

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

In the Matter of)
)
LPFM Licensees Propose Necessary) RM No. 11753
Improvements to the Low Power FM (LPFM))
Radio Service)
Petition for Rulemaking)

To: Office of the Secretary

COMMENTS OF EDUCATIONAL MEDIA FOUNDATION

Educational Media Foundation, by its attorneys, hereby submits these comments in the above-referenced proceeding. As set forth below, EMF believes that some of the proposals contained in the Petition for Rulemaking (the “Petition”) filed by The Low Power FM Advocacy Group (“LPFM-AG”)¹ will cause significant degradation in FM service. In addition, these proposals would violate the letter and spirit of the delicate balance between full-power stations and FM translators on one hand, and LPFM stations on the other, struck by Local Community Radio Act (“LCRA”).² Moreover, some of the LPFM-AG proposals would simply not be in the public interest. Thus, EMF suggests that the Commission need not further advance the proposals discussed below into any formal proposal for a change in the Commission’s rules.

EMF will not herein address all of the many proposals for reform of the LPFM service that are raised in the Petition, as it expects that other parties more directly affected by those

¹ Petition of The Low Power FM Advocacy Group for Rulemaking, RM-11753 (July 27, 2015) (the “Petition”).

² Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011) (“LCRA”).

issues will provide comments. For instance, the Petition suggests that LPFM applicants be allowed to run commercials, and that LPFM stations be able to be owned by local businesses, abandoning the current restrictions in the rules that limit LPFM ownership to non-profit and governmental entities.³ While EMF is not a commercial operator, and therefore is less directly impacted by these proposals than may be other broadcasters, EMF does note that making the LPFM service into one that allows commercial operations by commercial entities would result in this service being subject to an auction for any future applications for the service. And, in an auction, if there are commercial applications that are mutually exclusive with a noncommercial application, the noncommercial application is routinely dismissed. Thus, the LPFM-AG proposal would have the effect not only of opening the service to commercial operators, but of severely disadvantaging non-profit groups that want to operate such stations from receiving grants to do so in future filing windows. If a non-profit group seeks a channel in an open window, and a commercial entity also applies for that same channel, the noncommercial applicant would be dismissed. So the LPFM-AG proposal does not merely open the window to commercial applicants, it effectively gives them a priority to any new channels. We question whether changing the service from one intended to serve local noncommercial organizations to just another commercial service is really in the public interest.

The Petition also provides many suggestions for allowing LPFM services to expand their coverage area – by allowing common ownership of 2 LPFM stations⁴, by allowing a much greater expansion of the area in which translators can be used to retransmit the signal of the LPFM station⁵, and by allowing boosters to exceed the coverage of the primary station.⁶ These

³ Petition at 15, 19.

⁴ *Id.* at p. 56.

⁵ *Id.* at pp. 53-57.

⁶ *Id.* at p. 70.

proposals also distort the nature of this service. LPFM stations, by their very nature, were supposed to provide service to limited areas as outlets for smaller organizations to communicate with their members and others who would have interest in their *local* services. Stringing together LPFM stations, or translators and boosters for these stations, to reach a wider audience (e.g. by allowing translators as much as 80 miles from the primary station) is an inefficient way to provide FM service over wide areas. Full service stations are supposed to provide that wide-area service, and low power FM stations were intended for service to local organizations. If those interested in providing a radio service want to reach a broad area, they should simply seek a full-power license, not try to cobble such service together through a perversion of the purpose for these stations. For instance, there are many AM stations that are struggling. If there really is an appetite for the programming to be delivered by these stations over a wider area, look at acquiring one of these full-service stations. Creating wide-area service by what LPTV-AG envisions as potentially a commercial service is an inefficient way to serve larger geographic areas, and will simply create more engineering clutter on the FM band.

In fact, interference underlies EMF's biggest concerns about the LPFM-AG proposal. The Petition suggests two separate changes in the rules that, when taken together, would create monumental issues of potential interference for FM service across the country. The Petition suggests both that (1) LPFM services abandon the current mileage separations requirements and be governed by the translator spacing rules⁷ and (2) that LPFM stations be given primary status so that they cannot be displaced should they cause interference to a full-power station.⁸

Translators are allowed to operate at the spacings that they do only because, if they cause actual interference to full-power stations, they can be forced to relocate or shut down. The rules about

⁷ Petition at 69.

⁸ Petition at 47-48.

the location of translators were adopted with the idea that these stations, filling in gaps between full-power stations, can only fill those gaps if the translator really does not interfere with full-power service. After all, it is the full-power service on which the FCC primarily relies to provide public service programming to the areas that they serve.⁹

Fundamentally, the proposal that LPFM service be given primary status is simply inconsistent with the LCRA. LPFM-AG quotes the statute's language that "FM translator stations, FM booster stations and low-power FM stations remain equal in status and secondary to existing and modified full-service stations."¹⁰ It contends that, despite the clear language of the statute requiring secondary status for LPFM facilities, this rule does not preclude primary status for LPFM stations as it is to be applied only "during the time when a new LPFM is licensed."¹¹ That reading of the law is simply wrong. The law requires that these stations be licensed as secondary stations. To say that the FCC can license the LPFM as secondary, and then the next day change their status to primary would totally undermine the purpose and clear intent of the law. In addition, while LPFM-AG cites one clause of one paragraph of the LCRA to support its nonsensical reading of the Act, the remainder of the Act, in virtually every section, talks about how LPFM stations must resolve interference to existing and new full-power stations. These required interference protections throughout the Act refute any contention that the LCRA could be read to limit required secondary status to that instant when the initial LPFM license is granted.

Moreover, on a practical level, the LPFM-AG proposal is not in the public interest.

EMF, as a licensee of many translators, can attest that the translator spacing rules are not perfect – that there are times that translators are constructed in area in which no interference is predicted,

⁹ There is no evaluation of the public service provided by translators – e.g. they do not complete quarterly issues programs lists, they do not maintain a public inspection file, they have no independent political broadcasting obligations, etc. They are even excused from EAS compliance.

¹⁰ Petition at 47 quoting the LCRA.

¹¹ Id at 48.

but where interference in fact occurs. EMF has many times had to relocate translators after they are constructed, or change their operating channels, to avoid interference to full-power stations. In a number of cases, it has even had to cease operations of a translator because of interference issues.¹² Thus, giving an LPFM station primary status just because it meets translator spacing rules is asking to ignore this real-world interference that in fact occurs, and will contribute to significant new interference on the FM dial. Creating more interference to full-power stations simply does not serve the public interest.

Moreover, primary status also precludes upgrades by existing stations and the allotment of new full-power stations. As stated above, it is full service stations to which the FCC looks to provide public service programming. If they are precluded from adding new service, the public loses. Small areas of service from an LPFM station can preclude vast areas of new service from new and improved full-power stations, and the public will be deprived of the mandatory public service that these stations provide.

LPFM-AG suggests that these protections are needed as LPFM applicants are investing their money into these services and stand to potentially lose that investment if a station is forced off the air by interference issues.¹³ EMF has been warning of that possibility throughout the various proceedings trying to resolve the status of, and relationship between, LPFM stations and FM translators and full-power stations. EMF has urged that the Commission be conservative in where it allows LPFM stations, by encouraging their use in areas where there is a greater possibility of interference, you are inviting nonprofit groups to risk the funds of their donors should their station end up causing interference to a full-power station. The proposal to allow

¹² This has occurred even though EMF, as relatively large broadcaster, has an experienced engineering staff which conservatively evaluates locations of translators to minimize their interference potential. For an inexperienced small operator like an LPFM licensee, the precision is less likely, and the potential for interference even greater.

¹³ Petition at 78.

LPFM stations to use translator spacings will only increase the potential for the loss of the investment by these broadcast novices lured by the promise of providing a broadcast service, but just as likely to provide very limited reception lost in a sea of interference. And the proposal to give these stations primary status will only limit the prospects for more public interest programming from the full-power stations which are required to provide such service.

It is easy for LPFM advocates such as LPFM-AG to promise a renaissance of the broadcast industry just by providing a few more protections to LPFM stations. But the litany of LPFM stations that have failed is perhaps more properly read as an indication that the service provided by full-power broadcasters is not so easily replicated and replaced by new entrants – as this list of failed stations provided by LPFM-AG indicates that there are many organizations that have realized that low power broadcasting in their area has not attracted the audiences that they hoped nor delivered the service to their members that they expected. To further bend the LPFM rules to the detriment of FM service generally, and full-power FM stations in particular, just because some stations have been unsuccessful, does not serve the public interest. Thus, the FCC should not further process the proposals made in the Petition, but instead it should preserve the LPFM service in the manner in which it currently operates consistent with the intent of the LCRA.

Respectfully submitted,

EDUCATIONAL MEDIA FOUNDATION

By: /s/ David Oxenford
David Oxenford

Its Attorney

Wilkinson Barker Knauer, LLP
2300 N Street, N.W., Suite 700
Washington, D.C. 20037
(202) 383-3337

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CERTIFICATE OF SERVICE

I, Rhea Lytle, a secretary with the law firm of Wilkinson Barker Knauer, LLP, hereby certify that on this 31st day of August 2015, I served copies of the foregoing “**COMMENT TO PETITION FOR RULEMAKING**” on the following via U.S. Mail:

Dave Solomon
Low Power FM Advocacy Group
Post Office Box 422
Taylors, SC 29687

/s/ Rhea Lytle