

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC

In the matter of:)	
)	
Proposals for a New FM Radio Broadcast Class)	
C4 and to Modify the Requirements for)	MB Docket 18-184
Designating Short-Spaced Assignments)	
)	

REPLY COMMENTS

I. INTRODUCTION

1. Founded in 1984, REC Networks (REC) is a leading advocacy voice for a citizen's access to spectrum through broadcast and other radio services. REC's constituency includes but is not limited to Low Power FM (LPFM), rural commercial and noncommercial broadcasting and non-broadcast services such as the Amateur Radio Service. In these *Comments*, REC will address the issues raised by the commenters responding to the *Notice of Inquiry (NOI)* in the above captioned proceeding released on June 5, 2018.

II. THE IMPLEMENTATION OF CLASS C4 MUST NOT PRECLUDE SPACING OPPORTUNITIES FOR NEW AND MODIFIED LPFM STATIONS AND SHOULD BE TIMED WITH THE IMPLEMENTATION OF A 250-WATT LPFM SERVICE

2. *Interference to existing LPFM minimal compared to translators* - While we do not feel that Class C4 would "destroy much of the LPFM service", we definitely agree that it has the potential of increasing noise floors to existing LPFM stations.¹ While C4 will have a minimal but noticeable impact on LPFM stations, the impacts to FM translators would be more problematic and could hinder the efforts in the translator interference proceeding, MB Docket 18-119.²

¹ - LPFM Advocacy Group (LPFM-AG) comments at 7, Jeff Sibert (Sibert) comments at 2.

² - National Association of Broadcasters (NAB) comments at 3-4.

3. A full “small station” improvement plan must include LPFM - REC does fully agree with Sibert and LPFM-AG that if the Commission decides to implement a Class C4 service, it should also implement a 250-watt LPFM service such as the distance separation method proposed in RM-11749 or the hybrid method proposed in RM-11810.³ For affected LPFM stations, the implementation of LP-250 would offset the increase in noise floor while still continuing to protect the upgraded primary full-service station.⁴

4. LPFM to Class C4 distance separation requirements - As stated in our comments as well as in Sibert’s comments, if a Class C4 is implemented, we are asking that the §73.807(a) minimum distance separation between an LPFM station and a Class C4 station on co-channel and first-adjacent channels remains the same as Class A stations.⁵ Using flat-earth, a 15-kilometer buffer zone will still remain if the same distance requirements are used. As we had stated in our comments, this can be done in accordance with the Local Community Radio Act Section 2 because the Commission is required to “prescribe protections” on co-channel, first and second adjacent channels; and would not be subject to Section 3(b)(1) of the LCRA because at the time of enactment of the LCRA, Class C4 was not codified in the minimum distance separation requirements therefore, there is no incumbent distance to reference.⁶

5. Other LPFM issues - REC does support the ability for LPFM stations to use directional antennas as recommended by Sibert and is a part of the proceeding in RM-11810.⁷ Other proposals by Sibert such as the ability to “short-space” full-service stations, denying upgrades for full-service stations if an LPFM station is displaced and making all radio services

³ - Sibert comments at 2 & 4; LPFM-AG comments at 2.

⁴ - REC comments at 7 (REC estimates as many as 1,102 Class A stations in Zone II could “upgrade in place” to Class C4, including through the §73.215 method that we will object to). In comparison, REC’s *Petition for Rulemaking* in RM-11749 suggests that without waivers, approximately 1,341 LPFM stations would be able to “upgrade in place” to LP-250. See RM-11749 *Petition for Rulemaking* at 30-31.

⁵ - REC comments at ¶¶ 16-21; Sibert comments at 2.

⁶ - Pub. L. No. 111-371, 124 Stat. 4072 (2011) (“LCRA”) at §2 and §3(b)(1).

⁷ - Sibert comments at 4.

into a combined single protection method cannot be implemented due to the statutory requirements of the LCRA.⁸

III. CLASS C4 MUST REMAIN ONLY IN ZONE II

6. REC disagrees with several commenters that Class C4 should also be made available in Zones I and I-A or a wholesale power upgrade for Class A stations to 12 kW at 100m HAAT.⁹ In the *Report and Order* that created the B1 and C2 classes of service, it was in response to a desire to increase the availability of FM stations within what was then, the present assignment structure.¹⁰ It was not necessarily intended to allow Class A FM stations to upgrade. The introduction of Class C3, was intended to allow Class A stations to upgrade.¹¹ A subsequent *Report and Order* in this docket increased existing Class A stations (in all zones) from 3kW to 6kW.¹² In 1989, when Class C3 was created, FM translators were mainly used in rural areas for the extension of primary FM stations into different areas, religious broadcasters were starting to catch on to the strategy of constructing translators in urban areas that are fed distantly by satellite and stricter broadcast ownership regulations were in effect.¹³ Therefore, at that time, there were fewer FM stations and more “spare” spectrum throughout the county thus making for more

⁸ - Sibert comments at 3, 4 and 6; also LCRA at §3(b)(1) (Minimum distance separation between LPFM and full-service can not be reduced from the requirements in effect on the date of enactment of the LCRA, however REC has made a showing in RM-11810 that this minimum distance spacing can be reduced to the former “LP-10” codified distances as that regulation was in effect on the enactment date; also LCRA §5(3) (When licensing new LPFM stations, they must remain secondary in status to existing and modified full-service FM stations.). These proposals would require an act of Congress.

⁹ - Wheeler Broadcast Consulting comments at 1; Robert Fuller comments at 1; Charles M. Anderson comments at 1. See also Alan Brown comments at 1 (advocating a wholesale upgrade of all Class A stations to 12 kW at 100 meters HAAT).

¹⁰ - See *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments, Notice of Proposed Rulemaking* 78 FCC 2d. 1235 (1980); Also see *Report and Order*, 94 FCC 2d. 83-259.

¹¹ - See *Amendment of Part 73 of the Rules to provide for an additional FM station class (Class C3), et al.*, First Report and Order, 4 FCC Rcd. 4192 (1989) at 1.

¹² - See *Second Report and Order*, 4 FCC Rcd. 6375 (1989).

¹³ - As of November 30, 1990, there was a total of 1,863 FM translators and boosters. See *Broadcast Station Totals for November 30, 1990*, News Release, DOC-301963 (MMB, 1990).

opportunities for Class A stations in all zones to grow to 25 kW. Due to many changes inside and alongside the industry there is far less room for expansion of FM service without deeply impacting vital secondary services, including those operated on behalf of facilities that date back to the 1920s.¹⁴ Due to the denser concentration of primary and secondary services in Zones I and I-A, we cannot support expanding Class C4 into Zone I and I-A nor can we support a wholesale upgrade of Class A to a higher ERP.

IV. THE ROLE OF SECONDARY STATIONS HAS SUBSTANTIALLY GROWN SO FAR IN THIS CENTURY

7. *Demand for FM translators* - Since the turn of the century, we have seen some growth in digital audio broadcasting (DAB) and the use of translators by major religious broadcasters such as Calvary Chapel of Twin Falls (CCTF) and Educational Media Foundation using a rule that permits alternate methods of delivering programming to commonly-owned FM translators in the reserved band.¹⁵ In what we considered as speculation, especially in light of a *Petition for Rulemaking* filed by CCTF that would allow any translator to be satellite fed¹⁶ as well as the increase in translators to rebroadcast DAB subchannels, we saw a massive land rush for FM translators in 2003 during the Auction 83 filing window.¹⁷

8. *Demand for LPFM stations* - Prior to the turn of the century, we had the passage of the Telecommunications Act of 1996 which resulted in a significant amount of media concentration that substantially reduced the diversity in ownership in markets of all sizes.¹⁸ This lack of diversity raised awareness of many groups within a community that were not being served by these corporate owners.¹⁹ This awareness resulted in the LPFM service.²⁰ Two filing

¹⁴ - See also ¶9 *infra*.

¹⁵ - See 47 C.F.R. §74.1231(b).

¹⁶ - See *Calvary Chapel of Twin Falls, Inc.*, Petition for Rulemaking, RM-10609 (2002).

¹⁷ - See *FM Translator Auction Filing Window and Application Freeze Extended to March 17, 2003*, DA 03-633 (MB/WTB, 2003).

¹⁸ - Pub. L. 104-104, 110 Stat. 56 (1996) (“Telecom Act”).

¹⁹ - See *Creation of a Low Power Radio Service*, Notice of Proposed Rulemaking, 14 FCC Rcd. 2471 (1999) at ¶1 (“In creating these new classes of stations, our goals are to address unmet needs for

windows are held in 2000/2001 and 2013 and so far, there are 2,171 LPFM stations licensed nationwide.²¹

9. Progress causing the continued degradation of AM - The reality of the advancement of consumer electronics since the 1990s has also substantiated the need for secondary services. With the personal computer boom that really started with Windows 95 in the mid-1990s, there has been a massive increase in the number of switching power supplies. Add to that, plasma televisions, LED displays, electric vehicles²² and even the delivery of broadband over power lines, the viability of AM broadcasting has been substantially degraded since the turn of the century. As a result, the Commission responded with a plan to “revitalize” the AM band.²³ This includes improving the ability for AM stations to use secondary FM translators to simulcast their AM programming.²⁴ In 2017 and 2018, the Auction 99 and 100 restricted filing windows will likely result in over 2,000 new FM translators.

10. Secondary service must remain viable - In the *NOI*, the Commission has recognized this increased viability for secondary services, especially in light of the recent LPFM window in 2013 and the even more ripe Auction 99 and 100 windows that are still being processed.²⁵ REC continues to agree with the Commission that only proposals that will not have a detrimental impact on the secondary services should be considered.

community-oriented radio broadcasting, foster opportunities for new radio broadcast ownership, and to promote additional diversity in radio voices and program services.”)

²⁰ - See *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd. 2205 (2000).

²¹ - See *Broadcast Station Totals as of June 30, 2018*, News Release, DOC-352168 (2018).

²² - Neal, Meghan; “*Why Electric Cars Are Ditching AM Radio*”, Motherboard (Feb 5, 2016), retrieved September 9, 2018 from https://motherboard.vice.com/en_us/article/yp3vmj/why-electric-cars-are-ditching-am-radio

²³ - See *Revitalization of the AM Service*, Notice of Proposed Rulemaking, 28 FCC Rcd 15221 (2013).

²⁴ - Id. at ¶¶ 11-18.

²⁵ - See *NOI* at ¶14 (in respect to the Class C4 proposal) and ¶21 (in respect to the §73.215 proposal).

V. A WHOLESALE NATIONWIDE LOOSENING OF §73.215 WILL HAVE A MASSIVELY DETRIMENTAL IMPACT TO SECONDARY SERVICES INCLUDING THE NEW AUCTION 99 AND 100 TRANSLATORS

11. FCC turns a rural issue into a nationwide one - In *Comments*, REC had cautiously supported a the new Class C4 service in Zone II²⁶, but we staunchly opposed the concept, which seems to have been invented at the Commission to allow a wholesale ability for FM stations of any class in any location to be able to use the §73.215 rule to upgrade to the next highest service class in respect to the incumbent station's actual facilities instead of maximum facilities as long as the incumbent station has been licensed at their facility for a substantial number of years.²⁷ Based on our communication with the petitioner, this is not necessarily what was intended.

12. Negative impact across the spectrum of FM services - Several comments were received supporting positions, similar to REC in respect to the impact that a wholesale §73.215 change would have on secondary FM translator and LPFM services.²⁸ While not addressing LPFM, NAB states that the proposed changes to §73.215 would hinder the improvement of FM stations²⁹ and forever lock neighboring stations and increase the noise floor while providing minimal benefit of one individual station while harming other broadcasters.³⁰

13. Process must be limited to deep-rural Class A stations - Comments received in favor of the Class C4 and §73.215 changes were mainly boilerplate and individual statements made by Class A broadcasters stating that the upgrade to Class C4 and the §73.215 changes would benefit their stations. The petitioner, SSR Communications (SSR) did make a recommendation that Class A stations seeking to upgrade to C4 could, in the alternative to a

²⁶ - REC comments at ¶14.

²⁷ - See *Id.* at ¶¶23-25.

²⁸ - See Educational Media Foundation comments; Sibert comments at 3 (calling the §73.215 proposal “disastrous” to LPFM and FM translators); iHeart Media comments at 7; and Beasley, et al comments at 12 (“§73.215 would impact LPFM opportunities squeezing that space out for upgrades. The proposed changes would cause a lop-sided impact that would reduce LPFM opportunities.”); also *Id.* at note 32.

²⁹ - NAB comments at 5.

³⁰ - *Id.* at 8.

wholesale §73.215 policy should be allowed to upgrade on a waiver basis if a showing can be made as long as the applicant station is a Class A in Zone II and is upgrading to Class C4 and if there is no demonstrated interference to FM translators or LPFM stations.³¹ It is REC's interpretation of the LCRA that the study of interference to a FM translator or LPFM station would violate §5(3) of the LCRA.³² If the Commission wishes to move forward with the "waiver" concept that SSR proposes, then we support it only in areas where the 60 dBu of the applicant Class A station currently does not overlap into an Urbanized Area.³³

VI. CONCLUSION

14. The Commission stated in their *NOI* that they would not entertain a proposal if it would result in substantial interference to the secondary services.

15. The C4 aspect of the *NOI* would result in increased noise floors to just over 100 LPFM stations and some issues surrounding future opportunities are mitigated based on REC's proposal to handle §73.807(a) in respect to the new service class, we feel that implementing a 250-watt LPFM service as proposed in RM-11749 and RM-11810 concurrently with the implementation of Class C4 would offset that impact for the greater good.

16. REC, along with NAB, corporate broadcasters, EMF and other LPFM advocates are all in agreement on the detrimental impact that the proposed changes to §73.215 will have on the secondary services, including many of the new translators authorized as a result of AM Revitalization. The Commission is statutorily required to keep FM translators as secondary to full-service FM and equal in status to LPFM. While we would entertain a very limited carve-out for deep rural Class A stations to use actual incumbent facilities instead of full facilities in order to improve their signal, we will not in any way accept a wholesale change to §73.215 to apply to all stations in all zones due to the massive destruction it can do to LPFM and FM translators.

³¹ - SSR comments at ¶9.

³² - See LCRA §5 ("The Federal Communications Commission, when licensing new FM translator stations [...] shall ensure that [...] (3) FM translator stations, FM booster stations, and low-power FM stations shall remain equal in status and secondary to existing and modified full-service FM stations.")

³³ - REC comments at ¶¶26-27.

17. For the second-generation LPFM stations applied for in 2013, the FM translators moved up to 250 miles in 2016 and the Auction 99 and 100 translators applied for in 2017 and 2018, any substantial change like this can be seen as a serious “bait and switch”. The Commission and broadcasters invested many resources in the past several years into secondary services. Implementing the §73.215 proposal would make many of those efforts wasted, both for the broadcasters and for the Commission. While we can live with a joint implementation of Class C4 and LP-250, implementing the proposed changes to §73.215 would destroy the hard work we as a broadcast community have achieved over the past 5 years.

Respectfully submitted,

/S/

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