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

In the Matter of	)	
	)	
REC Networks Petition for Rulemaking for	)	RM-11749
Improvements to the Low Power FM	)	
(LPFM) Radio Service	)	

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

Rick Kaplan
Larry Walke
NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430

John Marino
David Layer
NAB Technology

June 15, 2015

Table of Contents

I. Introduction and Summary 1

II. Authorizing 250-Watt LPFM Service is Premature 2

III. Authorizing 250-Watt LPFM Service Is Inconsistent with the LCRA Mandate that Licenses Remain Available for FM Translators 6

IV. Conclusion 11

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

In the Matter of	)	
	)	
REC Networks Petition for Rulemaking for	)	RM-11749
Improvements to the Low Power FM	)	
(LPFM) Radio Service	)	

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

I. Introduction and Summary

Pursuant to Section 1.405 of the Commission's rules,[1] the National Association of Broadcasters (NAB)[2] submits the following comments on the above-captioned Petition for Rulemaking in which REC Networks proposes certain rule changes designed to substantially expand the low power FM (LPFM) radio service.[3] REC's request that LPFM stations be allowed to increase their maximum power from 100 watts to 250 watts (LP250) is premature. The overwhelming majority of the approximately 2,000 LPFM stations to be licensed from the 2013 LPFM filing window have not even been constructed yet, let alone commenced operation at their current maximum power of 100 watts. Moreover, pursuant to the Local Community Radio Act of 2010 (LCRA),[4] many LPFM stations will be allowed for the first time to operate in urban markets and/or on second adjacent channels to full-power FM stations,

---

[1] 47 C.F.R. § 1.405.

[2] The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

[3] *Improvements to the Low Power FM (LPFM) Radio Service*, Petition for Rulemaking, REC Networks (REC), RM-11749 (April 20, 2015) (Petition).

[4] Pub. L. No. 111-371, 124 Stat. 4072 (2011).

both of which carry a higher risk of interference to full-power services. Given these circumstances, it is too early to assess the interference impact of this new wave of 100-watt LPFM stations on neighboring FM stations. NAB submits that, at a minimum, the Commission should wait until it can sufficiently review the performance of these new LPFM stations at 100 watts before considering a request to increase their maximum power to 250 watts.

The Petition also is inconsistent with Section 5 of the LCRA, which requires the Commission to ensure that licensing opportunities for FM translators remain available when licensing new LPFM stations. AM broadcasters have waited patiently for their first opportunity to participate in an FM translator window, but are concerned that allowing LPFM stations to increase power to 250 watts, and thereby double their coverage areas, will further overcrowd the already congested FM band and foreclose licensing opportunities for cross-service translators. The Commission carefully implemented the LCRA to preserve opportunities for future LPFM licensees, including the dismissal of thousands of long-pending applications of FM broadcasters for translators, thus paving the way for the 2013 LPFM filing window. AM broadcasters deserve equal consideration. The Commission must take account of the impact of licensing 250-watt LPFM stations on the FM band and on licensing opportunities for future cross-service translators, before further considering REC's Petition.

II. Authorizing 250-Watt LPFM Service is Premature

REC's petition is not ripe for FCC consideration. Most notably, it comes prior to the Commission finishing its processing of the 2,800 applications for 100-watt stations submitted in the 2013 LPFM filing window. It is imprudent, if not impossible, for the Commission to adequately assess the impact of upgrading LPFM's to 250 watts before the effects of all of the new LPFM filers is understood.

To date, 215 LPFM applications still remain pending,[5] or about 10 percent of the accepted applications, including technically challenging applications that could take years to resolve.[6] The overwhelming majority of LPFM stations approved during that window have not yet been constructed, let alone commenced operations, as they try to raise funds for equipment and other expenses. Indeed, there may be more applications still pending before the Commission from the 2013 window than LPFM stations actually broadcasting. NAB estimates that only about 150 of these new LPFM stations have commenced operations at 100 watts.

Thus, despite the Commission's efficient processing of the 2013 LPFM applications so far, it is too early to tell how this new wave of LPFM stations will perform at 100 watts and far too early to weigh a request to upgrade to 250 watts. Moreover, the vast majority of LPFM stations that preexist the 2013 filing window are located in rural and other markets where the FM band is relatively uncrowded. NAB is concerned with the impact of new LPFM stations that are being licensed to operate in urban markets and on second-adjacent channels for the first time, where the risks of interference to full-power stations are greater, even at the 100-watt power level. The Commission should first confirm that these new 100-watt LPFM stations are not causing interference to existing radio services before considering REC's petition.

To date, the Commission's LPFM policies have attempted to strike a careful balance between providing opportunities for low power FM service while ensuring the "integrity of the

---

[5] Petition at 9.

[6] Randy J. Stine, *LPFMs Look Ahead to 2015*, Radio World (Dec. 31, 2014), available at http://www.radioworld.com/article/lpfms-look-ahead-to-/273906.

FM spectrum," and preventing "unacceptable interference to existing radio service."[7] For example, the rules set forth minimum distance separations that protect the contours of FM stations, and standards for protecting existing FM translator and booster stations.[8] The LCRA reinforced the importance of protecting FM services, mandating that the Commission retain the minimum distance spacing requirements for certain LPFM stations and adopting specific remediation procedures for LPFM interference to full-power FM services. LCRA, §§ 4 and 7. The LCRA House Reports explained: "We are committed to creating a low-power FM service only if it does not cause unacceptable interference to existing radio services."[9] The LCRA also allowed 100-watt LPFM stations to operate on second adjacent channels to full-power stations for the first time, but only pursuant to a waiver in recognition of the higher risks of interference they pose. *Id.* at § 3(b). To date, more than 900 LPFM applicants have requested waivers to operate on second adjacent channels,[10] some of which may affect full-power FM stations.

When first raising the issue of 250-watt LPFM services in the Fourth Further Notice, the Commission specifically asked if it would be possible to do so without undermining the LCRA's interference protection and remediation procedures, all of which are based on the current maximum of 100 watts.[11] It is critical that the Commission be able to answer this

---

[7] *Creation of Low Power Radio Service*, Report and Order, MM Docket No. 99-25, 15 FCC Rcd 2205, 2209 (2000) (LPFM First R&O).

[8] 47 C.F.R. §§ 73.807, 73.809 and 73.827.

[9] H.R. Rep. No. 375, 111st Cong., 1st Sess. 9 (2009), at 2.

[10] Prometheus Radio Project, Response to Educational Media Foundation's Request for Clarification of Second-Adjacent Channel Waiver Interference Standard, MM Docket No. 99-25, at 3 (June 3, 2014).

[11] *Creation of Low Power Radio Service*, Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Fourth Order on Reconsideration, MM Docket No. 99-25, 27 FCC Rcd 3315, 3334 (2012).

question in the affirmative before considering REC's request for LP250 stations. More than 241 million Americans rely on full-power radio stations each week for local news, public affairs and entertainment,[12] and these listeners expect clear, uninterrupted FM signals (including AM stations that are rebroadcasting their signals on the FM band).[13]

Authorizing 250-watt LPFM stations could also change the fundamental nature of LPFM service. REC stresses the purported need for more power as a way to improve the penetration of LPFM signals into building and cars.[14] What REC does not explain, however, is that granting the Petition will also allow LPFM stations to double their coverage areas.

As NPR has explained, the underlying rationale for the LPFM service was to "fill in gaps in spectrum that would otherwise go unused by full-powered stations,"[15] and create a service that is "designed to serve very localized communities or underrepresented groups within communities,"[16] or "small, local groups with particular shared needs and interests."[17]

---

[12] *The Infinite Dial, Navigating Digital Platforms*, Study, Arbitron, Inc. and Edison Research, available at www.edisonresearch.com.

[13] Many full-power stations, especially class A stations, rely on substantial listenership beyond the protected 60 dBu contour. Although not formerly protected from interference, in many cases these listeners are critical to the ongoing viability of such stations. For example, we are aware of FM stations in New Jersey and other locations with more listeners outside their "protected" contour than within. A power increase for most LPFM stations will substantially reduce listenership in these cases.

[14] Petition at 4-6. REC's premise is questionable. REC offers a few examples of LPFM stations having trouble penetrating inside metal buildings and through limestone walls, and interference caused by co-channel 50,000 watt stations and tropospheric ducting. Petition at 4-6. Although REC styles these problems as "unique challenges faced by LPFM stations," they are not. The laws of physics govern all broadcast signals, including those of numerous full-power stations that suffer these same problems. Allowing LPFM stations to increase power by 150 watts (4dB) will be of little help in most of these situations, and REC cites no technical evidence to the contrary. An additional 150 watts will not help LPFM stations complaining about ducting interference along the Gulf Coast, as many full-power FM stations encounter the same problem.

[15] Comments of National Public Radio, MM Docket No. 99-25 (May 7, 2012), at 8 *citing Creation of a Low Power Radio Service*, Memorandum Opinion and Order, 15 FCC Rcd 19208, 19236 (2000).

[16] LPFM First R&O, 15 FCC Rcd at 2208.

[17] *Id*., at 2213.

Multiple Commission policies reinforce the hyper-local nature of LPFM services, such as requirements that LPFM operators have an "established community presence" and provide locally originated programming for at least eight hours per day.[18]

Licensing 250-watt low power stations could take the "low" right out of the service's name. Indeed, REC's own Petition belies its expressed purpose for raising the maximum power level,[19] as it also seeks a relaxation of the LPFM obligation to air at least eight hours of locally-originated programming per day. Petition at 35. REC states that it is too burdensome for some LPFM operators to provide so much local content, and even more revealing, that the rule prevents LPFM stations from delivering national news. *Id*. REC also glosses over the most important feature of the local programming obligation, namely, the limits it places on the amount of nationally syndicated programming an LPFM station may carry. For example, even a cursory glance at the LPFM stations approved during the 2013 window reveals scores of applicants affiliated with Calvary Chapel and other national religious radio networks, and while this programming is valuable and popular, it is neither local nor original.

Accordingly, NAB respectfully requests that the Commission wait until it can fully assess the interference impact of the thousands of new 100-watt LPFM approved during the 2013 LPFM window, before considering whether to permit them to increase to 250 watts.

III. Authorizing 250-Watt LPFM Service Is Inconsistent with the LCRA Mandate that Licenses Remain Available for FM Translators

Section 5 of the LCRA sets forth the criteria the Commission must consider when licensing new FM translator, FM booster and LPFM stations:

---

[18] 47 C.F.R. § 73.872(b)(1) and (2).

[19] The record also reveals that many LPFM operators seek a power increase primarily to reach distant listeners, rather than to provide better reception in urban areas. *See, e.g.*, Comments of Mary Jane Williams (June 8, 2015), Comments of Kathy O'Brennan (June 8, 2015), Comments of Ricky Green (June 8, 2015), Comments of WZLW-LP (May 18, 2015), all in RM-11749.

> Sec. 5. ENSURING AVAILABILITY OF SPECTRUM FOR LOW-POWER FM STATIONS
> The Federal Communications Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations, shall ensure that –
> (1) licenses are available to FM translator stations, FM booster stations, and low-power FM stations;
> (2) such decisions are made based on the needs of the local community; and
> (3) FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations.

The Commission interpreted Section 5(1) to require licensing procedures that ensure a minimum number of FM translator and LPFM licenses remain available in as many "local communities" as possible when licensing new FM translator and LPFM stations.[20] The Commission further interpreted this provision to require that it consider both existing and future licenses in the translator and LPFM services when licensing new stations in those services.[21] Pursuant to these findings, the Commission dismissed the translator applications of thousands of FM stations that were still pending from the 2003 FM translator filing window because granting these applications would have blocked too many licensing opportunities for LPFM stations, thus paving the way for the 2013 LPFM filing window.[22]

The Commission struck a careful balance between allowing translator applicants to retain a reasonable number of their pending applications, while creating sufficient opportunities for future LPFM services. Broadcasters therefore seek comparable treatment of licensing opportunities for future FM translators to be used to rebroadcast AM radio services ("cross-service" or "AM/FM" translators). Section 5 makes no distinction between LPFM, FM translators, and FM boosters, clearly mandating that when issuing licenses to one service, licenses must remain available for others. The Commission carefully implemented this

---

[20] *Creation of a Low Power Radio Service*, Fourth Report and Order and Third Order on Reconsideration, MM Docket No. 99-25, 27 FCC Rcd 3364, 3372 (2012) (Fourth Report and Order).

[21] *Id*.

[22] *Id*., at 3364-5.

provision to ensure new opportunities for LPFM services, even delaying and dismissing thousands of long-pending translator applications. AM broadcasters seeking to obtain a translator deserve the same consideration.

AM broadcasters could not participate in the 2003 translator window because cross-service translators were not allowed at the time. However, since the Commission authorized such translators in 2009,[23] FM translators have been very helpful to those AM stations able to obtain one, allowing them to overcome technical and interference challenges that can severely degrade signal quality.[24] Translators have helped these AM broadcasters to reach shifting population centers, launch coverage of live events that typically occur at night, and win back advertising revenues. More than any other Commission effort over the past three decades, cross-service translators have been the most effective mechanism for revitalizing AM stations – at least those AM broadcasters lucky enough to obtain an available, eligible, and affordable translator.[25]

Unfortunately, thousands of AM broadcasters have been left standing on the sideline. NAB estimates there are approximately 720 AM stations with no translators licensed within the parameters that dictate whether a translator may be eligible for use by an AM station.[26] In

---

[23] *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, MM Docket No. 07-172, RM-11338, 24 FCC Rcd 9642 (2009) ("2009 Translator Order").

[24] *Id.*, at 9642-43.

[25] "Translators . . . can effectively bring service to rural and under-served areas. . . ." Fourth Report and Order, 27 FCC Rcd at 3373.

[26] AM broadcast stations are allowed to use currently authorized FM translator stations to rebroadcast their signals, provided that no portion of the 60 dBu contour of any such FM translator station extends beyond the smaller of: (a) a 25-mile radius from the AM transmitter site; or (b) the 2 mV/m daytime contour of the AM station. 47 C.F.R. § 74.1201(g) and (j). Under certain conditions set forth in the so-called "Mattoon Waiver," AM broadcasters may also move-in existing translators from nearby locations to provide fill-in service. *The Cromwell Group, Inc. of Illinois*, Letter, 26 FCC Rcd 12685 (MB 2011). However, the Commission has recently imposed new limits on the use of Mattoon Waivers, further draining the pool of translators that may be available to an individual AM broadcaster. *See The End of*

addition, there are many more AM stations located in areas where all the existing translators are already occupied by other FM, AM and noncommercial stations, and not for sale at any price. Finally, there is a substantial number of AM stations in areas where demand for translators far outstrip supply, creating untenable bidding wars. Earlier this year, NAB observed reports of FM translators selling for $30,000 and up in rural and small markets, $50,000 or more in mid-sized and suburban markets, and one million dollars in one top 5 market. AM broadcasters have thus waited anxiously for the Commission to open an FM translator filing window that would be exclusive for AM stations, as discussed in the AM Revitalization NPRM.[27] Such a window is the only way that many AM stations will ever be able to obtain an FM translator.

Permitting LPFM stations to increase power to 250 watts would complicate this process by further overcrowding the FM band, thereby blocking licensing opportunities for translators to be used by AM stations, contrary to Section 5 of the LCRA.[28] In keeping with this provision, the Commission undertook a thorough analysis of the FM band prior to the LPFM filing window to evaluate and preserve potential licensing opportunities for LPFM. The LCRA requires a similar analysis prior to authorizing 250-watt LPFM stations, to ensure that

---

the Mattoon Waiver? – FCC Decisions Confirming Its Use Only for the Rebroadcast of AM Stations and Prohibiting Intermediate Site Changes, Broadcast Law Blog (Dec. 12, 2014), available at http://www.broadcastlawblog.com.

[27] *Revitalization of the AM Radio Service*, Notice of Proposed Rulemaking, 28 FCC Rcd 15221, 15229 (2013) ("AM Revitalization NPRM").

[28] Although the Commission stated previously that the 2013 LPFM window would have only a modest impact on licensing opportunities for future translator stations, this conclusion was based on 100-watt LPFM stations. Fourth Report and Order, 27 FCC Rcd at 3374. The Commission did not consider the impact on future translators of LPFMs operating at 250 watts, with 100 percent larger coverage areas. Allowing LPFM stations to upgrade to 250 watts will further crowd an already congested FM band in certain markets, thereby squeezing opportunities for future translators for all radio broadcasters.

frequencies remain available for AM broadcasters' first opportunity to participate in a translator filing window. In particular, AM broadcasters are concerned that 250-watt stations will hinder translator licensing opportunities in markets the Commission identified as spectrum-limited in the LPFM proceeding. REC itself predicts there will be considerable demand to upgrade to 250 watts, and that as many as 75 percent of LPFM stations should be able to increase power under the conditions proposed in the Petition.[29]

The FM band is a finite resource, and allowing LPFM stations to increase their power by 150 percent and double their coverage areas will have an inevitable impact on available frequencies for cross-service translators. NAB submits that, at a minimum, the Commission should conduct a thorough analysis of radio markets to ensure that authorizing 250-watt LPFM stations will not unduly impede future opportunities for cross-service translators.

[29] Petition at 25.

IV. Conclusion

For the reasons set forth above, NAB respectfully requests that the Commission wait to consider authorizing 250-watt LPFM stations until after it can thoroughly examine the interference avoidance performance of the approximately 2,000 LPFM stations to be licensed from the 2013 LPFM filing window at 100 watts, and to ensure that, if LP250 stations are ultimately permitted, potential licensing opportunities for FM translators to be used to fill-in service of AM stations are not unduly compromised.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430

Rick Kaplan
Larry Walke

John Marino
David Layer
NAB Technology

June 15, 2015

CERTIFICATE OF SERVICE

I, Patricia Jones, a legal secretary with the National Association of Broadcasters, hereby certify that on this 15th day of June 2015, I served copies of the foregoing "Comments on Petition for Rulemaking" on the following via first-class United States mail, postage prepaid:

Michelle Bradley
Founder: REC Networks
11541 Riverton Wharf Road
Mardela Springs, MD 21817

Patricia Jones