

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

In the Matter of:

Reexamination of the Comparative Standards and
Procedures for Licensing Noncommercial Educational
Broadcast Stations and Low Power FM Stations

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MB Docket No. 19-3

COMMENTS OF JEFF SIBERT

I. Introduction

The following comments are submitted by myself, Jeff Sibert, regarding the Notice of Proposed Rulemaking in MB Docket 19-3. I am the president of Park Public Radio, which holds the license for Low Power FM (LPFM) station KPPS-LP. I have also donated thousands of hours of engineering and technical services to a number of LPFM and Non-Commercial Educational (NCE) licenses and served on the governing boards of two NCE stations since 2003.

The Commission has proposed a number of changes to the comparative standards for these two services, many of which I am in favor of, therefore I am not commenting specifically on most of the proposals. However, most of the changes proposed are inconsequential for most existing operators or most prospective operators. Substantial reform is needed to address significant short-comings in the NCE and LPFM service to promote greater diversity and address operational issues. The comments below address areas that the Commission could improve upon.

II. Changes to the NCE Comparative Process are long overdue

Changes to the comparative process are welcome, but it is unclear why the Commission would continue to operate under two separate sets of rules for full power NCE and LPFM applicants. Both

services have similar organizational qualifications and construction permits would be issued to similar organizations. As much as legally possible, both services should have a unified set of rules.

For full power NCE applicants the Commission proposes to reduce the likelihood of mandatory time-sharing by modifying the tie-breaking criteria that would otherwise lead to time-sharing. The Commission seems to hold that mandatory time-sharing for full power NCE applicants has a number of concerns, but does not seem to hold the same regard for LPFM applicants. Why should time-sharing of full power NCE applicants be avoided but LPFM applicants are expected share time in many cases? If time sharing is good enough for LPFM applicants why is it not good enough for full power NCE applicants? Perhaps the Commission should simply throw away the tie-breaker comparisons and just force NCE stations to share time like it does in the LPFM service. One could argue that there are fewer full power NCE opportunities than LPFM opportunities, so mandatory time sharing would be a reasonable way to promote a diversity of ownership within the NCE service.

III. Holding period and assignment rules

Within the full power NCE context, there were a number of applicants that sold construction permits for profit without ever having built the station, or sold the license after operating less than four years. Quite simply, there is no good reason for an entity to apply for a full power NCE station and then profit from the sale of the permit. Regardless of the safeguards that are supposedly put in place, the only way to avoid trafficking is simply to bar the for-profit transfer of any permit or license until the station has been licensed and operational continuously for four years. To do any less will simply encourage speculators to apply for permits that they will never construct, or will assign shortly after building, thus depriving local entities of their ability to launch new NCE service over the competing applicants of speculators.

In the 2007 window, a number of speculators applied for and received a number of permits which were then sold to other entities. Some of these speculators prevailed over the applications of

local entities simply based on providing first and second service to a few thousand more listeners through the use of very odd directional antennas. There were dozens of such successful applicants, and a quick review of the assignment applications in the first few years following the NCE window, particularly during the period when the Commission was extending CP deadlines following assignment, will show just how widespread this problem was. Limiting applicants to ten applications and placing holding period restrictions on assignments/transfers were obviously not enough to deter speculation. Nor will the proposals in this NPRM be enough. Those applicants who are not serious about building and operating a station for at least four years should not be encouraged to apply.

If the Commission doesn't close this loophole then it should expect massive amounts of speculation. I have written software that can very easily find areas that will support a new full power NCE station and it would be trivially easy to apply for as many permits as the Commission will allow. I could likely make a small fortune tying up the process by filing speculative applications hoping for settlement agreements or the sale of permits to other entities. I won't be the only one who would consider this since such software is readily available for purchase for those with no programming/scripting experience.

For the LPFM service, there is no profit in the sale of permits or licenses to other entities, so the concerns are substantially different than in the full power NCE service. Assignment of LPFM permits and licenses therefore do not cause concern and allowing them may enable another organization to save the permit. Allowing these transfers, as the Commission proposes, while also banning the for-profit transfer of full power NCE permits would promote greater harmonization between the two services.

IV. Section 301 violations (unlicensed operation by LPFM applicants)

It is striking that only LPFM applicants must adhere to the restriction regarding prior unlicensed operation. If the Commission feels it is so important that the rule be strengthened for LPFM applicants, then why has the Commission not implemented similar language for all broadcast services? Why

should someone who engaged in unlicensed broadcasting and received repeated notices from the FCC be unable to obtain an LPFM station but then subsequently be rewarded with a 100 kW full power NCE station? This actually happened for a station on the other side of the state. Fairness would dictate that the Commission should have the same prohibition across all services.

If the Commission is unwilling to extend the same rule to all other services (Full Power AM, FM, and Translators) then proposing to further tighten the restriction on LPFM stations is ludicrous. If I were to provide credible proof that a full power operator engaged in recent unlicensed broadcasting would the Commission take action against that operator by barring that operator from future applications? Should a trustee of a University who may have at one time operated an FM modulator in their car that placed a 300 uV/m signal at 3 meters disqualify the University from applying for an LPFM station? Would the applicant even be aware that the trustee operated an illegal FM modulator in their car? Would it be reasonable to expect a party to an application, whom may be far far removed from the station, to disclose a minor transgression when it means the application would be summarily dismissed? Will this rule even seek to disincentive pirate operators who already know there is likely no viable path to licensed operations, and thus no point in pursuing such a route? These questions may seem pointless, but MX'd applicants will sometimes stop at nothing to prevent their competitor from receiving a permit. I have also spoken with a few pirates who believe their 100 mW transmitter that goes 4 or 5 blocks is also legal, would they honestly have any reason to believe their application should be in jeopardy?

If the Commission implements further restrictions is it ready to deal with the flood of complaints of unauthorized broadcasting or a court challenge surrounding the inequity of applying this rule only to LPFM applicants and not other broadcast services? The Commission should very carefully consider avoiding going further down this route if it would like to avoid a mess of unintended consequences with little benefit.

V. Pre-determined point sharing agreements have been utterly abused but are necessary

Within the Twin Cities area there were three different “consortium” of applicants who successfully applied for three different frequencies. All three brought at least 3 organizations to the table and each organization in the consortium filed for the same frequency and same location in hopes of aggregating time. Having been somewhat involved in two of the organizations, this strategy was even suggested by a prominent engineer and a prominent communications attorney. In the end all extraneous organizations either dismissed their applications (when no longer needed), one group formed a time-share and the time-share simply allowed their permit to expire, and one operator modified to a different frequency as a singleton¹. This could probably be considered gaming the system, but in 2001 there more than 50 LPFM applicants for 3 frequencies (all dismissed in when Congress subsequently imposed 3rd adjacent protections in the Radio Broadcast Protection Act), and it was expected there would be fierce competition for the remaining channels.

All three organizations that ended up with permits and are successful stations today. However, it is clear that the method in place at the time to select between applicants was inadequate to insure the strongest applicants would be selected. The Commission’s proposal would in effect codify this method of gaming the system, even if it wasn’t specifically allowed in 2013.

There is at least one prominent engineer who is adamantly opposed to allowing this type of gaming to occur, and she will likely comment against such a proposal. But I personally feel that stronger applicants should be the ones that have the greatest connection to the community and the greatest reach, and these applicants should be encouraged to bring as many stakeholders to the table as possible. Whether that involves getting as many as eight organizations to all file for a single location and frequency, awarding points to an organization that brings signatures from members of the community, or some other method, there should be a benefit to those organizations who are able to rally the community in this way. Since a major overhaul of the point system is not on the table at this time, I

¹ My involvement in these two groups ended prior to 2013 filing window when the organizations hired an outside firm to handle the filing.

would encourage the Commission to allow organizations to form a consortium with the express purpose of filing multiple applications for the same frequency in order to ensure the strongest organization(s) are successful.

VI. More is needed to protect the LPFM service

Although it is appreciated that the Commission is looking at some long-standing concerns within the NCE and LPFM rules, most of the proposals solely concern applicants rather than existing operators. Within the LPFM service specifically, a substantial number of operators are suffering due to incoming interference from FM translator stations authorized through the AM revitalization windows with few recourse to fight such interference. There have been a lot of technical proposals to benefit the LPFM service, some from myself, REC Networks, other engineers, and LPFM stations. So far these concerns have been ignored while the FCC focuses on other proposals such as affording FM translators greater flexibility in their channel selections in the face of interference.

Unlike translators and full power stations, LPFM stations are barred from using directional antennas and contour protection towards FM translators that create new short-spacings. Here in the Twin Cities market, all but two of the LPFM stations have become short-spaced due to FM translators applied for during the AM revitalization window. One of my clients (WVIC-LP) has unfortunately been substantially affected and is broadcasting on only a 15 watt STA because of the lack of viable and affordable sites within the allowable area. The Commission has forced this station to pursue locating on a site that it cannot afford and whose landlord has increasingly placed additional burdens during lease negotiations. Whether they can come to an agreement is uncertain and the the future of the station remains tenuous due solely to the FCC's inflexibility of 73.807. If WVIC-LP was a translator it would have avoided the filing of 15 applications that have burdened both the station and Commission personnel. For a service that was supposed to be simple, the Commission has sure put a lot of technical barriers up.

I have talked to numerous stations and engineers who are stating similar concerns. The lack of continuity and flexibility between FM translator and LPFM stations is severely harming such stations, and my discussions with Commission personnel have shown complete disregard for the plight of the LPFM service. I have a number of proposals which are probably not appropriate to include here, but I am very much looking forward to the day that the Commission seriously considers rule changes that will resolve this (and other) inequities in the LPFM service. For now, I won't be holding my breath since my prior requests have fallen on deaf ears. It is time for the Commission to get serious and put forth a major overhaul of the technical rules surrounding both FM translator and LPFM stations that accurately reflects the goals advanced by the Local Community Radio Act and promotes greater equality between these two services.

VII. Conclusion

Most of the proposals the Commission puts forward in this rulemaking proceeding will help NCE and LPFM operators and I support most of the rules as proposed, even if they will not help existing LPFM operators who are struggling from a mountain of new interference and inflexible rules. A few of the proposals are unlikely to have the intended change and should be rethought. Finally, the Commission should expeditiously move to open up a rulemaking proceeding to address a number of technical rules that are severely harming LPFM stations.

Respectfully Submitted,

/s/

Jeff Sibert
May 20, 2019