

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

In the Matter of)
)
Petition of Low Power FM) RM No. 11753
Advocacy Group)
)
To: The Commission
Attn: Chief, Consumer & Governmental Affairs Bureau

COMMENTS OF VARIOUS BROADCAST LICENSEES

The licensees of the several full-power radio broadcast stations listed below (collectively, the “Licensees”)¹ hereby submit these comments in response to the Public Notice issued by the Consumer & Governmental Affairs Bureau on July 31, 2015 with respect to the Petition (“Petition”) filed by the Low Power FM Advocacy Group (“LPFM Group”) in the captioned proceeding. The LPFM Group does not proffer any legitimate reason for why the Commission should dramatically upset its rules and declare that all low power FM (“LPFM”) stations may begin airing commercials. Thus, the Licensees urge the Commission to reject the suggestion to license LPFM as a commercial service.

The Petition fails to consider the substantive and procedural nightmares that would result if its proposal were adopted. Moreover, the LPFM Group fails to acknowledge that there presently are no barriers to radio station ownership by any legally- and financially-qualified individual or entity. Indeed, there is no reason why any member of the LPFM Group cannot acquire a commercial station in the way that thousands of entrepreneurs have in the past, even in rural areas, such as by purchase from a willing seller or petitioning the Commission to allocate a new station in a given community and then acquiring a construction permit for it in a subsequent auction. But

¹ The Licensees represent a wide variety of owners of radio stations, including publicly-traded and privately held companies. The Licensees collectively operate in urban markets, small markets and in rural areas.

the LPFM Group seeks a shortcut by asking the Commission to wave its magic wand and – presto! – convert their stations to a much more valuable commodity.

There is no legal or equitable basis on which the Commission should take such action. The Petition at 7 states that “LPFM was originally meant to be a fully commercial service in order to replace all of the stations lost to the duopoly & telecommunications rule changes of 1996; not the watered down version of NCE-FM that it has become.” But there is no support for such a proposition. Indeed, Congress and the Commission each have determined that the purpose of LPFM is as a **community** service, to be operated by schools, religious organizations and other community groups. The Commission never intended for LPFM stations to be operated as a business.

In 2000, the Commission adopted rules to authorize new LPFM stations.² After carefully considering whether to allow LPFM stations to operate commercially, including by evaluating comments from LPFM **proponents**, the Commission rejected that proposal, finding that the overwhelming evidence suggested that LPFM should be licensed as a noncommercial educational (“NCE”) service. The Commission stated that an NCE service is “more likely” than a commercial service to fulfill the “purpose of LPFM,” which is to create “opportunities for new voices on the air waves and to allow local groups, including schools, churches and other community-based organizations, to provide programming responsive to local community needs and interests.”³

That is because:

“[c]ommercial broadcast stations, by their very nature, have commercial incentives to maximize audience size in order to improve their ratings and thereby increase their advertising revenues. We are concerned that these commercial incentives could frustrate achievement of our goal in establishing this service: to foster a program service responsive to the needs and interests of small local community

² *In the Matter of Creation of Low Power FM Service*, Report and Order, 15 FCC Rcd 2205 (2000) (“2000 LPFM Order”).

³ *Id.* at ¶ 17.

groups, particularly specialized community needs that have not been well served by commercial broadcast stations. We believe that noncommercial licensees, which are not subject to commercial imperatives to maximize audience size, are more likely than commercial licensees to serve small, local groups with particular shared needs and interests, such as linguistic and cultural minorities or groups with shared civic or educational interests that may now be underserved by advertiser-supported commercial radio and higher powered noncommercial radio stations...” [footnotes omitted]⁴

On reconsideration, the Commission considered and again rejected suggestions that LPFMs be licensed as commercial.⁵

In the 2000 LPFM Order, the Commission also found that licensing LPFM as an NCE service will have the “added benefit” of providing flexibility to assign licenses in a manner that is most likely to place them in the hands of local community groups that are in the best position to serve local community needs.” The Commission reasoned that if LPFMs were licensed as commercial stations, they would have to be awarded to the highest bidder in an auction, pursuant to Section 309(j) of the Communications Act of 1934, as amended (the “Act”). But if LPFMs were non-commercial, they could be awarded via other means.⁶ Thus, by retaining LPFM as an NCE service, the Commission found that LPFM stations would be more likely to be operated by local entities, in keeping with the stated purposes of the LPFM service.

The Petition fails to take into account the logistical difficulties associated with allowing LPFM to be licensed as a commercial service. For example, would existing LPFM stations, who were awarded licenses based on community service-centric criteria such as whether the individuals to be involved with the station lived close to the proposed transmitter site, be forced to surrender their licenses so they could now be awarded via competitive bidding? Are the members of the

⁴ *Id.*

⁵ See *Creation of Low Power Radio Service*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208 (2000) (“Reconsideration Order”).

⁶ See 2000 LPFM Order at ¶ 18.

LPFM Group willing to compete at auction for new LPFM stations with larger companies, who likely would have deeper pockets, thus shutting out many individuals who otherwise would be LPFM owners? Presumably, the LPFM Group would seek to exclude such larger companies. But on what basis would such exclusions withstand judicial scrutiny?

And what if certain LPFM licensees preferred to operate on an NCE basis, in keeping with the Commission's findings in the 2000 LPFM Order and the 2012 LPFM Report (referenced below)? The Commission ran into this precise problem during the 2003 FM Translator filing window, when it dismissed as unacceptable for filing all applications for new NCE FM Translators that were mutually exclusive with proposals for commercial FM Translators.⁷ That led to significant confusion among applicants that had to be resolved by subsequent Commission consideration of various pleadings and petitions, which caused additional delays in the provision of translator service to communities.⁸ And if LPFMs were allowed to convert to commercial status, would existing full-power non-commercial FM stations desire the same accommodation? That might require Congress to amend Section 399B of the Act, which prohibits public broadcast stations from airing advertisements. And if Congress elects not to pursue such an amendment, there could remain the incongruous result that LPFMs would have greater value than full-power NCE FM stations. Surely the Commission would like to avoid opening that Pandora's Box.

Ultimately, if the LPFM Group's proposal were adopted, there likely would be substantial confusion, with the harms far outstripping any potential benefits. Indeed, the Petition did not provide any evidence demonstrating how allowing LPFM stations to air commercials would serve the public interest, convenience and necessity, the hallmark requirement for the licensing of any

⁷ See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003) ("NCE Second Report and Order"), at ¶ 1.

⁸ See, e.g., *American Family Association, et al.*, 19 FCC Rcd 18681 (MB/WTB 2004).

broadcasting service under Section 309 of the Act. Instead, the Appendix A “Case Studies” included with the Petition are replete with examples of how airing commercials would benefit the **LPFM licensees individually**, rather than the communities they are bound to serve.⁹

The U.S. Congress apparently also intends for LPFM to remain as a NCE service. Several years ago, Congress enacted the Local Community Radio Act of 2010 (“LCRA”). Primarily, the legislation directed the Commission to revise its rules to eliminate the third channel-adjacent minimum distance separation requirements, thereby allowing for more LPFM stations to be licensed. However, Congress appears to have specifically contemplated that LPFMs continue to operate non-commercially. Section 8 of the LCRA directed the Commission to conduct a study and report its findings to Congress regarding the potential impact that licensing many more LPFM stations might have on existing **commercial** stations. Importantly, Congress was not concerned with the impact that the new LPFM stations would have on other LPFM stations, or even on existing full-power NCE stations.¹⁰

In its 2012 LPFM Report, the Commission concluded that, due to the regulatory and operational constraints placed on LPFM stations, the service is “unlikely to have more than a negligible economic impact on full-service commercial FM stations.”¹¹ The Commission found that there are three key restrictions on LPFM stations that presently reduce the competitive threat they might otherwise pose to full-power FM stations for audience and advertising: (1) the fact that

⁹ The Petition at 13-19 claims that only LPFMs provide important public safety programming to the public. But not only did the Petition fail to provide any support for that absurd claim, the fact is that during times of emergency, millions of people turn to their local commercial radio stations for information. See, e.g., http://aquila.usm.edu/theses_dissertations/583/; and mediadecoder.blogs.nytimes.com/2012/11/18/after-hurricane-sandy-people-flock-to-radio-for-information/?_r=0.

¹⁰ See *Economic Impact of Low-Power FM Stations on Commercial FM Radio: Report to Congress Pursuant to Section 8 of the Local Community Radio Act of 2010*, Report, MB Docket No. 11-83, DA 12-2 (MB rel. Jan. 5, 2012) (“2012 LPFM Report”), at ¶ 12.

¹¹ *Id.* at ¶ 53.

LPFMs are limited to 100 watts in power; (2) the requirement that they operate on a NCE basis; and (3) the prohibition on broadcasting commercials or other promotional announcements.¹² In particular, the Commission found that:

the NCE entities eligible to serve as LPFM licensees – such as churches, community organizations, public safety organizations, and educational institutions – generally have listenership and revenue-earning goals that differ from those of for-profit licensees. Their need for underwriting may be limited due to the availability of institutional financial support and/or an ability to operate the station on a small budget. In any event, the rule prohibiting LPFM stations from promoting the products or services of their underwriters significantly reduces the incentives of sponsors to substitute underwriting announcements for commercial advertisement spots on full-service commercial FM stations.¹³

The Petition does not even address, much less seek to refute, the fact that Congress, in adopting the LCRA, indicated that LPFM must remain an NCE service. And the Petition also fails to explain what the impact would be on commercial stations if the Commission allowed LPFMs to air advertisements. Given that the LCRA has been law for such a short time, it is very likely that Congress would get involved again – at a minimum by insisting on another impact study – before authorizing the Commission to change its Rules in favor of LPFMs at the expense of full-power stations. The Commission does not need to expend its resources in fighting a battle before Congress on behalf of LPFM that has zero public interest benefit.

As indicated above, and as the Commission doubtless is aware, full-power stations already do an outstanding job of serving their communities (including in rural areas) every day with key weather, traffic and public affairs programming. There is no “hole” in the service from full-power stations that needs to be “plugged” by LPFM. Indeed, LPFM may have its place in serving particular hyper-local communities, such as schools and religious groups, provided that such

¹² *Id.* at ¶ 54.

¹³ *Id.*

services do not interfere with full-power stations from a technical standpoint, and provided that LPFM does not compete with full-power stations for advertisers. LPFM never was designed to be a commercial operation, and there is nothing in the record that shows that such design should be altered in any way. Accordingly, the Commission should reject any and all suggestions to reform its Rules that would allow LPFMs to air commercials.

Respectfully submitted,

SAGA COMMUNICATIONS, INC.

TRI-STATE COMMUNICATIONS, INC.

SOUND COMMUNICATIONS, LLC

REED BROADCASTING, LLC

NORTH LOUISIANA BROADCASTING, INC.

ALEXANDRA COMMUNICATIONS, INC.

FLAGLER BROADCASTING, LLC

D&H BROADCASTING LLC

By 

Gary S. Smithwick
Mark B. Denbo
Their Attorneys

Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W., Suite 301
Washington, DC 20016
(202) 363-4050

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