

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

In the Matter of:

Amendment of Part 73 of the
Commission's Rules to Provide for a New
FM Radio Broadcast Class C4 and to
Modify the Requirements for Designating
Short-Spaced Assignments, Order and
Notice of Proposed Rule Making

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MB Docket 18-184

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

Herein, please accept the comments of the LPFM Advocacy Group (LPFM-AG) regarding Docket 18-184. LPFM-AG represents the interests of the licensees of LPFM stations.

1- RM-11810 Priority Over This Proceeding

In accordance with section 5 of the Local Community Radio Act (LCRA) requiring FM translators and LPFM to be “*equal in status*,” LPFM-AG, respectfully, requests that the new and massive interference issues and, as such, public interest need to repair the LPFM service, as defined in the RM-11810 petition for rulemaking *and related comments*, are addressed before this proceeding goes forth. Due to recent dramatic changes in FM spectrum due to AM Revitalization (AMR), LPFM radio stations, in the nation’s lowest power FM service, have suffered massive numbers of fringe and service signal losses and reduced transmitter site moving abilities should changes in their local spectrum force facilities to be displaced from

current authorization. There has already been a tremendous amount of fringe signal loss due to recent FM translator *moves, new stations and station modifications* as a result of AMR. Now comes this proposal, Docket 18-184, allowing even more new interference to the nation's lowest powered, most minimally funded, FM service; potentially enabling hundreds of Class A stations to double their power to 12,000 watts. The Commission points out its statutory mandate to provide a nationwide "fair, efficient, and equitable distribution of radio service." We, respectfully, request the Commission to do this now, by delaying progression in *this proceeding* in order to review and act upon the RM-11810 petition for rulemaking and the comments and reply comments in order to level the tables for LPFM with FM translators, *before adding new interference from a new class C4 service*. LPFM stations will be nearly destroyed by a new class C4 under current LPFM rules. Those LPFM stations that continue to exist will experience even *more interference* and secondary status burdens to move and/or adjust their broadcast facilities to protect primary stations that have always been expected to be protected as class A, but as a class C4 will require even more protection. This as, due to AMR, the local spectrum in most populated cities is full of new secondary service obstacles from FM translators, that, despite having equal status in the LCRA, have already adversely affected LPFM station signals due to rules favoritism. LPFM has experienced *no improvement* to its maximum 100 watt facilities since the service was created almost two decades ago. Today, those LPFM facilities are less effective than ever. In contrast, FM translators have been able to move up to 250 miles, start new stations without a fair major change window and now even originate programming at night. This is unfair treatment, an occurrence that can only happen between two parties with *unequal status*.

2- Ignored Calls for Relief

Alarm bells sounded three years ago, well before AMR or Docket 18-184, in both RM-11753 and RM-11749 petitions for rulemaking that there was a *dire need* for LPFM signal improvement against the spectrum as it existed then. Today, the FM spectrum, in every corner of the country, has become a much harsher environment for an LPFM station. Both RM-11753 and RM-11749 were heavily commented on by the public, LPFM licensees (*many also made statements in RM-11753*) and nearly every state broadcasting group, yet there has never been a known response from the Commission. LPFM has been, seemingly, ignored while corporate commercial broadcasters who own FM translator stations have been shown incredible favor. FM translators have been allowed to twist the rules to their advantage while, despite two very active petitions for rulemaking in 2015, with interest so great it was reported on by nearly every radio industry media, the plight of LPFM and their small, nonprofit licensees have appeared to be completely ignored. We, respectfully, request the Commission “right” this wrong now, before more destruction to the LPFM service occurs due to new C4 stations. Please prepare the LPFM service for C4 by enabling the facilities outlined in RM-11810 with the added suggestion that antenna height is adjusted to 100 meters. This would not only allow 2018 LPFM signal equality with 2001 LPFM coverage maps, it will also enable stations a lifeline to be saved as they will have more options to move the station if faced with primary station spectrum displacement than current rules allow. Many more LPFM stations will be able to survive a new C4 service if they are equally protected, with the same *equal in status* rights specifically defined in the LCRA, through equal regulation of LPFM as currently afforded to the FM translator service. There is no mandate from Congress to destroy the LPFM service and, yet, only through regulation, *that is exactly what is happening*.

3- LPFM Equality With Itself

The maximum LPFM facility today, 100 watts at 30 meters of antenna height, is not the same signal as it was in 2001. Due to interference, LPFM stations with this power in 2018 broadcast to a much smaller coverage area than they did when the service was created. The LPFM coverage area has been further, and most significantly, reduced by new FM translator allowances created *after the 2010 establishment of the LCRA*, where it was specifically defined in section 5 that LPFM and FM translators must be *equal in status*. Benefits and changes afforded only for FM translators since then appears to be an unintentional disregard for that dictate. LPFM is more unequal in status with FM translators that it has ever been and, due to further advantages awarded FM translator licensees during AMR, the divide is growing rapidly. The LPFM service now has a question of *survival* in this newly crowded spectrum and a new C4 service would, further, exacerbate the problem; an issue FM translator service rules allowances caused, yet, the FM translator service is not facing with the same degree of risk certainty. Due to much larger protected signals and higher numbers of potential new transmitter sites in which to move, FM translators will find it *much easier* to adjust their transmitter sites during an implementation of a new Class C4 service. Their ability to move, should they need to, is greatly eased and much more affordable due to a much larger pool of available transmitter sites and greater flexibility in the FM translator spacing rules.

As written in the LCRA, FM translators and LPFM stations are required to be “*equal in status*.” However, for the past eighteen years, this has not been the case. According to Webster’s dictionary, “status” is a reflection of rank, benefits and prestige. Further, to have equal *status*, you must first be on an *equal foundation* with an *equal right to exist*. Only after an equal right to exist is achieved can “*equal status*” be assigned. LPFM does not have the

fundamental benefit of *equal status*, as the core of all benefits, *equal right to exist* is not true. RM-11810, its related comments and reply comments merit long contemplation and immediate remedy before allowing more interference toward the LPFM service, while administration of more *benefits, authority and status* is awarded to FM translator licensees that makes their trek through a C4 implementation, much easier, as though the FM translator service was a service with a higher status than the LPFM service. As such, and due to *recent* higher-status advantage opportunities for the FM translator secondary service that has created the current limited spectrum situation, LPFM station licensees ask that parity between the status of LPFM and FM translators is accomplished before adding even more interference and facilities adjustments for LPFM stations to suffer alone. There was never a mandate from Congress to eliminate the LPFM service, however, repeated advantageous alterations of the FM translator rules, and now the new C4 rules proposed in this proceeding, are a *perfect storm* for just that. The LCRA recognizes the value that the LPFM service brings it's listeners and doesn't make allowances to enable another secondary service to have advantages. However, new and radically moved FM translators have assured their future over that of LPFM, unfairly, *with the use of unequal rights*, and have filled nearly all of the available frequencies in the spectrum; lowering a pre-existing ability to find adequate transmitter sites for LPFM stations should a primary station related spectrum displacement situation occur, diminishing *the equal right to exist* that LPFM stations *are supposed to have* with equal secondary stations, especially FM translators. LPFM's reduction in existence rights is parallel to an *elevation of existence rights* for FM translators; a clear violation of section 5 of the LCRA. Congress defines LPFM, FM booster and FM translator stations as "*equal in status*." In AM Revitalization (AMR), FM translator rules were adjusted to allow station moves of up to 250 miles, without a major change window, into areas that host transmitter sites that would have been a savior for displaced LPFM

stations. AMR has created, in many cases, LPFM stations to lose their backup transmitter site options. Licensees that had future options to save their LPFM station in the event of primary station spectrum displacement of their facilities of roughly a dozen potential backup transmitter sites, now have options of nearly none. Even with the small protected contour of LPFM and the limiting moving options to save the license that existed before AMR, LPFM's *equal* cousin, the FM translator service, was allowed ignore the plight of LPFM, to minimize LPFM station survival options all while, at the same time, allowed to adversely affect LPFM fringe signals, in order to enjoy the new AMR moving and new station rights that the FM translator service was granted and the LPFM service was not. Afterward, no remedy has been afforded the LPFM service licensees, the smallest American nonprofits, in such a new and hostile spectrum environment that was created, *and can be fixed*, by new regulation. The table seems to be set, right before this C4 proceeding, to unfairly enable FM translators to survive better than even a heritage LPFM station, regardless of public service or interest. Many of the stations that will not survive have been in service to their listeners for over a decade, yet, they have a lesser ability to survive the implementation of a new C4 service than a brand new commercial translator. This is an injustice to the long-time listeners of LPFM stations, millions of them. It will destroy many of the nation's smallest nonprofits who operate LPFM stations. This is unfair, lower status treatment of the LPFM service in exchange for greatly favored treatment for the FM translator service. With the exception of two major filing windows, and despite popular petitions for rulemaking, the LPFM service has had no review of its FM spectrum "status" as compared to FM translators from the Commission. We, respectfully, request that the Commission consider this inequality before more damage is done to the important LPFM service. Please review and consider RM-11810, *associated comments and reply comments* before going forward with Docket 18-184; a proceeding with proposals that guarantee further service-wide destruction to the

LPFM service; while apparently pre-protecting FM translators with advantageous facilities rules; in essence, creating an environment solely through regulation that ensures FM translator survival while administratively allowing the sacrifice of the entire LPFM service. There is a higher level of signal protection for FM translators as they face new C4 stations and leaves America's smallest nonprofit organizations to pay the bill. This is, obviously, *not* indicative of an *equal in status* relationship between LPFM and FM translators. The situation will be further made apparent by the addition of the new C4 stations, deepening the divide in benefits, existence opportunity and status between LPFM stations and FM translators. We, respectfully, plea for remedy of this divide *before* implementing a new, further-damaging C4 service.

4- Existing Secondary Service Faces A Unique, Unplanned Interference Situation

Millions of Americans listen to secondary status radio, regardless of its vulnerable secondary spectrum position in regards to primary classes of stations, classes A, B, C3, C2, C1, C0 & C. What's proposed in this proceeding, Docket 18-184, is a new class of protected primary station, an eighth class, that, from day one, will displace many existing, heritage secondary stations. This should merit long contemplation. Thought should be given, not only to the domino effect of secondary station destruction caused by every class C4 station that was upgraded from class A, but also to the added interference that all classes of stations, especially secondary, will receive. A new class C4 could destroy much of the LPFM service and even minimize some of the work done in AMR. No one is questioning that secondary stations should remain secondary, however, if public interest is considered, it should be said that millions of Americans make it a habit to listen to a secondary translator or LPFM and their interests *should have weight* in this proceeding, regardless. C4 will be a brand new class of primary FM service and, even if sufficient public interest exists, which we doubt, in creating such a service, it still

should not be at the expense of existing secondary station listeners' interests. C4 should be created to *do no harm*, even to secondary stations.

Many LPFM licensees have learned how to plan like a secondary service and have had to be strategic. They have spent large amounts of time and money performing engineering calculations to predict all potential spectrum changes; planning their own potential for station survival accordingly. AMR forced them to throw all of that research out the window and to solve an even bigger problem; the reduced amount of available spectrum. In the AMR process, LPFM stations and their listeners were unfairly forced to accept new secondary station crowding and interference from other *equal in status* secondary FM translator stations. This has damaged the nonprofit operated LPFM licensee's ability to fundraise and to exist. Naturally assumed, due to the LPFM dial damage, was the idea that, *as LPFM is equal in status with FM translators*, repairs would come to the service before any more damage was done. The possibility of a new C4 service was not a consideration. The ideas raised in Docket 18-184 now requires even faster repair to a service that, despite its secondary status, has become an important part of local community broadcasting for millions of listeners. Through the years, LPFM stations have built a relationship with their audiences, each who trusts them to be as solid as a utility. LPFM stations each broadcast to many thousands of Americans, who collectively make up a mass public of millions, and should have an important voice, despite radio station *status*, in this discussion. They place great value on their local radio stations. It is important to be careful that the effect of an upgraded class A to C4 does not displace any secondary stations in the process, and, if it does, the upgrading station should be responsible for all financial and situational remedy to the displaced licensee, and thus the audience, of the existing, perhaps heritage, secondary class station regarding all costs involved in the new construction, facilities

change, ancillary items (promotion, van repainting, logo changes, etc.) or fair rate for full displacement caused by the upgrading station. In this situation, public interest for the creation of a *new* C4 service does not outweigh the public interest assurances of dial stability for millions of listeners of *existing* secondary stations that *their* station, even though secondary, will continue to exist. Further, there was a clear and predictable FM dial “landscape” for LPFM licensees before they invested into their LPFMs. No changes as dramatic as AMR had been undertaken and could not be predicted. Nonprofit organizations who invested in an LPFM had at predictable potential for survival. In AMR, that potential was, inadvertently, reduced dramatically for many of the licensees of LPFM stations. Plans and preparations that had been made in the case of LPFM spectrum displacement are out the window. Nonprofit budgets have been developed around this estimated potential for the last 17 years. Suddenly, the spectrum has been made completely different and *less available for LPFM*, in favor of FM translators, just before this proceeding, Docket 18-184. There has been no study to show that public interest favors a new class C4 over keeping local choice on the FM dial. Replacing a popular local community LPFM with the fringe signal of a distant primary station does not seem, on the surface, to be in the public interest. As such, if this proceeding is to go forward, all upgrading C4 stations should be tasked with all physical costs, manpower and reasonable promotional budget for moving a displaced secondary service station, especially affected nonprofit LPFMs. This would still mean that the primary station would remain primary, however, it is fair that the licensee that caused the displacement, obviously intending on an upgrade budget, should factor in the full expense of the upgrade, including that imposed on an unoffending secondary station.

5- Needless Destruction of Small Nonprofits

The broadcast outreach of America's smallest nonprofits is LPFM. Since the late 1990's, Congress and the Commission have always recognized the value of LPFM. Many small nonprofit groups use their LPFM licenses to provide localized community news, weather, programming and service to a trusting local audience. Though the FM band is known as "not static," unexpected recent spectrum changes due to new stations and 250 mile moves of existing translators involved in AM Revitalization (AMR), have caused many LPFM stations to be so adversely affected that they've lost huge amounts of signal, audience and critical funding. There's been a cost in AMR and its been paid by America's most local, community based nonprofit organizations. We're at a point now, where another cost is being suggested for those same damaged licensees. The cost of a C4 service will be the final nail in the coffin for many LPFM stations; while their former audiences gain nothing but a new fringe signal of the encroaching C4. Truly, with such minimal gain to the upgrading C4 and the loss of an important secondary service that many local listeners need, how can there be any public service gain in allowing primary station encroachment with a new class A upgrade to C4? The upgrading station's gains are very minimal and the local nonprofit losses could be the entire broadcast facility. Further, to avoid the chance that upgrading stations might *strategically upgrade* in order to harm or purposely displace a secondary station due to spectrum gamesmanship, all encroaching new primary stations should have to compensate the secondary station licensee for all secondary signal damages. There is no need to damage local nonprofits to advance profit potential. Primary stations should be required to pay the nonprofit to reestablish a new site that fits their existing budget. They should be responsible for extra monthly costs, paying for the site move, and a fair compensation for things like logo changes, van repainting, office sign changes, website rebranding and all other changes due to a site change. While many

upscale licensees *will already* do this, many broadcasters will not and will leave unsuspecting LPFMs in waters beyond their financial preparation. If C4 is to become a reality, in order to advance the agenda while doing no harm, the costs in channel change, site adjustments or full and fair cost of the entire station if fully displaced, should be reimbursed. The C4 service is nothing that secondary stations should have been prepared for and spells real doom for many LPFM stations. We feel it has limited public service value and could likely destroy many radio stations that Americans, uninformed as to the station's secondary status, enjoy and listen to every day. We should find ways for the service, if it is created, *to do no harm*.

6- LPFM is Unfairly Unprepared for C4

The launch of the C4 service seems like "punch two" in a "one - two punch" for LPFM. For the licensees of FM translators, it seems they've had a chance to improve their stations to get ready for it, while LPFM has not. While section 5 of the Local Community Radio Act (LCRA) states clearly that LPFM and FM translators will be "equal in status," it seems that existing FM translator rules were bent to make wild changes in spectrum advantageous to their station survival. LPFM stations, stricken to a meager 100 watts at 30 meters of antenna elevation, have had their signals nearly destroyed in order to enable this. LPFM, the lowest powered FM service operated by America's smallest nonprofits has always broadcast with the assumption that the LCRA would be followed *as written*; obviously enabling LPFM the same right to survive, or, "*status*," as FM translators, encouraging nonprofit LPFM licensees to invest into creating an important public service. Without a fundamental right to exist, one cannot have an "equal status," or "*status*" at all. Major changes allowing new FM translator licensees to start new stations without a window and for existing FM translator stations to move 250 miles without a major change window, to commence night-time program origination and fundraising that

exceeds 30 seconds an hour, 250 watts of power at extreme antenna height, some well over 300 meters, and easier contour rules for spacing have certainly given FM translators an *unequal* advantage in *status and survival* over LPFM in the face of a new class C4. FM translators have a huge service area in which to move should they be faced with a possibility for displacement, LPFM stations do not. As the rules are currently written, LPFM is sure to be *regulatorily harmed* in exchange for the advancement of an equal secondary service, FM translators. To be compliant with the LCRA, LPFM should be given an *equal right* to prepare for the upgrade of so many new, displacing primary class A stations. Remedies are clearly defined in RM-11810 and the comments and reply comments. Before there is an increase in interference, LPFM should have a thorough *rules revitalization* of its own that will enable it to survive, as Congress and the American people intended. Clearly, there is no congressional call for the LPFM service to keep facing continued station license losses while the FM translator service is booming with license issuances of epic proportions. To the public, this is equivalent of favoring commercial low powered FM radio over noncommercial low powered FM radio. LPFM license after LPFM license is sent back to the Commission while FM translator new station numbers soar; coincidentally before the 18-184 proceeding and its assurances of further LPFM service destruction. We, respectfully, ask the Commission to check the *status levels* between LPFM and translators before moving forward with 18-184. We beg that LPFM is as solidly prepared for C4 as the Commission has prepared the FM translator service, with equal status protection and equal facilities.

7- Value of LPFM

Every LPFM spends twice the amount of money to purchase a certified transmitter as an FM translator. They must, it's a Commission rule applicable only to LPFM. They must also have EAS decoders installed, *of which there are none*, so they must pay full power station price for an encoder/decoder. Building a tower, even a 30 meter tower is a major undertaking and very expensive, especially for a small nonprofit organization. Construction of an LPFM station can easily cost \$15,000-\$20,000. As of August 12, 2018, two-thousand one-hundred twelve (2,112) LPFMs are licensed and on the air. If you value each at \$15,000, just for construction, then \$31,680,000 in LPFM costs have been endured by America's smallest nonprofits. Such an investment in an FCC license was made with assurances clearly stated in the LCRA that the service would not be destroyed unless the FM translator service was also destroyed. Likely, much of that investment could have been spent toward other local initiatives like food drives, education, historic endeavors, directly helping local families and other programs local nonprofits are known to pursue. Still, with assurance from Congress that, if invested in properly and according to the FCC's rules defining a *specifically more expensive plan* than FM translators, *equal status* for LPFM in relation to FM translators should enable their more expensive stations to exist. Still, in the spectrum "chess game," FM translators were allowed unfair advantage with a few advance moves. This advantage could only be given to a service of higher status. *Equal in status* should protect the big risks taken by small nonprofits and is required due to clear Congressional order; yet, due only to regulation, those same small community LPFM servants are being forced to suffer an unexpected inefficiency of their LPFM broadcast chain and a clear potential for station demise. Current regulations, needlessly, make the construction of an LPFM station more expensive and now is about to force, through regulation alone, *the loss of potentially thirty-one million dollars of small, local nonprofit funds*. A protection of LPFM

licenses requires that the proposed rules and facilities of LPFM are adjusted to enable all of the technical changes proposed in RM-11810, with the exception that LPFM antenna height is allowed to be raised to 100 meters (*proposed in comments*). This would allow LPFM stations transmitter movement abilities in order to *save the license from deletion* and would make it closer in *equality* to that of FM translators. LPFM stations have a much smaller, and thus much more expensive, pool of available transmitter sites should they be displaced by a primary station. This is due to a smaller 60 dBu signal. Equality in status can only mean equality in protection. *Equality in status can only mean equality in transmission facilities.*

We ask, respectfully, that the Commission consider RM-11810 and it's comments and reply comments before moving forward with a launch of a new primary class C4 service.

Respectfully submitted,

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A handwritten signature in blue ink, appearing to read 'Dave Solomon', is written over a solid black horizontal line.

Dave Solomon, Executive Director

Record
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