

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Petition for Rulemaking)	RM-11753
)	
LPFM Licensees Propose Necessary Improvements)	
to the Low Power FM (LPFM) Radio Service)	

**OPPOSITION OF
HUBBARD RADIO, LLC**

Hubbard Radio, LLC (“Hubbard”) hereby submits its opposition to the Petition for Rulemaking (“Petition”) filed by The Low Power FM Advocacy Group (“LPFM-AG”), regarding the low power FM (“LPFM”) service.¹ In its Petition, LPFM-AG proposes numerous changes to the LPFM service rules, asserting that the Commission’s treatment of LPFM puts the service at a disadvantage as compared to other broadcast services and has “prevent[ed] LPFMs’ ability to adequately serve the public interest.”² Among other things, LPFM-AG suggests that the Commission should allow LPFMs to broadcast commercials, treat LPFMs as primary stations, loosen the LPFM rules relating to ownership limits and transfers, and permit LPFM stations to operate with increased power.

LPFM-AG’s proposals would impermissibly alter the scope and nature of the LPFM service dictated by Congress, and must be rejected on that basis. Moreover, even if the

¹ Petition of the Low Power FM Advocacy Group for Rulemaking, RM-11753 (filed July 27, 2015) (“Petition”). Hubbard is the licensee of full power AM and FM radio stations in markets across the country, from large markets such as Chicago and Washington, DC to small markets such as Bemidji and Wadena, Minnesota.

² *Id.* at 7.

Commission had the discretion to modify some of the LPFM rules, it is premature to do so at this point, having just come off the heels of a lengthy rulemaking implementing the Local Community Radio Act of 2010 (“LCRA”)³ and adopting new rules for the LPFM service. Thus, for the reasons set forth below, Hubbard opposes the requested modifications to the LPFM rules.

I. The Commission Cannot Change the Noncommercial Status of LPFMs Absent a Mandate from Congress

LPFM-AG first argues that the “noncommercial business model” doesn’t work for LPFM, given its size.⁴ It contends that the LPFM service “was not created nor ever meant to be a noncommercial service”⁵ and asserts that, by allowing LPFMs to broadcast commercials, LPFMs would then have in-kind access to important news alerts, such as weather alerts or public safety alerts.⁶ It further argues that the LPFM service cannot attract underwriters, given the scope of competition in the advertising landscape (blogs, Internet radio stations, satellite radio, Pandora, etc.),⁷ and that without support from advertisers or underwriters, the service cannot be financially viable.

Notwithstanding any concerns (true or not) about the viability of the LPFM service, the Commission may not legally permit LPFMs to operate on a commercial basis absent a directive from Congress. When the Commission first adopted the LPFM service, it determined that only

³ Pub. L. No. 111-371, 124 Stat. 4072 (2011).

⁴ Petition at 8-9.

⁵ *Id.* at 12. Similarly, later in the Petition, LPFM-AG proposes a “commercial safe harbor” for LPFMs which would provide an “automatic waiver from the NCE-FM underwriting rules” when it comes to “church or public service based broadcasts.” *See id.* at 59-61.

⁶ *Id.* at 16-18.

⁷ *Id.* at 20.

noncommercial educational entities would be eligible to hold LPFM licenses.⁸ Congress subsequently endorsed this approach when it enacted the Radio Broadcasting Preservation Act (“RBPA”).⁹ The RBPA explicitly warned that the FCC “may not . . . extend the eligibility for low-power FM stations beyond the organizations and entities as proposed in MM Docket No. 99-25 (47 C.F.R. 73.853) . . . , except as expressly authorized by an Act of Congress”¹⁰ Given that the Commission has no authority to allow LPFMs to operate commercially, LPFM-AG’s proposals must be rejected.

II. The LCRA Makes Clear That LPFM is a Secondary Service

LPFM-AG next argues that the Rules should be revised to treat LPFM as a primary, not a secondary, service, claiming that the current treatment of LPFMs constitutes “bullying, borderline anti-competitive behavior.”¹¹ It maintains that the language of the LCRA – specifically, the first sentence of Section 5 – limits the treatment of LPFMs as a secondary service at the application stage only.¹²

LPFM-AG’s constrained reading of Section 5 is untenable. First, the LCRA House Reports emphasized that LPFM was to remain a secondary service: “We are committed to creating a low-power FM radio service only if it does not cause unacceptable interference to

⁸ *Creation of Low Power Radio Service*, Report and Order, MM Docket No. 99-25, 15 FCC Rcd 2205, 2213-14 (2000).

⁹ Pub L. No. 106-553, § 632, 114 Stat. 2762, 2762A-111 (2000).

¹⁰ *Id.* at (2)(B).

¹¹ Petition at 44.

¹² *Id.* at 47-48. The first sentence of Section 5 of the LCRA, states: “The Federal Communications Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations, shall ensure that”

existing radio stations.”¹³ A common sense reading of the LCRA likewise makes clear that Congress intended LPFMs to be secondary to full-service stations. Section 5(3) states in no uncertain terms that “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.*”¹⁴ When Section 5 is read in its entirety, it is clear that this section requires that LPFM stations be secondary to full-service stations. This section was discussed at length in the LPFM rulemaking and not a single party – not even Prometheus, a strong advocate of LPFM – argued that Section 5 somehow transformed LPFM into a primary service after the application stage.¹⁵ In fact, Prometheus itself contended that Section 5(3) merely “authorize[d] the existing arrangements between licensed LPFM and translator stations as they relate to full service stations.”¹⁶ It is therefore clear that Congress did not intend for the Commission to alter the secondary status of the LPFM service, and the Commission has no authority to do so.

III. It Would Be Premature to Make Any Additional Changes to the LPFM Rules

LPFM-AG argues that the Commission’s restrictions relating to the transfer and ownership of LPFM licenses should be loosened.¹⁷ It further urges that the Commission apply the translator service technical rules to the LPFM service.¹⁸

¹³ H.R. Rep. No. 375, 111st Cong., at 2 (1st Sess. (2009)).

¹⁴ LCRA § 5(3) (emphasis added).

¹⁵ See e.g., *Creation of a Low Power Radio Service*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3370-71 (2012).

¹⁶ *Id.* at 3375 (quoting Prometheus).

¹⁷ Petition at 50-58.

¹⁸ *Id.* at 69-70.

Any additional rule revisions at this point would be premature. As noted by the National Association of Broadcasters in a separate proceeding, 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”¹⁹ The Commission should decline to engage in any further LPFM rulemaking until the majority of these low power stations are operating, as only then will it be positioned to properly assess whether any additional rule changes (particularly technical changes) are warranted. If and when it does consider such changes, it should take care to ensure that they do not undermine the truly local, community-based nature of the LPFM service.²⁰

IV. Conclusion

For the foregoing reasons, Hubbard respectfully opposes the Petition and urges that it be dismissed or denied.

Respectfully submitted,

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¹⁹ Comments of the National Association of Broadcasters, RM-11749, at 1 (filed June 15, 2015).

²⁰ *See e.g., id.* at 6 (“Licensing 250-watt low power stations could take the ‘low’ right out of the service’s name.”).