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To: All Radio Clients

January 3, 2008

FCC ADOPTS RULES TO PROMOTE LOW POWER FM RADIO SERVICE, SEEKS COMMENTS ON ADDITIONAL PROPOSALS

The FCC recently issued an Order adopting ownership, eligibility and technical rules concerning the Low Power FM ("LPFM") radio service, and released a Second Further Notice of Proposed Rulemaking ("FNPRM") seeking comments on additional related proposals. Comments will be due after publication of the FNPRM in the *Federal Register*.

In the Order, the FCC:

- Limited the responsibility of LPFM stations to resolve interference caused to subsequently authorized full-service stations to situations involving co- and first-adjacent channel interference, but not second-adjacent channel interference.
- Established a procedural framework for considering second-adjacent channel short-spacing waivers for LPFM stations. In instances where a new full-service station or a modification to a full-service station would result in a full-service station and an LPFM station operating at less than the minimum distance separation, and if no alternate channel is available for the LPFM station, the LPFM station may seek permission to operate under an interim short-spaced special temporary authority ("STA"), pending resolution of proposals raised in the FNPRM, which are discussed below.

- Adopted a presumption that the public interest would be better served by waiving the FCC's existing rule that LPFM stations are secondary to subsequently authorized full-service stations when the LPFM station is threatened with displacement or significant interference from a community of license change by a full-service station, if the LPFM station can show that it has regularly provided at least eight hours per day of locally originated programming.
- Imposed an application cap of ten FM translators per applicant for applications filed during the 2003 window. Applicants will be allowed to select the ten applications they want to preserve before a settlement window opens.
- Allowed the assignment or transfer of control of LPFM licenses if the proposed assignee or transferee satisfies the LPFM ownership and eligibility criteria existing at the time of assignment or transfer.
- Reinstated a rule that all LPFM authorization holders be local to the community, but expanded the definition of "local" for rural LPFM licenses.
- Reinstated the rule restricting LPFM ownership to one station per licensee.

- Encouraged voluntary time-sharing agreements between LPFM applicants.
- Clarified that repetitious, automated programming does not meet the requirement for LPFM local origination.

In the FNPRM, the FCC:

- Recommends that Congress remove the requirement that LPFM stations protect full-power stations operating on third-adjacent channels.
- Tentatively concludes that the FCC should adopt a contour-based protection methodology for LPFM stations in order to expand LPFM licensing opportunities, especially in major markets.
- Tentatively concludes that full-service stations must provide technical and financial assistance to LPFM stations when implementation of a full-service station application for construction permit or license, including a community of license modification, would result in short-spacing and increased interference or displacement of an LPFM station. Assistance would include help in finding an alternate LPFM channel, developing technical approaches to lessen the interference and/or displacement impact

of the proposal, and payment of expenses for necessary physical changes in the LPFM station's transmission system.

- Seeks comment on whether the interim second-adjacent channel waiver rule announced in the Order should be made permanent.
- Seeks comment on whether the Commission should amend its rules to establish a licensing presumption to protect certain LPFM stations from subsequently proposed community of license modifications by full-service stations.
- Seeks comment on a possible altering of priorities between LPFM and FM translator stations, which are currently treated as "co-equal" for purposes of protecting existing stations or applications in either service against subsequently filed applications in either service.

We will provide you with the comment date once the FNPRM has been published in the Federal Register.

If you have any questions concerning these new rules or proposals, or if you would like to file comments in response to the FNPRM, please contact any attorney in our office.

Leventhal Senter & Lerman PLLC

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact any attorney in our office.