

Proposal for the Creation of the National Lawyers Guild Center for Democratic Communications and Low Power Radio

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Proposal for the Creation of the National Lawyers Guild Center for Democratic Communications and Low Power Radio

Executive Summary

The National Lawyers Guild Committee on Democratic Communications (CDC) proposes to establish a Center for Democratic Communications and Low Power Radio, dedicated to assisting community organizations in applying for two new classes of Federal Communication Commission (FCC) low-power non-commercial community radio licenses. The creation of such a center is essential to ensuring that the diverse community groups eligible for these licenses —grassroots organizations with little fiscal or personnel resources—have a fair chance in the application process.

Since 1979 the FCC had banned any radio stations of less than 100 watts of power¹, thereby effectively eliminating small community based broadcasting. After more than eleven years of constitutional challenge in the courts, civil disobedience on the air, and intensive persuasion at the FCC, the government has agreed to create an entirely new type of radio service. Once called Pirate Radio, later termed Microradio, it is now officially enacted as Low Power FM (LPFM).

Although the FCC has attempted to simplify the license application process, it is still highly technical, and the preparation time may be as little as thirty days. Grassroots and other applicant groups simply will not be able to prepare and file applications without serious technical and legal assistance. The Center will assist grassroots community based organizations (CBOs), unions and others in this process. In addition, the Center will provide compliance monitoring when licenses are granted, to ensure that the new service stays non-commercial and community based.

¹ The average “full power” station broadcasts with anywhere from 20,000 to 60,000 watts; a few of the older stations go up to 100,000 watts

1. BACKGROUND

In its formal filing in the Rulemaking Proceeding which preceded the creation of this new service, the CDC pointed out how inappropriate the ban on low power radio was. It was as if the government had tried to ban all newspapers with a circulation of less than a million, i.e. all local papers, community weeklies, church newspapers. CDC pointed out that worsening this situation, the Telecommunications Act of 1996 resulted in a massive concentration of media in the United States.

Starting in the late 1980s, in an act of civil disobedience, first a few, and ultimately up to 1000 micro powered radio stations went on the air, producing programming for those communities that are historically disenfranchised and left out by mainstream corporate media. These stations not only diversified the perspectives and voices heard on the radio, but also created public awareness on the issue of media access.

On January 20, 2000, after years of pressure by a national grassroots "micro radio" movement, with the Lawyer's Guild Committee on Democratic Communications playing a key leading role, the FCC announced the establishment of a new Low Power FM (LPFM) service. The result will be a local and non-commercial low power service that will increase the diversity of local voices on the airwaves. A wide coalition of community groups, churches, local governments, radio activists, music industry professionals and elected officials mobilized and were able to overcome significant opposition from the National Association of Broadcasters and other industry groups. This decision is an essentially unprecedented victory of a grassroots movement over commercial broadcast interests and government inertia.

After years of trying to suppress the micro radio movement, the FCC has recognized that local, community-based low power radio is desperately needed to counteract the

enormous centralization taking place in the broadcast industry since the Telecommunications Act of 1996. In its Comments, the CDC suggested that the FCC create an LPFM service to serve local communities with locally-produced radio programming, to enable diverse and alternative voices to utilize the airwaves, and to encourage radio service by and for traditionally under- or unserved communities. The CDC is pleased that the FCC has followed many of its suggestions, raised in its formal Comments to NPRM 99-25, to establish a non-commercial LPFM service to counteract the massive commercial consolidation of the radio airwaves following the Act of 1996.

2. THE NEED FOR A CENTER FOR DEMOCRATIC COMMUNICATIONS AND LOW POWER RADIO

The FCC decision has great First Amendment implications, and some problems. It creates a great opportunity to re-invigorate the public forum. However, if public and civic groups are not quickly educated about the opportunity and helped with the application process, enormous risk exists that the new service will not be democratic in nature.

Since the FCC vote on January 20, the CDC and other LPFM advocates have been overwhelmed with inquiries from organizations that need information on equipment, consultants, lawyers and engineers. Despite commendable efforts to simplify the rules and procedures for qualifying for LPFM licenses, the FCC's 79-page Order (with its 32 pages of technical appendixes and 13 pages of Commissioner interpretation), does contain numerous technical and procedural requirements. And, the FCC has said that there will be a little as 30 days between the time application procedures and forms are announced (which is expected to be in early May), and the time they must be filed. There may be no more than a five-day filing window, for the FCC's initial implementation of 100 watt service, and thereafter there will be subsequent short filing windows for the implementation of the 10 watt class of service.

Competition will be keen for the available frequencies. The commission has taken a conservative approach to the question of station separation, which means that there must

be a minimum distance between available frequencies. As a result, there will be far fewer frequencies available in most metropolitan areas than will be sought by community groups, churches, unions, schools and government entities. While the purpose and spirit of the FCC's Report and Order is very clearly to empower local grassroots, community based organizations and others to obtain these licenses, and run these stations in the interest of the community, the targeted groups lack the capacity and resources to deal with the myriad of requirements needed to prepare and file applications. In order to guarantee that these groups are given a fair chance to apply, they will require intensive low fee and/or free technical assistance. Since applications deemed non-qualifying will simply not be processed, there is an enormous premium on proper preparation and presentation of applications.

Once licenses are issued there will be a strong need for ongoing monitoring. The FCC has included commendable provisions seriously restricting multiple ownership, requiring local ownership, and forbidding ownership for commercial purposes. However, the FCC has made these provisions essentially self-enforcing, with little or no governmental compliance monitoring to ensure that these requirements are adhered to. Thus, there will be a strong need to monitor future applications and performance of LPFM licensees to ensure that the intent and purpose of the Report and Order are carried out. As licensed stations come on line, and the licensing process itself is winding down, the Center will fulfill this monitoring role.

3. **TIMELINE** The process of getting low power station on the air will fall into several distinct phases:

PHASE	TIME FRAME
Report and Order goes into effect	April 17, 2000
Application Forms available	About April 7, 2000
Five-Day filing window for LP100 Applications	Probably May 17-22
Period in Which to Deal with Rejected Applications	During the five day filing window, and up to approx. 30 days thereafter, approximately May 22-June 30
“Cooperation Period” (competitive and mutually incompatible application scoring an equal number of points will have to enter into joint operating agreements (frequency sharing) in order to have the opportunity to obtain licenses in congested areas. Joint agreements will have to be carefully negotiated and drafted in a short period of time.	Probably the month of July
Licensing period for LP100 stations. Once all LP100 licenses have been issued a similar process will be initiated for LP10 (1 to 10 watt transmitters) stations.	Probably September 2000, through January 2001
Implementation Monitoring	Through April 2003
Compliance Monitoring	Ongoing

4. TASKS THE CENTER WILL FULFILL

The Center will provide technical assistance to community based organizations by carrying out and coordinating a number of specific functions:

- a. Preparation and dissemination of web and print educational materials regarding the LPFM opportunity and process. This will include preparing documents that describe in simple English (and Spanish) the rules, requirements and procedures for the new low power FM service;
- b. Disseminating these documents on the web, in print via mail, and other appropriate means;
- c. Conducting regional training workshops for potential LPFM applicants to educate and inform them with respect to the LPFM process;
- d. Conducting regional training workshops for local attorneys, paralegals, or others who are available to assist applicants;
- e. Providing assistance to applicants in forming or structuring organizations to apply;
- f. Organizing and coordinating engineering support for applicants who will need help in determining availability of frequencies.
- g. Engineering and legal help in preparing formal requests to the FCC for waiver of certain regulations for applications in crowded urban areas;
- h. Conducting ongoing public education to ensure on going public support for LPFM;
- i. Cooperating and liaising with the FCC to simplify and interpret the licensing process;
- j. Providing training and advice for legal and other persons advising potential applicants.

5. SERVICE PROVIDERS FOR THE CENTER

We have available a wide range of experts who have been involved with micro radio as attorneys, legal workers and community activists. Primary responsibility for the Center will be in the hands of Peter Franck, Alan Korn, and Phil Tymon, attorneys with the CDC who have been involved in the defense of micro broadcasters and the campaign for the legalization of micro radio for more than ten years. They have led the National Lawyers Guild Committee on Democratic Communications, which has played a central role in legitimizing LPFM as a new and democratic medium and in the formulation of the specifics of the FCC's LPFM service (our Comments in the formal proceedings leading to this service are quoted over a dozen times by the Commission in its Report and Order). Peter Franck has practiced entertainment and intellectual property law for more than thirty years; his interest in free speech and communications issues led him early in his career to be one of the attorneys for Mario Savio and Berkeley's Free Speech Movement of 1964; he has been a director and president (1980-84) of the Pacifica Foundation and on numerous boards of organizations such as San Francisco's Media Alliance. Alan Korn developed the fundamental legal theory which formed the basis for the constitutional defense of micro broadcasters during the 90s while still in law school. He has extensive experience in non-commercial radio and in 1985 he received his Masters degree in Broadcast Communication Arts. He is also a partner in the San Francisco law firm of Berchenko and Korn, focusing on entertainment, intellectual property and media issues. Phil Tymon prepared CDC's formal comments in the FCC's Low Power FM rulemaking proceeding. He is a former member of the staff of the National Citizen's Committee on Broadcasting, Managing Editor of Access magazine, and director of Cable and Television Information Center of the Urban Institute. A graduate of New York University Law School, he is a former Manager of Pacifica Station WBAI, and is currently the director of the Arts and Ecology Center in Guerneville, California and teaches broadcast law and regulation at San Francisco State University.

6. OTHER RESOURCES

The United Church of Christ has established its Micro Radio Implementation Project, based in Portland Oregon. Its Director, Andrea Vargas is concentrating on a public information campaign to inform potential applicants of the licensing opportunity. She has informed the CDC that once the word is out, the Microradio Project will refer potential applicants to the appropriate engineering, legal and equipment resources. She has asked the CDC to be available for legal referrals to help fill this need.

The Media Access Project (MAP) is concentrating on preparing summaries of the new rules and recruiting a core of attorneys from Washington based communications firms to act as a back-up resource if and when difficult questions of FCC rules, procedures and policy arise (as they certainly will).

The Prometheus Radio Project is already conducting workshops throughout the Northeast to familiarize potential applicants with the process, from an organizational, equipment and regulatory point of view. CDC has worked extensively with Prometheus Radio throughout the rulemaking process and expects to continue to do so.

The Low Power Radio Coalition plans to continue its public education work, to ensure that there is broad public awareness and support for this important initiative of the FCC.

7. CDC's EXPERIENCE AND EXPERTISE

The National Lawyers Guild Committee on Democratic Communications is uniquely qualified to form and run the Center. The CDC was a founding member of the Microradio Empowerment Coalition organized to raise a public campaign for truly democratic, locally based microradio service. For the last 14 months, since the FCC issues its Notice of

Proposed Rulemaking, the Microradio Empowerment Coalition, Low Power Radio Coalition and other groups have worked to educate the community at large about the public process. The CDC helped take the stories about the potential of LPFM into the Washington, DC decision making process, including the FCC, Capitol Hill and the media. We have worked extensively with unions, grassroots community groups, individuals hoping to obtain licenses, the music industry, educational institutions, and local governments.

6. FISCAL

The proposed first-year budget for this project is \$244,961 (budget attached). Of this first year budget, \$150,000 has been requested from other sources. We respectfully request a grant of \$100,000 from the Open Society Foundation on an emergency basis.

In late 1998 the CDC received approximately \$10,000 in start-up fund grants for its work on behalf of the creation of Low Power FM. In 1999 CDC received a grant of \$50,000 from the MacArthur Foundation to support its work related to educating and mobilizing public opinion and grassroots organizations around the issue of opening the airwaves. The recent FCC victory is testimony to the success of the organizing campaign of which we were a central part.

The CDC is a permanent national committee of the National Lawyers Guild, which is incorporated as a 501(c)(4) organization. CDC has received foundation grants through the National Guild in the past. The *National Lawyers Guild Foundation* is recognized as a public benefit corporation certified as a charitable organization under section 501 (c) (3) of the Internal Revenue Code. It frequently receives grants earmarked for particular educational or charitable activities of the National Lawyers Guild.