	Udall (CO)
Jefferson	Nadler	Udall (NM)
Johnson, E. B.	Napolitano	Velazquez
Jones (OH)	Neal	Waters
Kaptur	Obey	Watt (NC)
Kennedy	Olver	Waxman
Kildee	Ortiz	Weiner
Kilpatrick	Owens	Weygand
Kleczka	Pascrell	Woolsey
Klink	Pastor	Wu
		Wynn

NOES—245

Aderholt	Deutsch	Isakson
Allen	Diaz-Balart	Istook
Archer	Dickey	Jenkins
Armey	Dingell	John
Bachus	Doolittle	Johnson (CT)
Baird	Dreier	Johnson, Sam
Baldacci	Duncan	Jones (NC)
Ballenger	Dunn	Kanjorski
Barcia	Edwards	Kasich
Barr	Ehrlich	Kelly
Barrett (NE)	Emerson	Kind (WI)
Bartlett	English	King (NY)
Barton	Etheridge	Kingston
Bass	Everett	Knollenberg
Bateman	Ewing	Kuykendall
Bereuter	Fletcher	LaHood
Berkley	Foley	Lampson
Berry	Forbes	Largent
Biggert	Ford	Latham
Bilbray	Fossella	Lazio
Blagojevich	Franks (NJ)	Lewis (CA)
Blunt	Frelinghuysen	Lewis (KY)
Boehlert	Frost	Linder
Boehner	Gekas	Lipinski
Bonilla	Gibbons	LoBiondo
Bono	Gilchrest	Lowey
Boswell	Gillmor	Lucas (KY)
Boucher	Gilman	Manzullo
Boyd	Goode	McCrery
Brady (TX)	Goodlatte	McHugh
Bryant	Gordon	McIntyre
Burr	Goss	McKeon
Burton	Graham	Mica
Buyer	Granger	Miller (FL)
Calvert	Green (TX)	Mink
Camp	Green (WI)	Moran (KS)
Campbell	Gutknecht	Morella
Cannon	Hall (TX)	Murtha
Castle	Hansen	Nethercutt
Chabot	Hastings (WA)	Ney
Chambliss	Hayes	Northup
Chenoweth-Hage	Hayworth	Norwood
Coble	Hefley	Nussle
Collins	Hill (IN)	Oberstar
Combest	Hill (MT)	Ose
Condit	Hilleary	Oxley
Cox	Hobson	Packard
Cramer	Hoekstra	Pallone
Cubin	Holden	Paul
Cunningham	Horn	Pease
Danner	Hostettler	Peterson (MN)
Davis (VA)	Hulshof	Peterson (PA)
Deal	Hunter	Phelps
DeLay	Hutchinson	Pickering
DeMint	Hyde	Pickett

Pitts
Pombo
Porter
Portman
Price (NC)
Pryce (OH)
Radanovich
Rahall
Ramstad
Regula
Reynolds
Riley
Roemer
Rogers
Rohrabacher
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sandlin
Sanford
Saxton
Scarborough
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Simpson
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Spence
Spratt
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Toomey
Traficant
Turner
Upton
Visclosky
Vitter
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wise
Wolf
Young (AK)

NOT VOTING—47

Baker
Billirakis
Billey
Borski
Callahan
Canady
Clay
Clement
Coburn
Cook
Cooksey
Costello
Crane
Fattah
Fowler
Gallegly
Ganske
Goodling
Greenwood
Hall (OH)
Herger
Houghton
Kolbe
LaTourette
Leach
Lofgren
Lucas (OK)
Martinez
McCarthy (MO)
McCollum
McInnis
McIntosh
Miller, Gary
Miller, George
Mollohan
Myrick
Quinn
Rangel
Rogan
Ros-Lehtinen
Sanchez
Shuster
Stark
Vento
Weldon (FL)
Wexler
Young (FL)

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Messrs. LAHOOD, BARCIA and WATKINS changed their vote from "aye" to "no."

Mrs. MCCARTHY of New York, Mr. SHERMAN and Mr. METCALF changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated for:

Ms. MCCARTHY of Missouri: Mr. Chairman, during rollcall vote No. 129, the Rush/Barrett Amendment to HR 3439, I was unavoidably detained. Had I been present, I would have voted "yes."

Ms. SANCHEZ. Mr. Chairman, during rollcall vote No. 129 on April 13, 2000 I was unavoidably detained. Had I been present, I would have voted "aye."

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The CHAIRMAN. Under the order of the House of today, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. PEASE) having assumed the chair, Mr. LAHOOD, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 3439) to prohibit the Federal Communications Commission from establishing rules authorizing the operation of new, low power FM radio stations, pursuant to the order of the House of today, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the order of the House of today, the previous question is ordered.

The question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. OXLEY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 274, noes 110, not voting 50, as follows:

[Roll No. 130]

AYES—274

Abercrombie
Aderholt
Allen
Andrews
Archer
Armey
Baca
Bachus
Baird
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Batsman
Bereuter
Berkley
Berry
Biggert
Bilbray
Blagojevich
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Campbell
Cannon
Capps
Castle
Chabot
Chambliss
Chenoweth-Hage
Coble
Collins
Combest
Condit
Cox
Cramer
Crane
Cubin
Cunningham
Danner
Davis (VA)
Deal
DeLay
DeMint
Deutsch
Diaz-Balart
Dickey
Dingell
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Etheridge
Everett
Ewing
Fletcher
Foley
Forbes
Ford
Fossella
Franks (NJ)
Frelinghuysen
Frost
Gejdenson
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Green (TX)
Green (WI)
Gutknecht
Hall (TX)
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (IN)
Hill (MT)
Hilleary
Hobson
Hoeffel
Hoekstra
Hooley
Horn
Hostettler
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kanjorski
Kasich
Kelly
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Knollenberg
Knykendall
LaHood
Lampson
Largent
Latham
Lazio
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lowey
Lucas (KY)
Luther
Maloney (CT)
Maloney (NY)
Manzullo
McCrery
McHugh
McIntyre
McKeon
McNulty
Meehan
Mica
Miller (FL)
Minge
Mink
Moore
Moran (KS)
Morella
Murtha
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Olver
Ose
Oxley
Packard
Pallone
Pease
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Radanovich
Rahall
Ramstad
Regula
Reynolds
Riley
Roemer
Rogers
Rohrabacher
Rothman
Roukema
Ryan (WI)
Ryun (KS)
Salmon
Sandlin
Sanford
Sawyer
Saxton
Scarborough
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Shows
Simpson
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Thurman
Tiahrt
Toomey
Traficant
Turner
Udall (NM)
Upton
Visclosky
Vitter
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (PA)
Weller
Weygand
Whitfield
Wicker
Wilson
Wise
Wolf
Wu
Young (AK)

NOES—110

Ackerman
Baldwin
Barrett (WI)
Becerra
Bentsen
Berman
Bishop
Blumenauer
Bonior
Brady (PA)
Brown (FL)
Brown (OH)
Capuano
Cardin
Carson
Clayton
Clyburn
Conyers
Coyne
Crowley
Cummings
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dixon
Doggett
Dooley
Doyle
Eshoo
Evans
Farr
Filner
Frank (MA)
Gephardt
Gonzalez
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Holden
Holt
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Jones (OH)
Kaptur
Kennedy
Kildee
Kilpatrick
Kucinich
LaFalce
Lantos
Larson
Lee
Levin
Lewis (GA)
Markey
Mascara
Matsui
McCarthy (NY)
McDermott
McGovern
McKinney
Meek (FL)
Meeks (NY)
Menendez
Metcalf
Millender-McDonald
Moakley
Moran (VA)
Nadler
Napolitano
Obey
Ortiz
Owens
Pascrell
Pastor
Paul
Payne
Pelosi
Reyes
Rivers
Rodriguez
Roybal-Allard
Royce
Rush
Sabo
Sanders
Schakowsky
Scott
Serrano
Slaughter
Snyder
Tauscher
Thompson (MS)
Tierney
Towns
Udall (CO)
Velazquez
Waters
Watt (NC)
Waxman
Weiner
Woolsey
Wynn

NOT VOTING—50

Baker
Billirakis
Billey
Borski
Callahan
Canady
Clay
Clement
Coburn
Cook
Cooksey
Costello
Dicks
Fattah
Fowler
Gallegly
Ganske
Goodling
Greenwood
Gutierrez
Hall (OH)
Houghton
Kolbe
LaTourette
Leach
Lipinski
Lofgren
Lucas (OK)
Martinez
McCarthy (MO)
McCollum
McInnis
McIntosh
Miller, Gary
Miller, George
Mollohan
Myrick
Quinn
Rangel

Rogan	Shuster	Weldon (FL)
Ros-Lehtinen	Smith (WA)	Wexler
Sanchez	Stark	Young (FL)
Sherwood	Vento	

□ 2032

So the bill was passed.

The result of the vote was announced as above recorded.

The title was amended so as to read:

"A bill to require the Federal Communications Commission to revise its regulations authorizing the operation of new, low-power FM radio stations.".

A motion to reconsider was laid on the table.

Stated for:

Mr. KOLBE. Mr. Speaker, on rollcall No. 130, H.R. 3439, Radio Broadcasting Preservation Act, I was unavoidably absent. Had I been present, I would have voted "aye."

Stated against:

Ms. MCCARTHY of Missouri. Mr. Speaker, during rollcall vote No. 130, Radio Broadcasting Preservation Act, H.R. 3439, I was unavoidably detained. Had I been present, I would have voted "no."

Ms. SANCHEZ. Mr. Speaker, during rollcall vote No. 130 on April 13, 2000, I was unavoidably detained. Had I been present, I would have voted "no."

PERSONAL EXPLANATION

Mr. COOKSEY. Mr. Speaker, due to my mother's illness, I was not here for the votes on H.R. 3615 or H.R. 3439. Had I been present, I would have voted "yea" on passage of H.R. 3615, "nay" on the Barrett of Wisconsin Amendment to H.R. 3439, and "yea" on passage of H.R. 3439.

GENERAL LEAVE

Mr. PICKERING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 3439, the bill just passed.

The SPEAKER pro tempore (Mr. PEASE). Is there objection to the request of the gentleman from Mississippi?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3308

Mr. PICKERING. Mr. Speaker, I ask unanimous consent that my name be removed as cosponsor of H.R. 3308.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

AUTHORIZING THE SPEAKER, MAJORITY LEADER AND MINORITY LEADER TO ACCEPT RESIGNATIONS AND MAKE APPOINTMENTS, NOTWITHSTANDING ADJOURNMENT

Mr. PICKERING. Mr. Speaker, I ask unanimous consent that notwithstanding any adjournment of the House until Tuesday, May 2, 2000, the Speaker and majority leader and minority leader may be authorized to accept resignations and to make appointments authorized by law or by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY, MAY 3, 2000

Mr. PICKERING. Mr. Speaker, I ask unanimous consent that business in order under the Calendar Wednesday rule be dispensed with on Wednesday, May 3, 2000.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1396

Mr. BOUCHER. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor on H.R. 1396.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the House disagrees to the amendment of the Senate to the concurrent resolution (H. Con. Res. 290) "Concurrent resolution establishing the congressional budget for the United States Government for fiscal year 2001, revising the congressional budget for the United States Government for fiscal year 2000, and setting forth appropriate budgetary levels for each of fiscal years 2002 through 2005", agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. KASICH, Mr. CHAMBLISS, Mr. SHAYS, Mr. SPRATT, and Mr. HOLT, to be the managers of the conference on the part of the House.

YOUNG ROLE MODELS

(Mr. GIBBONS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GIBBONS. Mr. Speaker, this week three youngsters from Sparks, Nevada, were honored as national winners of Make a Difference Day, the largest national day dedicated to helping others.

Ten-year-old Crystal DeRuise, her 8-year-old brother Trevor, and her friend, 10-year-old Diana Vaden, started a simple crafts project. They collected oval-shaped rocks, painted them to resemble ladybugs, and sold them at local community craft fairs.

This simple project has become a local phenomenon in a nationally-recognized charity. When Diana's mother became ill with lupus last year, the students began to sell their rocks at the local stores, donating all of their proceeds to the Lupus Foundation. To date, they have raised about $1,500 for lupus research, and plan to generate at least $1,000 more in sales by Christmas.

In addition, as national finalists, an award of $10,000 will go directly to the Lupus Foundation on their behalf.

It is truly an honor for me to recognize these young individuals, who have given so much of themselves to such a worthy cause. These young children are truly the real role models for all America.

COMMENDING COMMISSIONER CHARLES ROSSOTTI FOR CREATING PARTNERSHIP BETWEEN IRS AND NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN

(Mr. LAMPSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAMPSON. Mr. Speaker, each day in the United States, 2,200 children are reported missing to the FBI's National Crime Information Center. Our colleagues have helped to raise the level of awareness about missing children by featuring their photos on franked mail and newsletters. Hundreds of corporations do their part. President Clinton mandated the posting of missing children's photos in Federal buildings.

Today I commend Commissioner Charles Rossotti of the IRS for creating a new partnership between his agency and the National Center for Missing and Exploited Children. All tax forms and publications this year feature the pictures of missing children where blank space once appeared. The IRS estimates that up to 600 million images of missing children are being featured.

The National Center reports that one in six missing children is recovered when someone recognizes their photo, and we are optimistic that many children featured in the new IRS program will make their way home as a direct result.

Mr. Speaker, please join me and the Members of the Missing and Exploited Children's Caucus in applauding Commissioner Rossotti for his leadership in bringing the pictures of these children to such a large audience simply by taking advantage of available space.

On behalf of all the families of missing children from our respective districts, we thank you.