

2009

## Community Radio, Public Interest: The Low Power Fm Service and 21st Century Media Policy

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<https://doi.org/10.7275/866458>

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**COMMUNITY RADIO, PUBLIC INTEREST:  
THE LOW POWER FM SERVICE AND 21<sup>st</sup> CENTURY MEDIA POLICY**

A Thesis Presented

by

MARGO L. ROBB

Submitted to the Graduate School of the  
University of Massachusetts in partial fulfillment  
of the requirement for the degree of

MASTER OF ARTS

September 2009

Department of Communication

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## **DEDICATION**

To my amazing family:

James Carrott, my husband

Amelia and Beatrix, my daughters

and Bruce and Janet Robb, my parents

L. Bob Rife laughs. “Y’know, watching government regulation trying to keep up with the world is my favorite sport. Remember when they busted up Ma Bell?”

“Just barely.” The reporter is a woman in her twenties.

“You know what it was, right?”

“Voice communications monopoly.”

“Right. They were in the same business as me. The information business. Moving phone conversations around on little tiny copper wires, one at a time. Government busted them up – at the same time when I was starting cable TV franchises in thirty states. Haw! Can you believe that? It’s like if they figured out a way to regulate horses at the same time the Model T and the airplane were being introduced.”

-- Neal Stephenson, *Snow Crash*, 1992

## ACKNOWLEDGMENTS

I began writing this thesis in the spring, 2002, in what I now know were my carefree days, but which at the time seemed overly busy with coursework, teaching a video production class, working on a media literacy video and planning for the radio station that would become WXOJ 103.3 FM. Little did I know that I would get pregnant and move to Seattle later that year. And now, seven years and two kids later, I am approaching the end of this project.

As I look back on those years – while scratching my head wondering where the time went – I know that I would not be where I am if not for the help of some tremendous people. Special thanks to Bob McChesney for helping me make my next step, after leaving my post as news director at WORT 89.9 FM, the wonderful community radio station in Madison, Wisconsin. I would like to thank professors Mari Castañeda and Sut Jhally for their knowledge, support and patience as I have (repeatedly) found my way back to this project. I would also like to thank Erica Scharrer, Briankle Chang, Lisa Henderson and Carolyn Anderson for challenging me to look at the world differently.

I both thank and curse Pete Tridish for the opportunity to organize the weekend in 2005 that culminated in WXOJ going on-air for the first time. It was thrilling to see the station launch, but the endeavor stretched and challenged me in ways that I am not sure I wanted to be... Pete has also been an amazing sounding board while I wrote this paper. To my mother-in-law Kathy Veenker, I extend a thank you for the two and half weeks she spend watching a two year old Amelia while I burned the candle on both ends, leading up to and during WXOJ barnraising and 10<sup>th</sup> Annual Grassroots Radio Coalition Conference.

There are many friends who have held my hand along the way, Thank you one and all for your kindness. A special thanks to Chad Hessoun for just telling me to sit down and write and to Jonathan and Elizabeth Maher for support both with writing and watching my kids. Marina Carrott, also my mother-in-law, spent two weeks with my girls while I pounded out the last few chapters of the thesis. She could not have come at a better time. Thank you.

I want to thank my parents who have been supportive every step of the way. They opened their home to my daughters and me for five weeks last spring, taking care of the kids so I could write. They came again at deadline to support me during the final push. They have also read countless numbers of drafts, giving valuable feedback each and every time I have asked for it. I love them dearly.

To my amazing daughters, Amelia and Beatrix, I thank you for your understanding and (sometimes) patience as I worked. This project pre-dates them and I do not think they entirely get it, but even so, Beatrix, my 2 ½ year old, tells me she is so proud of me and Amelia, my 5 ½ year old, gives me a necklace from her dress-up box every time I finish a chapter. And to my husband, James Carrott, thank you for trusting that I would finish.

## **ABSTRACT**

### **COMMUNITY RADIO, PUBLIC INTEREST: THE LOW POWER FM SERVICE AND 21<sup>ST</sup> CENTURY MEDIA POLICY**

SEPTEMBER 2009

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The introduction of the Low Power FM (LPFM) service by the Federal Communications Commission (FCC) provided a unique glimpse into media policy-making. Because usual allies disagreed over the service, the usually invisible political nature of the debate was made transparent. The project of this thesis is to contextualize the histories of radio policy, non-commercial radio, and the public interest standard to shed light on why it was so challenging to implement even a small, local radio service. Secondly, the thesis will explore the theoretical understandings of the various players in the LPFM debate, as well as the practical functioning of these tiny stations. This project also challenges the low power advocates and media reform movement to actively fight for more substantive media policy regarding civic protections.

**KEYWORDS:** non-commercial, community, radio, low power, public interest, LPFM service.



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## ABBREVIATIONS

AMARC	World Association of Community Broadcasters
CDC	National Lawyer's Guild's Committee on Democratic Communications
CP	Construction Permit
FCC	Federal Communications Commission
FRC	Federal Radio Commission
GRC	Grassroots Radio Coalition
LPFM	Low Power FM radio
MAP	Media Access Project
MIP	Microradio Implementation Project
NAB	National Association of Broadcasters
NFCB	National Federation of Community Broadcasters
NPR	National Public Radio
PRP	Prometheus Radio Project
UCC	United Church of Christ
VFR	Valley Free Radio

# CHAPTER 1

## INTRODUCTION

In the beginning months of 2009, the market is showing signs of weakness. With a massive bank bailout in the United States and the decline of newspapers in major cities across the country, the presence and influence of industry is more transparent than it has been in decades. Due to the results of the 2008 elections, which put Democrats in the Oval Office and in charge of both houses of Congress, the time seems ripe to push for a more substantive public interest standard in the broadcasting regulatory process at the Federal Communications Commission and other government sectors dealing with communications more generally. The intent of this thesis is to utilize the emergence of the LPFM service in 2000 – an initiative implemented by the Federal Communications Commission (FCC) to give non-profit civic organizations space on a highly commercialized radio dial – in order to explore the theoretical, perceived and practical promise of executing even a small initiative in the name of defending democratic ideals from corporate disinterest.

That the LPFM service was hotly contested when introduced provides a glimpse into the highly political workings of the FCC, an agency that has historically often been viewed as a mere administrator. The theory behind the LPFM service was that it would increase diversity and local voices in communities, combating an increasingly consolidated radio market. Media coverage, however, perceived the implementation of the LPFM service primarily as a quaint human-interest story rather than as part of a larger policy discussion focused on rethinking the state of the US media landscape. The actual practice of many of these LPFM stations illustrates that while living up to the promise of

providing diverse, local voices, the issues facing low power stations are formidable. This thesis explores the histories of public interest, noncommercial radio, and media policy more generally— as interpreted by the FCC, Congress and the courts – to provide context for why a non-commercial low power service was so difficult to implement and to understand the challenges facing media reform organizations trying to institute changes to the business-as-usual, market economy approach to media policy.

By studying the LPFM service in this thesis, it is possible to gain critical insight into the challenges of creating a more open and engaged discussion about the public interest standard and First Amendment protections more specifically and media policy in general. Due to the constant attacks by commercial interests on the public interest standard, for instance the attempt to eliminate scarcity as an argument for why broadcasters need to operate in the public interest, very little of its original potential remains. The one hope is that localism and diversity continue to be key issues in implementing the service for a new generation of low power stations. They, along with scarcity, provide the precedent that media reform groups can use to build campaigns that proactively fight for policies that protect the public and challenge the media industry to provide more well-rounded and engaged programming.

### **Literature Review**

The amount of research concerning radio has mushroomed in the last twenty years. Research by Robert W. McChesney (1993), Susan Douglas (1987), Thomas Streeter (1996), Robert B. Horwitz (1988), Patricia Aufderheide (1996), and Michelle Hilmes (2001) all have explored the introduction of regulation to radio broadcasting. McChesney (1993) and Douglas (1987) have provided compelling stories of groups

responding to the original and ongoing commercialization of the airwaves. Streeter (1996), Douglas (1987), and Horwitz (1988) provide an analysis on the impact that the organizing principles surrounding corporate liberalism have played on the way media policy gets regulated throughout U.S. broadcasting's history. These scholars, as a group, have begun the process of challenging terms used by policymakers and previous broadcast historians, forcing a spotlight on the agency behind policies that get introduced as merely technical decisions. Streeter (1996) notes that “[c]ommercial broadcasting exists...because our politicians, bureaucrats, judges and business managers, with varying degrees of explicitness and in a particular social and historical context, have used and continue to use the powers of government and law to make it exist” (xii). Using analysis from Streeter (1996), McChesney (1993, 1999, and 2008) and Kuttner (1996), this paper will work from three basic ideas: that the concepts behind corporate liberalism have helped to shape the way policy decisions about communications get made in the US, public stakeholders have on occasion been able to engage and counter this ideological unity of government regulators and commercial interests, and that there is a pressing need to reclaim concepts that protect the common good in the context of broadcast media. These concepts include reviving public interest and First Amendment protections.

McChesney (1993), Streeter (1996), and Kuttner (1996) all provide important and innovative analysis regarding the current pro-market state of media regulation. Streeter's analysis illuminates a media policy apparatus that media reformers must face when trying to implement even a small radio service such as low power FM. Streeter's argument suggests that, to date, the power to frame the media policy discussion in the U.S. has remained in the network of people tied to commercial broadcasting and corporate liberal

ideals. According to Streeter (1996), corporate liberalism emerged as a concept in government operations as early as the 1880s. Its roots are tied to American liberalism, a belief system that is often seen as antithetical to the corporations, providing juxtaposition between the two concepts being combined by commercial interests. Liberalism draws from philosophers such as John Locke, Thomas Hobbes and Adam Smith, and grapples with concepts of individualism, rights, markets and property. According to Streeter (1996), highlighting Alfred Chandler's research, corporate entities were able to align themselves with aspects of liberalism during the period between 1880 and 1920 (32). During this time, economics, politics and social policy shifting in the United States to accommodate the rise in government-regulated trusts.<sup>1</sup>

Radio emerged into this climate of regulation, though due its uniqueness as a form of mass communication, regulators would be forced to grapple with a more challenging definition of a public interest than is applied to most other industries. Because of the shifting approach to regulation, broadcast regulators, legislators and legal community began to rely on information delivered in terms of “technical necessity, administrative expertise, and a functionalist vision of the public good” without ever dealing out right with the question of property (Streeter, 1996, 60). People are told that the airwaves belong to them and yet the stations are being bought and sold among a handful of large corporations.

Streeter (1996) notes that the government has “embod[ied] discursive rules, rules about what can be said and done and what can't be said and done, and more important, how to say and do them” (115). The problem for media reformers, he argues, is that “what makes a ruling appear practical, a legal decision seem sound, or a procedure appear

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<sup>1</sup> Streeter (1996) notes that these include the telegraph, steel, railroad, and chemical industries (60).

fair, is the contingent, shared vision of the interpretive community itself, not simply rational policy analysis, legal reason, formal rules of process and procedure, or interest group measures” (114). He is arguing that changing the structure of what gets prioritized in media policy has to happen at a more basic level, addressing the “central contradiction” between the individual and the social in the concept of liberalism, that there is

...the possibility that free individuals can be reconciled with the social good through some combination of the invisible hand of the market, democratic procedure, and a legal system based on impersonal, objective rules (“the rule of law, not of men”). (31)

The idea that the inevitable tensions that arise surrounding the intersections between the market, democracy and objective laws can be transcended is a key tenet in this worldview. The term property, an essential component of liberalism, which Streeter describes as being the benchmark of “the moral and material progress of human kind,” has increasingly been replaced by more mutable approaches such as contracts (Streeter, 31). It is the system that Streeter argues media reformers need to expose, as the decision-making and basic interpretations of how policy decisions get made “should be allowed to be open to question,” rather than taken to be the natural and neutral way of regulating a communication system (21). His ultimate message in *Selling the Air* is “that fixity of broadcasting is historical, not inevitable, and thus, in the larger scope of things, subject to change” (21).

While McChesney (1993) does not embrace Streeter’s corporate liberalism critique, both scholars recast the historical development of media policy onto the *people* responsible for developing the policies that ultimately shaped radio into a commercial enterprise. They disagree about the point at which the battle for a more public-minded



broadcasting system was lost, but both of their perspectives offer insight into the early creation of broadcasting regulation. McChesney's first book *Telecommunications, Mass Media & Democracy* highlighted the struggle to advocate for public interest concerns by a group of primarily educational and religious broadcasters seeking to inform and include the general public in the broadcasting policy issues at hand. Unfortunately these organizers lacked the resources and the ability to articulate effectively, in a way that had resonance, what was at stake to a broad base of the U.S. population. This provides an important lesson for current reformers, including McChesney, who co-founded Free Press, a non-profit group advocating for media reform in the U.S., in 2002. The lesson is that critics of the way government is currently regulating communications need to get organized, effectively communicate within movements, and be ready with a plan for engaging the public to become stakeholders in the shaping of broadcast and other policy that impacts their lives.

Because the radio spectrum in the U.S. has become part and parcel of the capitalist market economy, economist Robert Kuttner (1996) notes, legislation and regulations have to champion "privatization, deregulation and liberation of the global marketplace" (5). In his book, *Everything for Sale*, Kuttner (1996) notes that the pro-market economists, emphasizing the economic model of man, "impeaches politics as well as government, because of their common, allegedly negative effects on the efficiency of the market" (332). He argues, "[T]he celebration of the market has become an insidious form of contempt for political democracy" (332). He critiques the Public Choice philosophy, to which economist Ronald Coase and former FCC Chairs Fowler, Powell and Martin subscribe, noting that the theory "den[ies] that such a thing as the common

ground exists, except as the sum of selfish individual goods. Those who posit a collective good, or an ethic or public-mindedness, are mere “sentimentalists” pursuing an unscientific mirage” (337).

Kuttner (1996) provides compelling examples of where markets fail to address public good and questions when and how government should intervene to correct shortcomings of the market. He points to the creation of the Occupational Safety and Health Administration (OSHA), the Tennessee Valley Authority and the passage of the Food Act after Upton Sinclair’s expose of unhygienic meat processing plants as examples of where the government had to step in because private industry was not protecting the public good. Another example is the notion of universal service, which requires telephone companies to provide service, even where there was no monetary incentive to do so.

Even as technological advances are drawing people away from traditional broadcasting – even television – into the Internet, their phones, MP3 players, or game consoles, the site of the LPFM service introduced on to the radio spectrum, is fertile ground for exploring the political nature of media policy. Radio, though often seen as by many as antiquated medium, nevertheless has remained a constant within the media landscape. Regardless of its various technological competitors, radio broadcasting remains an inexpensive and accessible medium, available in the car, at work, at home, and in the background of daily life. Yet, due to the 1996 Telecommunication Act, the economy of scale of radio ownership has shifted dramatically. Currently, a few large corporations own the majority of radio stations, even as the airwaves are purportedly publicly owned. This dramatic change in radio broadcasting regulation, now over a

decade old, provides an important example of what can happen when a medium gets largely deregulated. It was because of the void created by massive buy-outs of radio stations nationwide post-1996 that FCC Chair William Kennard said he responded to the citizen petitions proposing an LPFM service. He sought to counter what he saw as troubling trends on the radio: the lack of diversity and localism and reduction in minority ownership. The goal of the LPFM service was to open up permit applications to any non-profit organization, whether municipal, religious, or community based, in order to broadcast at 100 watts or approximately a ten mile radius, three and a half miles of which was protected from encroachment or interference from neighboring stations. Basically, the LPFM service was meant to serve the immediate local community.

### **Methodology**

The scope of this paper is the United States and its government's policies on radio, particularly as they apply to the LPFM service, and how the commercial broadcasting industry often manipulates those policies for its own monetary ends. Certainly, with the emergence and impact of the Internet and the constant merging of technologies, the regulations are no longer just under the purview of the FCC, which complicates matters for media reformers, but for the purposes of this paper with its focus on radio, the FCC will be the regulatory agency accessed. As with all regulatory agencies, their mandates come from Congress, which means that the directives are often influenced by the ruling political parties dominant at that time.

The commercial radio industry in 2009 has as its primary objective to increase advertising revenues. This prioritization has meant the decline of news departments, local content and musical variety. Primarily utilizing the thinking of political economists,

this thesis seeks to explore the political, economic and technical aspects of the LPFM service, to get insight into how decisions get made in current practice at the FCC and in the government more generally. This study of the LPFM service requires background on three inter-related histories – that of the public interest standard, non-commercial community radio, and broadcast media policy at the FCC – to study how they came about and the perimeters within which they have developed. By removing the moral component of political economy from the en-vogue Keynesian theories that guide current media policy decisions, marketplace theorists attempt to operate solely from economic analysis; attempting to reframe debates to not consider social ramifications and to subsume the political components in the equation. This research project, however, is also concerned with the social aspects of radio broadcasting, thus prompting an initial exploration of the importance of cultivating truly public space and local place on the airwaves and in communications more broadly.

Political economy historically has drawn from economics, law and political science to try to get at how political institutions, the political environment and capitalism influence each other. Divided into many schools, political economists reside throughout the political spectrum. On the right, Public Choice theorists argue for a market economy, efficiency, and deregulation, while on the left, the social value school of thought explores moral questions and access diversity (Entman and Wildman, 1992). Eileen Meehan, Vincent Masco, and Janet Wacko, (1993) who reside in the latter school, note that political economists need to address history, social totality, moral philosophy, and praxis (a commitment to collapsing distinctions between research and social action) into their research projects (107).

This progressive approach to studying political economy addresses the conflicting policy goals of liberalization (i.e. deregulation) and democratization that are continually at play in U.S. politics (Lenert, 1998, 3). These scholars define political economy as “the production, distribution and consumption of resources, including communication and information resources (Meehan, et al, 1993, 106)” McChesney (2008) recently posited exploring “the political economy of media,” which he notes has grown significantly since the 1960s. He describes this approach as being “a critical exercise, committed to enhancing democracy” (13). In 2001, he also addressed specifically “The Political Economy of Radio,” which he described as “how radio broadcasting is owned, controlled and subsidized.” This thesis attempts to show that the broadcasting spectrum is a space where the market will continue to fail to do what it needs to do to cultivate citizens and serve in the public interest. The idea that the majority of radio stations throughout the United States are owned by less than a handful of companies is shocking, especially considering that radio is the cheapest broadcasting medium to produce and distribute and an easy medium to access for all socioeconomic groups and people with different languages, The following chapter synopses include the methodological approach used in each chapter.

### **Thesis Layout**

Public interest, a key tenet in the formation of U.S. broadcasting policy in the late 1920s, continually gets redefined in broadcasting policy such that at the turn of the 21<sup>st</sup> century it reflects an industry-driven marketplace approach to regulating the airwaves. The corporate interests have attacked key aspects of the standard, particularly scarcity, arguing that because of the tremendous leaps forward in technological advancements

there is no longer a shortage of ways information can be disseminated throughout society. This argument has been gaining currency and if successful in the courts, could remove the necessity for the public interest standard in broadcasting, a troubling notion considering that the standard offers the grounds on which to counter commercial influence in broadcasting. Chapter Two contrasts two historical analyses of the public interest standard, one focused on the importance of protecting public access to information (Martin, 2001) and the other on eliminating the scarcity argument, to free of broadcasters from “holy grail” mandates serving an ambiguous public interest (Krasnow and Goodman, 1998).

In Chapter Three, the challenges noncommercial radio has faced in finding space on the dial throughout radio broadcasting’s history will be addressed. The history of noncommercial broadcasting will be accessed to provide context for the current U.S. media policy debates surrounding the LPFM service, which the FCC created expressly as a noncommercial service, as well as the broader discussions around issues of localism in broadcasting. One aspect of this project is to examine how noncommercial space on the radio spectrum came to be there and how it continues to survive considering the mostly commercial landscape that surrounds it. This history can help guide current reformers in what has worked and what has not worked in the quest to provide broadcasting that is accountable to its audience. This chapter highlights, in particular, three histories of noncommercial community radio movements, including Lorenzo Wilson Milam’s *Sex and Broadcasting: A Handbook on Starting a Radio Station for the Community* (1988), Ralph Engelman’s *Public Radio and Television in America: A Political History* (1996) and Jesse Walker’s *Rebels on the Air: An Alternative History of Radio in America* (2001).

In Chapter Four, the powerful opponents of the LPFM service, who fought to eliminate this service, as well as various media reform groups that came together to advocate for low power radio will be introduced. This chapter will look practically at what transpired within the FCC and Congress and how political maneuvering impacted the outcome of how the FCC could issue low power FM licenses. It is instructive to study a scenario where the FCC and the broadcasting industry were on decidedly different sides of a policy issue, as they have been close allies in recent years. This chapter will incorporate Information gathered from the FCC website, as well as from listserves run by progressive grassroots media reform groups. The information sites include Stubblefield, set up by Prometheus Radio Project to help low power groups network; the National Low Power Advisory Board, set up by the National Federal of Community Broadcasters, in response to a Ford Foundation grant; and ongoing communiqués from media reform groups including Prometheus Radio Project (PRP) and Media Access Project (MAP).

In Chapter Five, the various moments when broadcasting mandates have been legislated will be examined. This chapter will explore the Radio Act of 1912, the Radio Act of 1927, the Communication Act of 1934, the Telecommunications Act of 1996 and the media ownership debates of 2003. Considering the dramatic reach of broadcasting in the United States, it is rather surprising that Congress has made so few rulings on it, often leaving decisions to be tested for constitutionality in the courts. Of particular interest are the historical circumstances that led to Congress weighing in on broadcasting mandates and the presence of opposition to the commercial interests at these moments in time. The response by grassroots media reform groups throughout the 2000s to new efforts to

change ownership rules has at least to date showed signs of success in holding back further loosening of regulation. This chapter combines historical analyses provided by Susan Douglas (1988), McChesney (1993) and Streeter (1996) with newspaper reports of the most recent debates to roll back ownership broadcasting regulations.

In Chapter Six, I will examine the low power stations that are currently broadcasting and question whether their emergence onto the airwaves is, in fact, in the public interest. The focus of this chapter will be divided between the challenges facing the individual projects and the successes of the progressive low power movement. In this chapter, some of the realities of low power radio stations that are already broadcasting will be explored. In particular, the application, construction permit and licensing of a project in Florence, Massachusetts will be featured. This chapter will incorporate interviews, newspaper articles and personal observation to document the emergence of this low power community radio station, which began as the Valley Free Radio Project, in 2001, and would officially become WXOJ 103.3 FM on August 7, 2005. Ed Russell, Will Hall, Allison Brown, and Jane Braaten gave permission to incorporate their reflections into the VFR narrative. Where there is not a name given, just a vague description, these are people whose permission was not requested due to the sensitive nature of some of the conflict that arose at WXOJ.

In the conclusion, I will argue that the media reform movement needs to focus on a proactive re-imagining of the public interest standard that has in the past protected the rights of listeners from the commercial radio station owners. Low power radio's place within a broader discussion about the need to create public space in an increasingly corporate culture will be analyzed. To accomplish these goals, I will explore other



instances where individuals and groups are addressing the necessity of open access across the various mediums that make up current media.

## CHAPTER 2

### CONTEXTUALIZING THE PUBLIC INTEREST STANDARD

The public interest standard, first codified into broadcasting policy with the 1927 Radio Act, has held a controversial space in media policy. Though broadcasting regulators were mandated by Congress to serve “in the public interest, convenience and necessity,” they received very little other guidance for how to address it practically in policies. While, according to scholars Horwitz (1997) and Streeter (1996), the standard has always been a market term, borrowed from the big trusts at the turn-of-last-century and never intended to be about citizens per se, the presence of public interest terminology in media policy has on occasion served as a public safeguard, encouraging and in some cases cajoling broadcasting entities to operate with more concern toward its listeners. This chapter seeks to accomplish three things: to provide an assessment of the various interpretations of the public interest standard; to highlight the ongoing assault by corporations on this piece of regulation; and to explore how the media reform movement might utilize the standard to further its mission of making the airwaves more representative of the needs and interests of the general public.

#### **Defining Public Interest**

Krasnow and Goodman (1998) make three general observations about the public interest standard. These observations are that public interest:

(1) eludes satisfactory definition; (2) remains to great extent dependent on a consensus that must be repeatedly fashioned anew from among the competing values (economic; social; political and constitutional) at stake in the decision-making process; and (3) one, that notwithstanding its shortcomings, still enjoys significant support (607).

They argue that historically federal regulatory agencies have two ways that they function, either as “Deliver the Mail” or “Holy Grail” agencies. They note that early broadcasting communications primarily processed the use of spectrum allocation (see Chapter Four for the discussion on the Radio Act of 1912). But when Congress introduced the “public interest, convenience and necessity” clause into both the Radio Act of 1927 and the Communications Act of 1934, Congress created “a more controversial and difficult mandate,” and thus the search for the holy grail (606). They contend that “the phrase is vague to the point of vacuousness, providing neither guidance nor constraint on the [regulatory] agency’s action” (606). Despite the challenges of defining such a standard, even Krasnow and Goodman (1998) note that it still enjoys significant support. This ambiguity demonstrates the contradicting importance the American public places on protecting democratic virtues and values, even as the commercial system and its legislative supporters finesse these ideals for their own purposes.

The concept of broadcasters operating in the public interest has strong resonance with the public, because people like to believe there are checks-and-balances protecting them from interests other than their own. Yet, the standard is under attack by commercial broadcasters, who have had nothing but impatience with the fact that a public interest standard resides in broadcasting policy. Whether the commercial broadcasters will be able to eliminate the standard from the books depends on whether their lobbyists, scholars and lawyers can convince the Federal Communications Commission (FCC) and/or the courts that scarcity (of broadcasting entities) has become a moot point in light of the tremendous advances in technology. The original intent for the standard was to

have a mechanism for evaluating stations on the quality of their broadcasts, due to the finite number of available spectrum frequencies. The commercial broadcasters contend that this argument is out-of-date. Scholars such as Erwin Krasnow (1998, 2008), former legal counsel for the National Association of Broadcasters (NAB), the biggest commercial broadcasting lobby group, has written extensively on the need to remove scarcity from the public interest standard. If commercial broadcasting industries succeed in eliminating the scarcity argument, the public interest standard, as a whole, will likely be voted unconstitutional by the courts. Starting in 1976, in the Supreme Court decision of *Buckley v. Valeo*, dealing with campaign contributions, the court began issuing decisions giving corporations greater protection under the First Amendment. McChesney (1998) notes that the First Amendment has faced similar challenges to the public interest standard, over what it signifies and it does. Corporations use First Amendment protections to further commercialize industries, such as media, which has shown to be constitutional under the First Amendment. The application of scarcity to broadcasting regulation hangs on this balance.

This is a very tenuous place for such a treasured piece of American ideology to reside. As political economist Robert Kuttner (1996) writes, “The virtues and complexities of democracy are deeply engrained in our collective consciousness as Americans, perhaps our most precious heritage as a nation” (342). To this end, I will explore what it would take to implement a reconceptualization of the public interest standard that is more responsive to issues of public good, rather than the interests of commercial station owners. The grassroots progressive media reform movement has been working throughout the late 1990s and to date to make media policies more

representative of the public concerns and further opening the airwaves. The goal is to reset the frame on public interest such that reformers may be able to make real substantive changes in other aspects of regulation, such as licensing and ownership rules. The LPFM service provides a valuable site for assessing the effectiveness of the current media reform movement and to help think about what it means to challenge what appears to be a non-partisan media system. This challenge for reformers is not only to confront what to most people appears to be a neutral media system whose function is beyond question and make changes to it, but also the bigger question of what those changes should be. The movement needs to make a concise agenda that it can present for public discussion. The debates around media conglomeration and consolidation need to be made clear such that everyday people can understand and address the issues that vitally impact their lives and the media they receive. The questions of localism and diversity that were raised during the implementation of LPFM service in 2000 and currently over the question of whether the LPFM service can finally serve the top 50 media markets in the country, are central to the discussion of the LPFM service broading debates around public interest in broadcasting and other forms of media, especially the Internet. Before delving further into the history and theoretical underpinnings of the public interest standard, this chapter will briefly introduce how public interest was addressed in the emergence of LPFM.

### **The LPFM Service Operating Within Public Interest Standard**

The creation of the LPFM service was a proactive move by the FCC to provide non-commercial space on the radio spectrum. By offering a small piece of the spectrum to non-profit and other civic organizations, then FCC Chair Kennard was hoping to

bridge the gap he saw in broadcasting concerning diversity of information and minority involvement. Journalist Marc Fisher (2000) noted that Kennard was “determined to leave office at the end of the Clinton administration with low power radio FM as his chief broadcast legacy” (46). And to a degree, he did, but the service’s launch was not as successful as he had hoped. He spoke out passionately against the NAB, his former employer, when it began its campaign to derail the creating of this new non-commercial service. He was especially upset because he had personally petitioned the organization to support the service at both the 1998 and 1999 NAB national conventions. Kennard spoke of “the haves – the broadcast industry – trying to prevent many have-nots – small community and educational organizations – from having just a little piece of the pie” (47). This intense rhetoric coming from the FCC speaking out against the NAB is highly unusual behavior by the regulatory agency. According to radio scholar Martin Spinelli (2000), the FCC’s usual relationship with the lobbyist organization was “more like the bootlick of the NAB than its regulator” (19). The LPFM service’s introduction by the FCC suggests the agency, or at least Kennard, was aware of the impact the 1996 Telecommunications Act had on radio, pushing it firmly into an industry with three big corporations jointly owning over half of all the radio stations in the country. This topic will be addressed more thoroughly in Chapter Five, but for the purposes of this chapter, the move by the FCC to respond to a couple citizen-driven petition was a significant departure for the agency.

That the FCC supported the creation of the LPFM service opened up unexpected political space within the beltway of Washington, D.C., allowing for discussion of the

importance of localism, diversity and minority ownership in broadcasting.<sup>2</sup> I contend that with the current and ongoing attack on the public interest standard by commercial interests, reformers need to be proactively petitioning the FCC, Congress and the courts for a broader interpretation of the standard. This is the case especially in light of the fact that commercial interests continue to attack the application of scarcity of resources to broadcasting and the public interest standard. These lobbyists and think tanks hope to ultimately undermine the whole standard. Media reform organizations, in concert with each other and including intellectuals, lobbyists, organizers and ordinary people interested in engaging with media policy, need to launch an aggressive campaign to re-frame the public interest standard as a tool for further facilitating their work. To this end, the next sections provide assessments of the public interest standard, starting with its roots, following how it has variously been interpreted by different incarnations of the FCC, as well as Congress and the courts, and studying the strategies used by commercial interests, with very different ambitions than the media reform movement, to alter it for their gain. To understand how the public interest relates to broadcasting, I will first examine the process in which it was incorporated into early broadcasting policy.

### **Mandating the Public Interest**

When radio stations first began broadcasting in the 1920s, big corporations were on hand, providing both equipment and much of the content that listeners received. To address the arrival of radio broadcasting as a viable technology, then Secretary of Commerce Herbert Hoover held a series of four radio conferences from 1922-25,

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<sup>2</sup> The problem of incorporating minority ownership, another concept often associated the public interest, into the standard is that ownership goes beyond issues of regulation, to the structural need for capital and resources to buy into the radio market. FCC Chair Kennard (1997-2000) felt very strongly about minorities having a voice and argued for minority ownership of more of the airwaves.

bringing together major players in broadcasting – including large corporations, the professional engineering community, the government and the military – to “propose a new framework” for regulating the radio spectrum and allocating the space. (Martin, 2001, 1167 and Streeter, 1998, 89). According to Streeter (1998), there was only one person explicitly representing the public– Hiram Percy Maxim, founder of the (amateur) American Radio Relay League – invited to attend these conferences.

Despite resolutions such as “Radio Communication is a public utility and as such should be regulated and controlled by the Federal Government in the public interest” that came out of the first conference in 1922, the importance of business investment was always central to the discussions (Douglas, 1987). During the second radio conference, the participating members had a hand in the creation of classes of broadcasting licenses. According to media scholar Louise Benjamin (1998), the large corporations were well represented in the Class B bloc, while educational and other non-profit interests were primarily assigned to Class C, giving the better radio real estate to commercial interests.<sup>3</sup> Even as Secretary Hoover, in a speech before the Fourth Annual Radio Conference in 1925, reinforced the importance of radio serving the public by noting that, “The ether is a public medium, and its use must be for public benefit” and the final Conference attendees endorsed the use of the concept of public interest to regulate the spectrum, simultaneously Hoover emphasized the importance of protecting capital already invested into radio enterprises. The conference attendees never entertained the idea of a public service broadcasting model, which is utilized by many countries in Europe, most notably the British Broadcasting Company (BBC) in England. Hoover heralded the commercial

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<sup>3</sup> Class A stations, primarily serving the military, could broadcast over 999.4 kHz. Class B stations were given the prime space between 550-999.4 kHz, with Class C stations getting placed at 833.3 kHz and limited to daylight hours and low power watts.



broadcasting industry in the United States for “secur[ing] for us a far greater variety of programs and excellence in service free of cost to the listener,” while dismissing “governmentally controlled” public service broadcasting services (Streeter, 1996, 89-90). Streeter (1996) contends that Hoover was a “quintessential corporate liberal,” wanting radio broadcasting to succeed as an industry and collaborating with the people he felt could best ensure this outcome. According to Streeter (1996), Hoover’s view of the public was that its needs were best met by a capitalist economic system.

Following these conferences, according to many traditional accounts of this time period in U.S. media policy’s history, the airwaves reached a state of chaos (Krasnow and Goodman, 1998, 608).<sup>4</sup> According to Walker (2001), however, this story may be more fabrication than fact. He points to economist Thomas Hazlett’s research that documents that stations in the mid-1920s were mostly operating in concert with each other, without any federal supervision. Walker (2001) argues that Hoover, then guardian of the airwaves, purposely created “chaos” in 1926, by discontinuing all regulation of the airwaves, so he could push Congress to establish more concrete radio regulation, as he was still operating under laws created in the 1912 Act, which did not allow him to deny any applicants (Krasnow and Goodman, 1998). This led to what has been called the “the Breakdown of the Law” (Walker, 2001). Congress stepped in and passed the Radio Act of 1927, creating the Federal Radio Commission (FRC, which would become the Federal Communications Commission after 1934). It “enabled the regulatory agency to create new rules, regulations and standards as required to meet new conditions” (609). It also legislated the FRC’s right to restrict access to

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<sup>4</sup> See Coase (1959) and Krasnow, Longley, and Terry (1982).

the spectrum based on the notion of scarcity and required reviews of licensees every three years. Krasnow and Goodman (1998) argue, “The 1927 Act employed a utility regulation model under which broadcasters were deemed ‘public trustees’ who were ‘privileged’ to use a scarce public resource” (610). The scarcity argument was applied to the concept of “public interest, convenience, or necessity;” regulators were to use the standard to consider which applicants should receive and retain broadcasting licenses under the new Act. Congress, however, never defined what exactly it meant by this phrase (McChesney, 1993, 18).<sup>5</sup> Streeter (1996) argues business interests heavily influenced the perimeters around which “public interest” would be discussed. He contends that, “‘the public interest’ was part of a legal and rhetorical strategy for organizing broadcasting’s further development as a commercial for-profit institution” (93). Robert McChesney notes the FRC’s success in finding a way to support commercial broadcasting while simultaneously articulating their arguments to sound like they supported the public interest, a concept that had garnered strong support with the public.

The public interest standard’s “scarce public resource” argument would help the regulatory agencies justify commercial entities broadcasting from the most prime real estate on the spectrum, because they had the resources to commit to setting up the infrastructure of broadcasting. As a part of the 1928 reallocation plan, the FRC issued its first interpretation of the public interest standard. It stated that broadcasters were not to

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<sup>5</sup> Krasnow and Goodman (1998) recount a story from former FCC Chair Newton Minnow, who had asked Senator Clarence C. Dill about the origins of the “public interest” clause. According to Dill, the drafters of the 1927 Act were having trouble defining a regulation standard for radio stations. A lawyer from the Interstate Commerce Commission suggested “public interest, convenience and necessity” which sounded good, but lacked an explicit meaning for radio regulation.

use the airwaves “for their own private and selfish interests” and that the commission would “determine from among the applicants before it which of them will, if licensed, best serve the public” (Krasnow and Goodman, 1998, 613). The FRC wrote in 1929 that to be deemed acceptable radio “broadcasters need to provide ‘a well-rounded program’” (McChesney, 1993, 27). The FRC approved licenses for stations that aired shows such as the *Lucky Strike Dance Orchestra*, *La Palina Smoker*, and *Aunt Jemima: Songs*, but labeled stations such as the progressive WCFL as “propagandist” (Summers, 1971, 11-12). This popular Chicago station, which began broadcasting in July 1926, aired programs in foreign languages, vaudeville, musical comedies, and major league baseball games. It was an easy target as a propagandist station because its mission was to:

...influence or educate the public mind upon the meaning and objects of Trade Unions and of Federation of Labor, correct wrong impressions by broadcasting the truth and advance progressive economic ideas which when put into operation will benefit the masses of the nation (McChesney, 65).

The term was actually applied more broadly to any licensee who espoused a viewpoint or tried to fund their station with resources other than advertising (65).

According to the FRC, because there was no spectrum room to give “every school of thought, religious, political, social, and economic” a space on the AM dial, it reasoned that none of these groups should be granted a license (McChesney, 1993, 65).

McChesney (1993) notes that in the FRC’s *Third Annual Report* the commissioners specified that commercial radio, what it termed “general public service stations,” would always get preference over propaganda stations (28). The FRC (1929) argued that the propaganda stations would be “constantly subject to the very human temptation not to be fair to opposing schools of thought”(32). The FRC further argued that if the

programming on propagandist stations was so desirable, commercial stations would feel compelled to broadcast it. WCFL's organizer Edward N. Nockels was told by a FRC commissioner at a 1927 hearing, attended primarily by representatives of commercial broadcasting, that his topic of advocating for non-commercial spectrum allocation "was not in accordance with our program" (19). Nockels petitioned Congress to review the FRC's 1928 reallocation plan, asking, "Is it in the 'public interest, convenience and necessity' that all of the ninety channels for radio broadcasting be given to capital and its friends and not one channel to the millions that toil?" (71). The FRC responded to Nockels' complaint that commercial stations could also be defined as propagandist:

It may be argued that the same reasoning applies to advertising. In a sense this is true. The commission must, however, recognize that, without advertising, broadcasting would not exist, and must confine itself to limiting this advertising in amount and character so as to preserve the largest possible amount of service for the public"(FRC, 34-35).

The FRC reasoned that listeners would be the arbiters of problematic commercial broadcasters by turning away from stations that abused advertising, and thus the market would weed out the bad broadcasters. The commission also pointed to the advisory boards, consisting of prominent citizens, set up by the networks to monitor their public affairs programming. Consequently, as McChesney (1993) notes, "the marketplace and self-regulation rendered extensive government intervention in the public interest unnecessary" (29).

The FRC noted in its correspondence with Congress that "[c]ertain enterprising organizations, quick to see the possibilities of radio and anxious to present their creeds to the public, availed themselves of license privileges from the earlier days of broadcasting, and now have good records and a certain degree of popularity among listeners" (FRC,

1929, 32). The FRC argued that even though these stations complied with the rules of broadcasting and had varying degrees of popularity with listeners, they were “furthering the private and selfish interests of individuals or groups of individuals” rather than a public interest. WCFL’s lack of success was, at least, in part due to the explicit nature of its efforts, which were so easily labeled as propagandist, and the fact that Nockels was attempting to implement his vision for a national labor network, but it was also tied to the FRC’s underlying assumption that commercial broadcasting was preferable because it was more economically viable. Due to poor frequency assignments, WCFL was forced to turn to advertising in 1929 and ultimately became an affiliate of NBC in 1934. Even as early regulation did not confront the underpinnings of what it means to broadcast in the public interest, the standard remained a part of regulation, forcing the FRC and later the FCC to grapple with how to interpret it as broadcasting technology continued to advance.

### **Interpreting the Public Interest Standard**

The question of how to practically apply the public interest standard to broadcasting entities first came up in 1929, when the FRC reviewed a conflict between three Chicago stations seeking technical facility modifications. In *Great Lakes Broadcasting Co. v. Federal Radio Commission*, the FRC expanded the standard by introducing four criteria that would satisfy the public interest mandate. The first criteria demanded that a station meet the “tastes, needs and desires of all substantial groups among the listening public” by providing a well-rounded program consisting of “music of both classical and lighter grades, religion, education and instruction, important public events, discussions of public questions, weather, market reports and news, and matter of

interest to all members of the family” (Krasnow and Goodman, 611-612). The second component specified that all stations’ programming would be assessed at license renewal to determine whether they met public interest requirements. Third, the FRC would give preference of frequencies to the longest operating stations, with the caveat that if there was a substantial difference in programming between two stations, the superior station would get the license. Lastly, the FRC ordered, “there is no room for operation of ‘propaganda stations’” (612). The FRC was announcing, in essence, that commercial stations would always receive preference in licensing because they fulfilled all four criteria. Broadcasting scholars Krasnow and Goodman (1998) argue that this is considered FRC’s most important decision as it includes programming content as a public interest criterion, establishing a precedent that has been continually debated and refuted throughout the ensuing years.

For instance, in 1933, the FRC terminated two Chicago licenses not only because their signal interfered with a station in Gary, Indiana, but according legal scholar Arthur Martin (2001), the FRC concluded that the content of the Chicago stations could be found on other area stations. The programming heard on the Gary, Indiana station, however, catered to a diverse audience including Hungarian, Italian, Spanish, German, Polish, Croatian, Lithuanian, Scotch and Irish listeners, and since it could not be found anywhere else in that community’s listening area, it was more important to serve this public’s interest. The Chicago stations challenged the FRC’s decision in the District of Columbia’s Court of Appeals and the court ruled in *Federal Radio Commission v. Nelson Brothers Bond & Mortgage Co. (WIBO)* that all the stations were operating in the public interest and FRC’s decision was “arbitrary and capricious” (Martin, 2001, 1172). The

Supreme Court, issuing its first opinion regarding the public interest standard, reversed this decision and returned the case to the FRC with the caveat that the FRC must always have strong cases for making such decisions, but that it was in its purview to make decisions based on programming content. The Court wrote that the public interest criterion “is not to be interpreted as setting up a standard so indefinite as to confer unlimited power,” but that as long as the FRC considered all the evidence thoroughly on a case-by-case basis, the courts could not second guess its interpretations as “that would be a judicial infringement of executive authority” (Martin, 2001, 1173).

By the time the Communications Act of 1934 was passed and the Federal Communication Commission replaced the FRC, network radio companies that relied exclusively on advertising were broadcasting from the most prime real estate on the AM spectrum, a topic that will be addressed in Chapter Five. While enforcing the regulatory policies of the FRC, the FCC was also given a broad mandate to execute and further develop federal communication policies including spectrum allocation, band allotment, and channel assignment. At its passage, the Act required the FCC to grant licenses for three-year terms with the intent of evaluating stations based on whether they served “the public interest, convenience, and necessity” at each license renewal.

It was within the channel assignments that much of the controversy resided – and continues to reside – as the FCC had to make judgment calls as to whether particular stations were broadcasting in the public interest. Krasnow and Goodman (1998) state, “Perhaps no single area of communications policy has generated as much scholarly discourse, judicial analysis and political debate...as has that simple directive to regulate in the ‘public interest’” (606). They note that that the FCC’s use of its programming

regulatory powers was limited throughout much of the 1930s and early 1940s, “with the exception of forcing most of the remaining propaganda stations off the air” (614).

Ironically, in Section 307c of the Act (1934), there was a call for the FCC to conduct a study about allocating percentages of facilities “to particular types and kinds of non-profit radio programs” (10).

Various incarnations of the FCC have sought to further define the public interest concept and often these attempts at solidifying the concept resulted in court cases. In response to an applicant petitioning the FCC’s dismissal of its application, the Supreme Court argued in 1940, in *FCC v. Pottsville Broadcasting*, that the public interest standard is the “touchstone” of the FCC’s authority and that it was the FCC’s responsibility to always measure license applications using this standard. The Supreme Court wrote that the public interest standard is “as concrete as the complicated factors for judgment in such a field of delegated authority permit” and the FCC’s use of the standard was “a supple instrument for the exercise of discretion” (Krasnow and Goodman, 1998, 620). In the *FCC v. Sanders Brothers Radio*, also issued in 1940, the Supreme Court further narrowed the standard’s definition by arguing that “the FCC had no supervisory control over programs, business matters or stations policies” (Krasnow and Goodman, 1998, 620). The decision read, “The broadcasting field is open to anyone, provided there be an available frequency over which he can broadcast without interference to others, if he shows his competency, the adequacy of his equipment, and financial ability to make good use of the assigned channel” (620). The Supreme Court was continuing to operate in the corporate liberal mindset, by focusing on the “adequacy of equipment” and “financial abilities” to determine whether licensees were worthy to broadcast later.



One year later in 1941, the FCC completed a three-year study on “chain broadcasting” and concluded that it needed to restrict some of the influence by the national radio networks that had flourished in the previous decade. Of the 660 commercial stations operating in the United States at the time, 341 were affiliated with NBC, CBS, or the Mutual Broadcasting System. The FCC argued that even though chain broadcasting was not problematic in and of itself, the requirement by the networks for their local affiliates to sign exclusivity contracts with them “infringed, at least potentially, on the local stations’ abilities to serve the public interest as their licenses required” (Krasnow and Goodman, 1998, 620). The FCC offered eight regulations based on their study including that “a licensee station does not operate in the public interest when it enters into exclusive arrangements which prevent it from giving the public the best service of which it is capable.” (620). The FCC put the restriction of signing such contracts on the affiliates, rather than the networks, arguing that if “a broadcast licensee...was willing to enter into contracts that could restrict his ability to respond to the needs and interests of his local community (the public interest) [he] was not deserving of the privilege of spectrum space” (620).

The networks, representing their affiliates, challenged the FCC’s decision; first in the District Court, and then at the U.S. Supreme Court. The networks challenged that the FCC was violating their First Amendment rights to free speech, as laid out in Section 326 of the 1934 Communications Act. In Section 326 (1934), Congress informed the FCC that it had no “power of censorship over the radio communications” and that it could not “interfere with the right of free speech” (18). In the Supreme Court decision, written in 1943, Justice Frankfurter noted, “It is not for us to say that the ‘public interest’ will be

furthered or retarded by the Chain Broadcasting Regulations. The responsibility belongs to the Congress for the grant of valid legislative authority and to the Commission for its exercise” (Martin, 2001, 1176). The U.S. Supreme Court, however, disagreed with the free speech argument made by the networks, arguing that because spectrum space was scarce and the FCC was mandated to regulate broadcasting by granting only a limited number of licenses, the FCC’s interpretations did, in fact, advance public interest criteria. Krasnow and Goodman (1998) point out that this Supreme Court decision is “the most frequently cited authority for the expansive view of the FCC’s regulatory mission” because Court argued that the FCC is not only responsible for the engineering and technical aspects of regulations – that is, supervising “the traffic” on the spectrum – but also for “determining the composition of that traffic” meaning the content of programming on broadcasting entities (621).

As a result, in 1946, the FCC published a staff report entitled *Public Service Responsibility of Licensees*, which became known as the Blue Book (because of its blue cover). Its intent was to further clarify the FCC’s interpretation of the public interest standard and included four requirements: (1) “sustaining” (unsponsored) programs; (2) local live programs; (3) programming devoted to the discussion of local public issues; and (4) the elimination of advertising excesses (Krasnow and Goodman, 1998, 615). Krasnow and Goodman (1998) note that the requirements were really no more than just suggestions for renewing licensees as the FCC never formally adopted them. One (unnamed) commentator was recorded as saying:

Its theme of balanced programming as a necessary component of broadcast service in the public interest coupled with its emphasis on a reasonable ratio of unsponsored (“sustaining”) programs posed too serious a threat to the profitability of commercial radio for either the industry,

Congress of the FCC to want to match regulatory promise with performance (615).

Three years later, in 1949, the FCC introduced the Fairness Doctrine, and this became the most concrete and enforceable tenet stemming from the public interest standard to date. The Fairness Doctrine worked as a general policy in response to ongoing debates about editorials in broadcasting and required that broadcasters provide coverage of “controversial issues of public importance” as well as “reasonable opportunity” for opposing views to express opinions on these issues (Krasnow and Goodman, 1998, 619). Krasnow (2008) notes that in the early 1940s, prior to the Fairness Doctrine, the FCC originally ruled that editorializing over the airwaves violated the public interest standard.

In the late 1950s, the FCC would return to the question of the public interest by further clarifying its public interest criteria. After conducting a series of hearings, this composition of FCC members adopted the 1960 Programming Policy Statement, which listed the “major elements usually necessary to meet the public interest” (Krasnow and Goodman, 1998, 616). These included: (1) Opportunity of Local Self-Expression, (2) Development and Use of Local Talent, (3) Programs for Children, (4) Religious Programs, (5) Educational Programs, (6) Public Affairs Programs, (7) Editorialization by Licensees, (8) Political Broadcasts, (9) Agricultural Programs, (10) News Programs, (11) Weather and Market Reports, (12) Sports Programs, (13) Service to Minority Groups, and (14) Entertainment Programming. (Krasnow and Goodman, 616). Station licensees were also to keep on record in their public file the people that they had interviewed on their stations, listing nineteen categories of expertise with which the FCC felt community leaders should be interviewed about, ranging from agriculture to religion. Not surprisingly, these intensely specific and detailed regulations drew “the ire of

philosophical critics of government regulation” (Martin, 2001, 1178). Legal scholar Arthur Martin (2001) notes that this type of regulation was “a manifestation of the New Deal ideology that government should be actively involved in organizing aspects of social life that have widespread public effects” (1177). The FCC’s instruction to the licensees was to serve the public interest through carefully crafted programming for their specific community in which they broadcast.

According to Martin (2001), prompted by regulations such as the community ascertainment regulations and the Fairness Doctrine, market economists began “voicing a sustained critique” of the FCC’s licensing practices. They felt that the FCC was being “insultingly patronizing and as deforming the market” (Aufderheide, 2002, 516). These economists claimed that the FCC regulations were “hindering the efficient, market-based use” of the airwaves (Krasnow and Goodman, 1998, 616). One economist, in particular, Ronald Coase, who espouses the Public Choice Theory, attacked FCC’s interpretation of the public interest standard as infringing upon the broadcasters’ First Amendment rights and affecting their free speech.

The FCC disagreed, arguing that their regulations did not restrict speech, but only access to the spectrum. If a station demonstrated upon license renewal that it was not operating in the public interest, the FCC could terminate the license. The FCC’s stance was that serving the public interest was a requirement for the privilege of being able to broadcast, rather than an infringement of broadcasters’ right to broadcast the programming they wanted to broadcast. The FCC could make serving in the public interest a requirement because as U.S. Supreme Court Justice Frankfurter wrote, “the radio spectrum simply is not large enough to accommodate everybody” (Martin, 2001,

1176). The market-oriented economists argued that scarcity was no longer sufficient reason to regulate the airwaves. Coase (1959) argued, “Land, labor, and capital are all scarce, but this, of itself, does not call for government regulation” (Martin, 2001, 1179). Journalist Karen Charman (2003) refutes this argument by noting that media, unlike most industries, is a cultural industry – producing “programming, genres and words rather than natural materials” and therefore, media needs to be evaluated using different terms. Into this maelstrom came a landmark 1967 U.S. Supreme Court case that would test the Fairness Doctrine, which was a key target of the marketplace assault on how the FCC regulates broadcasting.

### **The Fairness Doctrine Serving Public Interest**

The FCC formally passed the Fairness Doctrine in 1967 in response to a case that rose out of a personal attack of a journalist by a Christian radio host in Red Lion, Pennsylvania. In 1964, Fred J. Cook, who authored a book entitled *Goldwater: Extremist of the Right*, was criticized on WGCB, the Christian station, for the content of his book. He petitioned the FCC for the right to respond to the views expressed on the station. The station argued, using Coase’s language, that the Fairness Doctrine was unconstitutional because it violated its First Amendment right to free speech. The U.S. Supreme Court ruled in 1969 that due to scarcity of spectrum space, the FCC had the right to enforce the Fairness Doctrine. If the case had applied to media other than broadcasting, it would be unconstitutional because the scarcity argument would not apply. In what became known as *Red Lion Broadcasting Co. v. FCC* (1969), Justice Bryon White wrote, “It is the right of the viewers and listeners, not the right of broadcasters, which is paramount.” He

cautioned, though, that if the Fairness Doctrine could be shown to diminish the coverage of important issues, this decision could be overturned.

### **Reframing Public Interest to Support Commercial Interests**

This caveat in White's opinion on *Red Lion v. FCC* provided the pro-market advocates grounds on which to begin formulating a challenge to the Fairness Doctrine specifically and public interest standard more broadly, while simultaneously advocating for greater corporation protection under the First Amendment. This ideology was gaining currency throughout the U.S. government and economists, such as Coase (1959), were directly challenging the FCC's interpretation of its mandate from Congress, using market language and arguments. It is noteworthy that during this time there were two commissioners who spoke out against these economically-based arguments. The first was Newton Minow, who was appointed FCC Chair by John F. Kennedy from 1961-63. Minow is remembered for his assault on television as a "vast wasteland" and for his advocacy in pursuit of a civic understanding of public interest. By the time Nicholas Johnson, an outspoken commissioner serving from 1966-1973, was appointed to the FCC, his impact was limited to being a dissenting voice to a predominantly marketplace ideology within the FCC. He did, however, play an important role in popularizing media policy issues to the more general public. His book *Talk Back to Your Television Set* garnered coverage including the cover story for *Rolling Stone* in April 1971.

Despite scattered dissent, an increasingly pro-market FCC (and government generally) began in the mid-1970s a sustained challenge, among other things, against broadcasting regulations. This FCC argued that the spectrum scarcity was a problem of the distant past and that broadcasters' free speech is firmly protected under the First

Amendment. In 1976, it began generating policy statements that directly supported business interests. In one statement it said it would not review radio station format changes, as such a review “inevitably deprives the public of the best efforts of the broadcast industry” (Martin, 2001, 1185). The FCC statement further concluded, “The marketplace is the best way to allocate entertainment formats in radio” (1186). Listeners of classical radio station WNCN tested this policy change, in 1979, by petitioning an en banc panel of the D.C. Circuit, because WNCN’s owners planned to change the station’s format to rock-and-roll. The listeners asked that the FCC be required to hold hearings when stations proposed format changes. The D.C. Circuit agreed with the listeners that a no-review policy did not serve the “public interest,” but the U.S. Supreme Court overturned its decision, upholding the FCC’s decision not to regulate format changes. According to Krasnow and Goodman (1998), “the Court found that marketplace regulation was a constitutionally protected means of implementing the public interest standard of the Communications Act” (623). The Supreme Court chided the D.C. Circuit for focusing only on questions of diversity and concluded that “the policy of avoiding unnecessary restrictions on licensee discretion” was at least equally as important to the decision (Martin, 2001, 1186).

Yet, historically, it has been the “public interest, convenience and necessity” clause written into the Radio Act of 1927 and the Communication Act of 1934 that has, on occasion, forced broadcasting companies to adopt operating procedures that encouraged inclusion of specific kinds of content into their broadcasts and required them to provide equal air time to differing opinions on issues. Commercial broadcasters had supported scarcity back in 1927 when they were concerned about their spectrum

allocation. Yet, now that the broadcasters, in essence, owned licenses they sought to loosen regulation by arguing that the market does a better job of providing for the public interest than a government agency can.

In recent years, particularly since the 1980s, when President Ronald Reagan's neoconservative administration took office, commercial interests have gone on the offensive, aggressively seeking to dismantle the public interest standard. An economically conservative and laissez-faire FCC for much of that time has sought to devalue public aspects of the public interest standard. In addition the courts, particularly the conservative U.S. District Court of Appeals in D.C., have primarily backed up the newly weakened definition of public interest such that the broadcasters have diminished governmental oversight. It is valuable to study how Mark Fowler, FCC Chairman, under Reagan, went about reframing broadcasting policy such that he largely succeeded in his goal to devalue the impact of the public interest standard on broadcasters.

At the beginning of his tenure, in 1981, Fowler adopted a Deregulation of Radio decision, which eliminated program logs, ascertainment of community programs and non-entertainment programming requirements and loosened commercial time limitations. He thus claimed that "a specific, quantitative guideline" of public interest criteria was only an "illusory comfort" (Krasnow and Goodman, 1998, 617). He sought to define the public interest solely in market terms, noting, "We conceive of [the public] interest to require us to regulate where necessary, to deregulate where warranted, and above all, to assure the maximum service to the public at the lowest cost and with the least amount of regulation and paperwork" (617). He directed, "The Commission should, so far as possible, defer to a broadcaster's judgment about how best to compete for viewers and



listeners because this serves the public interest” (616). According to Krasnow and Goodman (1998), “under this new approach, regulation is viewed as necessary only when the marketplace clearly fails to protect the public interest, but not when there is only a potential for failure” (616).

In 1984, despite Fowler’s offensive challenge to the public interest standard, the Supreme Court was not yet ready to rule that scarcity was no longer an issue when regulating broadcasting licenses. U.S. Supreme Court Justice William J. Brennan, Jr., writing on behalf of a 5-4 majority, in *FCC v. League of Women Voters of California*, said,

We are not prepared...to reconsider our longstanding approach without some signal from Congress or the FCC that technological developments have advanced so far that some revision of the system of broadcast regulation may be required (Krasnow and Goodman, 1998, 623).

This opinion, though, signaled Fowler’s FCC to begin compiling evidence to back up its claim that the scarcity argument no longer applied to broadcasting.

During this time in the mid-1980s, FCC also issued a shortened renewal form, whereby stations were no longer required to provide program-related reports in order to be considered for a license renewal. Black Citizens for a Fair Media challenged this decision in 1983, arguing that the FCC would have no way of determining whether “the public interest, convenience, and necessity” was served by stations with this “postcard renewal.” The D.C. Court of Appeals dismissed these arguments, thus supporting the FCC’s argument that it could still make public interest determinations using the shortened form. In 1983, the FCC eliminated additional “underbrush” policies, further challenging previous Commission regulations, which it argued raised “fundamental questions concerning the constitutional rights of broadcast licensees” (Krasnow and Goodman,

1998, 618). When reviewing this decision by the FCC, the U.S. Court of Appeals held that the agency could define the public interest standard as it saw fit. It ruled that the FCC “may rely upon marketplace forces to control broadcast abuse if the Commission reasonably finds that a market approach offers the best means of controlling the abuse” (618). The U.S. Supreme did not take up the case in its 1987 session.

Fowler was simultaneously moving forward with his attack on the Fairness Doctrine. He argued that instead of providing more balance on issues, the doctrine actually discouraged broadcasters from even addressing controversial issues. Responding to the Supreme Court’s caveat in *Red Lion* that the FCC had to show that the Fairness Doctrine reduced rather than increased the “volume and quality of coverage” in broadcasting to eliminate it, Fowler began looking for a test case to demonstrate this dampening effect. In 1986, such a case presented itself. A television station in Syracuse, New York, WTVH, had aired editorial advertisements advocating the construction of a nuclear power plant in the area and the Syracuse Peace Council sought help from the FCC to be able to air an opposing viewpoint on the station. The FCC ruled that the Fairness Doctrine did require the station to provide the opposing viewpoint. The Meredith Corporation, which owned WTVH, in turn took the FCC to court, arguing that this ruling and the Fairness Doctrine more generally, violated its First Amendment right to free speech. Fowler responded that while the doctrine may “chill” broadcasters’ speech, this was clearly a constitutional issue and outside its jurisdiction and should be addressed by either Congress or the courts.

In 1987, the D.C. Circuit Court of Appeals remanded the decision back to the FCC, ruling that the FCC could not avoid the constitutional issues. The Syracuse Peace

Council, meanwhile, had resolved its issues directly with the station, WTVH, but the FCC took advantage of the opportunity provided by the case to make a ruling. By utilizing the Court of Appeal's opinion that it needed to confront the constitutional issues, the FCC voted to eliminate the Fairness Doctrine by a 4-0 vote, citing its violation of broadcasters' First Amendment right to free speech, by chilling the speech of a broadcaster. Congress attempted to save the Fairness Doctrine in 1987, and again 1991, but both Presidents Ronald Reagan and George H. W. Bush vetoed legislative attempts to codify it into law.

The FCC further argued that the doctrine, in fact, "disserved the public interest," arguing that scarcity was no longer an issue for spectrum management, as the airwaves were more open than ever before (Krasnow and Goodman, 1998, 623). When this FCC's ruling was challenged in court, the D.C. Circuit Court of Appeals narrowly ruled, in 1989, to uphold the FCC decision, in *Syracuse Peace Council v. FCC*, but it did not address either the First Amendment or scarcity arguments. The court only ruled that it felt that programming regulation was a policy question, best determined by the FCC, rather than a constitutional question. By ignoring the scarcity question in the decision, the courts did not address the underlying assumptions of the FCC, that "an explosive growth in both the number and types of outlets providing information to the public" made spectrum management unnecessary (Martin, 2001, 1183). Martin (2001) disagrees, arguing that the addition of cable channels and the Internet does not change the fact that there is only so much spectrum space available. He adds that, "Given that the government owns the resource, the allocation of the resource is properly a public policy decision" (Martin, 2001, 1179).

Based on his analysis of the courts' interpretations of the public interest, Martin finds the decision in *Syracuse Peace Council* to be representative of court opinions related to the FCC's programming regulation decisions more generally. He argues, "So long as it is based on a reasonable argument, the FCC is free to construe the public interest as it sees fit" (1183). The D.C. Court of Appeals wrote, "It is an elementary canon that American courts are not to 'pass upon a constitutional question...if there is also present some other ground upon which the case may be disposed of'" (Martin, 2001, 1184). The relative ease with which former FCC Chairmain Fowler was able to dismantle the Fairness Doctrine, despite vocal opposition, demonstrates the organization behind his efforts. According to economist Robert Kuttner (1996), the success of such a theoretical coup was based on commercial interests "pumping hundreds of millions of dollars into think tanks whose intellectuals would validate and celebrate laissez-faire" (87). By producing studies, and more recently, talking points for spokespeople, the pro-market interests are catering their arguments to the government's dependence on expertise and technical assessments.

Despite their various successes, there is reoccurring concern among commercial interests in 2009, that the Democrats will again attempt to reinstate the Fairness Doctrine. Even ewly inaugurated President Barack Obama is not publicly advocating the return of the doctrine, demonstrating the success the pro-market advocates had in making the doctrine seem untenable in today's media landscape. The Republicans are not taking any chances, however. In a press release from GOP12, a website focused on electing a Republican president in 2012, columnist Michelle Malkin (2009) writes, "Never write about the Fairness Doctrine without quotes...We can't concede the name's implication."

This ongoing assault on broadcasting regulation, and media policy more generally, has presented an enormous challenge to public stakeholders, most notably the grassroots progressive media reform movement, looking for some footing on which to build a strong case for protecting the national resource of the airwaves from such well-financed commercial interests.

### **Inflating the Public Interest Standard with Civic Arguments**

The fact that precedent surrounding the public interest standard did not ultimately protect regulations such as the Fairness Doctrine, and the pro-market lobbyists keep attacking public interest in broadcasting indicate weakness of the Congressional mandate that needs to be enforcing the dissemination of local and more diverse programming. The civic health of the United States depends on it. Instead, commercial broadcasters have sought to reinterpret the concepts surrounding the public interest standard to best serve profit making. Their ideal would be to completely undermine the application of public interest to broadcasting, by eliminating scarcity as a defining word in broadcasting regulation.

Despite the plethora of resources available to the public today, the quality and quantity of diverse and local information and music is still largely missing. Yet, with the introduction of the LPFM service and a vocal opposition to further media deregulation, it may be hoped that the ideals of the public interest – localism and diversity, in particular – are forcing a broadening within FCC discourse. It is possible, with a careful strategy and good outreach – both within the movement and to the general public – that the media reform movement can bolster the concept of the public interest. Serious thinking needs to be done around what the public interest standard should encompass. Key tenets which

still apply to a much-weakened public interest standard are localism and diversity. These ideas could be turned into policies that protect citizenry from the abuses of corporate greed and provide for general well-being. At least in theory, the airwaves belong to the public and have become part of the public's understanding of checks-and-balances, which assumes that governmental representatives are in fact representing the public. Any strategy for engaging media needs to include not only the FCC, but also the Federal Trade Commission, which oversees the Internet – where broadcasting is heading) – as well as Congress, the president, and the courts. In this chapter, it has been argued that without a strong public interest mandate, that is clearly defined and enforceable, so business interests will continue to drain this public resource for monetary gain, rather than informing and enriching their audience(s). In the current climate, broadcasters are cultivating consumers, rather than citizens. The next chapter will focus on another kind of broadcasting, which has been continually reinvented around the idea of the public interest and cultivating citizens. WCFL's Nockels failure to create a national labor network in the late 1920s did not mark the end of non-commercial groups attempting to get their voices heard on the airwaves.

## CHAPTER 3

### THE HISTORY OF NONCOMMERCIAL RADIO

The history of non-commercial radio has been told in various ways – anecdotal and documented alike – and it has made a surprisingly number of appearances on what has largely been a heavily commercialized radio spectrum. McChesney (1999) argues that retaining and expanding non-commercial spaces on a heavily commercialized medium is essential for maintaining a rich and deliberative democracy. Stavitsky, Avery, and Vanhala (2001), however, highlight in their comparison of the failed Class D licenses and the LPFM service, the challenges of keeping these spaces protected in “a telecommunications policy environment dominated by the tenets of corporate liberalism” and “high-powered politics” (349). They express concern “that noble but quaint regulatory notions of civic and cultural access in broadcasting cannot be heard over protectionist industrial concerns” (349). To address their concern, the media’s history in the United States will be examined to draw out examples of non-commercial radio broadcasting and how the various projects fared in a radio broadcasting environment primarily owned by business and fueled by advertising dollars. The purpose of this chapter is to lay the foundation for understanding the media landscape in which the LPFM service emerged.

#### **Amateur Broadcasters**

The history of U.S. noncommercial radio can be traced back to the turn of the 20<sup>th</sup> century when transmission was point-to-point communication, tapped out to Morse Code. At the advent of wireless communication, some members of the public – known as

amateurs, ham radio operators, or boys – were already advocating for public consideration within the radio spectrum. Their interest was primarily self-interest, as they were looking to have airspace with which to experiment and communicate through the radio spectrum.<sup>6</sup> Radio historian Jesse Walker (2001) argues that these “boys” – most often young men – were “a loose movement whose chief interest was public uplift, not public access” (14). The amateur organizations that formed were, according to Walker, “as apolitical as any other hobby club” with only one political idea “that the airwaves should be open to the public, not monopolized by a powerful few” (13). Due to increasing pressure from the Navy and commercial interests, Congress pushed amateurs to the periphery of the radio spectrum with the Radio Act of 1912. Because these amateur pioneers were repeatedly pushed off the most listenable frequencies, their on-air presence disappeared from the airwaves and from influencing policy debate. Throughout the 1910s, some “ham” operators continued to operate wireless communication, often without licenses from the Department of Commerce and Labor or with licenses but choosing to ignore the new regulations. Radio historian Jesse Walker (2001) notes that “as long as they were considerate of commercial and naval operators, they were usually left alone” because the Department of Commerce could not afford to fund the enforcement teams the FCC employs today (22).

This loose enforcement of spectrum management abruptly ended when the United States went to war. On April 7, 1917, the Navy nationalized the airwaves as the U.S. entered World War I and took over fifty-three commercial stations and ordered the

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<sup>6</sup> The term “amateur” was also often interchangeable with “boys” or “hams”. These are accepted terms amongst radio researchers for describing this group of broadcasters (see Streeter (1996), Douglas (1987) and McChesney (1993). It would be interesting to investigate whether these labels impacted how these broadcasters were perceived in the radio regulation debates. I wonder if they had “re-packaged” themselves to sound more professional if they would have had more success in selling their arguments.



amateurs to dismantle their stations (Walker, 2001, 26). After the war ended in late 1918, the amateurs that returned to the air faced increasing regulation and even as their subculture flourished through clubs and continued exploration of the technology, they disappeared from the AM airwaves. But according to Streeter (1996), they had played “a crucial role in popularizing and democratizing radio, bringing large portions of the public into contact with it for the first time” and offered “organizational possibilities that are neither commercial nor corporate nor governmental” (64-65). These first advocates for public participation of the airwaves may have lost their appeals to Congress, but their argument that regulation of radio should include public representation extended into future regulatory debates.

Stations affiliated with colleges and land grant universities, such as WHA of the University of Wisconsin-Madison, would become the new advocates for non-commercial radio. One radio engineer, C.M. Jansky, Jr. noted that educational institutions “were at the start of things distinctly in on the ground floor” (McChesney, 1993, 14). According to McChesney (1993), a significant percentage of radio stations broadcasting through the mid-1920s were run by non-profit organizations including religious groups, civic organizations, labor unions, and particularly colleges and universities, with 128 college stations in 1925 with “almost as many broadcasters” from other types of nonprofit organizations (14). Even though RCA (Radio Corporation of America), General Electric, AT&T, and Westinghouse, among other corporations, had a strong hand in the development of radio industry – production of receivers, etc. – throughout the 1920s, McChesney (1993) argues, “broadcasting eluded the corporate net for much of the decade” (14). The biggest challenge for all radio stations at the advent of radio

broadcasting was funding; the question of how to pay for programming loomed large, especially in light of the Depression. McChesney notes, “[E]conomic instability of radio broadcasting was its overriding feature in the mid-1920s” (15). The stations affiliated with colleges and universities struggled to stay afloat on the limited resources allotted to them by their institutions. Between 1925 and 1927, the number of stations dwindled from 128 to 95, due to lack of funds (15).

It was unclear even to the business interests how to make radio self-sufficient. WEA, American Telephone & Telegraph’s (AT&T’s) New York station started in 1922, was the first station to sell advertisements for commercial interests, referred to at the time as “toll” broadcasting. It is credited as the pioneer of an advertising-based radio broadcasting system in the United States, but even it struggled to support itself using this model, as other stations were willing to give commercial space away for free (McChesney, 1993, 15). In a 1926 survey by AT&T, half of U.S. radio stations were used by their owners to publicize their own products or enterprises, a third were non-profit and supported by charity or educational institutions, with only 4.3 percent characterized as commercial. In addition, direct advertising, as we know it today, did not exist. AT&T used what in today’s noncommercial radio circles is known as underwriting. The businesses could give their company and product name in exchange for “good will publicity”(McChesney, 1993, 15). According to McChesney (1993), even as late as 1929, NBC’s President Merlin Aylesworth argued that NBC would sell only enough advertising to support quality programming (16).

McChesney (1993) highlights the political maneuverings that took place in Congress to ensure that advertising would be the dominant funding mechanism in

broadcasting regulation. He documents the efforts of a broadcast reform movement in the late 1920s, made up by the educational institutions and religious groups, whose members fought for more noncommercial representation on the radio spectrum.

Unfortunately, the movement members lacked the political savvy to compete with the commercial interests that were well represented both within Congress and the FCC.

When the FRC commissioners released General Order 40, their first spectrum allocation plan, in 1928, they provided no safeguards for non-commercial stations. Stavitsky, et al (2001) noted, “No distinctions were made between stations licensed to commercial and noncommercial entities in the formative legislation, and no preferential policy treatment was afforded noncommercial broadcasters” (342).

In fact, noncommercial stations were placed in a position of continually having to compete with other broadcasters for time and power on their stations because the FRC allowed broadcasters to challenge other broadcasters every three months for their frequencies. The FRC, in some cases, ruled that the existing broadcaster had to share the frequency with the competing broadcasters, and the broadcasters with the fewest hours – often the non-commercial entities – found they could not sustain their programming. To defend their frequencies, non-commercial broadcasters had to go before the FRC in Washington, D.C. This constant defense of their frequency and the lack of preferential treatment drained their resources and made it difficult to focus on the day-to-day broadcasting of their stations. The director of the University of Arkansas station, which was forced off the air because it was unable to generate funding, wrote, “The Commission may boast that it has never cut an educational station off the air. It merely cuts off our head, our arms, and our legs, and then allows us to die a natural death”

(McChesney, 1993, 31). According to McChesney (1993), “without having to actually turn down the license renewal applications of very many broadcasters, there were 100 fewer stations on the air within a year of the [1928] implementation of General Order 40” (26).

McChesney (1993) contends that the commercial broadcasters, led by their professional organization, the National Association of Broadcasters, ultimately won control of the airwaves when the Wagner-Hatfield Amendment, which was proposed as part of the Telecommunication Act of 1934, was defeated. If the amendment had passed, it would have reserved a quarter of the most desirable radio frequencies for noncommercial radio. Instead, Congress re-enforced commercial broadcasting’s right to this spectrum space and paved the way for corporate control of the airwaves. Media scholar Ralph Engelman (1996) reported that of the 200 plus educational licenses issued by Hoover’s Department of Commerce in the 1920s, only 29 remained on the AM dial by 1945 (37). Yet even as the number of non-commercial stations dwindled, they did not completely disappear. People associated with these stations regrouped and continued to advocate on behalf of noncommercial space on the radio spectrum.

### **Educational Licenses**

In 1938, the FCC, responding to “a hardy band of educators and activists,” allocated an unused spectrum space on the AM Band for a new class of stations, designating it “noncommercial educational,” which remains the official classification for what is now known as public radio stations (Stavitsky, et al, 2001, 342-343). This accomplishment is seen only as a minor victory because, according to Stavitsky, Avery and Vanhala (2001), there were few experimental receivers on the market at the time that

could receive the high-frequency signals from this area of the spectrum. Only one station – WBOE, representing the Cleveland Board of Education – ever successfully broadcast from this frequency. In 1940, this class of “noncommercial educational” stations was moved to the FM dial, which at the time was still in development – a spectrum space whose technology was incomplete and whose growth was slowed by World War II. In 1945, when the success of the FM Band was still unclear, the FCC expanded the number of frequencies available to educational broadcasters on this spectrum by reserving the channels between 88 and 92 megahertz for noncommercial educational broadcasting, the area of the dial on which most noncommercial stations, including public, community and college, still reside today (Stavistky, et al, 2001, 343)

This creation of spectrum space for educational broadcasting did little to spur the development of non-commercial radio. As of 1947, the FCC had granted 918 commercial licenses and only 38 noncommercial educational licenses. The cost of running a full-power station was proving to be prohibitive for non-commercial stations. In 1947, the FCC authorized Syracuse University, in cooperation with General Electric, to begin experimenting with low-power radio technology that would allow a more affordable alternative for educational broadcasters. WJIV began broadcasting to a 3-mile radius around campus in 1947 and prompted the FCC to introduce the Class D license in 1948, which permitted educational stations to broadcast with 10 watts or less. This wattage was a welcome reduction from the 250 watts minimum previously required of such stations. This alternative to full-power broadcasting did encourage more educational institutions, including small colleges, high schools and community school boards, to apply for licenses. As of 1953, 106 educational FM stations were broadcasting,

40 percent of which were licensed as low-power broadcasters (Stavitsky, et al, 2001, 343). The FCC had introduced this service with the hope that these stations with Class D licenses would eventually upgrade to full power, which some did including the Syracuse station, which today has the call letters WAER (344).<sup>7</sup> But ultimately Class D licenses would come under attack by National Public Radio (NPR) and the Corporation of Public Broadcasting (CPB), distributor of funds to noncommercial radio stations. NPR came into existence with the passage of the Public Broadcasting Act of 1967 and with it a plan for a nationwide but regionally-based noncommercial radio system. NPR would launch a concerted effort to gather frequencies between 88 and 92 MHz throughout country on which to broadcast public radio. Due to the ten-watt stations occupying the available educational allocations, however, it was hard to secure space for a public radio station in every market. Furthermore, the Class D stations were inconsistent, with shows being only as good as the people behind the microphone and sound board. According to Stavitsky, et al, (2001) these stations became known “somewhat derisively” as electronic sandboxes, “emphasizing their training function for students and implying an amateurish program service” (344). As early as 1966, at the urging of full-power educational licensees, the FCC began to look for solutions to the conundrum of spectrum scarcity on the noncommercial educational end of the dial. In December, 1978, the FCC issued a freeze on Class D licenses. This action marked an end to the this wave of low power radio licenses granted by the FCC.

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<sup>7</sup> In an interesting side note, Stavitsky, et al (2001) argues that the 1950s and 1960s were not good years for FM radio, commercial or noncommercial. – that it was not until 1979 that the number of listeners tuning into FM radio finally exceeded that of AM radio. Even though the FM Band offered superior listening quality, listeners preferred to tune in to the more established AM stations.

## **A Public Radio Network**

NPR, which did become a nation-wide network, grew to encompass 384 public radio stations throughout the US. Longtime newscaster Corey Flintoff (2000) noted that, “NPR was never a progressive news organization. It has always been mainstream.” Flintoff pointed to the fact that the majority of grants received by NPR come from businesses and, as of 2000, NPR employed twelve science and medical reporters covering corporate developments, compared to one NPR reporter whose job it is to cover the entire continent of Asia (2000). Jim Russell, a public radio veteran, bemoaned “the impact of underwriting, audience research, and the marketing approach to programming” (Engelman, 1996, 132). Russell predicted that if this model for public broadcasting continued, NPR’s programming would become increasingly stagnant, with stations not be willing to take the risks necessary to create “inventive and strange” shows (132).

Another variety of noncommercial radio has emerged in years following 1948. Community radio stations sprang up throughout the country due to the tenacity on the part of their organizers. Community radio’s history has received increased scholarly attention in recent years. Matthew Lazar, Michael Land, Ralph Engelman, Alan Stavitsky, Robert McChesney, Charles Fairchild, and Jesse Walker, among many others, have documented various outgrowths of community radio. Community radio’s history can be broken down into three waves – Pacifica’s emergence in the late 1940s, the creation of numerous independent radio stations beginning in the late 1960s, and the latest effort involving some of the stations launched under the LPFM service. The first two waves will be addressed in the section below while the LPFM service will receive more extended analysis in Chapters Four and Six.

## **Power to the People**

The first wave of what later became known as community radio came about due to the efforts of Lewis Hill, a conscientious war objector, former White House correspondent and nephew of Phillips 66 owner, Frank Phillips. By carefully selecting language when applying for a license and with what turned out to be a bit of luck, Hill succeeded in landing a station assigned to a new spectrum – the FM dial – which was still in an experimental stage of development in mid-1940s. Hill originally applied in 1946 for an AM license for a station in Richmond, California, but his application was rejected because the frequency he listed on the application would have interfered with NBC and CBS stations in the area. Instead, in 1948, he was granted a license on the still new FM spectrum for KPFA in Berkeley, California, the flagship station for what has become the Pacifica Radio Network.

By anticipating the FCC's "propagandist" concerns and framing the station's objectives "in terms of extending the marketplace of ideas by offering a wide range of programs and perspectives absent from the networks," Hill successfully introduced a new style of radio broadcasting to the airwaves (Engelman, 1996, 47). It was the first non-commercial license given to an entity that was not explicitly an educational or religious institution. This set an important precedent that the commercial broadcasters may not have noticed at the time, but that would allow for other noncommercial, community-oriented stations to emerge on the airwaves throughout coming decades (Lewis and Booth, 1990, 116).

In 1949, KPFA went on the air with enough money to operate the station for a month and with plans to ask its listener base to financially support the station. Hill



envisioned “radio broadcasting created by individuals in direct relation to listeners [so they] could bypass the restrictions of advertising bias and vested interest, and be free to broadcast the full and uncensored range of political views in America and throughout the world” (Fromm, 1966, 3). Berkeley was chosen “as the site for KPFA in part because of the presumption that an academic community centered around a campus of the University of California would be more likely to support an experimental FM station” (Hill, 1966, 19). In a commentary that he wrote in 1951, Hill argued that “[l]istener sponsorship is an answer to the practical problem of getting better radio programs and keeping them” (19). Despite Hill’s optimistic belief in people’s willingness to monetarily support good radio, funding continues to be an issue for the station. Hill became disillusioned with KPFA in 1954, going so far as to file a complaint with the FCC urging the agency to take the station off the air. In 1957, he committed suicide, a sad end for a man who had brought something new to the airwaves.

Over the years, Hill’s vision grew to encompass a network of five stations, in Los Angeles (KPFK), New York City (WBAI), Houston, Texas (KPFT) and Washington, DC (WPFW). This network – Pacifica – has repeatedly addressed the question of whether its stations’ markets are big enough to sustain listener-supported radio stations. Even so, Pacifica’s experiment has laid the groundwork for an alternative to commercial broadcasting networks and its successes indicated that another form of broadcasting was possible in the United States. Indeed, some people are willing to pay out of pocket for programming committed to free speech, especially against a backdrop of an increasingly monopolistic commercial broadcasting industry.

Scholar James Lumpp (1996) describes Pacifica as “the modern equivalent of the old town meeting” (50). This experiment in non-commercial broadcasting is the first wave of community radio in the United States, though these stations would not get defined as “community” until 1974, when the second wave of community-minded broadcasters, who had already been broadcasting, in some cases, since the 1960s, met in Madison, Wisconsin, for the National Alternative Radio Konvention (NARK). This gathering laid the groundwork for the creation of the National Federation of Community Broadcasters (NFCB), a lobbying organization still representing community radio stations inside the beltway. According to one attendee, “the word ‘community’ was ... a compromise between political ideologues, radio experimentalists, media-philosophers and total greenhorns – all of whom could feel that the rubric ‘community broadcaster’ would suit their image of themselves ” (Walker, 2001 138).

### **Community Radio’s Second Wave**

The first station to emerge in this second wave of community broadcasting was KRAB, which went on the air, in 1962, in Seattle, Washington. Lorenzo Milam, the force behind the station, sought to recapture the “anarchic excitement and the spirit of equality of the earliest days of radio” (Milam, 1988, 74). He, along with engineer Jeremy Lansman, further helped to inspire a network of like-minded stations throughout the country, what became known as the “KRAB Nebula.”<sup>8</sup> Walker (2001) notes that if, as many historians notes, Lewis Hill “fathered the movement” then it must be said that “Lorenzo Milam reared it” (70). Milam (1988) described the KRAB nebula stations

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<sup>8</sup> Lansman, who now lives in Anchorage, Alaska, has worked with Prometheus Radio Project to help train another generation of radio enthusiasts and attends many of PRP’s radio barnraisings, which are training weekends centered around setting up low power stations for community-centered groups throughout the country.

“starting with nothing except a burning desire by radio mendicants who seek only to spread the joy and freedom of outspoken, outrageous, eccentric, culturally astonishing, socially unkempt, didactically indefensible radio” (154). Mike O’Connor (2000), one of the founders of WORT 89.9 FM, a community station in Madison, Wisconsin which incorporated in 1975, said of Milam, “He inspired a gaggle of us geeks to go out and do what needed to be done...eeyowsah could that man sell. He sold bicycles to fishes and ice to Eskimos and wound us geeks up when we got tired and cranky. We owe him, big-time” (WORT Yearbook, 2000, 8) Milam and Lansman had a hand in the creation of community radio stations throughout the country, including WORT; KBOO 90.7 FM in Portland, Oregon; KDNA, which has become KDHX 88.1 FM in St. Louis, Missouri; WRFG 89.3 FM in Atlanta, Georgia; KOPN 89.5 FM in Columbia, Missouri, KZUM 89.3 FM in Lincoln, Nebraska and the now defunct KTAO 95.3 FM in Los Gatos, California.

Lacking the emergence of a new radio frequency, these second wavers needed a strategy to ensure that their Class B applications received FCC approval. According to O’Connor (2000), “We didn’t convince the FCC of anything; we snuck under the radar. We got real good at their rules and regulations, did the application, made them fit the mold.” Most of these stations incorporated in the late 1960s and throughout the 1970s, with WERU in Bangor, Maine, being one of the last of such stations to be granted a Class B license in 1988. Thereafter, FCC simply stopped issuing full power licenses because the agency argued that there were no more frequencies available.<sup>9</sup>

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<sup>9</sup> This freeze was based on the FCC’s licensing stations at a distance of three frequencies apart (89.5, then 91.1, then 91.7, etc.). This spectrum spacing is based on the old tuning of radios, when a person had turned the knob rather than use digital locking in on frequencies that occurs with newer radio technology.

The NFCB (1991) characterizes community “broadcasters [as people] who work to bring a measure of humanity and excitement to the airwaves, who approach their efforts with an experimental and open minded view to the potential of the spectrum.” Another community radio group, the Grassroots Radio Consortium (2001), a loose coalition of community stations founded in 1996 in response the NFCB’s push to professionalize community radio, wrote:

More than audio outlets, volunteer-based community radio stations are cultural institutions in their communities, reflecting the unique concerns and passions of the people who live there. With a system of governance based on openness and collaboration, and diverse programming produced by volunteers and funded by listeners, these stations are cornerstones of participatory democracy, offering ordinary citizens the chance to exercise First Amendment rights in a mass medium, and listeners the opportunity to directly support the programming that is of importance to them.

The issue of professionalization of community radio has played a significant role throughout the community radio network. The question of how to raise enough funds to stay on the air while remaining rooted to the ideas of accessibility, diversity and remaining directly connected to the local place where the station resides. In the 1980s, David LaPage, a one time general manager at WORT in Madison, Wisconsin, started a Healthy Stations Project in an effort to solve the funding problem for small stations. His main directive was that the stations needed to make their programming sound more consistent and more professional if they wanted to be financially solvent. His primary solution was the removal the volunteers from the airwaves, replacing them with syndicated shows. The GRC formed, at least in part, as a challenge to the professionalization push by the NFCB in the mid-1990s.

In the past twenty-five years, some of these stations, including Milam’s KRAB, have disappeared from the radio dial. The surviving stations, which have been

broadcasting in most cases at least thirty years, strive to stay rooted in their communities, to keep their budgets in the black, and to maintain the resourcefulness that has been the backbone of the community radio movement. They continue to provide an important resource to their communities in places such as Madison, Wisconsin (WORT 89.9FM); Portland, Oregon (KBOO 90.7 FM); Albuquerque, New Mexico (KUNM 89.9 FM); Blue Hill, Maine (WERU 89.9 FM); Boulder, Colorado (KGNU 88.5 FM); Tucson, Arizona (KXCI 91.3 FM) and Tampa, Florida (WMNF 88.5 FM). But during the 1980s, small groups of people throughout the US, frustrated by the freeze on licensing and then FCC Chairman Fowler's attacks on the public interest standard, began taking to the airwaves in protest of what they saw as an infringement of their right of free speech. These people sought to challenge commercial radio and the existing approach to regulating media in the U.S. by not adhering to the existing system.

### **Micropower Broadcasting**

These individuals entered into debate about radio ownership, arguing that electronic civil obedience was necessary to combat unjust media policies. Amateur broadcasters again appeared on the radio dial on open frequencies and broadcast in defiance of the FCC and their licensing regulations, arguing that they were the true advocates for public interest in media broadcasting. Mbanna Kantako, creator of Black Liberation Radio, began broadcasting, in 1987, from his living room in the John Hay housing project in Springfield, Illinois. Many sources credit him as the founder of what has become known as the microbroadcasting movement. He took to the airwaves because no commercial stations were covering issues important to his community. With a two watt FM transmitter, he reached over half of Springfield's black community, which

as media scholar Kevin Howley (2000) notes, has “a population with a high rate of functional illiteracy but a keen appreciation for the oral tradition” (259). Kantako argues that because he sees the government’s authority to regulate the airwaves as illegitimate, he does not need to ask for permission to broadcast.

In 1993, political activist and agitator Stephen Dunifer started Radio Free Berkeley, transmitting from a 15 Watt homemade FM transmitter. According to Howley (2000), he actively sought to challenge the FCC and its regulatory authority over the public airwaves. Dunifer argued that Radio Free Berkeley was practicing free speech and that the FCC’s licensing system was unconstitutional. Alan Korn, an attorney with the National Lawyers Guild’s Committee for Democratic Communication (CDC), helped Dunifer navigate the legal issues after the FCC filed a forfeiture against the illegal station in 1993. In response, Dunifer filed a series of reviews with the FCC. The FCC’s response was to ask the federal courts to enjoin Dunifer from any further illegal broadcasting.

Prometheus Radio Project (2000), a clearinghouse for low power radio stations, which has a history in what it prefers to call pirate broadcasting, wrote in 2000, “A series of surprising courtroom victories created legal doubt about the fairness and legitimacy of our nation’s broadcasting rules.” During the last half of the 1990’s, encouraged by these court cases, “a great deal of momentum was created and many otherwise upstanding citizens were taking to the airwaves without a license as a form of protest against corporate domination of media” (PRP, 2000). However, in 1998, Federal District Court Judge Claudia Wilken’s, reversing her earlier decision, granted the FCC’s request for a permanent injunction against Radio Free Berkeley. But instead of successfully

dismantling the microbroadcasting movement, the FCC's continued attacks on Radio Free Berkeley and other stations throughout the country have instead further encouraged illegal broadcasting.

William Kennard, FCC chair from 1997-2000, who the Prometheans refer to as “the sometimes progressive FCC chairman” responded to the “open rebellion” of the microbroadcasters against the FCC's allocation system by aggressively shutting down illegal stations (PRP, 2006). Simultaneously, however, he began investigating the potential for a legitimate noncommercial radio service for non-profit organizations representing minorities, church groups and community projects, which became known as the LPFM service. Many radio scholars, including Howley (2000) and Spinelli (2000), contend that the introduction of the LPFM service was an attempt to stem the tide of illegal stations broadcasting throughout the country. These scholars argue that the microbroadcasters' illegal use of the airwaves put the necessary pressure on the FCC to introduce a service that could remedy, at least in a small measure, the commission's poor public stewardship of the airwaves. Microbroadcasters are themselves divided over the value of the LPFM service, with many continuing to broadcast illegally despite the impending repercussions of such action. The FCC passed a ruling that any person connected to illegally broadcasting station shut down by the agency cannot apply to for a license under the LPFM service. With the implementation of the LPFM service in 2000, the FCC licensed into existence the potential for a third wave of community licenses. The next chapter provides an overview of the LPFM service from its introduction through implementation, documenting the policies, players and actions that have shaped the

service into what it is today, a rural service that has the potential of getting extended into larger markets in the coming year.



## **CHAPTER 4**

### **(LOW) POWER TO THE PEOPLE**

In 2000, the FCC announced that it would implement the LPFM service. This new class of low power FM radio licenses allowed broadcasting power of 100 watts, reaching at their maximum an approximate ten-mile radius, with 3.5 of those miles protected from interference by adjacent frequencies. The FCC's goal was to grant long-established community organizations, such as schools, churches, and non-profits, access to the broadcast spectrum. Former FCC Chairman Kennard saw the service as a way to address troubling trends in localism, content diversity and minority media ownership in a post-Telecommunications Act era. He noted at the time, "This will bring many new voices to the airwaves that have not had an outlet for expression, and it happens at a time when the radio business has consolidated in a very dramatic fashion" (Stravisky, Avery and Vanhala, 2001, 340). The formation and implementation of the LPFM service will be examined, accessing the debate that raged and continues to rage amongst members of the media industry, the FCC, Congress, and media reform organizations. The LPFM service, as a case study, offers rare insight into what it took – and continues to take – to launch new non-commercial entity into a heavily commercialized media environment. It is equally important to assess the tactics the commercial media lobbyists used to undermine the service and the campaign conducted by progressive media reformers to expand non-commercial community space on the broadcast spectrum.

## **Introducing the LPFM Service**

In 1998, the FCC received two different citizen petitions asking for a new class of low power licenses. Virginian radio enthusiasts Nickolaus and Judith Leggett, with the help of attorney and Washington, D.C. insider Donald Schellhardt, filed RM 92-08 with the goal of fostering "the ties of community identity...in urban neighborhoods, rural towns, and other communities which are currently too small to win much attention from mainstream, ratings-driven media" (diymedia.net, 7). Radio entrepreneur Rodger Skinner filed RM-92-42 with the intent to implement a class of 3000 watt licenses, which he hoped would appeal to other small-scale radio entrepreneurs, who had been subsumed by the post-1996 mass-scale radio station buyout.<sup>10</sup>

While these petitions might otherwise have received little reception at the FCC, due to the dramatic changes in radio ownership and a lively community of micropower broadcasters taking illegally to the airwaves, Chairman Kennard actively explored the idea for a new low power service. On January 28, 1999, Kennard issued a Notice of Proposed Rulemaking concerning the LPFM service. As is customary in such proceedings, the FCC announced a three-month public comment period for this Notice. The commission received nearly 17,455 written submissions and 3500 official comments on Docket 99-25, a combination of the two citizen-led petitions. This correspondence was the most in FCC history and overwhelmingly in favor of the new service (Boehlert, 2000).<sup>11</sup>

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<sup>10</sup> In 1998, the attitude of the LPFM advocates was that the FCC would not support the service.

<sup>11</sup> See <http://www.diymedia.net/feature/fhistlpfm11.htm> and click on "amount of public input" to get the FCC site listing the public response to the service.

## **Opposition to the LPFM Service**

The fact that the FCC chair was proposing a new LPFM service sparked intense debates and extensive political lobbying in Washington, D.C. Opponents of the service launched a campaign focusing on technical issues. The National Association of Broadcasters (NAB), the lobby for commercial broadcasters, claimed that these new stations would create an “ocean of interference” for the existing 8000 full-power commercial FM stations (Fritts, 2000). Many proponents of low power, including FCC Chair William Kennard, argue that competition was the real reason the NAB was against the service. Prometheus Radio Project’s Amanda Huron, argued,

The real reason the NAB is so opposed to low-power FM is they are afraid of losing listeners to low-power stations (and, more importantly, losing advertising). Radio listenership is already dropping, partly because of the increasingly boring fare served up by national chain stations, and partly because people are turning to other sources - like the Internet - for their entertainment. So the Radio industry is nervous about a lot of things. (Radio Ink, 2000).

By choosing interference as the focal point, the NAB gained an important ally in National Public Radio, the public radio network. NPR, a generally well-respected organization, expressed concern that the new service would interfere with its reading service for visually impaired listeners, which some of its affiliates provided via sub-carriers.<sup>12</sup> Public radio’s opposition gave credibility to the NAB’s arguments, providing a non-commercial voice to the argument.

To hinder the advancement of the service, the NAB launched a coordinated attack. It began by petitioning the FCC for and received four additional extensions on the Notice of Proposed Rulemaking, thereby extending the comment period for a total of ten

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<sup>12</sup> These Reading Services channels feature people reading newspaper stories and other information out loud for blind or otherwise visually-impaired listeners.

months, with the FCC denying the NAB's fifth such request on January 13, 2000. During this extended comment period, the NAB distributed a "Low Power Radio Kit," to its members, asking for their help in lobbying against this perceived threat to commercial interests. The kit, issued on March 19, 1999, included talking points and a copy of a trade publication's obituary for William Kennard crediting him with killing radio.<sup>13</sup> It urged its members to write to the FCC, Congress members, and editorial page editors of newspapers throughout the country. On the same page as the obituary, B. Eric Rhoads, Radio Ink's publisher writes, "Your signal, your business and your future depend on your ability to get very angry before it is too late" (Radio Ink, 1998-99). The question of whether low power stations would cause interference to full-power stations became the vortex of the debate. Because the existence of interference is a given in radio broadcasting, it was an effective tool for the NAB to use in challenging the new radio service.

### **Interference**

According to a radio technology primer written by Prometheus Radio Project (PRP), a low power radio advocacy group working out of West Philadelphia, radio waves "travel, bounce and dissipate in mostly the same way as light does," dispersing the waves in all directions until they are overwhelmed by physical barriers or other signals on the same frequency" (2000a). Because there is an indiscriminate flow of radio waves, all inhabited frequencies create some interference. The question for FCC engineers and policymakers planning for a LPFM service was how to best maximize radio spectrum

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<sup>13</sup> See [www.beatworld.com/NAB/NABindex.html](http://www.beatworld.com/NAB/NABindex.html) for the complete "Low Power FM Kit."

space – the need for new stations – with the least amount of interference for existing full-power stations and their listeners.

To understand how interference would affect the FM spectrum, the FCC reviewed a total of four engineering reports, including reports from its own engineers and the NAB. The tests examined reception on radio receivers from car stereos, in-home set-ups, walkmans, boom boxes and clock radios.<sup>14</sup> The FCC was interested in determining how closely low power frequencies could sit next to full-power frequencies, as the agency was exploring the possibility of the LPFM service being exempt from the third adjacent channel protection required of full-power stations.<sup>15</sup> In 19 of the 21 receivers, FCC engineers found that if a full power station was broadcasting at 91.5 FM, a low power frequency could broadcast from as close as a first adjacent channel (91.3 or 91.7) with few interference problems. The two receivers that yielded interference were from low-end receivers without the filters to impede interference.

The NAB's results yielded very different results from the same kind of testing. In its study, over half the radio receivers tested failed to meet an acceptable interference level, even at the protected third adjacent channel spacing. In an article about low power radio and interference, PRP (2000a) noted that the NAB engineers set such a high standard of audio quality – one not required of existing broadcasters – that some of the

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<sup>14</sup> The invention of transistor made it possible to keep a radio transmitter within a tiny fraction of its allotted frequency, thus removing transmitters as a cause of interference. In an effort to keep down the manufacturing costs, many of the more inexpensive receivers are not equipped with filters, which increases the chances of interference and these became the focus of much of the debate surrounding interference by LPFM stations (PRP, 2000).

<sup>15</sup> Frequencies are assigned on the odd numbers of the broadcast spectrum. One adjacent channel spacing for a frequency of 91.5 FM is 91.3 FM or 91.7 FM, second adjacent channel spacing is 91.1 FM or 91.9 FM and third adjacent channel spacing is 89.9 FM or 92.1 FM. Full power stations are currently required to be three channels, or clicks, away from each other.

receivers failed to pass the acceptable interference level even in cases where no interfering signal was used.

Besides the studies conducted specifically for the LPFM rulemaking, the FCC had two other pieces of relevant data to study. The first was translators, a class of 250-watt licenses given to full power stations to expand station coverage by carrying their frequencies to additional transmitters, especially in places where mountain ranges interfere with the distribution of radio waves. The interference caused by translators has been proven over time to be acceptable and this class of licenses is essentially identical to that proposed for low power radio. The other evidence is a group of about 400 stations that were licensed by the FCC as clear channels, at a time when it authorized stations to broadcast at a higher power than it does today. These stations exceed the third and, in some cases, second channel adjacent rules and have not caused unacceptable interference for nearby stations. The FCC, after reviewing the engineering studies, concluded that even though low power frequencies could safely sit on first adjacent channels with acceptable interference, the agency proposed in its Rulemaking that LPFM frequencies could occupy second adjacent channels (i.e. a full-power station could broadcast at 91.5 with a low power station broadcasting at 91.1 or 91.9 FM).

### **Advocates for the LPFM Service**

That the FCC was actively pursuing implementation a new radio service in opposition to the NAB was, in part, due to the significant presence of public interest advocates, people and groups striving to make media more democratic, substantive, and representative of the public it is supposed to serve. On the ground ready to advocate for the service as it was unfolding were the Media Access Project (MAP), the United Church

of Christ's Microradio Implementation Project (MIP); Prometheus Radio Project (PRP); and people such as progressive attorney and lobbyist Michael Bracy, who created the Low Power Radio Coalition website. In a March 2000 press release, MAP noted, "The groups who support low power radio cannot match the immense resources of the broadcast industry, but they are numerous and spread all over the country" (MAP, 2000).

Working inside the beltway, MAP, which is a law firm specializing in public interest telecommunications, was in a position to respond to NAB 's ongoing assault on the service, beginning in 1999. Cheryl Leanza, former Assistant Director of MAP who is now the managing director of UCC's Office of Communication, has done extensive lobbying work on behalf of the low power radio movement. Besides monitoring the activities of the NAB, the FCC, Congress and the courts, Leanza assisted low power radio advocates in finding funding to support their work in getting the LPFM service implemented. In personal correspondence, founder Pete Tridish notes that PRP's first big grant from the progressive Ford Foundation was the result of her efforts. He wrote, "She helped get Prometheus supported by introducing us to funders, but also felt that we needed a straight partner that could appeal to other groups that might be afraid of our radical profile." (Tridish, 2006). PRP as an organization, spearheaded in large part by Pete Tridish, had grown out of the pirate radio movement. Tridish had also co-founded Radio Mutiny, a pirate station in West Philadelphia. Coming from a controversial background and because it was a new organization, PRP needed another group to give the low power implementation project credibility with funders.

Leanza helped partner PRP with the United Church of Christ, a non-profit religious organization with a long history in civil rights and media activism. According

to Tridish (2006), MIP represented “the ‘non-profit’ version of Prometheus, appeal[ing] to more mainstream sorts of groups.” He noted, “They got much more money than we did, but they did not do a lot of fundraising and closed up shop as soon as the Ford grant ran out” (Tridish, 2006). His analysis of MIP was that it did excellent outreach in the northwest states, where it was based, but did little at the national level. Simultaneously, PRP, working out of makeshift offices in a church basement in West Philadelphia, began conducting regional tours throughout the country meeting with progressive people, encouraging them to apply for a low power station in their communities. In an article written for community newsletters, PRP’s Jon Strange wrote, “As lifetime activists in movements for social justice, we have a special interest in seeing community organizers and neighborhood organizations apply for these stations” (Strange, 2001). Of particular concern to PRP was making sure that low power stations remained in their communities as “electronic town squares” giving voice to “innovative ideas” and nurturing “local cultural expressions” (Strange, 2001).

PRP has become a clearinghouse for all things low power radio. PRP’s style is uniquely its own and to outsiders it can often feel chaotic, but they have shown that with relatively meager resources and a willingness to put in a lot of hard work it is possible to build community radio stations and to engage politicians and the FCC on policy issues. The group offers information, technical advice, and support, provides compelling interviews about the LFPM service to the press, and holds radio gatherings throughout the country to bring people together to learn about radio. PRP is a five-person organization, with its founder, Tridish, and former campaign director Hannah Sassaman, particularly adept at playing the media policy game. Tridish’s greatest frustration has



been with the American Left and its system of funding and organizing. Effective radical organizations, such as PRP, Minneapolis-based Americans for Radio Diversity and Seattle-based Reclaim the Media, have shown they can operate on shoestring budgets and can accomplish a lot with very little. It could be argued that if they were given reliable and substantial resources, this investment would ultimately benefit the whole movement, but, unfortunately, even progressive funders tend to be conservative with their limited resources.

As low power stations started to emerge onto the airwaves in 2002, PRP received money from another Ford Foundation grant, this time with the National Federation of Community Broadcasters (NFCB) getting the majority of the grant money. NFCB hired an administrator to oversee the grant. The position, outside of handling the grant, never seemed entirely defined, though as a stipulation of the grant, the administrator scheduled regular meetings for the Low Power Advisory Board, which consisted of the progressive groups and individuals engaged in the low power radio project.

The Advisory Board proved to be an effective tool for the movement. The members used an email listserve to set meeting dates and to share information about LPFM service developments and dialed into a conference call for meetings. The meetings provided grassroots individuals and groups from around the country an opportunity to talk regularly about developments surrounding the service. NFCB, PRP, attorney and progressive lobbyist Michael Bracy, MAP's Leanza, radio engineer Michael Brown, attorney Alan Korn representing the National Lawyers Guild Committee on Democratic Communications (CDC), and community radio veteran Nan Rubin were all involved in these calls. Free Press joined the conversations in the later months of 2002,

upon launching as a new non-profit tackling media issues. As an applicant representing a low power station as well as a researcher, I was privy to these meetings for a year. One of the meetings took place at the barnraising for the Southern Development Fund's low power station KOCZ in Opelousas, Louisiana. This gave the DC-based advisory members a chance to step outside the theoretical political debates to see the practicalities of a station going live for the first time.

These gatherings, whether in person or over the phone, allowed interested parties to come together to strategize on how best to advocate for the service, ensuring that the people and organizations working in the beltway – Michael Bracy, MAP, Free Press, UCC and NFCB – kept in close contact with those working within communities – PRP, Nan Rubin, and low power applicants. When the grant ran out, the group no longer met regularly, though, according to Tridish, in recent years the Advisory Board has continued as an informal strategic body working to cultivate a large public network to help put and keep pressure on the FCC and Congress. The process of having different kinds of non-profit organizations – from both the inside and outside of politics – regularly talking to each other was an important step in keeping the groups moving in the same direction. Even as they all were working for the same cause, they had different vantage points and regular communication allowed them to be more able to represent a united front for this new non-commercial radio service. These committed individuals helped to cultivate the third wave of community non-commercial radio within a FCC service that may have otherwise just offered up programming from churches, municipalities or educational institutions.

## **The Launch of the LPFM Service**

On January 26, 2000, after almost two years of comments and engineering research as well as much lobbying for and against it, the FCC implemented the Low Power FM (LPFM) service. The most controversial aspect of the ruling, aside from the implementation of the service writ large, was the decision by the FCC to allow groups to apply for frequencies that were only two channels – or clicks – away from existing stations on the spectrum. The FCC contended this reduction in spectrum spacing would allow more groups to apply for construction permits, especially in larger, urban environments where the radio spectrum was more densely populated. Despite mounting pressure to abort the service, the FCC announced its intent to proceed with establishing the service. NAB and NPR's campaign to kill the LPFM service before it could even get implemented was unsuccessful, but this is not to say that NAB and NPR were not successful in disrupting and downsizing the service as it was being implemented.

On February 17, 2000, less than a month after the FCC's introduction of the LPFM service, NAB President Eddie Fritts took issue with the FCC's launch of the LPFM Service at a meeting of the House's Subcommittee on Telecommunications, Trade and Consumer Protection. He claimed that the FCC "had abandoned its mandate and primary function of spectrum manager and has crossed over to social engineering at the expense of the integrity of the spectrum for existing FM broadcast stations and their listeners" (Fritts, 2000). The fact that the FCC had changed the frequency spacing for the LPFM service from third adjacent to second adjacent channels gave the NAB ammunition to question the FCC's judgment before Congress. To dramatize this point, in March 2000, the NAB distributed a studio-produced demonstration CD to members of

Congress implying that interference would result in listeners hearing voices or “crosstalk” from two stations at once. PRP (2000) wrote of the CD demo, “[W]hat was presented was actually the sound of two audio tracks laid on top of each other with a mixer.” The FCC publicly stated that, “The NAB ‘crosstalk’ demonstration...is meaningless,” as “any such interference that might occur from an LPFM station would nearly always appear as noise or hissing” (FCC, 2000b). Dale Hatfield, head of the FCC’s Office of Engineering and Technology and Roy Stewart, head of the FCC’s Mass Media Bureau, went on record saying, “This CD demonstration is misleading and is simply wrong” (FCC, 2000b). Even though the NAB never submitted the CD to be part of the public FCC record and the NAB replaced it on its website with tracks of actual recorded interference, its efforts at subterfuge paid off in Congress. Many politicians, lacking technical knowledge and holding a CD demonstrating “evidence” of interference, were led to have doubts about the LPFM service based on a vague understanding of interference.

The NAB and NPR lobbying against the LPFM service was so intense that the FCC published a “factsheet” in March, 2000 entitled “Low Power FM Radio Service: Allegations and Facts.” The FCC carefully – allegation-by-allegation – refuted NAB’s claims that the agency had rushed to judgment regarding the service and that it overlooked significant interference issues. At first it seemed to DC insiders that there was little threat to the implementation of the service, especially from Congress, as precedent suggested that it would rubberstamp the FCC’s decisions. Yet NAB-friendly bills continued to appear on the Subcommittee on Telecommunications, Trade and Consumer Protection docket attacking the LPFM Service, including House Resolution

3439. In a public statement before the subcommittee on March 23, 2000, Commerce Chair Tom Bliley assailed the FCC for proceeding “full speed ahead with its application process for these Low Power stations despite appeals raised from broadcasters and legislators” (Bliley, 2000). He added, “Congress must now step in to slow this process at the Commission, before it wreaks havoc on our nation’s airwaves” (2000)

A bill to discontinue or alter the service were never voted out of either the House or the Senate, but in December, 2000, NAB-friendly politicians succeeded in slipping a “rider” into a general appropriation bill – ironically entitled the “Radio Broadcasting Preservation Act.” This legislation forced the FCC to change its ruling on how closely low power station frequencies could sit next to full-power frequencies. Because of the language tucked into the 2000 Appropriations Bill, the FCC had to increase the distance to three adjacent channels – the same as for full-power stations – thus eliminating frequency space in the most tightly populated areas in the country, primarily the top 50 radio markets. This move by Congress eliminated as many as 80 percent of the applicants who had already applied for low power construction permits (Prometheus, 2000b). The low power FM applicants that had been legislated out of eligibility were encouraged to try to locate a frequency using three-channel spacing, but due to the high usage of frequencies in the largest markets, many groups could not find a way to wedge themselves onto the spectrum and the FCC could not license them. Tridish noted in 2000 that the Radio Preservation Act was “the first time in the 66 year history of the FCC that Congress has presumed to limit the FCC’s authority with regard to how it can make technical decisions regarding broadcast interference” (PRP, 2000b). He wrote that low power advocates had been overconfident that having the FCC on their side was enough to

ensure that the LPFM service would get implemented.

However, Congress did not completely rule out the closer channel spacing. Instead, it told the FCC to hire an independent firm to conduct field tests on interference posed by the LPFM stations. These tests were not released for three years. PRP stated in frustration, “The best way for special interests to kill a good, popular idea is to insist that it be “studied” until its advocates give up” (PRP, 2001). On June 30, 2003, the MITRE Corporation, which had been commissioned to study the interference problem, released the report on its findings. The NAB had unsuccessfully attempted to stall the release of these findings and there was some concern among grassroots organizations that the MITRE findings would be ambiguous such that NAB would be able to interpret them to its political advantage. To counter further delays, PRP’s Tridish and Huron brought together “the best engineering, legal, and social analysis in the grassroots community” to be ready to respond if need be (PRP, 2004). The MITRE Report, however, clearly stated that low power stations did not cause unacceptable interference to existing stations and the overly cautious frequency spacing of three channels could be lifted, in favor of the second channel spacing that the FCC had originally proposed.

In 2000, in the months following the launch of the LPFM service, a highly contested presidential election resulted in a Republican win with George W. Bush getting inaugurated in January 2001. He subsequently appointed Michael Powell, son of then Secretary of State Colin Powell, to head the FCC. Powell strongly advocated marketplace ideals of deregulation and efficiency and upon Kennard’s departure, all the remaining LPFM applications were left largely unprocessed by FCC staff. Priorities within the agency had shifted and they did not include the LPFM service.

However, in 2003, the same year that the Congress-sanctioned MITRE study was released confirming that low power did not cause significant interference to the FM dial, Powell launched a campaign to radically alter long-standing media ownership policies. This campaign will be addressed more thoroughly in the next chapter, but for the purposes of this discussion, Powell's proposals to further loosen the regulation on media ownership policies received a maelstrom of criticism. Because of the organizing work of the grassroots media reform movement, the FCC and Congress were flooded with comments from concerned citizens that further media ownership deregulation was not in their interest.

A decision, which historically would have passed quietly into policy, became public and Powell found himself needing to justify the FCC's record on issues of localism, as commercial broadcasting on both radio and television had become increasingly removed from the communities it served.<sup>16</sup> He ironically highlighted the LPFM service as an example of the FCC's commitment to keeping content local. His stated commitment to LPFM thus became a matter of record and the Media Access Project capitalized on this unlikely event by releasing a press advisory entitled, "Statement on Chairman Powell's Low Power FM Initiatives." The report highlighted the "significant" roadblocks still faced by low power stations, in part due his previous lack of interest in the service. They wrote, "Today...low power is a small bright spot in a congested and consolidated media landscape. The American People are aching to hear

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<sup>16</sup> According to PRP (2000a), "Broadcast professional of thirty years standing are regularly kicked off the air by slick marketing experts while mom-and-pop radio stations are being bought up at a furious pace by the corporate giants. Many radio stations do not even have their own programmers any more. Most of the work of creating our radio culture is done today not by practitioners of the radio art, but by statisticians and computers."

something local and real and meaningful on the airwaves, even if they have to run their own radio stations to get it” (MAP, 2003).

That Powell and the FCC were forced to highlight the LPFM service to save face on the question of localism did not change the fact that low power stations were still only available in smaller markets and, whereas they are not allowed to cause interference, they often find themselves dealing with encroachment from the high power stations on nearby frequencies. In 2009, low power advocates are still waiting for Congress to respond to the Congress-commissioned MITRE study which found interference by low power stations not to be an issue. Current reports put the number of low power stations, licensed under the LPFM service, at 876, with only one station, in Columbus, Ohio, in the top fifty markets and one other, in Spokane, Washington, with a population above 500,000.

### **Further Debates**

Since the release of the MITRE findings, vindicating the FCC’s conclusion that two channel adjacency does not cause significant interference to existing stations, a few legislators have continued to introduce bills to reassess the LPFM service. On June 4, 2004, Senators John McCain (R-AZ) and Patrick Leahy (D-VT) introduced a bill that would eliminate the third-adjacent channel protections for all licenses except those broadcasting reading services for the blind via subcarrier frequencies. It is interesting to note that National Public Radio, despite extensive negative press for the radio network, has continued to oppose the LPFM service. Senate Bill 2505 passed out of the Commerce, Science and Transportation Committee on July 30, 2004, and was scheduled to be debated on the Senate floor. Community radio veteran Nan Rubin, reporting about



the bill's progress, felt that the likelihood of the bill's ultimate success was limited, but also noted that its very existence as a bill being debated in the Senate was the result of "enthusiastic and energized grassroots advocacy" (Nan O'Tech, 2004).

This round of legislation did not end up going any further because the House version of the bill never made it out of committee. John Dingell, aside from having introduced the 2000 Preservation Act, also chaired the House Energy and Commerce Committee and never allowed the bill to come up for a vote, thus killing its chances in committee. In 2006, Senators McCain and Leahy, this time joined by Maria Cantwell (D-WA), again introduced a bill that would have restored the original second-adjacent channel language to the low power service. Again, it was unsuccessful. A year later, on June 21, 2007, House Representatives Mike Doyle (D-PA) and Lee Terry (R-NE) and Senators John McCain and Cantwell introduced the Local Community Radio Act (H.R. 2802/ S. 1675). This bill seemed to have traction, but even though the bill had seventy co-sponsors in the House of Representatives and unanimously passed the Senate Commerce Committee, it again did not leave Dingell's committee.

Advocates are hopeful that the Local Community Radio Act will finally pass in 2009. With a newly elected Democratic president, the majority of both houses of Congress Democrats, and Henry Waxman (D-CA), a long time supporter of the LPFM service, replacing Dingell as Chairman of the Energy and Commerce Committee, it is expected that the House and Senate will vote for the bill, which would return frequency spacing for low power stations to two channels. That these low power stations in bigger, urban markets may yet emerge is based, in part, on the 2008 presidential election. The other reason for the success is that the low power radio advocates did not give up. In

fact, the diversity of people, working from both the inside and outside of the beltway, in the progressive media reform movement, has made it possible for attention to be placed both on the latest developments in D.C and on building networks in communities throughout the country.

### **The LPFM Applicants**

Progressive organizations were not the only groups, however, pursuing the LPFM service. Educational facilities, ranging for high schools to universities; governmental entities including cities, municipalities and state departments; and religious organizations, pursued construction permits (CPs). Having already established a network of stations using radio translators (a similar technology), religious organizations were particularly well-positioned to take advantage of this new class of license. PRP and attorney Korn, from CDC, filed hundreds of petitions to deny CPs for Calvary Chapel and M&M applications. Both of these right-wing evangelical organizations had interpreted the LPFM service as an extension of their translator service and applied for low power stations throughout the country to further their mission of carrying their national broadcasts to a greater community of listeners. As of 2009, only 42 Calvary Chapel licenses and 5 M&M licenses have been granted, but more than half of the low power licenses have gone to religiously affiliated organizations. Some of the ways stations define themselves are vague, requiring more extensive research to determine their profile. By using terms such as “educational” and “community” to define projects it is not entirely clear how to categorize all the stations, but it seems that religious broadcasters were the clear winners in the number of low power licenses granted to their organizations. Low power radio scholar Christopher Lucas notes that, “the benefits of

LPFM were unevenly distributed and can be seen as especially benefiting fundamentalist and other religious communities' efforts to expand their cultural reach" (2006, p. 52).

This divide in the LPFM service is not the focus of this project, but an important issue for further study (see Lucas, 2006 and Brand, 2004 for some initial analysis). The focus of this study is rather to study how independent progressive groups overcame the various challenges to get licensed and to question whether these efforts have been worth it.

### **Form 318**

The FCC divided the fifty states and territories into five groups and announced that each group would be assigned a window of five days, during which applicants in that group could apply electronically at the FCC website, for a 100 watt LPFM construction permit. The application was entitled Form 318 and to be viable, applicants needed to both demonstrate they were a part of an established non-profit organization and provide specific technical coordinates for antennas and transmitters for stations that did not yet exist. Despite efforts by the FCC and advocate groups to make it accessible for non-profit organizations, the application for a low power CP was a rigorous compilation of technical data. To help counter this, the FCC published "Low Power FM Radio: An Applicant's Guide" (2000) in an effort to explain the service and its application process to groups. Community radio veteran Nan Rubin also wrote a primer for filling out the engineering specifications required in Section V of the application. According to Rubin, the three main technical elements needed to operate a station included: a physical place to hang an FM antenna, a place to install a transmitter and a location for the broadcast studio. The locations where the antenna and transmitter were to be installed were required for the application. Groups needed to provide exact geographic coordinates in

longitude and latitude for their antenna locations using the North American Datum 27 (NAD 27) coordinates.<sup>17</sup> The FCC also required the exact height of the antenna from the ground and from sea level, with the elevation being determined using a U.S. Geological Survey 7.5 minute topographical quadrangle map. Applicants could then enter their coordinates into the FCC Channel Finder to determine whether there were available frequencies. The results were not always accurate. When one low power applicant entered coordinates, he was given as an open frequency a popular alternative music station in town. The FCC did not provide staff to assist groups with these tasks. Instead, groups were directed to consult licensed radio engineers or broadcasting lawyers if they were having difficulties, requiring money that a lot of these groups did not yet have and which was hard to raise based solely on the promise of a radio station.

The FCC produced a guide laying out its requirements for who could apply for LP construction permits, with individuals and commercial entities not eligible to apply. Groups with illegal broadcasting records with the FCC were also not eligible. Groups with ties to pirate activity could only apply if they ceased operation when notified of their violation or if they terminated operation prior to February 26, 1999. Eligible applicants included: government or non-profit educational institutions; non-profit organizations, associations or entity with educational purposes (including community groups, public service or public health organizations, disability service providers or faith-based organizations); or government or non-profit entity providing local public safety or

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<sup>17</sup> Valley Free Radio in Florence, Massachusetts “borrowed” a GPS from a big retail chain, buying it to get the coordinates and then returning it within the time frame required for a refund.

transportation services.<sup>18</sup> The FCC further stipulated that these groups needed to broadcast within their communities. To demonstrate this, organizations had to be physically located within ten miles of their proposed transmitting antennas and seventy-five percent of their Board of Directors needed to reside within ten miles of antenna site.<sup>19</sup>

The FCC also explained how competing applications for a single frequency (what became known as MX-ed stations) would be resolved – based on a point system. With a total of three points possible, applicants would be assessed on 1) the organization’s presence in the community for at least two years; 2) a commitment to broadcast at least 12 hours each day; and 3) a commitment to broadcast at least eight hours of locally-originated programming each day. If a tie still existed after tallying the points, the FCC would encourage groups to share the license. Competing groups could also resubmit a joint application. For example, if three groups, with three points each, applied together, their nine points would grant them a license over a single applicant with only three points.

The challenges of getting a station up and running did not dissipate after the complicated application was submitted. After receiving a one-page confirmation of receipt of the application from the FCC, the organizations then went into waiting mode. The FCC left many LPFM applications in limbo for years. WXOJ 103.3 FM in Florence, Massachusetts, the station I will study more extensively in Chapter Five, waited for three years to receive a CP from the FCC. Many of the volunteers from the original

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<sup>18</sup> Interestingly, the cover of the guide includes five pictures, three of which depict church scenes, with the other two showing seniors playing cards and a town water fountain. In this guide, faith-based organizations were the poster-children of the LPFM service for the FCC.

<sup>19</sup> An organization is also considered community-based if it is a non-profit or governmental public safety organization that intends to broadcast within the area of its jurisdiction.

Valley Free Radio group moved away from the area during that time, leaving the few remaining people with a tremendous amount of work.

Once the FCC granted a construction permit to an organization, no matter how long it had taken to the agency to do so, the group then had eighteen months to secure funding, a station location, and volunteers to do all the work of fundraising, writing organizational policies, conducting station site research, and planning for equipment and station lay-out. When the station finally began broadcasting, volunteers then had to establish systems for operating the station without, in most cases, the assistance of a paid staff to oversee daily issues. That there are any low power FM stations is due to perseverance on the part of the applicants, especially for independent community groups that do not have built-in funding support that churches, governments and educational institutions can often provide. If the Local Community Radio Act gets passed in 2009, the groups that originally applied for LPFM construction permits back in 2000, which were put on seemingly permanent hold, will have a lot of hard work ahead of them to revitalize their volunteer base to be able to get their low power stations operational. It is likely that the FCC will have to re-open the application process, which would launch a new wave of stations throughout the country, most notably in big cities, which have been denied access to the promise of low power radio. In preparation, low power advocates need to study and assess their opponents' and their own strategizing and execution of strategy in the initial LPFM launch to be ready for this next round of debates.

### **Lessons Learned from the LPFM Service Launch**

That the NAB, with the help of NPR, succeeded in dramatically stunting the growth of the LPFM service during its launch illustrates the power of the incumbents of FCC

policy reform, the commercial broadcasters. The NAB's campaign to destroy the low power radio service is instructive because it demonstrates the influence media companies' money has on the electoral process and it shows a multi-tier strategy for successfully lobbying Congress. When it became clear that the FCC was going to proceed with the rulemaking to implement the service, the NAB developed a two-pronged approach to undermine the service.

While never shifting away from its aggressive filing of comments, reports, technical studies and requests for extensions with the FCC throughout all the public comment windows pertaining to the LPFM service; the NAB simultaneously pursued a full lobbying effort to convince members of Congress to strip the FCC's of its authority to make the policy decision and also appealed the FCC's decision to launch the service in the courts. The courts have not picked up the case. Congress, however, responded to the NAB's lobby. Tridish laments that LPFM advocates, himself included, "were overconfident that the facts spoke for themselves" and that "the FCC's engineers would be respected by Congress" (PRP, 2000). Instead, the NAB successfully stalled the majority of LPFM stations from going on the air during the last nine years. Back in 2000, Tridish wrote that the calls for more testing were an attempt "to stall LPFM enough to let the normal course of money and power smother this aberration of public-minded policy at the FCC" (PRP, 2000).

The strength of this grassroots media movement to date has been that the groups come from both the inside and outside of the beltway. MAP, Free Press, and attorney Michael Bracy, who co-founded the Future of Music Coalition, are well positioned in the rough-and-tumble world of DC politics to help galvanize public support when needed to

effect low power policy decisions. PRP remains engaged with the policies, but also takes seriously the importance of cultivating networks. It began hosting radio barnraisings in 2002, with the intent of launching a new low power station over the course of a weekend. They have hosted twelve such gatherings to date, bringing together people from all over the country to learn how to physically build a radio station and run it. Low Power advocates are further assisted by the current Acting FCC Chairman Michael Copps, who has been tirelessly advocating for greater protection of the public interest standard. He has worked to make localism a pressing FCC issue by hosting town hall meetings throughout the country about the current state of media.

Because the LPFM service was not the first time the FCC has licensed low power radio stations, it is possible to learn lessons from the Class D licenses, as well. As discussed in Chapter Three, the FCC approved the creation of Class D licenses, in 1948, to encourage more presence of non-commercial stations on the radio, because as of 1947, the FCC had only licensed 38 non-commercial radio stations (Stavitsky, Avery and Vanhala, 2001). The new class of licenses launched many educational stations, up from 22 in 1948 to 106 in 1953. The intent of these licenses was to incubate stations until they were ready and able to afford broadcasting at higher power. This option has not been offered to the new LPFM licensees, apart from one window that opened for full-power non-commercial licenses in 2008, in which religious organizations were again the primary recipients of these licenses, as their lawyers continued to produce applications through to the last second of the window closure. That the FCC stopped issuing Class D licenses in 1978 was, in part, due to the entrepreneurial drive of NPR to become a national network, but also because these stations were not taken seriously by the



commercial or larger non-commercial stations. Their status as underfunded “electronic sandboxes” made them easy targets (Stavitsky, et al, 2001, 344). Despite the possible gains the LPFM service may achieve in the coming years, Stavitsky, Avery and Vanhala (2001) conclude, after examining the striking similarities between the Class D low power licenses and 2000 LPFM service, that “it’s difficult to be optimistic about the prospects for a dynamic low-power FM service...[g]iven the realities of the electronic media marketplace and the lessons of Class D [licenses]” (349). They argue that even if the channel restrictions placed on the service get lifted,

The high-powered politics that engulfed the humble low-power proposal demonstrate once again that noble but quaint notions of civic and cultural access in broadcasting cannot be heard over protectionist industrial concerns. (Stavitsky, et al, 2001, 349).

The challenge for the future of the LPFM service is to keep it from getting marginalized, by either its opponents or its own inherent shortcomings that come with being a small broadcasting entity. LPFM stations concerned with representing their communities need to figure out how to move beyond merely broadcasting to maximizing access to the airwaves, while operating within their means and overcoming the challenges inherent in community organizations, a discussion that will be taken up in Chapter Six. That low power radio is a reality in a largely commercial broadcasting landscape is the result of extensive lobbying, organizing and networking by grassroots media reform organizations to ensure the continued existence of noncommercial broadcasting spaces in communities throughout the country. In the next chapter, the marketplace rationale in media policy creation that makes launching and maintaining noncommercial entities so challenging will be explored.

## CHAPTER 5

### CHALLENGES TO COMMERCIAL BROADCASTING OWNERSHIP

When radio first emerged at the turn of the twentieth century, it was not the aural experience we know today, but rather the staccato of continental morse code. At the time, broadcasting was a technology of the future, the FM dial would not be created for another fifty years, and most of the U.S. population did not yet own radio receivers (Douglas, 1987; McChesney, 1993). It is important, however, to look back at this early radio regulation as it lays the groundwork for the regulation battles that are still being waged today surrounding the roles of the marketplace and the public interest mandate in managing the spectrum. After introducing early media policy, the media policy debates that were occurring while the LPFM service was being implemented will be analyzed. This chapter will examine the various acts passed by Congress that have directed how regulatory personnel should approach communications, exploring how various people and organizations throughout broadcasting history have challenged pro-business actions at the regulatory level, in Congress and the courts.

#### **Radio Act of 1912**

The airwaves, in the first decade of the 1900s, were primarily used for U.S. Navy ship-to-shore communication and amateur experimentation. The commercial interest, primarily from the Marconi Company, assisted the Navy in its transmissions. At first, the spectrum operated with no government oversight and these interests shared the available space (Douglas, 1987). The Navy, however, wished to have a monopoly on the wireless spectrum to maintain communication between ships and military bases and to this end, it

began to challenge the amateurs' – or ham radio operators as they are known today – right to the airwaves. Though these “boys” actively challenged the military’s claim to the airwaves and fought to keep point-to-point communication open for more general use, they could not persuade lawmakers to support their right to the airwaves.

In fact, the presence of amateurs on the airwaves spurred early debates about spectrum management and ultimately helped sway politicians to support governmental and business interests over those of this technologically-savvy subculture of the general public. Susan Douglas (1987) wrote in her history of U.S. radio broadcasting, that amateurs “described the air as being free and the property of the people, for whom the amateurs tried to suggest they were the proper surrogates” (214). Congress dismissed this argument, which it viewed as being “voiced by seemingly scattered and unorganized individuals” and instead passed legislation establishing a precedent “that only consolidated institutions – in this case, the Navy and the Marconi Company – could anticipate, implement and protect ‘the people’s’ interest in spectrum use.” (Douglas, 233)

The Radio Act of 1912, which is seen by some scholars, including McChesney, as merely a footnote in media regulation history, was Congress’ first attempt at regulating the radio spectrum (Streeter, 1996). While members of Congress began introducing bills to regulate what some felt was a chaotic spectrum as early as 1910, it was not until the *Titanic* sank on April 14, 1912, that Congress felt compelled to take action. Amateurs were accused of causing communication problems that interfered with the *Titanic*’s rescue efforts (Douglas, 1987). While it is not clear whether an amateur did, in fact, send a misleading message assuring the safety of some of the *Titanic* passengers or if two messages were accidentally crossed due to poor translation of Morse Code by Navy

personnel, the result was that amateurs became scapegoats in the press. Thereafter, according to Douglas, Congress passed the Radio Act of 1912, which divided up the AM spectrum, giving the U.S. Navy prime spectrum real estate (600 to 1600 meters), while relegating amateur access to the airwaves to the short waves of 200 meters or less – a part of the spectrum usable to ham operators, but not to the general public (Douglas, 1987). Congress also granted the power to issue licenses and frequencies to the Secretary of Commerce and Labor, as this position already oversaw other lifesaving regulations on ships. The Act of 1912 did not, however, give the Secretary the authority to reject applications as Congress presumed the number of applicants would not be greater than the available spectrum space.

With passage of the Act, the Marconi Company, an enterprise that essentially had monopoly control over commercial wireless equipment, received the remaining usable space between 200 and 600 meters and above 1600 meters. Douglas (1997) notes that while there is little documented proof that commercial interests had a hand in shaping this first legislation regulating the radio spectrum, the outcome did nothing to hinder commercial expansion. Marconi Company's John Bottomley wrote in the company's Annual Report in 1912, "The greatest care has been taken that no bill detrimental to our work or to the system should be permitted to pass." (Douglas, 235)<sup>20</sup> Media scholar Thomas Streeter (1996) was not surprised that the commercial interests would fare so well and the amateurs so poorly. His assessment of early radio regulation suggests that the terms of debate surrounding the legislation had already been established prior to the actual debate in Congress. He contends that the initial groundwork for the Radio Act of 1912 was laid as far back as the 1880s when other government-regulated were

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<sup>20</sup> She found this comment in Marconi's 1912 Annual Report, archived in the Chelmsford Collection.

established, including Standard Oil, U.S. Steel and the International Mercantile Marine Company. Streeter (1996) notes that this corporate liberalism approach to regulating favors technical arguments made by industry experts on behalf of the public. He argues that members of Congress were already predisposed to this way of thinking and “the terms and broad boundaries of acceptable action within which interest group struggles [could] take place” were in many ways pre-set for radio regulation (Streeter, 33). According to Streeter (1996), the legislators were pre-set to support the industry which grew up around communication.

To complicate the dynamics even further, during the years between the Radio Act of 1912 and the first AM radio broadcasts in the 1920s, corporations, which had previously received largely negative coverage in the press and were perceived as greedy and money-hungry, made tremendous strides in public and media relations. This PR effort by corporations to clean up their images helped reframe their interests in a more positive light. Douglas (1987) documents the campaign conducted by AT&T to re-package itself as an altruistic company, noting that it was corporate leaders who were the most attentive students of Progressive Era reformers. These reformers, with somewhat elitist intentions, advocated that publicity be used to educate the common people about social ills and possible cures. Industry modified this focus to highlight the good deeds of the corporate sphere, thus giving birth to modern day public relations. This social development is important as it further solidified the corporate liberalism ideals about individualism, rights, and markets into the American psyche (Douglas, 1987, 248-251).<sup>21</sup>

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<sup>21</sup> She notes, “The hated trusts of the late nineteenth and early twentieth centuries were now becoming, in the pages of the press, farsighted and committed public benefactors” (250) The press was moving away from “muckraking and toward accommodation with and even admiration for American business” (250).

This change in corporate perception occurred while radio was transitioning from point-to-point communication system to that of broadcasting.

### **Radio Act of 1927**

For media researchers such as Streeter (1996) and Douglas (1987), the Radio Act of 1927 – which was legislated following the four radio conferences hosted by Herbert Hoover and following what traditional researchers refer to as the “Breakdown of the Law” – merely legitimated and solidified the established order of spectrum management. Streeter (1996) argues, “The practice of regulating the airwaves in ‘the public interest’ was itself less a decision to limit private ownership in broadcasting overall than it was a way to justify and make sense of the use of government powers to aid private ownership” (253). Streeter (1996) notes that by emphasizing technological aspects of the spectrum, the government and media industry were able to make the media system appear to be the result of a natural processes rather than political maneuverings. He is explicit about the government’s active role in creating and continuing to create the commercial broadcasting system in the United States. In Chapter One, this interpretation of corporate liberalism was introduced, suggesting that what people who opposed this approach to regulations were up against; a bureaucratic system that was seemingly impossible to topple.

McChesney (1993) challenges “this new, critical interpretation of the origins of the U.S. broadcasting set-up,” which suggests that “the matter is settled and removed from the political playing field long before commercial broadcasting has even come into existence” (4) He contends that, among others, Douglas and Streeter’s scholarship provides “a vision of all-powerful communication corporations and a dominating

ideology of capitalism as leading to the ‘unavoidable’ adoption of the status quo” (4). His concern with this analysis is that it does not account for the efforts of broadcast reformers in the late 1920s, who, between the passage of the Radio Act of 1927, and the Telecommunication Act of 1934, struggled against corporate interests and (often uninformed) politicians to create a different radio broadcasting landscape. He argues that the reform movement failed to influence media policy because of the economic depression, the reformers’ naivete of government decisionmaking processes, and the failure to come up with an alternative plan that fit comfortably into the U.S. political culture of capitalism (McChesney, 10).

McChesney (1993) does agree with Streeter that from its earliest days of regulation, radio broadcasting has been connected to commercial interests. McChesney (1993) documents the relationships between the FRC commissioners and the burgeoning radio industry. When Congress reviewed the FRC’s actions within its first year, its members questioned the significant emergence of chain broadcasting and the decline of nonprofit broadcasters. FRC member Orestes Caldwell responded to concern that all the clear channel licenses were going to chain broadcasters by arguing that the FRC’s decisions to date were made in the best interest of listeners. Congress, unconvinced by this argument, instructed the FRC to provide educational and independent stations access to clear channel licenses, frequencies assigned to one owner but broadcast nationwide at very high power. But when the FRC commissioners released their first spectrum allocation in 1928, they established clear channels only for commercial broadcasters, with twenty-three of the first twenty-five clear channels set aside were licensed to NBC affiliate stations. The FRC sidestepped criticism about these station allocations by

emphasizing the technical aspects of broadcasting and interpreting the “public interest” for broadcasters who could provide the best reception for listeners, favoring owners who had the best technical equipment (McChesney, 25).

### **The Communications Act of 1934**

By 1930, the airwaves were tentatively networked by the big commercial radio companies and supported by advertising. According to media historian Erik Barnouw, however, “This system had never been formally adopted. There had never been a moment when Congress confronted the question: Shall we have a nationwide broadcasting system financed by advertising?” (McChesney, 1993, 17). Streeter (1996) argues in *Selling the Air*, that “Within a few years, [the corporate liberal elite] successfully shaped the law and institutional structures so as to turn broadcasting into a linchpin of the consumer economy, while aggressively eliminating or marginalizing all other potential uses of radio” (63).

Streeter (1996) notes that Hoover began forcing a split in 1921, allowing “broadcasting to be defined in strictly business terms and separating it from the voluntarist grassroots organizational precepts of the amateur community” (87). One way Hoover did this was by prohibiting amateurs from “broadcast[ing] weather reports, market reports, concerts, speeches, news or similar information” (Streeter, 1986, 87), essentially taking away from the amateurs any way to communicate information to its listeners. By the time the Telecommunication Act of 1934 passed into law and the FRC was transformed into the Federal Communications Commission, McChesney concurs that the commercial broadcasting giants had won the “battle” for the airwaves (McChesney, 1993, 3). McChesney was on hand, though, throughout the 1990s, watching and



examining the trends in media and in 2002, he co-founded, with long-time newspaper journalist John Nichols, Free Press which is an organization posed to engage commercial media inside the beltway. He watched the passage of the Telecommunications Act of 1996 in dismay, as again the public was left out of key debates about how broadcasting and other media should be regulated.

### **Telecommunications Act of 1996**

In the ensuing years since the Communication Act of 1934, broadcasting has changed dramatically, first with television, then cable, then the Internet and with its future still in the making. A dramatic shift in thinking has emerged during the sixty-two years it took for Congress to make updates on the 1934 Act. This shift is based on the idea, often supported in recent years in the courts, that corporations have First Amendment rights. As discussed extensively in Chapter Two, the FCC has slowly absorbed the pro-market agenda throughout the late 1960s and 1970s. By 1980, under the leadership of pro-market advocate Mark Fowler, appointed by President Ronald Reagan, the agency was attempting to reject its former “trustee” management in favor of greater self-regulation by media industries.

Aufderheide (1992) has focused extensively on the concept of public interest, starting with whether the introduction of cable television negated, as commercial interests said it did, the need for the scarcity argument in broadcasting policy. She wrote that the Telecommunication Act of 1996 “explicitly linked, for the first time in law, the public interest, a competitive business environment, economic efficiency, and promotion of innovation.” Pro-market advocates, such as former FCC Chairmen Fowler (1981-1987), Powell (2000-2005), and Kevin Martin (2005-2008), continually point to improved

products and services, innovation and prices as the most important aspects of operating a successful broadcast entity. Powell (2001) has said, “Serving the public interest means crafting the conditions and the environment that will allow innovation to bring new and improved products and services to all Americans at reasonable prices” (2001). Put another way, Powell (2001) advocates for updating regulation by arguing, “It is evident to me that deregulation, though not always the answer, often dramatically 1) advances the options available to consumers 2) lowers their bill and 3) brings them higher value.” This jargon-filled doublespeak does little to enhance public debate, but rather continues to sell the idea of “choice,” an appeal to the consumer rather than the citizen. Aufderheide (1992) points to media scholar Streeter’s assessment that the notion of a natural marketplace is itself a product of political maneuvering. He notes the importance of questioning not only the policies that get applied to media, but also the logic that gets used to create and revamp broadcasting policy. (Aufderheide, 1992).

The passage of the 1996 Telecommunications Act demonstrates this pro-business ideology being written into legislative law. On February 8, 1996, Congress passed and former President Bill Clinton signed into law ownership rules that favored business interests and, among other changes, radically altered the radio landscape.<sup>22</sup> Prior to this new Act, a broadcaster could only own 20 AM and 20 FM stations nationwide, with only two of each in any individual market. With the new provisions in the 1996 Act, a broadcaster could now own an unlimited number of radio stations nationwide, with the only cap being eight stations in any given market. As a result, companies such as Clear

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<sup>22</sup> Other provisions of the Act included “eliminat[ing] rate controls on cable television service, allow[ing] local telephone service providers to get into the long-distance business, cable television systems to get into the local telephone business and television networks and local telephone companies to get into the cable business” (Drushel, 1998, 3).

Channel, Infinity and Entercom gobbled up the mom-and-pop stations of bygone days and consolidated their holdings such that the eight stations they own in every major city are often housed in the same building and pipe in demographically-prescribed programming from the corporate headquarters.<sup>23</sup> These companies broadcast in each market a range of stations catering to different demographic groups, creating attractive packages for advertisers” such as Easy Listening, Classic Rock, Country, Triple AAA (Alternative), Top 40, etc. The outcome of the FCC’s deregulation of radio ownership barriers – aside from the occasional community, public or religious radio station – was that radio became a composite of Top 40 playlists, flashy contests and gimmicks, and a continuous stream of commercials, with little thought given to the local communities in which the stations broadcast. For the broadcasting companies such as Clear Channel, elimination of ownership limits proved to be, at least initially, exceedingly lucrative, but for the small-time independent station owners it was devastating. Rampant buyouts of these smaller stations became the story of radio broadcasting throughout the later half of the 1990s.<sup>24</sup> One analyst noted that the deregulation “amounted to essentially a land rush” for radio station ownership. (Ribbing, 1999).<sup>25</sup>

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<sup>23</sup> According to the non-partisan Center for Public Integrity, in 43 cities, a third of the radio stations are owned by a single company. According to Moyers (2003), in 34 of those 43 markets, one company owns more than eight stations, despite the 1996 Telecommunication Act’ “limit” of eight.

<sup>24</sup> In more recent years, Clear Channel has fallen on hard times. After acquiring more than 1200 stations by 2000, the “radio ratings and ad revenue ... began to flatten as listeners moved elsewhere.” In 2008, Clear Channel announced plans to sell off most of its holdings. According to WP’s Ahrens, “The sell-off will mark the end of the consolidation era for the radio industry and its largest player, Clear Channel.” It also serves as “an acknowledgment by the company that it no longer is interested in smaller radio markets,” as there is no profit in these markets (Ahrens, p. D1). As of 2009, Clear Channel filed just one of its holdings for bankruptcy. Its stations continue to operate, though the company continues to divest its interests in stations in smaller markets.

<sup>25</sup> The analyst was Geoffrey G. Jones of Donaldson Lufkin & Jenrette Inc. in New York, who added “Deregulation really allowed fundamental change in the industry.”

## **The Media Ownership Debates of 2000s**

The loosening of regulation applied to the radio industry proved to be just the first step by the commercial broadcasting interests seeking to further deregulate the its industry.<sup>26</sup> Just as George W. Bush and Al Gore were competing for the Oval Office in 2000, new media ownership debates began to percolate. A FCC Press Release, from September 12, 2002, listed the six rules that were ultimately proposed by Bush's appointee to chair the FCC, Michael Powell – son of former Secretary of State Colin Powell. The press release also introduces the years the rules under attack were originally adopted. They are: 1) Newspaper/Broadcast Cross-Ownership Prohibition (1975); 2) Local Radio Ownership (1941); 3) National TV Ownership (1941); 4) Local TV Multiple Ownership, aka “Duopoly Rule” (1964); 5) Radio/TV Cross-Ownership Restriction (1970); and 6) Dual Television Network Rule (1946). These proposed rule changes appealed to the broadcasting industry as well as that of newspapers. According to a December 11, 2000 article in trade publication *Electronic Media*, “the newspaper industry lobbyists in Washington could hardly contain their glee” over the likelihood that George W. Bush would become U.S. President as he had “all but promised to ax a rule that bars daily newspapers from buying broadcast stations in their markets.”<sup>27</sup> John Strum, president and CEO of Newspaper Association of America, said, “We’re looking forward to renewing our request [that the Federal Communications Commissions kill the regulation]” (Halonen, 2000, 60). Before Powell was named Chair, during a debate about

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<sup>26</sup> To be clear, the various media industries all have differing interests, but as a whole, are generally working to remove regulation of the media. For example, though the Newspaper Association of America is advocating for the cross-ownership of newspaper and television stations, it wishes the FCC to keep a bar on broadcasters so they do not reach “more than 35 percent of the nation’s TV homes with their stations, on the grounds that regulation is needed to limit network power” (Halonen, 2000). “Regulation” and “limits” only seem to surface for media industries when they are battling other media industries for audience.

whether this newspaper/broadcasting cross-ownership rule change should be allowed, he said, “This rule raises significant First Amendment concerns and as a result requires rigorous analysis in support of its continuing validity” (60). This quote demonstrates Powell’s support of marketplace ideals (regarding First Amendment protection of corporations) and the obfuscating language insiders often use when talking about media policy. As early as April 16, 2001, the *New York Times* was reporting that the easing of ownership limits was a done deal. Powell, by then the newly appointed FCC Chair, said, “I don’t know why there’s something inherent about a newspaper and something inherent about a broadcaster that means they can’t be combined” (Labaton, 2001).

The idea that First Amendment rights of broadcasters extends to the giant companies who own the media is an important platform from which the commercial media industry has argued for greater freedom from regulation. Media scholar McChesney (1998) laments that these mega owners have been granted by the courts the same rights as journalists and editors. His concern is based on corporation’s interest in profit-making rather than altruism. He contends that by being able to hide behind the First Amendment, the media has become richer and the democracy in the U.S. has suffered considerably (McChesney, 1998 and 1999).

Powell’s goal with the ownership changes was to eliminate “all rules against media consolidation that are not found to be based on a ‘rigorous factual record’” (Labaton, 2001). As discussed in Chapter Two, the U.S. Supreme Court had made rulings from the 1940s to the 1970s giving “broad deference to the FCC to employ regulations it felt promoted diversity and public interest, even as it acknowledged the challenges of documenting that the regulations achieved such ends” (Labaton, 2001).

Because of a “new conservative Republican regulatory climate in Washington and an expansive reading of the First Amendment,” it had become “difficult, if not impossible” to justify ownership limits in media policy (Labaton, 2001). The idea that the FCC had to show “clear empirical” evidence to justify its policy-making decisions provided Powell’s FCC an avenue for moving forward with the loosening of the aforementioned six regulations. According to a FCC press release (2003a), Powell created the Media Ownership Working Group in late 2001 and tasked it with “developing a solid factual foundation for re-evaluating FCC media ownership policies.” According the *Wall Street Journal*’s Frank Ahrens (2004), the FCC sought to demonstrate “with tables, charts, graphs and formulas how it arrived at its numbers.” The press release (2003a) went on to say, “The FCC said that the public will benefit from rules that reflect the modern media environment and are able to withstand future judicial scrutiny.”

It appeared that these changes were on the fast track to getting implemented and yet, on the periphery, governmental and public dissent were emerging. In response to thousands of emails and internal pressure from FCC commissioner Michael Copps, a democrat appointed by Bush to fill a seat, Powell announced plans to hold a February 27, 2003 public hearing in Richmond, Virginia to “hear from citizens of a mid-sized city” (FCC, 2003a). Powell planned to hold only one such hearing, from which the FCC would gather information to add to the “commentary from the FCC media ownership roundtable held in October, 2001 and the extensive record that has already been accumulated” (FCC, 2003). However, Copps, along with his fellow democrat on the commission, Jonathan Adelstein, used the precedent of this hearing to establish a Localism Task Force, which continued to hold hearings throughout the country “to gather

information from consumers, industry, civic organizations and others on broadcaster's service to their local communities" (FCC, 2003b). Copps had seemingly come out of nowhere to become a vocal opponent of the business-as-usual approach to regulating media. He told one audience, "[W]e can't pretend everyone...has lobbyists to make their voice heard at the FCC. We have a responsibility to reach out" (Brown, 2003). Powell disagreed, saying in a *Seattle Times* interview, "In the digital age you don't need a 19<sup>th</sup>-century whistle stop tour to hear from America (Virgin, 2003). According to an article in one of Seattle's alternative newspapers, *The Stranger*, Powell's response to these hearings was one of dismissal, downgrading them from "official" event to unofficial "field" hearings (Kaushik, 2003). He was upset with Copps for proceeding to schedule hearings, the first two of which took place in Seattle, Washington and North Carolina, when the FCC already had "public input" from the Virginia hearing and written comments (Virgin, 2003).

In an Associated Press report (2003) of the Richmond, Virginia hearing, which was attended by all five of the commissioners, journalist David Ho (2003) includes the concerns of the critics "that weakened government restrictions will lead to more mergers and a few large companies controlling what people read, hear and watch." Sociology professor David Croteau of Virginia Commonwealth University spoke at the hearing, arguing that media cannot be treated like other industries. He contends,

Its products are not widgets or toasters – they are culture, information, ideas and viewpoints. Less regulations will be a windfall for a few giant media corporations. It is likely to be a huge mistake for the rest of us (Ho, 2003).

Powell (2003) countered, "This is a rulemaking that will be driven by evidence and not just intuition." Lobbyists for newspapers and television networks also attended the

hearings to argue that changes in ownership rules “will not diminish diversity,” but would, in fact, “enhance the quality and quantity of news and local information” (Powell, 2003). The NAB has in the past refuted arguments suggesting that consolidation has negatively impacted radio content. Its president Eddie Fritts (2000) argued, “The evidence of our study and *an FCC study* shows that listeners get more formats now than before consolidation began in 1996, and the trend is increasing. For example, there were 400 Hispanic format stations in 1996; now, there are more than 600.” If this debate over ownership rules had been anything like the Telecommunications Act of 1996, there would have been very little public discourse on this issue. However, because of the governmental and public dissent, the regulations under attack by Powell remain in place as of 2009, even as Powell’s FCC did everything it could to make the changes in media ownership.

By March 5, 2003, Powell was already showing signs of fatigue in the battle to loosen the regulations of all six of the ownership rules. In an article about the Seattle hearing, orchestrated by Copps and Adelstein, he is quoted, “I think the media environment will have to be partially liberalized, but I don’t think there is going to be a sweeping elimination [of the rules]” (Virgin, 2003). The March 7<sup>th</sup> hearing on the University of Washington campus added ammunition to Copps’ argument that the public wanted to have a greater say in the media ownership debates, as the university auditorium was full and at least fifty people provided public comment on the ownership changes (Bishop, 2003).<sup>28</sup> Adding to the voices opposing the ownership changes, long-time media owner Ted Turner wrote an editorial for the *Washington Post* on May 30, 2003

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<sup>28</sup> I attended this hearing. What struck me was how slick the commercial broadcasting representatives were; how they were much easier to listen to than the public trying to articulate why media reform matters.



expressing concern over the deregulation of long-standing broadcasting rules. He wrote, “I oppose these New World Order rules. They will stifle debate, inhibit new ideas, and shut out smaller businesses (trying to compete).” (Turner, 2003).<sup>29</sup> Bill Clinton also wrote a scathing attack on the proposed changes on June 30, 2003 (Clinton, 2003).<sup>30</sup> Responding to why the FCC’s the proposed ownership changes were problematic, Clinton wrote,

Because more monolithic control over local media will reduce the diversity of information, opinion and entertainment people get. Interesting local coverage will be supplanted by lowest-common-denominator mass-market mush (2003).

Despite all the efforts to curtail the ownership changes, the FCC did, in fact, vote 3-2 to loosen regulations on June 2, 2003 such that a single company could own in any market eight radio stations, a daily newspaper, a cable system and as many as three TV stations, in large markets such as New York and Los Angeles. The cap of national broadcasting was increased from 35 percent to 45 percent. *The Washington Post’s* Marc Fisher predicted in a June 1, 2003 editorial that this would result in “an expected binge of station and network sales,” with “the deepest pockets...providing news and entertainment via all media from a single newsroom” (Fisher, 2003). The changes were due to take effect September 4, 2003.

However, due to a significant response of at least 520,000 public comments filed with the FCC and Congress regarding the media ownership limits and caps, most of these proposed changes were curtailed by either Congress or an appellate-court ruling on

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<sup>29</sup> This article was forwarded to me with a note from my father-in-law, Stephen Veenker, recalling what he had learned about the FCC in broadcast school in the 1950s. He wrote, ‘Before a license could be renewed every three years, the Commission examined input from listeners and expected the broadcaster to demonstrate how it served public interest. A letter from a private citizen was read and considered.’ He wondered what current broadcasting students are learning about the FCC.

<sup>30</sup> Forwarded by Sut Jhally to the MEF-net listserve. Jhally commented, “It’s good he’s saying it now, but what was he thinking when he signed the 1996 Telecommunications Bill?”

September 3, 2003 (Labaton, 2003).<sup>31</sup> According to Stephen Labaton from the *New York Times*, as early as June 4, 2003, senators were working to restore some of the limits on media ownership. He wrote, “The battle over the new rules...spilled into Congress where the Republican commissioners who voted for them faced hostile questions from both Democrats and Republicans on the Senate Commerce Committee.” According to Labaton, the House of Representatives was less likely to take issue with the FCC’s decisions, due to the presence of pro-market advocate, Billy Tauzin (R-LA), who was Chairman of the influential House Energy & Commerce Committee, but due to the large outcry from groups ranging from the National Organization of Women to the National Rifle Association, it seemed likely that much of the regulation would remain in place. The House did ultimately approve a bill that blocked the rule changes.

During the questioning, Powell pointed to a D.C. Circuit Court ruling, which held that “the Congress set in motion a process to deregulate the structure of the broadcast and cable television industries” (Labaton, 2003). He contended that as a regulatory agency of Congress, the FCC “is constitutionally bound to comply – willingly or not – with Congress’s direction,” as expressed in the Telecommunication Act of 1996 which required the agency to review broadcast rules every two years and to deregulate rules that became unnecessary due to changing technologies (Labaton, 2003). *Radio World*, which one radio engineer describes as “not known for being a politically progressive publication,” published an editorial online entitled “The FCC Didn’t Hear the Screams”

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<sup>31</sup> And this response, despite the fact that, according to media watchdog Fairness and Accuracy in Reporting, the public comment procedure is not user-friendly. According to the progressive media watchdog Fairness and Accuracy in Reporting, “[t]he complicated and technical nature of FCC’s public comment procedure does not encourage—and some would argue actually discourages – significant participation from the public, the citizens whose interests the FCC is supposed to safeguard” (Hart and Coen, 2003). According to Advertising Age’s Mya Frazier (2008), the number of public comments was closer to three million.

on June 4, 2003.<sup>32</sup> The trade publication wrote, “To argue that the FCC was forced to act by the courts is misleading. And to ignore the experience of radio consolidation in the past seven years is foolish” (Radio World Online, 2003).

The editorial was referencing the land rush on radio stations that occurred after the passage of the 1996 Telecommunication Act. According to reporter Fisher (2003), radio should be the test case for how consolidation impacts a media industry.<sup>33</sup> He highlighted the face-off between “big media companies and musicians, activists and some of the few remaining mom-and-pop station owners” regarding the state of radio after deregulation (Fisher, 2003, D1). The media companies contend, “The airwaves offer a more bountiful selection of artistic riches than ever before and that they have brought big-city talent to backwater communities, replacing farm reports, swap shops and amateurish deejays” (Fisher, 2003). Whereas, Fisher argued, “Listeners hear the nation’s broadcasters pressing the culture to its lowest common denominator in a cynical money grab. Rush Limbaugh, Howard Stern and Tom Joyner are piped into your hometown by satellite” (Fisher, 2003). Fisher contended that consolidation and the ensuing cutbacks “dilut[e] the localism that has given radio its distinctive edge’ (D1). He points out that “radio for decades played a crucial role in building community – from deejays visiting high schools to running record hops to news department that provided essential coverage of storms,

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<sup>32</sup> Radio engineer Michael D. Brown, who forwarded the piece to the LPFM Advisory Board on June 13, 2001, noted, “Indeed, they sometimes seem to be largely a mouthpiece for their big advertisers. This editorial is refreshing.”

<sup>33</sup> In a fake news article that reportedly had been circulating on a listserve for retired FCC field folk, Clear Channel’s acquisitions were extending to the FCC. The article ficticiously quotes then CEO Lowry Mays saying, “The FCC has been a wonderful business partner for the past several years and has carried out our directions with great enthusiasm. We are proud to welcome the FCC into the Clear Channel family of companies.” Sent by Ellen Homes and Dan Drasin, people privy to the listserve on September 10, 2003.

riots, elections and scholastic sports” (Fisher, 2003).<sup>34</sup> The *Radio World* editorial noted, “All too often, we in the business forget that the airwaves do belong to the people. We talk about “our licenses” as though we own them. Rather, we are keepers in trust” (Radio World Online, 2003). The editorial ended with a quote from Copps,

At issue is whether a few corporations will be ceded enhanced gatekeeper control over the civil dialogue of our country; more content control over our music, entertainment and information; and veto power over the majority of what our families watch, hear and read. ... This path surrenders to a handful of corporations awesome powers over our news, information and entertainment. On this path we endanger time-honored safeguards and time-proven values that have strengthened the country as well as the media. (Radio World Online, 2003).

Because of Copps’ vocal opposition to Powell’s agenda, this opinion was gaining currency. The Senate Commerce Committee voted on June 20, 2003 to begin “rolling back” what Media Access Project’s Cheryl Leanza (2003) called, “several of the FCC’s most egregious decisions.” While she noted that this was a good first step, she added that the House would be the hardest fight for the legislation as House Energy & Commerce Chairman Tauzin (R-LA) “is firmly in the camp of big media” (Leanza, 2003).

Throughout the summer and into late autumn, Congress worked to overturn the FCC’s rulings. In the Senate, seven Republicans had joined twenty-eight Democrats in July to schedule a rare “resolution of disapproval” to overturn the new FCC rules. Additionally, in the House, “defecting Republicans fueled a 40-to-25 committee vote to reverse part of the FCC’s action” (Novak, 2003). A *Time Magazine* article described this decision-making process as “Powell ram[ming] through the new rules,” with strong support from key

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<sup>34</sup> He references the train accident in Minot, North Dakota in which dangerous toxics were released as a prime example of how “consolidation and cutbacks in local staffing” are impacting how information gets disseminated. When local emergency officials tried to publicize using the radio, none of the six local stations, all owned by Clear Channel, had a live person at their studios.

Republican leaders and President Bush (Novak, 2003).<sup>35</sup> The article illustrated the increasing party pressure for fellow Republicans who voted to kill the FCC plan, by noting that when Republican Congressman Zach Wamp saw House Chair Tauzin, he “kind of ducked to the left, went around a column and down three flights of stairs” (Novak, 2003).<sup>36</sup>

While various committees in Congress were looking into the ownership changes proposed by the FCC, Commissioner Cops continued to schedule public hearings. On July 23, 2003, he announced in a FCC press release that he would be conducting Broadcast License Renewal Meetings, an extension of his Localism Task Force, to hear from local communities how the companies that owned the radio and television stations were doing in their area. According to the press release, the way license renewal is supposed to work is every eight years the FCC reviews the performance of a radio or television station. Cops denounced the “postcard” renewals, which require “minimal review and no public outreach to local communities.” The press release notes,

Most people do not even know that they can challenge the renewal of a local radio or television station if they believe that the station is not living up to its obligation due to a lack of local coverage, a lack of diversity, excessive indecency and violence or for other concerns important to the community (FCC, 2003b).

Cops questioned,” How can we know if licensees are serving their local communities without hearing from the local community?” (FCC, 2003b).

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<sup>35</sup> It is interesting and noteworthy from a framing perspective that a *Time* article used such forceful language to discuss the dealings of the FCC. The opening sentence of the article read, “Populist outrage is threatening to undo a controversial effort by the FCC to loosen restraints on media megaliths.” The use of “rammed” and “media megaliths” suggest negative action by the FCC, not something that usually appears in the mainstream media., except when there is a disagreement in the status quo. See Chapter Five for further discussion on framing.

<sup>36</sup> The article also noted that word was spreading inside the beltway that Powell was planning to resign. According to *Time Magazine*, he “has told confidants he’d like to leave by fall, and three of his four top staff members are putting out job feelers. (Powell has denied he’s leaving soon.)”

While Copps was conducting hearings to document the state of the media in communities throughout the country, Powell launched his own initiative entitled, “Localism in Broadcasting.” On August 20, 2003, Powell announced plans for a panel to study issues of localism in communities, but only after the new media ownership rules went into effect. During this period of intense debate over the media ownership rules, Powell was asked to demonstrate examples of the FCC’s commitment to localism. He found himself in the awkward position of praising the LPFM service as an FCC initiative that supported “localism in communities across the country” (FCC, 2003b). He promised to speed up the LPFM licensing process, which had been slowed down by the lack of priority under his leadership. Powell’s use of the LPFM service to highlight the FCC’s localism and diversity is a compelling aspect of this story as much as it is an ironic twist in the LPFM narrative.

The same week that Powell announced his localism initiative and the ownership changes were set to take effect, Prometheus Radio Project and the Media Access Project filed a lawsuit against the FCC asking for a stay to prevent the ownership changes from going into effect (PRP, 2003b). In an August 22<sup>nd</sup> press release, PRP announced its intent to ask the U.S. Court of Appeals for a stay of the FCC’s rules taking effect. Former FCC spokesperson Hannah Sassaman said, “When the FCC voted to roll back media regulation on June 2<sup>nd</sup>, it created a climate in which true localism is impossible” (PRP, 2003b). The U.S. Appeals Court in Philadelphia heard oral arguments on September 3<sup>rd</sup> to stay the FCC’s deregulation of several media ownership rules, which was scheduled to go into effect September 4<sup>th</sup>, 2003. A *TV Week* article (2003) noted that most stays against federal agency rulings get rejected by the courts. However, MAP’s

Leanza said that by agreeing to hold a hearing, “the federal court recognized rules of this magnitude should not necessarily go into effect while their legality is considered” (TV Week, 2003). On September 4, 2003, the court did grant a stay on the rules taking effect. The Philadelphia Appeals Court told the FCC, in the case *Prometheus Radio Project v. FCC*, that it would conduct a review of the ownership changes. PRP wrote, “Rules preventing media consolidation help to make sure that no single interest, through ownership of the channels of mass media, can have an undue influence on our society’s democracy” (PRP, 2005). The group, responding to Powell’s approach to policymaking, argued “localism and ownership cannot be considered separately.” They added, “We look forward to working with the FCC to help craft a consistent approach to media ownership that allows businesses to function and the public to feel adequately protected from the forces of monopoly” (PRP, 2005). This stay, invoked by the Philadelphia branch of the Court of Appeals, forced the FCC to stop the changes from going into effect.

The fact that the case was heard in Philadelphia turned out to be significant. If the case had been signed to the US Court of Appeals in Washington, DC, many reformers suspect that the stay would have been rejected, but the Media Access Project representing Prometheus Radio Project invoked a lottery placement. By filing its suit in jurisdictions throughout the country, these public interest groups took a chance that the case might get placed outside of DC.<sup>44</sup> Philadelphia’s Court of Appeals proved to be comprised of more liberal judges than in DC. The three-judge panel wrote:

The harm to petitioners absent a stay would be the likely loss of an adequate remedy should the new ownership rules be declared invalid in whole or in

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<sup>44</sup> Powell attempted to file a motion to change the venue back to the DC jurisdiction, but as of September 16, 2003, PRP announced that the Third Courts of Appeals, in Philadelphia, would retain the case.

part. In contrast to this irreparable harm, there is little indication that a stay pending appeal will result in substantial harm to the Commission or other interested parties (Ahrens, 2003).

The U.S. Third Circuit Court of Appeals in Philadelphia did not begin hearing oral arguments in *Prometheus v. FCC* until February 13, 2004. When the court returned its findings to the FCC in June 2004, it ruled that this FCC's approach to deregulating was based on spurious mathematical equations and, therefore, its justification for making the new media ownership rules was flawed (Ahrens, 2004, E1). The FCC had attempted "to inundate Congress and the courts with data, demonstrating with tables, charts, graphs and formulas how it arrived at its numbers" (Ahrens, 2004). According to a *Washington Post* article (2004), "the appeals court told Powell and the FCC, essentially, that its math was wrong." Powell had utilized the "diversity index," a complicated formula modeled on the Herfindahl-Hirschman Index of market concentration that the Justice Department uses in antitrust cases. Powell attempted to use the device "to weight all of the media outlets -- television and radio stations, newspapers, cable channels, the Internet, etc. -- to which consumers are exposed" (Ahrens, 2004). The journalist, Frank Ahrens, explained that FCC planned to use the diversity index when deciding which mergers to allow among different media outlets, such as television stations and newspapers. The Court said Powell's approach failed to take into account each media outlet's audience size, which it saw as a major flaw.

Powell expressed "deep disappointment" about the appeals court findings (Ahrens, 2004). He commented that he might have tried to accomplish too much at once, suggesting that if he could do it again, he would introduce the rules separately. He did not concede defeat, however, saying, "The court wants more explanation for the lines we



drew. Yes, we failed to convince them on the first try. But we were not sort of way out of whack the way people portrayed it" (Ahrens, 2004). Powell stepped down as chair in January 2005 with his major initiative unexecuted. Commissioner Kevin Martin, another free-market ideologue, replaced him as FCC chairman in March 2005.

The challenge for people working for media reform, both inside and outside the DC beltway, is that even after numerous successful bids to keep the ownership rules in place, there is no guarantee that they will stay there. In fact, the FCC geared up again in 2008, to revisit the debate surrounding media ownership issues. If these limits and caps do eventually get lifted, veteran journalist Bill Moyers speculates,

An octopus like GE-NBC-Vivendi-Universal will be able to secure cable channels that can deliver interactive multimedia content – text, sound and image – to digital TVs, home computers, personal video recorders and portable wireless devices like cell phones. The goal? To corner the market on news ways of selling more things to more people for more hours in the day... And in the long run, to fill the airwaves with customized pitches to you and your children" (Moyers, 2003).

The hope among progressive media reform groups in 2009, following the election of a Democratic president and a newly Democrat-controlled Congress, is that the FCC will continue to move forward with the Copps' and Adelstein's efforts to make media policy more accountable to substantive public interest. Their efforts to date, especially those by Copps, have given real attention to issues of diversity, localism, and regulation that puts limits and caps on the number of holdings a media company can own. The challenges people – commissioners, politicians, media reform organizations and the public alike – face when they attempt to effect policy decisions that counter commercial broadcasting interests are numerous, especially as there continues to be fewer and fewer owners of the commercial media. In the next chapter, the efforts of community-based low power radio

stations to provide sites of localism, challenging what has become the big business model of radio will be discussed. Prometheus Radio Project contends that low power radio is “a small but meaningful part of the solution to an overly commercialized and consolidated media” (2003b).

## CHAPTER 6

### IS LOW POWER RADIO IN THE PUBLIC INTEREST?

It is a compelling time to be studying low power radio and asking questions about how the public interest gets defined in current media policies. The LPFM service may soon be able to incorporate stations from larger cities into its fold. In 2009, Congress seems poised to finally act on the findings from the 2003 MITRE study. Because of the recent crash of the banking industry with the subsequent billions of dollars bailout and proponents of marketplace ideologies scrambling to justify a significant economic downturn, the time seems ripe to advocate for more media policy focused explicitly on cultivating the public interest in broadcasting. The question, however, is how to do this, given not only the opposition, but also the hurdles facing the community-based low power radio stations. The model of community broadcasting is an important alternative to commercial broadcasting, but if more stations are going to emulate the model, then careful assessments need to be done to help moderate the challenges that are inherent to community broadcasting.

This chapter highlights the LPFM stations that operate in the tradition of community radio. These organizations attempt to represent the “voiceless” people in their communities, usually with all volunteer staffs and encouragement from the Prometheus Radio Project and its network of engineers, lobbyists, lawyers and other LPFM stations throughout the country. Excluded from this study are LPFM stations that were primarily set up as religious, educational (tied to high schools, colleges or universities) and

municipal entities.<sup>37</sup> I will primarily focus on WXOJ 103.3 FM, better known as Valley Free Radio (VFR), the station I helped apply for in 2001 and witnessed going on-air for the first time in August, 2005. The focus of this chapter is to examine the differences between an idealized community radio model and real life examples of what can happen at and to stations explicitly attempting to be local and diverse and to operate in the public interest. Communities can benefit from public-minded radio stations both by providing *space* on the radio dial that is not commercialized and does not have to conform to market pressures and as a concrete *place* for communities to gather and deliberate. Yet the intersections of space and place are often complex and challenging despite a public interest agenda.

At its best, radio can be a social space that reflects individual communities and their interests in a very real way. The idea that radio stations can be living representations of their local communities is central to how progressive media reformers envision the airwaves and the application of a meaningful public interest standard. The challenges of implementing, executing and retaining community-based low power stations, launched under the LPFM service umbrella, are important to examine as these stations are attempting to embody the tenets of a progressive interpretation of the public interest standard, emphasizing local voices and diverse content while giving voice to the voiceless.

As highlighted in Chapter Three, there have been ongoing debates about what it means to operate as a community enterprise. Speaking from an international perspective

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<sup>37</sup>See Brand (2004) for his categorical breakdown of LPFM stations: community, religious, education and municipal.

furthered by work of AMARC,<sup>38</sup> Jose Ignacio Lopez Vigil, El Salvadoran author of *The Thousand and One Stories of Radio Venceremos*, speaks to the ideals of such a community radio model:

When radio fosters the participation of citizens and defends their interests;...and makes good humour and hope its main purpose; when it truly informs; when it helps resolve the thousand and one problems of daily life; when all ideas are debated on its programs and all opinions respected; when cultural diversity is stimulated over commercial homogeneity; when women are main players in communication and not simply a pretty voice or a publicity gimmick; when no type of dictatorship is tolerated...; when everyone's words fly without discrimination or censorship, that is community radio" (1991).

These ideals are very important to the people who work and volunteer for these organizations. There is a lot of good that comes out of community radio such as people crossing paths in the lobby on the way in to be interviewed, knowledgeable volunteer hosts who really love their music or producing the news and sharing it with their listeners, amazing guests, live music from really great bands and singers, the list goes on and on. On the flip side, however, community radio has tremendous challenges. Some of these include burn-out, people milking the (usually) collective systems for their own purposes, collectives v. organizational hierarchy, debates over professionalism v. staying community-based, finding loopholes in the organizationally structure to drag down the functioning of the station, interpersonal disputes over ideological difference, sexual harassment, the constant need to fundraise, and concern about airing internal conflicts. These negative attributes are also aspects of community radio.

The conflicts in community stations can get outrageous and after a while no one seems to be right but the problem(s) linger(s). John Gastil, political communications scholar at University of Washington and husband of former WORT news director Cindy

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<sup>38</sup> AMARC stands for World Association of Community Broadcasters, or as it is translated into English.

Simmons, created a game where people play as board, staff, or volunteers of a community radio station a la Kremlin, a board game of careful strategizing. The goal of the game was to gain control of the station. When Gastil and Simmons offered it for people to play at a first Grassroots Radio Conference in 1996, hosted in Boulder, Colorado by the community radio stations KGNU 88.5 FM and WERU 89.9 FM, most people nervously laughed and walked past as the game cut a little too close to their own often complicated history with noncommercial community radio.

### **Low Power as Noncommercial Community Radio**

In an effort to understand the contemporary landscape of the LPFM service, Keith Brand (2004) conducted a study of the stations that had been launched under its auspices. He sent out questionnaires to the 239 LPFM stations listed on the FCC's database to gather information from the license holders about how they characterized themselves, both in terms of station identity and programming choices. Of this total number, seventy-six stations returned the questionnaire, providing a 32% return rate. Of this number, 41% identified themselves as community, 41% religious, 10% educational and 7% municipal. Based on his review of survey responses and attached state program guides, Brand derived two identifiers for "community" stations: that they "were formed for the purpose of presenting specific types of music and information to their areas of service" and "broadcast new content" (166). Since Brand's study, the numbers have increased. A recent review of the FCC's CDBS database turned up 876 currently broadcasting low power stations, with at a least half of low power stations broadcast religious programming, 9 % were affiliated with an educational institution and 7% of stations were assigned to cities, municipalities or state departments (FCC, 2009). At least 10% of the

stations, however, were licensed to community organizations, of which many are a part of the third wave of community radio broadcasting, a la Pacifica and independent stations fueled by Lorenzo Milam and Jeremy Lansman, through networks such as the KRAB Nebula and publications, such as those found in Milam's *Sex & Broadcasting* (1988). While a more careful analysis of the groups would be necessary to determine how each group defines community and whether they have opened their station to members of their community, many do seek to broadcast perspectives, voices and music rarely heard elsewhere on the radio dial. Some LPFM examples of this commitment to its community are WXOJ 103.3 FM in Florence, Massachusetts; WRYS 97.5 FM on the Chesapeake Bay in Maryland 97.5 FM; KRBS 107.1 FM in Oroville, California; WCIW 107.9 FM in Immokalee, Florida; KYRS 93.2 FM in Spokane, Washington; KPCN 96.3 FM in Woodburn, Oregon; Radio Tierra also known as KZAS, 95.1 FM in Hood River, Oregon and WRFU 104.5 FM in Urbana, Illinois. These stations embody a third wave of community radio broadcasters. In an effort to help these stations and others that might emerge if the second adjacency spacing on the radio dial is allowed to be used and low power stations can emerge in the larger markets, the remainder of this chapter attends to the issues that often come up for community stations, These issues, while intertwined, can be broken down into the following categories: 1) perceptions of a station, 2) how the station functions and 3) the influence of interpersonal and ideological struggles on station practices. Below each of these issues will be discussed in further detail.

### **Perception**

Although the coverage of low power stations is important to the community radio movement and individual stations to garner positive publicity to help grow its

listenership, it can also be a source of concern. This concern is based around the idea that the people running the stations are often progressive, if not radical, and approach organizing their stations in non-traditional ways, including the running of stations as collectives and providing programming that can be ideologically challenging. Also, due to the deliberative nature of such organizations, conflicts among members are seemingly inevitable. These small non-commercial stations worry about airing their dirty laundry, either over their own airwaves or in news coverage about their project. While it is understandable that individual stations would prefer not have to deal with potential fallout from negative media coverage, the more these issues come to light, the more they can be studied. Such analysis can hopefully produce some good strategies that groups can use to navigate the various layers of being an under-funded, non-commercial radio station composed of volunteers. One proven strategy is to carefully develop and implement an organizational structure that makes clear issues of governance, programming, and volunteer expectations, among many other things that come up in the daily operations of the station.

### **Organizational Structure**

Mapping out how a community radio organization will function is a very important, but also very time-consuming process. Meeting agendas, decision-making processes, mission statements, and formation of committees all require careful thought. Because this approach to broadcasting is about putting ordinary people on the air, these stations attract all sorts of people, some who are really motivated and contribute a lot, and others who can seem destructive or problematic. People bring with them to every endeavor their own, different understandings of the world in which they live. Steve



Pierce, a long time community radio technician, spoke about the challenge of trying to create something different, but working within the world we all live in, during a workshop at the WRFU 104. FM barnraising in Urbana, Illinois in November, 2005. He discussed how community stations often attempt to apply the principles of diversity, openness, and inclusion, but the challenge is that every volunteer brings his or her differing views of what diversity, openness and inclusion mean. In the process of trying to create an idealist space on the broadcast dial, the intersections of racism, sexism, classism and homophobia can often come into play (Pierce, 2006). The importance of an organizational structure comes into play particularly when ideologies clash within a community radio station and the group has to deal with the fall-out of such clashes.

### **Interpersonal and Ideological Issues**

A Warning: One thing to always watch for is the crazies. A project like a low power radio station is guaranteed to attract them: people who talk too much in meetings, who want to take over, who think the government is out to kill them, who will misrepresent you in public and turn other people off. ...It's a pain, and it takes energy away from the real job of organizing the station, but be prepared, because you will have to figure out how to deal with them" (Huron, PRP handout, unknown date).

This warning comes from a PRP handbook entitled "So You Want to Apply for a Low Power Radio Station," which was on literature tables wherever Prometheus Radio Project was in attendance throughout the early 2000s. The issue of people management, though, often goes beyond personalities, extending to ideologies, as well. The following case study provides an example of how perception, organization and interpersonal struggles can impact a community radio station.

## **Valley Free Radio: A Case Study**

Valley Free Radio came about due to the Johnny Appleseed travels of Prometheus Radio Project's Pete Tridish. In 1999, he took to the road spreading the word that there was an opportunity for community organizations to apply for low power, noncommercial radio licenses. One reporter took note of the number of miles on Pete Tridish's 1993 Ford Escort station wagon that has carried him and his compatriots on tours throughout the country. In 2001, the speedometer read 172,640, and he still continues to drive this car (Manekin, 2001).

Tridish likes to tell the story of showing up in Easthampton, Massachusetts, to talk at Flywheel, a funky, youth-oriented café/club/hang-out space.<sup>39</sup> Three people attended his talk, including a homeless man in from the cold. Pete gave his talk, but left feeling fairly certain that nothing would come of it. Fortunately for the organization, Will Hall, who became one of the original founders of Valley Free Radio, was one of those three people. He met another local, Ed Russell, through Prometheus and together, they called a town meeting, inviting interested parties to talk about the idea of a community radio station in Northampton, explicitly stating that they intended it to be progressive station. One of the fliers posted in downtown Northampton noted that this new station was "proclaiming a commitment to 'peace, justice, ecology, arts and music'" (Hall, 2005).

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<sup>39</sup> Flywheel, a collectively run, not-for-profit space, aims to build community and give artists of all types the opportunity to craft, practice, and perform their work in an environment where creativity is valued over profit. Volunteer-run and governed by consensus, Flywheel believes that art and information should be equally accessible and affordable to all people. [Flywheel's Mission statement found at <http://www.flywheelarts.org/about.php>].

Thirty people attended the first organizational meeting, which was in a small room at First Churches.<sup>40</sup> The question was raised whether the people were willing to commit to working on the application for such radio station. The general consensus was yes. The application was to be submitted in Window 4, which would only be open at the FCC website for a week, from June 10-14, 2001. Thus there were only two months to pull together all the required pieces to make an application. For the group, it meant finding an established non-profit organization that was willing to be license-holder since VFR had not existed for two years prior to the application, a qualification for receiving a low power frequency. There also needed to be a tower site complete with GPS coordinates, an environmental impact statement from a certified engineer, and having detailed answers for all the application questions.

### **VFR's Application**

The group that formed that night as the Valley Free Radio Project made plans to create an Internet listserve and form committees to begin tackling the various components of the application. The first committees included engineering, organization, and outreach. The group created the following mission statement to guide its efforts:

Valley Free Radio is an independent, non-commercial community based and volunteer-run radio station for the Greater Northampton area. We seek to educate, inspire and entertain through programming that reflects the diversity of the local community. We seek to provide a space for media access and education, placing equipment, skills and critical tools in the hands of the community. We aim to serve with particular regard for those overlooked or under-represented by other media and to provide a form for the exchange of cultural and intellectual idea and music. (VFR, 2001).

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<sup>40</sup>The Pioneer Valley is blessed with many college radio stations, the largest of which is WMUA, out of the University of Massachusetts-Amherst. And even though they provide excellent programming, the airwaves are primarily only available to students. Community radio stations attract people of all ages and there is more continuity through the years, with some hosts (for better or worse) broadcasting for decades.

After various meetings at homes, coffee houses and churches, the group developed a list of organizations that could potentially work as the main license holder. VFR approached, among others, the American Friends Service Committee, the Media Education Foundation, New Song Music Library, and Tapestry Health Services. After careful deliberation about legal ramifications and expectations between the two entities, the Northampton-based Media Education Foundation, which produces and distributes videos that challenge people's assumptions about the media and popular culture, agreed to be the license holder for VFR. AFSC was very supportive, but as a national organization with local chapters, they did not meet the qualification of local non-profit.<sup>41</sup>

Even after MEF had agreed to be the non-profit filing for a low power construction permit, Will Hall continued to pursue – on his own – other potential license applicants such as New Song Library and Tapestry Health, because he was worried about the possibility that an opposing ideological group might also apply for a construction permit and the differing groups would be forced to share a frequency. This was due to the following. As a part of the application, each applicant could receive a maximum of three points based on whether 1) the organization/institution has existed for two years prior to application, 2) the station will be on-air for at least 12 hours a day, and 3) the applicant will originate at least eight hours of programming per day. Various applicants applying for the same frequency would be allowed to pool their points, if necessary. Hall's thinking was if there were three applicants with similar plans for a progressive-oriented station, they could combine their points to block another application. Hall was

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<sup>41</sup>Jo Cummingford, AFCS regional organizer, was also a tremendous help to Prometheus Radio Project in 2005, offering to share their small office on the top floor of the Florence Community Center so Prometheus Radio Project had space to print, use the wi-fi access, and generally set up shop for several weeks leading up to the barnraising.

particularly worried about Calvary Chapel, an evangelical church organization that aggressively applied for low power licenses throughout the country, because it had a church in nearby Easthampton, Massachusetts. He submitted LPFM applications for both New Song Library and Tapestry Health to the FCC during Window 4.

The next step in the application process was locating both a transmitter site and tower site in close proximity to the studio site. The trick was that the space had to remain available for an undetermined amount of time, as the group did not know when – or if – the FCC would approve the CP application(s). After initial research, the engineering committee determined that rent in Northampton would likely be too high for a fledging non-commercial low power radio station. After various attempts to contact commercial tower owners and the School for the Blind, which owned a tower, and hitting dead-ends, the committee ultimately had two potential options for a studio site. MEF was in the process of buying the old firehouse in Northampton and was willing to consider designing space for the radio station when the building was renovated. Two possibilities including building up the third floor of the firehouse, which ultimately proved to be economically unfeasible, or building the station into the old tower, where the fire hoses used to dry, involving many floors, which raised handicap accessibility issues and had very little actual space for the studios and music storage. The other option was an old warehouse in Florence, two miles north of Northampton, which the owner had no immediate plans for renovating. After some pretty intense debate between those wanting to keep the station in downtown Northampton, and those concerned about space and affordability, VFR volunteers ultimately decided to make 40 Main Street in Florence, a space that could be listed on the application for the tower, transmitter and studio.

Despite these initial challenges, VFR was one of the lucky groups. Many groups never made it off the ground to apply for a license, due to the application's complicated and technical nature. After getting a license, the Spokane station spent years fighting encroachment on their signal from a commercial station. KRBS 107.9 FM in Oroville, California has recently had similar problems and almost lost its license because of it. The success of VFR was, in part, due to the amazing depth of volunteer knowledge and contacts. For example, when the group realized it needed an Environmental Impact Statement to submit with the application, one of VFR's volunteers, who used to work at KFAI 90.3 FM, Minneapolis's community radio station, was able to call upon an engineer she knew to write it quickly for a reasonable \$200. It was a motley crew of engaged and thoughtful individuals. On June 10, 2001 the group filed VFR's application electronically, after many days of careful work on the FCC's website to enter all the data and attach the necessary documents to support the application, including MEF's non-profit status and current list of Board of Directors, including their addresses, to show that 80 percent of them lived within 10 miles of proposed station.

At the small celebration after jointly pushing the send button, the groups printed out the screen that popped upon submitting the application. It said only that the FCC had received the application and gave a reference number. The next day, however, when a volunteer went back to check the application (a day before the window closed), it was missing from the list of stations that had filed. Fortunately, James Carrott, a main organizer of the group, was able to talk to a FCC staffer, who was able to locate the file in their system before the window closed.

VFR found out after the window closed that there was another application submitted from Cummington, a town to the north of Florence. A woman had filed an incomplete application with no indication of being a part of an existing organization. After numerous attempts to reach this person, including a certified letter with the address from her application that was returned with no known address, VFR filed a petition to deny with the FCC, done with the help of Prometheus Radio Project and Cheryl Leanza, then with Media Access Project.

Next, VFR had to deal with the fact that the FCC had processed three applications for the same spectrum location, 103.3 FM: MEF, New Song Library, and Tapestry Health Services, which meant multiple applicants (MX-ed in FCC lingo) were vying for a single license. Calvary Church had not submitted an application, after all, though it had filed hundreds of applications throughout the country, planning to use the stations as translators, an action prohibited by the LFPM service stipulations, but which on some occasions slipped through to construction permit and license.<sup>42</sup> VFR had to merge the three applicants into one application if there was any hope of getting a license, as the FCC was not actively processing MX-ed licenses at that time. PRP's Tridish introduced VFR to John Crigler, a telecommunications lawyer in DC who works with community radio stations. One of his clerks helped VFR file the necessary paperwork with the FCC to get the MX-ed applications resolved into one application with the Media Education Foundation listed as the sole applicant.

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<sup>42</sup> There are 42 Calvary Chapel low power licenses listed on the fcc.gov website as of March 30, 2009.

## **The Construction Permit**

The paperwork merging the three entities was processed in early 2003, yet VFR did not hear from the FCC until March 2004, at which point it granted MEF a construction permit. It had been three years since the application was filed and many of the original volunteers had moved away or were no longer involved with the project. In 2004, the few remaining founding members, including Ed Russell, David Gowler, and Jane Braaten, had to begin again the effort of drumming up support for a noncommercial radio station in the Pioneer Valley. The group was again under time pressure; it had eighteen months to raise a lot of money, buy equipment and begin broadcasting in a yet to determined studio site.

In the ensuing months, the volunteer base did increase and the group was able to raise funds between \$20,000 and \$30,000. With the help of a newly reinvigorated fundraising committee, VFR could now confidently seek money since the project was actually moving forward. The committee oversaw, among other things, a pancake breakfast and a successful silent auction. One of the station's volunteers, a longtime ham radio operator and parts collector, volunteered his yard for the tower site and his basement for the transmitter. The station finally had call letters, WXOJ 103.3 FM, which are related to the call letters from pioneer Edwin Armstrong's first radio endeavor, and VFR settled on a small basement space at the community center in Florence for its studios, after an extensive search of sites in the area. Volunteer and carpenter Erik Nash constructed the space into a lobby, production room and on-air room, and things seemed to be coming together for a station launch.



## **WXOJ's Barnraising**

When the group applied for the station, Tridish said that if the project became licensed he would love for VFR to be a host for a barnraising. PRP began holding barnraisings in 2002, with the first one held in Maryland for WRYR 97.5 FM, a group led by a charismatic environmentalist named Mike Shay. PRP (2002) describes a barnraising as:

In the spirit of neighbors pulling together to put up a new building, Prometheus gathers Low Power FM radio applicants, journalists, radio engineers, students, lawyers, musicians, activists and folks from across the country to raise the antenna mast, build the studio, and flip on the station switch... all over a long weekend!

PRP's eighth barnraising (of twelve to date) was held in Florence, Massachusetts.

Tridish had orchestrated this barnraising so it would occur in tandem with the tenth Grassroots Radio Conference, made up of independent community broadcasters intent on keeping their stations locally focused and produced. Some four hundred people descended on Florence, Massachusetts, on the weekend of August 4-7, 2005, to help launch WXOJ 103.3 FM as well as teach and learn about all aspects of radio: from programming to soldering, organizational issues to conducting interviews. The weekend was inspiring for many reasons, including people getting to know each other, learning various aspects of building and operating community radio stations, and witnessing a station going live for the first time. WXOJ began broadcasting on Sunday, August 7, 2005, at 2 pm to be exact. As only seemed fitting, the switch was accidentally flipped early and the first broadcasted voice was Screwy Louie from Berkeley's Liberation Radio asking the gathered assembly of people if anyone had seen his vest.

In the background of this gathering of engaging minds, energy and inspiration, however, was a strong division in the VFR organization. The political landmines that were navigated to get the station on-air alone were significant, as the volunteers had broken into factions over programming, based particularly around issues of race. A story that ran on July 11, 2005, in the local newspaper, the *Daily Hampshire Gazette*, reported on the upcoming launch of the station. While researching the story, the journalist also came across the contentious struggle occurring at the station at the time. Volunteers knew that this conflict would likely be a part of the story. According to one long-time volunteer, some members were concerned about how the coverage of the in-fighting within the organization would impact the public's perception of the station. There were some tense days leading up to the barnraising when it seemed that the station might not go live on the scheduled day. In response to this article, co-founder Hall wrote in a rallying letter to the editor of the *Daily Hampshire Gazette*, on July 20, 2005:

Social justice, activism, and anti-racism are not dirty words: they are a vital part of the Pioneer Valley's rich history...A disgruntled minority with an ax to grind believes Valley Free Radio is incapable of combining social conscience with vibrant and diverse programming.

Since the station has gone live, the polarization has continued to escalate between volunteers. According to a follow-up article published October 21, 2005 in the *Daily Hampshire Gazette*, in the two months following WXOJ going live, "the controversy has become so acrimonious it has generated allegations of racism, strikes, a resignation from the board and a vote of no confidence." The group has tried a variety of measures to help the organization, including mediation, which very few volunteers actually participated in, but the damage of such a divisive event at the moment that the station was launching has been significant to the perception, organizational structure, and the everyday functions of

VFR. Pete Tridish commended VFR's organizational structure for weathering these storms.

The internal conflict within VFR ultimately resulted in a lawsuit instigated by one of its volunteer, who contended that members of the organization's Board of Directors had publicly called her racist for her views on organizational policy and the types of programming the station should broadcast. This was a rather complicated case. VFR was discussing whether to adopt a guiding vision statement, which in part would require a certain percentage of programming to be set aside for people of color. The volunteer who sued disagreed with the "political hue" of this guiding statement, questioning whether the station was "going to be a community radio station or an activist station" (Loisel, 2005).

Pete Tridish (2009), having worked with many community radio groups, cautions groups trying to build an organizational structure using anti-oppression practice. He points to two problems that often arrive: the first of which is that these organizations do not have "a working social structure" to handle people who do not "behave like you hope they would" (personal email correspondence). This situation leads to the second problem, which is that "sensitivity becomes its own form of exclusion," causing groups to have expectations of behavior that may not fit with a greater diversity of people. He writes:

Without graduate level sensitivity training, an anti-oppressive organization can become like a mine field, which mostly ends up excluding working class people of all races and genders, people who speak plainly and directly. A group can work so hard to diversify, and then for example a person of color joins, and if they make a comment that hints of, say, homophobia...they get put through the wringer and probably leave, or, just as bad, they do not get confronted and the place is quickly overrun with double standards (2009).

Tridish emphasizes not losing track of the big picture, that of creating "a culture of kindness and gentleness and humor"(2009). He points to stations such as Radio Free

Nashville, WRFN 98.9 FM, which have focused on being inclusive, rather than on specific politics, when recruiting volunteers for the station. Tridish notes that by being a community resource and making it a priority to do community outreach to underrepresented groups, Radio Free Nashville has succeeded in side stepping many of the issues VFR continues to face.

Tridish provides other examples of low power stations that have had race as an important piece of their mission. Two low power stations (in Florida and Oregon), while admittedly homogeneous organizations made up primarily of Latinos, provide labor information that has potential to make a difference in the lives of migrant workers. WCIW 107.9 FM, started by the union for Immokolee Migrant Workers in Immokolee, Florida, is an important example of a radio station reaching out to and organizing within its community. Similarly KPCN 96.3 FM, a low power station outside of Portland, Oregon, is on the air in part to organize workers to collectively demand improved living conditions. Another low power station, KRBS 107.9 FM, also known as Radio Bird Street in Oroville, California, serves an urban community where the only other station in town is owned by Clear Channel, which actually moved the physical station out of town, and replaced it with automation. The low power station has provided a catalyst for revitalizing the downtown area by giving people a community project to work on together. The missions of these radio stations demonstrate that advocating for anti-racism does not have to create internal divisions. They have all focused their attention on projects that help the community organize and proactively engage with the station.

VFR volunteer Allison Brown notes that the group's goal in codifying the group's loosely held beliefs into a guiding vision statement was to make it a priority to include

people of color and other underrepresented groups from the beginning. She quotes Hall, who felt that as a community organizing project, VFR should not “let itself be dominated by mainstream people with privilege” (Brown, 2005). He argued that doing “‘outreach’ as an afterthought to the people that are missing,” would make them “feel alienated because they were not involved as equals to begin with” (Brown, 2005). The people of color that did get involve when VFR was granted a construction permit found themselves walking into a politically-charged atmosphere focused on race. By focusing so much attention on anti-racist concerns, VFR volunteers did not have the energy to put into the grand outreach project they needed to undertake to make VFR into an engaging and viable station within the Pioneer Valley. The point of conflict over ideology is important, as it is an ongoing issue for community radio stations. Each station has its own approach on how explicit it is about its politics. Hall has always been adamant about VFR being a progressive, “anti-racist” project. He includes as its audience:

Low-income people, people of color, the Spanish speaking community, the disabled, people involved with the criminal justice system, young people, peace activists, labor unionists, the queer community, local musicians--everyone shut out from commercial media needs to be welcomed and involved and feel that the station is their resource and serving their agendas and needs” (Brown, 2005).

VFR provides one example of the struggles community radio stations face when trying to operate as progressive radio stations, both organizationally and in programming, while also trying to create inclusive community space.

The VFR volunteer who filed the lawsuit did so on November 29, 1996, asking for \$25,000 in damages from VFR, the Media Education Foundation, and three individual board members. Hall, who now lives in Portland, Oregon, felt very strongly that the lawsuit was an attempt to destroy the station. He wrote (in an email): it is “extremely

important for any activist/poor/scrappy movement effort [to know]: your enemies can harass you with a lawsuit any time, without justification, and your cause will suffer. VFR almost went down from this whole thing” (Hall, 2009). The case was dismissed on September 24, 2008, but not before costing the Media Education Foundation over \$10,000 in legal fees. VFR now has non-profit status and VFR volunteer Matt Dineen recently filed a petition with the FCC to make the organization the license-holder, instead of MEF, which is ready to hand off responsibility to the people actively doing the work of radio broadcasting.

### **VFR: An Epilogue**

WXOJ continues to struggle with equipment failures and lack of volunteers to staff the on-air booth, let alone the station. Co-founder Russell notes that VFR’s volunteer base suffers from the fact that it is hard to for people to get invested in producing a radio show for a small pool of listeners. He has a theory about the ego and radio broadcasting that suggests that if the ego is not satiated, people will lose motivation to invest a lot on too little return on their efforts. The fact that WXOJ also broadcasts on the web helps, but Russell contends that volunteers struggle with whether their efforts are worthwhile. People are hopeful that the general malaise from the divisiveness that has run through the organization is becoming a thing of the past. Many volunteers hope that the group can move on and recruit a new crop of energized volunteers, though just recently another round of interpersonal conflict resulted in more Board members stepping down. Hall recently concluded via email: “I’m just relieved we’re on the other side and doing such a great job with what’s important: making awesome community radio” (Hall, 2009). If only it was as easy as Hall makes it out to be. It has been an amazing process

to watch the evolution of this radio station, but also humbling to witness yet another community organization get consumed by interpersonal and ideological drama.

Does low power radio operate in the public interest? The answer is yes, but this is only the first step. There needs to be more noncommercial entities available with plausible funding sources that can actually support a good living wage for the facilitators aiding in the accessibility of the station to newcomers. Community radio, with all of its complexity, is an important site for practicing and studying an alternative to the business-as-usual approach to most broadcasting. While seeking to provide both diverse and local information and music to people, community radio stations face various and ongoing challenges. I have only scratched the surface of the perceptual, organizational and interpersonal issues that confront these stations, but the case study here along with the historical and theoretical issues that have been discussed in previous chapters will hopefully make the case that such alternative spaces and places continue to be absolutely necessary in this commercial media environment we live in. Although grassroots radio may never reach its full potential to serve *all* publics, it is a very good starting point to counter what is the current state of commercial radio. The insipid sound of commercial radio on most of the dial in cities throughout the country is depressing, considering how easy it is to provide material that is compelling to listen to, whether music or information. Apart from the scattered community and public stations across the country, the idea that radio can be local and innovative seems like a quaint idea from a long-ago past, but radio could be regulated such that every community has such non-commercial space. The next, and perhaps the most important step, will be to help make that non-commercial space a place where people want to spend their time and energy. The grassroots media

movement also has to coordinate a forceful campaign to redefine the perimeters around how media policy decisions get made in the US. The need for such a campaign, which seeks to reframe structural definitions in broadcasting regulation, including public interest and First Amendment protections, will be the focus of the concluding chapter.



## CHAPTER 7

### CONCLUSION

The focus of this thesis – the LPFM service – may at first glance seem to be an outdated topic. After all, how does a little service giving stations 100 watts of power at which to broadcast on the radio, a medium whose future has been declared grim since the advent of television, pertain to the new age of rapid technological advance at the beginning of the 21<sup>st</sup> century? The purpose of the project, a case study providing historical analysis of both the public interest standard and noncommercial community broadcasting, is to provide a roadmap for media reformers to help in their strategizing for future campaigns, particularly pertaining to issues around the Internet. Media reformers need to aggressively challenge media policy and must create a platform that reframes policies to better reflect the needs of the audience rather than the greed of the media owners. With the current financial meltdown, in which the market did not self-regulate in the public interest, it is an opportune time for the media reform movement to focus explicitly on cultivating public interest, not only in radio broadcasting, but also more broadly across the new media landscape. Rapid technological advances have not eliminated scarcity of broadcasting frequencies as the commercial owners claim, but have rather resulted in a blurring of technologies, such that concepts of public interest and open access need to be applied to a broader arena of communication.

The research and analysis by both Thomas Streeter and Robert W. McChesney have been instrumental in the theoretical foundations of this paper. Their intellectual disagreement over how media policy became primarily dominated by marketplace ideals provides fertile ground for exploring how to counter both a corporate liberal system and

the weaknesses of grassroots organizing. Streeter (1996) argues that media policy is part-and-parcel of the corporate liberal system that frames media policy by continually reinforcing the structures in place, leaving little room for challenges to the *status quo*. McChesney (1993), meanwhile, highlights the challenges media reformers faced in getting their message heard. As early as the 1920s, when people were advocating for a public service model of broadcasting, a la the British Broadcasting Company in England, McChesney (1993) argues that they struggled with an inability to reach a large enough audience about the debates surrounding the emergence of radio broadcasting. Similarly, stories of about the Telecommunications Act of 1996, which, among other things, dramatically changed the face of radio broadcasting in the US, appeared in the business sections, rather than on the front pages of newspapers. According to McChesney (1999), one long-time lobbyist remarked, “The silence of public debate is deafening. A bill with such astonishing impact on all of us is not even being discussed.” Media scholar Mark Crispin Miller (2001) defines democracy as a place “where the people have to know more than their masters want to tell them” and due to the current dearth of meaningful information, he contends that the public is increasingly uninformed. Miller (2001) concludes, “Of all the [media] cartel’s dangerous consequences for American society and culture, the worst is its corrosive influence on journalism.” A number of these scholars have become directly engaged in the political debates around media policy. In an effort to be poised for future opportunities to challenge the media system, McChesney and long-time print journalist Jon Nichols formed Free Press, in 2002, to be an organization working to galvanize the American public to fight for media policy reform. McChesney (1999), who coined the term “Rich Media, Poor Democracy,” argues that the current state

of democracy in the US has been very much weakened by commercial interests' attacks on democratic principles – such as the public interest and First Amendment protections. He, both as an academic and co-founder of Free Press, actively is challenging decisions that get made on the public's behalf, contending that corporations have to be held accountable for their role in obstructing the free flow of diverse and local information and ideas in the United States.

Yet, progressive organizations have yet to form a cohesive movement in which to advocate for essential media change. These groups are not only challenged by their opponents, most notably the commercial broadcasters and economists arguing for an “open marketplace,” but also by each other. Organizations, even McChesney's Free Press, with its straight-lace inside-the-beltway approach, need to figure out how to work productively with grassroots groups such as Prometheus Radio Project, consisting of radical activists as comfortable taking to the streets as they are stirring up communities to apply for radio stations, because they are working for similar goals even as their styles may sometimes diverge. It is essential to the success of media reform that these groups figure out how to work together so they can strategize on how best to go about reframing communication policy issues to better reflect the needs of citizens. Media policy needs to force companies that distribute media content to meet basic fundamental requirements. One example of what these requirements could include would be comprehensive political coverage, rather than allowing media companies to cash in on the political advertising candidates purchase on their stations.

As a key aspect of the progressive strategy, grassroots media reformers must find a way to capture the imagination of the general public. Their message needs to resonate

with enough people that it becomes no longer acceptable that the FCC and similar regulatory agencies operate primarily in the interests of the corporations, which can lobby persuasively and effectively within the current system. Media reform is essential in the United States because democracies need checks-and-balances in place to protect their citizens, especially as new applications for the Internet. Even the basic social contract that the public subscribes to in order to function in any society needs to be called into question. The issue of information distribution is key to civic vitality and as technology continues to proliferate, government needs to be on top of civic protections for its citizens, even as the corporations are driving the market and most often the policies that pertain to their newest developments.

One of the first challenges ahead for media reformers will be to successfully counter the attacks on the public interest standard as it applies to broadcasting. This thesis sought to provide context for several competing interpretations of the public interest: that of the FCC, Congress, those used in the courts, and those used by reformers who have sought to challenge the corporate *status quo*. Fortunately for the reformers, the public interest standard – no matter how crippled – continues to have legal precedence which can assist in a strategic assault on the corporate liberal landscape at the FCC and in politics writ large. Without a strong public interest mandate that is clearly defined and enforceable, business interests will continue to drain a public resource – the airwaves – for monetary gain rather than informing and enriching their audiences. The civic health of the United States depends on the dissemination of local, diverse information.

The progressive media reform movement also needs to confront the attempts to remove from the First Amendment civic protections. Currently, commercial interests are

using freedom of speech protections to air cheaply made programming that is neither local nor diverse. As David Korten (1999) contends, the project of media reform needs to reclaim the First Amendment for people, not corporations. He writes:

The stronger the rights of corporations, the weaker the rights of persons to live fully and well with freedom, responsibility, and dignity. Thus, to restore human rights and dignity we must establish clearly the principle that human rights reside solely in living persons (Korten, 1999).

To succeed in bringing about substantive policy change, then, the media reform movement needs a substantive public interest standard and First Amendment protections. Without them reformers have very little ground on which to stand and critique the marketplace self-regulation. As a part of this defense, progressive media reformers need to look for court cases to challenge the First Amendment protections that have been provided to corporations, especially those that own media outlets. It is imperative that the cooption of the First Amendment, particularly that corporate entities have been awarded freedom of speech protections, be overturned. These protections need to be returned to the people – citizens – who the First Amendment was codified to protect, Providing historical context to this struggle, James Monroe, one of these framers, argued for the importance of a civic republic:

At the heart of republican politics lay the subordination of individual interests to the common good, the *res publica*. The ideal was not simply the sum of individual private interests, but a distinct public interest with an objective interest of its own (Kuttner, 332)

Journalist Bill Moyers (2004) added in a speech to the Society of Professional Journalists:

The framers of our nation never envisioned these huge media giants; never imagined what could happen if big government, big publishing and big broadcasters ever saw eye to eye in putting the public's need for news second to their own interests – and to the ideology of economics.

Kuttner (1996), however, contends that because of the current laissez-faire approach to governing, the concept of one-dollar/one vote has been given precedence over the idea of one person/one vote. He attributes this shift to the influx of money into the legislative sphere that is swaying the balance. He asserts that “[t]o temper the market, one must reclaim civil society and government and make clear that government and civic vitality are allies, not adversaries” (162).

Yet, the question remains how to make media regulation a compelling issue when so much of it is obscured, endlessly complicated by technocrats and “inside the beltway” media lawyers. Wading through the FCC’s proposals, rulemakings, and orders is challenging for even the most savvy of policymakers. The language used to discuss media matters is not geared toward the general public, but rather to those within government and the industries’ lobbyists and lawyers—a corporate liberal structure that facilitates the interests of corporations over those of the public. In highlighting where radio has been, the hope is to use the precedent established by the public interest standard to help pave a way forward for progressive media reform—not just within broadcasting, but for all communications media.

Grassroots media reform groups hope that the launch of the LPFM service is one tangible first step forward toward a “communication revolution,” which McChesney hopes is afoot. Noncommercial community stations, sanctioned under the LPFM service and by more progressive-minded groupings of the FCC, provide a base on which to build a media revolution, but only if they can form a cohesive front, which is a difficult proposition among progressive groups. Not only is it challenging for the different media reform groups to work closely together, it is also important that these groups collectively

analyze the challenges facing both the movement and the low power stations operating in their individual communities. Low power stations faced many hurdles in obtaining licenses. First, the language used in FCC radio regulations is language geared to the corporate liberal elite that facilitates corporate radio interests. Secondly, the FCC application specifications are restrictive and complicate the application process. Third, tight schedules further complicated the application process, construction permit requirements and the raising of considerable funds. In the case of WXOJ 103.3 FM, it was important to its success that Prometheus Radio Project and Media Access Project were available to provide expertise and support during every stage of the application process. Furthermore, the station has had to deal with conflicts concerning ideology, which has led to the development of factions detrimental to the station. Careful detail in developing and implementing an organizational structure is essential to the survival of small noncommercial stations. The challenges do not go away once a station has launched an individual station. The VFR case study provides an example of how difficult it can be for well-intended people to run a low power radio station. Because grassroots media reformers point to noncommercial community media as a viable alternative to commercial broadcasting, it is important to assess its shortcomings, along with its strengths.

Whether the grassroots media reform movement can launch a successful campaign against the marketplace mentality at play at the FCC is dependent on the message that reformers use to make their case. If reformers continue to focus on the idea that “the media is the issue” (the slogan of McChesney & Nichols’ Free Press), will they succeed in truly resonating with a broad cross section of the public? To succeed, the

reform movement must capture the imagination of the general public, much in the way Barack Obama's successful bid for the presidency inspired people with his mantra "yes we can." Bringing to the message of reform a strongly-resonating historical link could produce the necessary groundswell of support. As queer studies scholar Michael Warner (2000), in his book *The Trouble with Normal*, writes, "Finding the right thing to say can be of little use unless one can find the right register in which to say it" (IX).

In recent years there have been examples of projects that are proactively carving out spaces for civic dialogue in the primarily commercial landscape. One example of such a project is *Democracy Now!*, a radio program started by Amy Goodman, an activist journalist with a long history in community radio, with an interest in providing fully contextualized snapshots of current issues. This program, which gets aired on radio stations, both community and public, and on various cable and satellite services, takes seriously the need to get information out to as large of an audience as possible. The show employs two coordinators whose job it is to try to get the program carried on more outlets. Another example is Jon Stewart's television program, *The Daily Show*, and its spin-off *The Colbert Report* with Steven Colbert, which through humorous lenses, seek to "expos[e] the thoughtlessness of the punditocracy's perpetual motion machine, which spins itself silly powered only by hot air" Scholar and journalist Eric Alterman (2009) contends that reform will be hard to cultivate in the current climate because even as Democrats occupy the Oval Office and lead Congress, US public "discourse remains rooted in hardline conservative assumptions." The success of advisor Karl Rove's talking points in directing public discourse during George W. Bush's presidency has set a high bar for progressive reformers to overcome.



The task for media reformers is to challenge the assumptions of the corporate liberal *status quo*, exposing them for what they are: decisions getting made on behalf of the public, but benefiting media corporations. This thesis does not claim to have the answers for how to concretely re-conceptualize the public interest standard, to fight the corporate cooption of the First Amendment and attend to civic protections on the Internet. Though if scholars such as Patricia Aufderheide, Robert W. McChesney, organizers such as Pete Tridish and Jonathan Lawson of Reclaim the Media, and lobbyists such as Future of Music's Michael Bracy and MAP's Andy Schwartzman and Cheryl Leanza were to sit down with current acting FCC Chair Michael Copps, it seems likely that they could come up with a compelling plan to fight for these protections. These conversations need to be taking place in earnest if citizens hope to have a place at the table in future communication policy discussions.

Currently, progressive groups find themselves again waiting, this time for the FCC to open the window that would allow applicants from larger markets to finally submit their applicants. Although a very small piece of the broadcasting pie, low power radio has opened up space on the airwaves for noncommercial voices, providing the potential for space where diverse and local content can be heard. When former FCC Chair Kennard introduced the service, he expressed concerns about the massive consolidation of radio stations and argued that localism and diversity, key aspects of the public interest standard, are necessary in broadcasting. Community radio is generally committed to developing local personalities, encouraging diverse community-based programming and giving voice to the people who do not usually have a voice in society. This thesis concludes arguing that the current progressive media reform movement has to

strategize and aggressively fight – as it did for the LPFM service – for a reframing of broader issues surrounding communications policy, including the public interest standard and First Amendment protections. The LPFM service launch came about due to the hard work of many groups, including the progressive grassroots media reform movement, which have made some inroads into other media policy debates. LPFM, however altered by the political process, made it out of Washington, DC and onto the airwaves in small communities throughout the country. This is the potential of democratic discourse in action, building and reshaping the media landscape on the bedrock of true concern for public interest. Looking ahead, when and if the FCC opens a new LPFM window to introduce low power stations into larger cities, the progressive media reform movement needs to be poised to defend the move against the inevitable assault by commercial broadcasters. Groups including, but not limited to Free Press, Media Access Project, Prometheus Radio Project, Reclaim the Media and the United Church of Christ need to band together to strategize how best to proactively agitate for more civic protections in the age of the Internet.

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