

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

In the Matter of:)	
Amendment of Parts 73 and 74 to)	
further implement the Local)	RM-11810
Community Radio Act of 2010 and)	
make other improvements to the)	
Low Power Radio Service.)	

**COMMENTS OF THE
LOW POWER FM ADVOCACY GROUP (LPFM-AG)**

Herein, please accept the comments of the LPFM Advocacy Group (LPFM-AG) regarding the superb petition filed by REC Networks (REC). Important challenges face LPFM in an era full of new FM spectrum users and new FM noise. More noise is coming if the proposed (and somewhat experimental) class C-4 is granted. REC speaks about the importance of fair and equal spacing issues in front of each LPFM operator. Clearly, the FM band is soon to be wrought with short spaces and, not unlike the AM band, could become doomed and in need of it's own revitalization if we are not careful now, in the earliest days.

In this petition, REC stands up for those potentially hit hardest with FM service loss, LPFM, the non-commercial service with the smallest, most limited signal coverage on the FM dial and we salute them for the first effort.

I. Discussion

However, while we agree with the issues raised by REC in the discussion of what LPFMs face today, we disagree with the added regulations proposed, especially the technical limits that differ from the current FM translator rules and proposed additional rules regarding LPFM station transfers.

LPFMs should have the same technical rules as FM translators and the same content & license assignment rules as higher powered NCE-FM stations. There is no reason for the technical rules for LPFM & FM translators to be different. There is no reason for the station assignment procedures for LPFM and NCE-FM to be different. Today, AMs that broadcast on FM translators and LPFM stations are just lower powered versions of the commercial FM &

NCE-FM service.

II. Easy & Smart Solution: Copy & Paste Existing FM Translator & NCE-FM Rules

Today's rules for reduced station power/antenna height and for the assignment of stations without fair consideration is killing the entire LPFM service, local dial position by local dial position. We plea for relief with our support for part of this petition and with the alternate methods we put before you.

The best solution is just a "copy & paste" of the FM translator technical rules to replace the current LPFM rules; followed by a copy & paste of the NCE-FM rules regarding station qualifications and station assignments. Paste both over the related rules for LPFM. If the idea is to keep the big broadcasters out of LPFM, simply add a condition that "no licensee of another broadcast property can be licensed for an LPFM." The excess regulations are killing LPFM, as a service, and the additional regulations REC proposes can only speed up the demise. Move the excess regulation out of the way and all problems are solved.

Local community radio dial positions are being lost during the FM spectrum rush.

Total LPFM CPs granted in both 2001 & 2013 windows	3,307
Cancelled or expired construction permits	833
Cancelled licenses	214
LPFM Licenses returned to the FCC	1,047

Since 2001, the FCC has had to delete the licenses/CPs of about a third of all fully granted LPFM authorizations. That means 1,047 local communities that would have been served by an LPFM were not. However, if LPFM stations had the same assignment rules as their higher power cousin, NCE-FM, odds are that many of those lost LPFM stations would still be on the air today.

Public Perception

While, at the FCC, we have "proper service names" for FM services, the public perception is a bit more basic, with perceived power and, maybe whether the station is "commercial" or not.

Formal Service at FCC	General Public Perception of Service
Commercial FM	<i>Commercial FM</i>
NCE-FM	<i>Non-commercial FM</i>
FM Translator	<i>Commercial Low Power FM</i>
LPFM	<i>Non-commercial Low Power FM</i>

Consider that, much of the public has never heard of an “NCE-FM station” or an “FM translator.”

III. Public Interest: Order in FM Rules Structure Regardless of Power

Despite many decades of proven *equal technical structure* for full power FM, there are major differences in the commercial and non-commercial *technical structure* for the lower powered FM services. The current rules make commercial low power radio a vastly superior service to non-commercial low power FM radio. REC’s petition moves in the direction of parity; however, stops short of true equality.

We propose to make the, now mature, LPFM service into a service that can finally stand on the “equal secondary status” platform to FM translators. It is the LCRA that has mandated it should be so; **equal** in the pursuit of spectrum opportunity. Yet, there is no way to make that so without ensuring equal facilities, especially today.

Full Power FM Radio	Low Power FM Radio
Full-power commercial FM and non-commercial NCE-FM have similar power class structure and technical service. Neither is bound by rules to be less powerful than the other. Both services include class C 100,000 watt stations. Equal.	Low-power commercial FM translators have much more power, antenna height and sometimes 10 times the coverage area as low-power non-commercial LPFM stations. FM translators can be licensed for up to 250 watts with extremely higher antenna height. However, LPFM can only be licensed for a maximum of the equivalent of 100 watts ERP at 100 feet antenna height. Non-commercial LPFM is bound <i>by rules</i> to have a much smaller coverage area than commercial low power FM translators. Unequal.
Both full-power commercial FM and NCE-FM can sell their broadcast facilities for their earned public service value at free market rate. Equal.	FM translators can sell their broadcast facilities for free market rate. LPFM stations are forced to either transfer the license for the depreciated value of the equipment or vacate the channel entirely and send their authorization back to the FCC for deletion (which most do.) Unequal.
Full-power commercial stations and NCE-FM can both use affordable FM transmitters that are clean and exceed technical rules when broadcasting. Equal.	FM translators can use affordable FM transmitters that are clean and exceed technical rules when broadcasting. However, all LPFM stations must use much more expensive transmitters certified for use for LPFM. Due to availability, these usually must be bought <i>brand new</i> . Unequal.

“Equals in secondary status,” yet most lower powered FM facilities rules are **unequal**.

IV. Technical Rules

Full-power commercial radio and NCE-FM can each equally have similar power class structure and technical service to each other. But, LPFM has very unequal spacing rules and technical service areas when compared to FM translators. The LPFM service area, with only a maximum facility equivalent of 100 watts at 100 feet, is *much smaller* than the contours of most FM translators with 250 watts and much higher antenna height. In this petition, REC proposes a new facility standard for LPFM, 250 watts maximum power and a continued antenna height limit of 100 feet. While we agree with the proposed power of 250 watts, we do not see why LPFM should continue to be a “lesser” technical service due to an inferior antenna height. We feel that both services could benefit from the same rules and the rules proposed in RM-11810 are not equal technical rules and, as such, do not hold LPFM and FM translators to the spirit for equal secondary status. Ultimately, this will still destroy the LPFM service due to future interference issues.

V. Assignments

Full power commercial FM and NCE-FM can each equally sell their broadcast facilities for their earned public service value at free market rate enabling them the ability to recoup investment in public goodwill by building stations of value. Low power commercial FM translators can also sell their stations for fair market value; perhaps after a holding period. However, non-commercial LPFM licensees have a needless regulation that forces them to either transfer the license, for free (and depreciated value of equipment), to any qualified local group or ***vacate the channel entirely and send their authorization (and local community’s non-commercial dial position) back to the FCC for deletion***. Vacated channels are then available to anyone, even a commercial broadcaster, to move into, likely eliminating an *existing* non-commercial low power authorization in weighted favor of a commercial or full-power radio service. However, those vacated channels are only available as LPFM licenses when applications are filed during an LPFM window, and there have only been two (2) in 17 years.

VI. Certified for LPFM Transmitters

Full power stations and NCE-FM can each equally use affordable high-quality FM transmitters when broadcasting. But, the rules are different when the power level is lower. Commercial FM translators can use affordable transmitters that meet technical specs, yet, non-commercial LPFM is forced to pay much more for a brand new, certified LPFM transmitter. Still, after nearly two decades of service, there is no proof that LPFM licensees are any more of a risk to the FM spectrum than commercial or full-power licensees. Further, many LPFMs, like any station operators, often share the same local contact engineers with full-power services. It’s proper to

assume the technical judgement is the same, regardless of station power level.

VII. Rules Exceptions Should Exist for LPFM As They Do for FM Translators

The FCC has allowed FM translators to become the *de facto primary station* for AM stations and HD2 broadcasters. It is well understood that, for either of those services to reach their local audiences, without nearly impossible obstacles, they often *must* broadcast on an FM translator. Their “primary” AM or HD2 station is acting more like an STL transmitter than a primary station. A terrestrial STL (studio to transmitter) link is often a transmitter itself. Like AM radio, nobody is typically listening to those receivers either. Suddenly, FM translators are primary stations that have the same commercial content rules as their STL transmitters. With the recent allowance that daytime AM stations can originate programming and broadcast commercials during the night time hours, the longstanding fundraising rule for FM translators is overlooked.

Section 74.1231 (g) - “**Fundraising by FM translators.** Translators may interrupt the rebroadcast programming for up to 30 seconds each hour to solicit and acknowledge funds used to maintain the translator station. This interval may be broken up into smaller segments, e.g. two 15 second segments.”

LPFM stations are in dire need of spectrum and service protection. Strict adherence to every rule that exists, including adding of more regulation, as REC proposes in this petition, does not keep LPFM equal to FM translator stations. Public interest and the LCRA demands that we do. Remember, the only difference in LPFMs and FM translators, **to the public**, is that one is commercial and one is non-commercial. Commercial service should not outweigh non-commercial service in technical rules. It should reflect the higher powered services.

VIII. Direct Discussion of Articles in REC Petition RM-11810

a- Section 58. In this section, REC states that because the Commission once held, during the Clinton era, the belief that the sale of an LPFM license was fundamentally inconsistent with the Commission’s desire to promote local, community based use and ownership of LPFM stations, that this belief and action should still exist. We disagree. This is an outdated rule that was made at a time when no one could foresee its bad effects. Those effects have been disastrous and it’s those rules, in particular, that are erasing community based LPFMs from the airwaves. Unlike the assumption, operators of LPFMs are *not* selling their licenses for the depreciated value of the equipment. Instead, they are keeping the equipment and *returning the license* to the Commission for deletion. When operators who have spent a large amount of money to build and operate LPFM stations, the licensee usually doesn’t “give it away.” Instead, the license gets returned. The LPFM goes away and most likely, a translator owned by a commercial operator; even if they already own 5 or more local stations, fills the spectrum space with a new commercial station. The town loses a non-commercial community station that would likely be on

the air if it were allowed the same assignment rules as any other station.

Further, operators are usually further driven to create better radio stations when they are inspired by a financial return on their community investment. Better radio stations have traditionally proven to be always in the public interest. We propose that the Commission deny this part of REC's proposal and consider allowing LPFMs the exact same assignment rules as NCE-FM.

b- Section 59. REC states, *"the current rules are burdensome because they do not permit an LPFM station to be saved and does not permit another organization to continue a service if the previous organization must abandon it in the first three years. The ownership rules partially protect the service from speculation and other bad actors. With that, we are asking the Commission to amend §73.865 to reflect the reality of today."* We agree that the rules need amending. However, the words "keep our guard up" implies that those non-profit community groups, who are qualified to operate LPFM stations, have not already jumped high enough hurdles to establish their non-profit, educational status. To, first, consider them "bad actors" or prospectors is beyond reason. These groups are not only regulated by the FCC. Many state and local government agencies have put hurdles before them before they filed for an LPFM license. The Commission should not create redundant regulations that hinder the service further, as REC proposes. In order to "promote local, non-profit community radio," *the stations must first be on the air.* These rule make "saving LPFM" much more difficult. Spectrum space is too limited to be sending fully authorized station licenses back when they could have been saved by another local group. Further, if a non-profit LPFM licensed group is allowed to restore the financial investment and good-will it has built with the community, why is that a bad thing? It's a community non-profit, not an investment bank and any financial gain is the result of proper public service..

REC states that the rules must evolve for the now-mature LPFM service. We agree. We would like them to evolve with a reflection of the real world; ultimately benefiting the public, the Commission and struggling LPFM licensees. The rules should be the result of many years of gained knowledge. We have that now. LPFM dial positions are being replaced by commercial operators, the same speculators that REC seeks to resist.

c. Section 60 & 61. REC supports a full ban on speculation for LPFM license assignments. While the idea of maintaining a high standard of operation for LPFM may seem ideal, it, instead, causes many license holders to not assign their licenses, at any time. Handing over someone's hard work and construction to someone new, for no consideration, is never a possibility for most licensees. Further, it puts the LPFM licensee in the unenviable, and potentially legally exposed, position of "license grantor," where the licensee can determine, by any process, who will operate a valuable public service. Most licensees simply choose to send their license back to the Commission. There is significant legal exposure to the licensee when awarding a free LPFM license to one group; perhaps arbitrarily over another. The smart thing, due to poorly structure LPFM assignment procedure, is to send the license back to the FCC for deletion.

Sadly, that probably will end all community radio efforts for the town it once served. The rules for LPFM assignments should, instead, change to exactly those of the NCE-FM service. Best case would be that each station can exist well into the future as financially supported broadcasters. Worst case scenario is that many of the nation's smallest non-profit groups will receive large donations to transfer their license; when it might otherwise be removed from the local FM dial.

d. Section 62: REC states, *"In order to further assure that the rules are not circumvented by "weaker" organizations by using "stronger" organizations to get them a license, we are proposing for stations licensed for less than 4 years, that if an original construction permit was awarded based on the process handling of mutually exclusive applications, the assignee organization must meet or exceed the same point value as the assignor."*

We disagree that there is a need to stop "smaller" organizations from enlisting the aid of "stronger" organizations. Many larger organizations are doing great work locally, through satellite offices or by supporting local groups.

The current rules govern way too much and step far into non-profit scrutiny and political position taking. Thankfully, each licensee has already been scrutinized by many other government agencies before applying with the FCC. If a local group applies and is qualified, the location of its headquarters is irrelevant. Often, the groups hurt most by this are religious based; which is a clear bias that the rules should not make. These groups have national footprints that, often, supports local efforts. Very often, the most community good is done by groups with a national headquarters. LPFM should be able to support those groups as well as local, often less funded, organizations.

Regulations for this area in the LPFM rules serve no purpose and only "gum up" the system with extra, unnecessary regulations & obstacles. The core of the assignment rules should be stricken all-together and replaced with those of the non-commercial NCE-FM.

XI. Summary Discussion

We should look to the successful operation, assignment and technical rules of our higher powered FM dial-mates when considering the best method to manage the spectrum for low power commercial FM translators and non-commercial LPFM. There are many decades of successful, non-interference related research about stations with *much more* interference capability than the lower powered tier. Further, instead of adding regulation as REC suggests to the assignment of LPFM licenses, we propose that the assignment rules be the exact same as the NCE-FM service. The only result of the current license assignment rule is that station licenses are sent back to the commission, never to be heard from again. FM translators are allowed significantly more broadcast service area and operating power, the ability to squeeze their signal into spectrum spaces that LPFM cannot and broadcasting rules that make building out a CP much more affordable. This should be fixed by simply applying all rules regarding

operation of a translator (power, height, transmitter certification, spacing rules) as a replacement for all related LPFM rules. The public is obviously best served when the broadcast limitations are equal for *both* commercial and non-commercial broadcasters, regardless of class or broadcast level. Commercial FM and NCE-FM seem to protect each other well. FM translators protect each other well. But, LPFM, equal in secondary classification according to the LCRA with FM translators, is disadvantaged, underpowered and more expensive to build for no logical reason.

Today's technical rules, in the face of mounting future technical tragedies, only promise that commercial low power FM will eventually swallow up much of the finite low power non-commercial radio service spectrum... and, potentially, existing stations. The LPFM service is mature and now needs to be given the *equal ability* to exist on the FM dial as FM translators. REC Networks had enough foresight to address this need now and we thank them.

X. Conclusion

For the reasons set forth above, LPFM-AG respectfully requests that the Commission move forward with technical rules where LPFM and FM translators are equal; and with assignment rules where LPFM and NCE-FM are equal. Doing so will enable commercial and non-commercial FM radio to reflect the successful procedures already in practice at the higher power stations.

Respectfully submitted,

LPFM-AG

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A handwritten signature in dark ink, appearing to read 'Dave Solomon', written over a horizontal line.

Dave Solomon, Executive Director

Record
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