Before the Federal Communications Commission

Washington, D.C. 20554

In the Matter of )

Notice of Proposed Rulemaking )

Reexamination of the Comparative ) MB Docket 19-3

Standards and Procedures for )

Licensing Noncommercial Educational )

Broadcast Stations and )

Low Power FM Stations )

6/1/2019

**You’re doing great, FCC!**

*I appreciate the attempt of the FCC to improve their processes of settling mutually exclusive applications for LPFM. However, I will argue that given statute and precedent, no replacement system permissible under current interpretation of the FCC’s mandate will yield better outcomes.*

**Who, What, Why, Which…**

This comment is submitted by Pete Tridish, of Center for International Media Action. As a founder of Prometheus Radio Project, I was responsible for regulatory advocacy during launch of the LPFM service, and our participation in the various rulemakings that shaped LPFM, culminating in the passage of the Local Community Radio Act. I currently work as sole staffer of Center for International Media Action, a non-profit that provides engineering assistance to non-profit groups in the process of starting radio stations. These days, I focus more on installation of transmitters, antennas and studios, in the US and abroad. I submit these brief comments due to my familiarity with the issues that shaped LPFM, and upon observation of the outcomes of the decisions that were made. I am very impressed that the FCC has taken the time to consider these issues and made these proposals for improvement. We did not even have to stage a protest this time to move LPFM forward!

**How Exclusive is Your Mutuality?**

The problem of Mutually Exclusive Applications (or as i prefer to call them for a lay audience, “competing applications”) is a vexing one. The United States is a bit of an outlier among developed nations, because our interpretation of the “Freedom of Speech” mandate of the Bill of Rights precludes the FCC from choosing one applicant for a radio license over another based on criteria related to programming content. This is good in a way, because Americans do not want the government choosing one speaker over others for the privilege of operating a radio station… but it means that many common sense solutions are impossible to use when choosing among applicants for the scarce available licenses.

In the UK, they have a much more sensible procedure for sorting out competing licensing claims. In their legal system, they appoint a non-governmental panel of community leaders that assess applications and consider factors such as underserved populations, linguistic groups, collaborations with non-governmental organizations, under-represented programming formats in the locality and other such social factors that make lots of sense but would be completely unacceptable in the USA’s legal system. The FCC must use a system to decide selectees with almost no reference to the content of the station, using only essentially technical criteria, which creates a baffling system for the lay person.

**A Statement of Purposelessness**

The LPFM service was created with the intention of expanding non-commercial, educational radio. All LPFM stations must submit a statement of educational purpose. However, the FCC is unable to evaluate these statements. Our system has the perverse outcome that an applicant who submits as their educational purpose “ We seek to educate the public on the merits of the music of the Nose Flute and Udderbot,” or “ We seek to educate the public on the prodigious heavy metal cello stylings of the band Apocalyptica” or perhaps even simply submits as their educational statement the number “42”: All of these can in no way be differentiated by the FCC from legitimate community organizations with thoughtful, serious plans for serving the public.

In light of this, the FCC has tried to use proxy factors to get an outcome that serves the public interest by selecting the applicants most likely to provide real radio service to their communities of license. Mostly, these are technical hurdles, or barriers to entry that do some weeding out based on who is not scrupulous or well advised enough to properly follow instructions on the form. For example, the requirement that the applicants be organizations recognized by their states precludes individuals that have so few friends that they can not even persuade two other people to trust them by signing their names on a form.

In general, the LPFM service was an attempt by the FCC to make it possible for small, local groups to apply for and receive licenses without spending a lot of money, and without needing to hire a lawyer or engineer. The form is drastically simplified compared to the application process for a full power station, but there remain a few “gotchas” for people who are not accustomed to some of the federally mandated legalese in the form. In effect, groups tend to be weeded out that do not have the advice of experts, engineers, or attorneys- though the FCC has made a good faith effort to simplify.

The FCC uses a point system to determine the prevailing applicant, with the possibility of the aggregation of points by various applicants if they can work out a mutually agreeable time share.

I must confess, I was no fan of the point aggregation system when it first came out. It sounded like a sort of crazy way to sort out the mess created when there are not enough licenses to go around. By observing it in action, however, I must conclude that it was a stroke of genius work-around for the fact that the FCC can not evaluate based on educational mission.

**The Los Angeles Logjam**

In the Los Angeles region, there were 32 applicants for a single channel, which created a total Clusterf\*\*\* (sorry FCC!) spanning dozens of miles. In this most competitive MX scenario, consultants launched into a S\*\*\*show (sorry FCC!) of nitpicking applications, backstabbing and pitting local groups against each other, snooping and tattling on variances of a few feet listed on applications, filing irrelevant harassing complaints with local agencies… Thousands of dollars were spent by small groups on professional fees to try to win this squabble.

Everything about full power competitions that we hoped LPFM would not become, was reproduced in pathetic miniature in this competition for the only frequency in Los Angeles.

At first, one of the consultants seemed to have constructed a bomb proof scenario. Through a combination of nitpicking, wheedling, petitions to deny, and aggressive posturing, a single coalition could emerge.

However, a few months in, some of the applicants stepped back and said: This Is Not Who We Are. We don’t care if we have the best advice, or the best strategy, but we will just try to make a coalition that wins this license by Being Nice.

They agreed- they would form a time share coalition where there would be would be no petitions to deny, no whiney filings, no harassment through spurious complaints to other government agencies. They hoped to prevail in this by simply being decent and respectful and not engaging in nasty behavior. Though their opponents filed all manner of petitions on trivial matters, such as errors of exact measurements and far flung conspiracy theories about collusion among applicants… the winning coalition gathered the most participants by simply Knowing How To Be Nice And Respectful. By gathering the most groups to their collegial time share proposal, they accumulated the most points and won the frequency.

***A system where groups can win by being nice and respectful, rather than buying a victory with lawyers and engineers and consultants: that is a treasure… a victory for what LPFM was supposed to be about.***

I won’t say everything came out rosy. So many of the scarce resources of these groups went into winning the competition that it took them a long time to build, and their organizations were so exhausted by the Nastiness they were put through that their programming has not developed to where I would hope it would be by now. Some applicants feel like their attempt to join the FM band has caused way more harm than good to their organization. Some feel that by trying to bring their programming to the FM band, their organizations have become the target of malevolent harassment, and they regret the day they ever applied. As someone who worked to promote LPFM since 1997, to hear decent, hardworking people from bona fide grassroots organizations say that they regretted ever hearing about LPFM***: it ties my stomach up in knots. It is shameful.***

But with the current MX system, the FCC has succeeded in creating a system where without extensive consultation, groups with leadership that is co-operative and generous of spirit can prevail over “experts” and “consultants.” I don’t think the FCC needs to change a thing. I don’t see a need to limit co-operative behavior, for “mini-windows,” or anything that makes it any more complicated than it already is. The prize at the end of this long road is already small enough, if there are a few more hours to divide up at the end, let it go to the existing time share. There is no need to limit the number or the hours in a time share group. The FCC has appropriately concluded that the supposed harms for collusion are small, while the benefits of a system that promotes mature settlements is huge.

While there is a necessary evil of having some hurdles in place to prevent mass filers and speculators who clutter the band with spurious applications, the FCC has been wise to see that the process should reward the ability of applicant groups to co-operate.

**Collusion Under Every Rock**

This choice by the FCC had an enormous benefit to the diversity of applicants for the LPFM service. In a world where under every rock there is the possibility of “collusion,” a “game -theory” savvy organization would have to be secretive. The “smart” thing to do when they find out about a filing window would be to keep it a secret, even from their friends- because the less groups apply, the better your chances.

However, in the current system implemented by the FCC, the incentive is to let all your friends know, and hope that groups friendly to your group apply, because it will mean that when the time comes to aggregate points, there will be other organizations that you have an affinity with, with whom you can collaborate. There is absolutely nothing wrong with this. The ability to succeed under this regime is actually a pretty good proxy for the non-secretive, co-operative, friendly sorts of people who we’d like to see more of on the airwaves.

**No one who was trying to create a simple fair system that got the best radio to the public would ever have dreamed up our current system for resolving LPFM MXs.** It is, in fact, a little BatS\*\*\* ( Sorry, FCC!), and very frustrating. However, given the constraints that the FCC works under, it works remarkably well at getting the best possible outcome.

I will not attempt to systematically address everything in the rulemaking. However, a few points:

**Directors, Reflectors...Active Elements?**

The FCC has the problem of the plethora of sneaky behavior engaged in by those seeking valuable FM licenses, and has chosen to regulate this by monitoring the composition of boards of directors— in case someone would try to de facto control of a licensed organization by trading money for seats on a board of directors, creating a change in ownership.

The problem with this is that most organizations change gradually, but many fail to report them to the FCC as they happen. 8 years later, they might find themselves with a completely different board, but having never reported these gradual changes as they happened, it looks to the FCC like a change of ownership has occurred. The need of the FCC to keep current information about the board sounds reasonable, but in practice, 99% of the time it is just a lot of useless paperwork.

Furthermore, elected boards can change completely, immediately. But the organization has actually not changed at all. I would recommend that rather than focus on boards of directors to detect illegal transfers, the FCC should focus on other criteria, such as a total variance of mission from what is stated in organizational documents, or a complete variance from the stated educational purpose. On the relatively rare occasions where these issues are called into question, other forms of documentation of organizational continuity should prevail. Small private paper organizations with little or no public presence might be able to change ownership by changing their boards, but with most well established community organizations it will be apparent if an ownership change has taken place by a cursory look at their website and “the wayback machine.”

In the interest of minimizing paperwork for the FCC and all parties, LPFMs should not have a continual obligation to have their current board of directors registered with the FCC. Rather, if a question comes up in which the identity of the board is of consequence, the LPFM should be counseled in the application form to retain documentation that demonstrates the chain of custody of the board and the dates of changes, from the original board to the current board.

**Organizational Splits:**

It sometimes happens that an LPFM station is applied for by an established entity, such as a college or long standing non-profit organization. The station constructs and operates, but after a while the college changes leadership, the organization changes priorities, or runs into organizational trouble. The station itself is fine, but the parent organization needs to move on. Volunteers at the station want to continue, but the organization wants to be done with it. I recommend that there should be special provisions allowing a group to spin off and establish independence. Such a group should not have to wait several years to establish independent existence. A subcommittee that has been doing the daily business of running the station should be free to leave the parent organization and take the license with it, if all parties agree that is the best course of action. Even if this means turning over the license to an organization that has not been state registered for two years, or has a complete change in the board of directors, if this subgroup can demonstrate that they have been active in the operation of the station, the license should be able to be transferred to the sub-entity if all parties agree that this is for the best.

**Full Power:**

I am broadly in favor of the comments submitted by Prometheus, et al, suggesting that the NCE MX rules look closely at the relative success of the LPFM procedures. The priority given to 307 (b) made engineering gamesmanship more significant than the comparative procedures in the last window. While this was easier for staff to evaluate, since it is purely technical, it created an incentive for bigger, barely buildable applications. I don’t think it even served the state goal of fair distribution of service particularly well, since in drawing a map/antenna pattern to catch “unserved populations” on the peripheries of major metro areas, applicants built very large facilities that precluded local applicants. It would probably be best to come up with a new approach to implementation of 307(b), or de-prioritze it with respect to the comparative procedures.

**Site Assurance and Treetop Radio**

I am unconvinced about the public interest necessity of site assurance. When you are not in the world of professional tower leases from companies specializing in this business, most property owners don’t want a lot of hassle on something that is not even confirmed yet. I know what I would say if some random person came up and said that they may or may not want to put something on my roof, maybe 4 years from now, depending what some federal agency decides. Um, good luck with that! There are just too many outstanding questions for anything but the most speculative conversation, at the outset.

One of the most important factors in the success of LPFMs is keeping costs low. Because so many local antenna ordinances have bene shaped by the wealthy, ubiquitous mobile phone industry, the attempt of LPFMs to use “legit” sites is often completely cost prohibitive. So, LPFMS often use non-traditional sites, such as residences, trees, office building roofs, and other things that succeed because they are “below the regulatory concern” of local zoning. I commend the FCC in particular for their acceptance of trees as tower sites. Many antennas are located just a few meters above the roof of a building, so they do not have to trigger local zoning concerns. This is a very very good thing!

Since the FCC feels that site assurance is vital, I believe in the interest of keeping things simple for applicants, (and even simpler for prospective landlords) I would suggest that it be integrated into the instructions. The instructions should include a template of acceptable documentation, or perhaps a worksheet. A simple affidavit by the applicant, prepared at the time of application, should be acceptable, in a form such as:

On\_\_\_\_ <date>, I discussed the potential viability of mounting an antenna on the rooftop of \_\_\_\_<address>, owned by \_\_\_\_<company> . I spoke with \_\_\_\_(name of agent or owner), available at this contact information.\_\_\_\_\_ The owner was open to the possibility of location of an antenna on the property.

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Asking for much more than that is really an undue burden, since the property owner can not really know what they are getting into, given the various modifications that may be made during the application process, changes in technology and policy that may ensue in the years between the first discussion with the applicant and the actual construction.

Site assurance documentation should be retained by the applicant, but only made available upon request by the FCC. Owners of potential sites should not be made to endure harassment from competing applicants, who might choose to pressure them by undermining the relationship of the LPFM with with their tower site. Site assurance should not be needed for modifications or amendments, since many of these happen due to changing circumstances.

**For Whom the Bell Tolls:**

The FCC proposals for clarification of tolling and full 3 year construction permits are spot on.

***You’re doing great, FCC!***

Pete Tridish

Center for International Media Action

Petri <<< @ >>> imarad.io