

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Reexamination of the Comparative Standards)	MB Docket No. 19-3
and Procedures for Licensing)	
Noncommercial Educational Broadcast)	
and Low Power FM Stations)	

REPLY COMMENTS

These Comments are prepared by Clayton John Leander and submitted in the Rulemaking proceeding in MB Docket No. 19-3, Reexamination of the Comparative Standards and Procedures for Licensing NCE and LPFM Stations.

The remarks provided here focus on Low Power FM processing, and offered from the author's standpoint as an independent mediator facilitating resolution of several Mutually Exclusive Groups across the US, including the universal settlement of FCC MX Group #27 of Los Angeles CA, for which 32 applicants originally applied for one channel in 2013, and was not fully resolved until May 2016, with over 20 groups participating in the final settlement.

Of particular interest are much-needed refinements and flexibility to Timeshares, which although important to resolving the various MX Groups, is also a potential key important for the ongoing sustainability of the underlying goals of the LPFM service: to avail broadcast spectrum to underserved communities, and increase the diversity of voices.

At the same, the author believes this exercise would be somewhat futile without also addressing related rules as well as concurrent planning for an update to the technical rules for improving the LPFM service. These reply comments therefore include a request that the Commission extend the proceeding to consider comments on technical rules.

Comments on select items are as follows:

- Permit Time-Sharing Agreements Prior to Tentative Selectee Designations.

This author generally concurs with implementing the proposed changes, with the addition of clear provisions allowing for applicants to even propose timeshares at the time original applications are filed, or otherwise declare a willingness to accept entering into timeshares.

Since the Rules and application process itself already has some built-in expectation that LPFM permits could be subject to timeshare with other qualified applicants, a certain level of contention, speculation and gamesmanship would be considerably reduced at the outset if applicants were to openly co-file as a timeshare unit and declare their proposed partners in a transparent manner. In this way, a cross-section of legitimate community groups could better plan and work cooperatively from the start towards securing a frequency to benefit the community as a whole.

The Commission's proposal seeking to limit 'point-stacking' is an interesting one. While there could be limitations in how many applicants are allowed to aggregate points, some of the procedures used for resolving MX groups allowed for the voluntary inclusion of applicants to either switch timeshare groups, or allow an application with fewer points to enter into a timeshare group without further aggregation of points, could be refined. In fact, such practices should be rewarded for the willingness to collaborate, perhaps with a bonus point per qualified applicant in the group.

A Low Power FM license, at its core, is not merely a permit to build a station; the greater value is guaranteed availability of local airtime through which to serve local needs and interests with an array of program offerings. Whereas the traditional model of

commercial and full-power broadcasters is that one single, winner-takes-all applicant ends up with total control over content and which groups will or will not be given airtime, allowing for multiple timeshares will reduce abuses that come with total editorial control, while also ensuring a diversity of voices will retain some access to the public airwaves if only for the minimum 10 hours per week.

While this author advocates flexibility for timeshares, including to allow for a single bonus point for each applicant, indeed there should be some provisions in the event that an applicant fails to build, cancel their license, or exits to become a singleton application. One possible solution is to allow an otherwise-qualified applicant that was left out of a winning timeshare group or not granted a license to remain on a list, and reactive their application to claim the airtime vacated by the previous canceled applicant. In this way, airtime on the frequency remains in some circulation for community use.

E. Modify Restrictions on the Transfer and Assignment of LPFM

Authorizations. This commenter generally agrees with the changes proposed by the Commission to modify assignment or transfer of permits to allow for assignment or transfer of a permit after 18 months, with one modification referred earlier in these comments:

Where a winning selectee was granted a permit and fails to build and permit faces cancellation, priority consideration should be given to the next qualified applicant in the MX group that not awarded with an LPFM permit. A clear procedure allowing for such a provision will reduce opportunities for speculation and abuse. This commenter otherwise has no objection to the other proposed changes in these specific rules and procedures.

- On Revising of 73.850. In the Sixth Report and Order released November 2012, only one entity commented on 73.850.

This author proposes that in addition to comments and replies to the topics listed in the first installment of the 19-3 NPRM released February 2019, a successful proceeding would be enhanced by also giving consideration to 73.850, since is also timeshare-based.

While perhaps not fully fathomed at the time the Commission originally underscored the potential of this rule for consideration, in retrospect and in light of the various MX settlements, it appears this rule alone, with improvement, could provide considerable flexibility for timeshares, increase diversity of voices, and even improve sustainability. For example, if the three-year period is relaxed, new voluntary timeshares could be proposed at any time.

In one case, an applicant on an adjacent channel proposed to timeshare, rather than compete, with a neighboring LPFM. If also allowed to co-locate, the move would have allowed and increase operational efficiency by having the two willing and compatible groups work together in the public interest.

In turn, had the timeshare been allowed, the vacated spectrum would have been made available to another group that was losing its own tower site.

This author respectfully seeks inclusion of Rule 73.850 into the proceeding.

- On Secondary Grants. This commenter concurs with the comments of Discount Legal concerning Secondary Grants. *“In some cases it wastes an opportunity to expand new service to the public, by identifying possible secondary selectees in the same group.”*

It was noted that in LPFM Settlement Window #1 spanning from July 2014 - October 2014, non-tentative selectees were not formally dismissed until near the last days of the Window #1. Some of those applicants that attempted to recover were denied and summarily dismissed as “secondary” grants, and not allowed to reinstate.

However by Window #3, non-tentative selectees were dismissed much sooner, some by at least 30 days before close of the window, allowing for the groups to recover, find other locations and channels, and reinstate their applications.

Such changes in processing, although helped greatly in reducing frustration and dooming attempts at reinstating applications against the 'secondary grant' endgame, still does not change the problem with the policy itself.

Based on the simplicity of LPFM allocations and technical rules, and noting the speed in which LPFM applications were processed following the 2013 window, modifying the policy and procedure for Low Power FM application proposals would apparently be viable and manageable. This commenter agrees with and restates the observation offered by Discount Legal: “[E]very effort should be made to maximize new service from the totality of applications in each window”.

- On Enhancements to the LPFM Technical Rules.

Given the increased scarcity of LPFM spectrum available for local communities use in light of the proliferation and encroachment imposed by new translators in nearly all the top 150 Arbitron markets, LPFMs are at a distinct disadvantage under the current rules. Pathways for introducing flexibilities and adjustments in power, HAAT, height, use of directional antennas are allowable under the Local Community Radio Act, and will help ensure the viability of the LPFM service in the future.

It is respectfully requested of the Commission to expand this proceeding and allow for consideration of technical improvements to accompany comments for improvements of LPFM Rules.

Conclusion.

The release of Docket 19-3 is evidence that the LPFM window was also a learning experience for the Commission and Staff, with room for timely improvements.

This commenter appreciates the Commission's willingness to revisit and refine the rules towards improvement of the LPFM Service.

Although the aforementioned comments were focused on LPFM, should any of the perspectives offered here be used for NCE, this commenter welcomes using and adapting for such purposes.

Respectfully Submitted,

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