

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Low Power FM (LPFM) Advocacy Group) RM-11753
Petition for Rulemaking for Improvements to)
the LPFM Radio Service)
)
To: The Commission

**JOINT COMMENTS OF THE
NAMED STATE BROADCASTERS ASSOCIATIONS**

Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Dakota Broadcasters Association, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio Broadcasters Association of Puerto Rico, Rhode Island Broadcasters Association, South Carolina Broadcasters Association,

South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters (collectively, the “State Associations” or “Associations”) by their attorneys in the matter, hereby file these Joint Comments, pursuant to Section 1.405 of the Commission’s Rules,¹ in response to the Low Power FM Advocacy Group’s (“LPFM-AG” or “Petitioner”) Petition for Rulemaking in the above-captioned proceeding (“Petition”).²

INTRODUCTION

The State Associations are supportive of the LPFM service. Indeed, a number of Associations include LPFM stations as members. However, the State Associations do not believe that the Petitioner has demonstrated a legally adequate basis for activating the Commission’s rulemaking processes to implement a wholesale redesign of the LPFM service. The full-power radio broadcast service is many, many decades old. In contrast, the LPFM service is quite young. The FCC created the nascent service a mere 15 years ago, and should be reluctant to consider replacement of that LPFM service with the entirely different service that LPFM-AG proposes in its Petition.

In fact, in presenting a broad and unsupported wish list of changes to the fundamental nature of LPFM stations, the Petitioner has essentially submitted an untimely “Petition for Reconsideration” of every material aspect of the FCC’s original LPFM rulemaking. The time for such an endeavor has long since passed.

¹ 47 CFR § 1.405.

² See *Improvements to the Low Power FM (LPFM) Radio Service*, Petition for Rulemaking, Low Power FM Advocacy Group, RM-11753 (July 27, 2015).

The result is a fatally flawed filing in which LPFM-AG fails to acknowledge the Commission’s reasons for creating the LPFM service in the first place or the impact its proposals would now have on existing licensees. Indeed, the exaggerated claims presented in the Petition to support the variety of proposals therein do not reflect reality, as demonstrated by many of the letters attached to the Petition itself. As a result, there is no basis for fundamentally altering the nature of LPFM service while compromising the integrity of the FM band.

The State Associations therefore oppose the Petition in its entirety, but focus these Joint Comments specifically on LPFM-AG’s proposals to alter the LPFM service’s (i) secondary status, (ii) power limits, and (iii) noncommercial status. As the Joint Comments more fully describe below, granting LPFM stations primary status would increase the risk of interference to full-power FM stations in contravention of the public interest and the plain language of the Local Community Radio Act (“LCRA”). Similarly, authorizing any increase in LPFM operating power would go against the LCRA mandate to ensure spectrum remains available for FM translators and boosters, and would simultaneously increase interference to full-power stations. Lastly, permitting LPFM stations to air commercials or be owned by commercial entities would eliminate the very reason for LPFM’s existence—to create a supplemental hyperlocal service that is neither profit-driven nor ratings-motivated.

DISCUSSION

I. Granting Primary Status to LPFM Stations Will Increase the Risk of Interference to Other Licensees and Is Contrary to the Local Community Radio Act

When the Commission first proposed creation of a new LPFM service, it “made clear that [the FCC] will not compromise the integrity of FM spectrum.”³ The Commission reaffirmed this

³ *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2209 (2000) (“Report and Order”); see also H.R. Rep. No. 375, 111st Cong., 1st Sess. 9 (2009), at 2.

commitment in the Report and Order authorizing LPFM service, reiterating its determination “to preserve the integrity and technical excellence of existing FM radio service, and not to impede its transition to a digital future.”⁴ As such, the FCC determined that LPFM stations would not be protected against interference from subsequently authorized full-service facility modifications, upgrades, or stations.

Amending the rules to grant primary status to LPFM stations would compromise the integrity of FM spectrum by increasing the risk of interference to full-power FM licensees in ways the Commission specifically found unacceptable in adopting the current power limits. Moreover, Petitioner’s request for primary status is supported by nothing more than a misinterpretation of the relevant statutory language and the completely unsubstantiated claim that full-power stations “just move [their] transmitters” to “bully” existing LPFM stations.⁵

Contrary to Petitioner’s statutory argument, maintaining LPFM’s secondary status is not just consistent with congressional intent, but statutorily mandated. Section 5 of the LCRA unambiguously mandates that LPFM stations “remain” secondary to full-power stations, providing that:

The Federal Communications Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations, shall ensure that—

- (1) licenses are available to FM translator stations, FM booster stations, and low-power FM stations;
- (2) such decisions are made based on the needs of the local community; and
- (3) FM translator stations, FM booster stations, and **low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations.**⁶

⁴ Report and Order at 2206-07.

⁵ See Petition at 44. Petitioner offers no proof of any such “bullying” actions by broadcasters, and it frankly makes no sense that a full-power station would go through the drama and expense of modifying its facilities merely to supplant an LPFM station.

⁶ Local Community Radio Act, Pub. L. No. 111-371, 124 Stat. 4072 (2011) (emphasis added).

Petitioner argues that this language only requires the Commission to treat LPFM stations as secondary to full-power FM stations *during licensing*. But this reading would render Section 5(3) superfluous: *All* classes of service—even applications involving full-power commercial FM stations—are secondary to existing full-power FM stations during initial licensing. Because the basic rules of statutory construction dictate that “a statute should be read, if possible, so that all of its provisions are given effect and none is superfluous,”⁷ the State Associations urge the Commission to reject Petitioner’s interpretation of the LCRA.

II. Increasing LPFM Power Will Reduce Available Spectrum for, and Increase Interference to, Other FM Services

LPFM-AG asks the Commission to delete the LPFM technical operating rules and instead allow LPFM stations to operate under the same technical rules as FM translator stations. Among other things, such a proposal would enable LPFM stations to more than double their maximum operating power from 100 watts to 250 watts. The State Associations are opposed to this request because, similar to Petitioner’s proposal to grant primary status to LPFM stations, its proposal to increase LPFM operating power runs contrary to the LCRA.

Allowing LPFM stations to increase power would further strain an already overcrowded FM band. Contrary to the LCRA’s mandate to ensure availability of licenses,⁸ a power increase would block licensing opportunities for FM translators (including for AM revitalization) and boosters. The requested power increase would also limit opportunities to maximize the number of LPFM stations while undercutting the hyperlocal nature of LPFM that was meant to be the very essence of LPFM service.

⁷ *Dupree v. Attorney Gen.*, No. 1:13-CV-01926 (UNA), 2015 WL 4555222, at *3 (D.D.C. July 24, 2015) (rejecting plaintiff’s reading of Federal Rule of Appellate Procedure 4(a)(6)(B) because, if accepted, it would render inoperative another portion of the Rules).

⁸ LCRA § 5(1).

Further weighing against the proposed power increase is the addition of approximately 2000 LPFM stations licensed in the 2013 filing window, a significant number of which have not yet commenced operations.⁹ These stations are, for the first time, being licensed to operate in urban markets and on second-adjacent channels, creating a higher risk of interference to full-power stations even at 100 watts.¹⁰ Authorizing any increase in operating power for LPFM stations would only exacerbate this risk.

III. Authorizing LPFM Stations to Operate “Commercially” Would Frustrate the Purpose of LPFM Service

From its inception, LPFM has been a noncommercial service—and with good reason. The Commission’s goal in authorizing LPFM service was “to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities.”¹¹ After considering comments and letters from “thousands of individuals and groups seeking licenses for new radio stations,” the Commission found that “[o]f those commenters supporting LPFM, an *overwhelming majority* endorsed establishing it as a noncommercial service.”¹² Accordingly, the FCC established LPFM as a noncommercial educational service, designed “to create opportunities for new voices on the air waves and to allow local groups, including schools, churches and other community-based organizations, to

⁹ *REC Networks Petition for Rulemaking for Improvements to the Low Power FM (LPFM) Radio Service*, Comments of the National Association of Broadcasters at 1-2 (June 15, 2015).

¹⁰ *See Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15424 (2012) (adopting second-adjacent channel spacing waivers in accordance with LCRA § 3(b)(2)(A)).

¹¹ Report and Order at 2208.

¹² *Id.* at 2212 (emphasis added) (citing Comments of Civil Rights Organizations at 16-17 (noncommercial LPFM service is the best means of creating locally-based radio likely to serve needs of the local communities); Comments of National Lawyers Guild at 6-8 (noncommercial service will attract those who truly wish to provide a service to their community); Comments of The National Federation of Community Broadcasters at 7 (noncommercial LPFM service would avoid the debate over the impact of LPFM on the economics of radio broadcasting)).

provide programming responsive to local community needs and interests.”¹³ The Commission explained that “noncommercial service is more likely to fulfill this role effectively than a commercial service” because “[c]ommercial stations, by their very nature, have commercial incentives to maximize audience size in order to improve their ratings and thereby increase their advertising revenues.”¹⁴ The FCC worried that commercial incentives would frustrate the development of a service responsive to specialized community needs. Thus, although it considered the “entrepreneurial opportunities that low power radio stations might create, [the FCC] nonetheless conclude[d] that a noncommercial service would best serve the Commission’s goals of bringing additional diversity to radio broadcasting and serving local community needs in a focused manner.”¹⁵

In an attempt to belatedly rebut the Commission’s original conclusions, Petitioner broadly asserts that “[n]oncommercial LPFM cannot work in nearly all cases.”¹⁶ But REC Networks, a leading LPFM advocate, has stated that it will “oppose any efforts to introduce any commercial element to the LPFM service,” and further that “[t]his is a position that is supported by virtually every other long running pro-LPFM advocacy. Financial viability while remaining within the operating rules of a non-commercial educational broadcast station is possible.”¹⁷ Indeed, the Petition itself contains submissions from LPFM licensees that boast 12-15 years of

¹³ *Id.* at 2213; *see also* Prometheus Radio Project, *Frequently Asked Questions*, <http://www.prometheusradio.org/faq> (last visited Aug. 28, 2015) (“Low power FM stations (LPFMs) are a forum for nonprofits, schools, churches, community centers, farmworker organizations, unions, environmentalists, and just about anyone else who wants to amplify their message.”).

¹⁴ Petition at 8.

¹⁵ Report and Order at 2213.

¹⁶ Petition at 8. The State Associations also urge the Commission to consider how acceptance of this proposition would open a Pandora’s Box in the noncommercial educational radio and TV broadcast industry.

¹⁷ Michi Bradley, REC Networks, *REC position statement on a commercial LPFM service*, <http://home.recnet.com/commercial-lpfm> (Jan. 25, 2015).

service catering to niche demographics.¹⁸ Other LPFM licensees included in Appendix A to the Petition expressed ambivalence toward, and even opposition to, a commercial LPFM service.¹⁹ With such diametrically opposed views from within the LPFM community—indeed, within the Petition itself—the State Associations question the necessity of a commercial LPFM service as well as Petitioner’s credibility in claiming to speak on behalf of LPFM licensees in that regard.²⁰

CONCLUSION

For the foregoing reasons, the State Associations respectfully request the Commission reject LPFM-AG’s Petition for Rulemaking.

Respectfully submitted,

NAMED STATE BROADCASTERS ASSOCIATIONS

/s/

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¹⁸ See Petition at 122, 159.

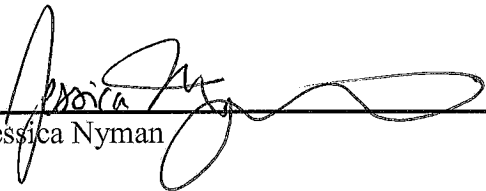
¹⁹ For example, a commenter writing on behalf of WEPB-LP writes “I am ambivalent about allowing full commercials on LPFM. If full commercials were allowed they should be very limited.” *Id.* at 162. Another commenter, writing on behalf of KGCE-LP, “does not want to sound like the commercial stations, nor compete with them for their advertising dollars.” *Id.* at 142.

²⁰ *Id.* at 6 (“LPFM’s only exclusive advocacy group.”).

CERTIFICATE OF SERVICE

I, Jessica Nyman, hereby certify that on this 31st day of August 2015, I served a copy of the foregoing "Joint Comments of the Named State Broadcasters Associations" on the following via first-class United States mail, postage prepaid:

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