

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Improvements to the
Low Power FM (LPFM) Radio Service RM No. 11749

REPLY TO RECENT COMMENTS MADE BY REC NETWORKS

The American Militia Association (“AMA”) and construction permit holder of WHYU-LP hereby submits this reply comment to the latest reply comment submitted by REC Networks (“Petitioner”) in the matter of certain improvements to the Low Power FM (“LPFM”) Radio Service posted on June 22, 2015.

1. We disagree with the notion that an extension of the proposed maximum service contour at 7.1 km would degrade the “hyperlocal nature of LPFM”, especially in terms of underserved rural communities which in many cases are much larger in geographic size than the suggested and purely arbitrary number. The Local Community Radio Act (LCRA) also mandates minimum separation requirements and does not mandate the maximum size of an LPFM station’s service contour. However, the LCRA does afford the FCC with an opportunity to grant a waiver to the minimum separation requirements when an LPFM can establish relevant prediction or propagation models which may take the size of a service contour into consideration in its decision making.

When considering a maximum service contour, we suggest you must take into account the existence of a buffer zone that is built into the minimum distance separation requirements, which according to the order creating LPFM service adopted by the Commission on January 27th, 2000 is indicated as 20 km which was placed in order to decrease the likelihood of interference to LPFM stations (which they must accept) from a full power FM station which might move the location of their transmitters. This might suggest that there are at least 20 additional kilometers of wiggle room for LPFM contour sizes so long as LPFMs are willing to accept such interference and do not interfere with existing authorized stations.

2. AM stations concerned with the availability of future locations for FM translators in our opinion should have no bearing on decisions regarding local community radio mandated by Congress. AM stations in our view have only one rightful place in the radio spectrum, and that is where it now sits and should ever remain if it is the desire of Congress and this Commission to serve the public interest by allowing not only mere licensed local community FM radio stations, but that such stations have sufficient power to penetrate the indoor structures of a sufficient number of homes throughout the local community in which it serves. No balance is therefore necessary or mandated by any public interest whatsoever in considering an expansion of the service contour or effective radiated power on one side compared to the commercial interests of an existing station in a completely unrelated band on the other.

3. In January, 2000, the commission sought to “create opportunities for new voices on the air waves... to provide programming responsive to the local community needs and interests” and “enhance locally focused community-oriented radio broadcasting”. These ideas were not lost on congress when the LCRA was drafted, originally considering these findings as the basis for the legislation. Section 5 of the passed Act is titled, “ENSURING THE AVAILABILITY OF SPECTRUM FOR LOW-POWER FM STATIONS”. As such the clear intent of the legislation was to ensure licenses were made available to LPFM stations and elevate them to a permanent equal footing with FM translators and boosters while insisting that licensing decisions are based on the needs of the community. There is absolutely nothing in the Act that supports an idea that the needs or desire of a potential station owner be given any consideration at all, especially in an environment where the available space on the dial are already filled with existing FM translators and boosters greatly diminishing the availability for low power FM opportunities. We suggest that the public interest expressed by Congress in this Act can only be accomplished when the number of constructed LPFM stations near that number of already constructed FM translators and boosters in order that LPFM ever become truly “equal in status.”

Limiting the power level of an LPFM in consideration of new FM translators applications not yet filed is not in the public interest and will prevent local community radio from ever having an equal footing with commercial FM translators.

4. Petitioner does point out certain differences which further erode the equal status between FM translators and LPFM, these include most significantly differences in ownership, transmit power and use of directional antennas, a situation we suggest must be remedied as current rules are technically in violation of Section 5 of the LCRA.
5. Again we must disagree with the Petitioners stance in regards to their refusal to support LPFM.AG’s proposal to operate boosters at 200% of the primary station’s output power based yet again upon the notion of a maximum service contour which the Commission has the authority to regulate and adjust based upon the public interest. Petitioner must not be permitted to decide for itself the sufficient size of a service contour to serve the interests of each and every community in which there exists an LPFM applicant or licensee. The injection of thought regarding the risk of potential interference with existing authorized stations here is not relevant, as the LCRA has already addressed this issue specifically. There is no disastrous effect on the availability of spectrum at least with respect to the requirement to place LPFM on equal footing with existing FM translators and boosters. However, in terms of power limits there already exists a great inequality between FM translators, boosters and low power FM which we suggest the Commission should address in order for its regulations to be fully compliant with the LCRA.
6. The AMA does not hold a position that the public interest of the community is best served in an environment where LPFM stations cannot provide adequate coverage of their community, especially in rural areas where there may be insufficient numbers of residents to provide adequate local funding of an LPFM within a 5.4 km service contour, and where LPFMs do not receive funding from the Corporation for Public Broadcasting (CPB). As such, some accommodation must be afforded to LPFM stations in regard to their ability to fund their operations. A complete ban on the airing of advertisements by nonprofit LPFM stations is repugnant to the public interest

and the most common reason for the failure of LPFM stations to construct or operate the intended class of station. Such restrictions are largely responsible for the lower than anticipated number of new LPFM application filings during the 2013 window. Without going into the vast array of first amendment issues surrounding 47 USC 399, the reasonable and important interests of the public in relation to LPFM would surely support an advertising policy which promotes the success of local community radio rather than its failure, especially when LPFM is not on equal ground with either commercial FM translators or existing NCE stations. As many nonprofit LPFM applicants and licensees have either received or are pursuing 501(c)(3) status with the IRS, there are already significant regulations, including those under State law, regarding the level of funding which can be derived by these institutions from commercial activities, which we suggest are sufficient to mitigate the concern that the quality of programming offered by LPFM stations may be adversely impacted by an approach lessening the burdens caused by this restriction and would in fact rather insure the desired level of quality can actually be obtained.

Respectfully Submitted,

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