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

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

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

I. Introduction

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 the Low Power FM Advocacy Group (LPFM-AG or Petitioner) proposes a host of significant policy changes designed to change the character of low power FM (LPFM) radio service.[3] LPFM radio service is a hyper-local, commercial-free forum for nonprofits, schools, religious and other community organizations who want to "amplify their message."[4] Approval of the Petition would completely upend this model, turning LPFM into a commercial service that could be owned and controlled by business enterprises, sell advertising, and increase the risk of interference to FM radio stations on which millions of Americans rely.[5]

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[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, Low Power FM Advocacy Group, RM-11753 (July 27, 2015) (Petition).

[4] Prometheus Radio Project, *Frequently Asked Questions*, http://www.prometheusradio.org/faq.

[5] More than 86% of consumers (age 12 or older) tune in to radio each week. Nielsen, *State of the Media: Audio Today – A Focus on Medium and Small Market Radio* (Aug. 20, 2015), http://www.nielsen.com.

NAB is privileged to represent hundreds of noncommercial radio members, so we appreciate the financial challenges of operating such a service, as described in the Petition. However, the Petitioner's proposals for addressing these challenges are simply a bridge too far, as they would not only change the fundamental nature and value of LPFM service, but also threaten the signal quality of full-power radio stations. Accordingly, NAB respectfully requests that the Commission dismiss LPFM-AG's Petition.

II. Approval of the Petition Would Change the Fundamental Nature of LPFM Service

Petitioner asserts that it is financially impossible for LPFM to succeed as a nonprofit, noncommercial service in "nearly all cases."[6] The Petition thus proposes a kitchen sink of rule changes that would allow LPFM stations to sell advertising, permit businesses to own multiple LPFM stations, and allow the sale of LPFM stations for a profit, among others.[7]

As a preliminary matter, the Petition is based on a false premise that LPFM service is failing because stations may not sell commercials. Although some stations that were granted during the first LPFM window in 2000 have since shut down, far more remain fully licensed and operational today. In fact, according to REC Networks, a leading LPFM advocacy and consulting group, the failure rate for this first generation of LPFM licensees is only 10.5%, and the primary reasons these stations ceased operations involve technical, zoning or programming issues, not a lack of financial resources.[8]

The tremendous wave of applications for LPFM licenses in the recent 2013 LPFM filing window is further evidence that LPFM remains an attractive opportunity. Certainly, the nearly

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[6] Petition at 8.

[7] *Id.* at 11-12, 22-24, 50-52, and 55.

[8] REC Networks, *REC Position Statement on a Commercial LPFM Service* (July 27, 2015), http://home.recnet.com/node/686.

2,000 organizations clamoring to launch LPFM stations licensed out of this window are undaunted by the limits placed on LPFM service, as alleged by the Petitioner. Instead, these schools, community groups and cause-based organizations are rolling up their sleeves, raising start-up funds and exploring underwriting methods to support ongoing operations.[9] These organizations not only understand the obligations of an LPFM station, but appreciate that the rules and policies governing LPFM service are critical to its unique nature. This is in sharp contrast to Petitioner's effort to undo the most vital characteristics of LPFM service.

Approval of the Petition would also change the fundamental nature of LPFM service. The Commission's expressed goal in establishing LPFM was 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 communities and needs."[10] The Commission agreed with the overwhelming majority of stakeholders that a noncommercial LPFM service was most likely to fulfill this goal, given that a commercial service would have incentives to maximize ratings and revenues instead of providing service to local groups with distinctive civic, ethnic or linguistic interests.[11] For the same reason, the Commission created certain local programming origination and eligibility rules to ensure that LPFM licenses are assigned to groups best situated to serve local community needs, such as local nonprofit educational organizations and municipalities, and tribal groups.[12]

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

[10] *Creation of Low Power Radio Service*, Report and Order, MM Docket No. 99-25, 15 FCC Rcd 2205, 2213 (2000) (LPFM R&O).

[11] *Id.*; 47 C.F.R. § 73.853.

[12] LPFM R&O, 15 FCC Rcd at 2215.

The Petition would reshape LPFM. Although permitting LPFM stations to sell commercials may help their bottom line, it would come with a cost. Advertisers, no matter how small or local, buy spots to increase brand awareness and entice customers. Any commercial LPFM station would inevitably feel pressure to maximize its consumer appeal to support its advertisers, at the expense of its primary purpose or target audience. LPFM broadcasters would also forfeit some control over how content is presented, including when commercials run. Despite an LPFM licensee's best intentions, the cause and effect of selling advertising are unavoidable. And adopting Petitioner's proposal to allow business enterprises to own LPFM stations would only increase a station's incentives to compromise its core values.

Moreover, Petitioner completely ignores the regulatory impact of a commercial LPFM service. For example, the Commission specifically noted that mutually exclusive applications for commercial broadcast licenses must be awarded by competitive bidding,[13] raising issues concerning how the Commission would go about reauthorizing licenses granted to a noncommercial service as commercial licenses. Commercial LPFM stations would also lose their noncommercial exemption from the Commission's annual regulatory fees,[14] and incur higher performance and webcasting fees from ASCAP, BMI and Sound Exchange, not to mention the additional paperwork burden. LPFM stations would also be required to comply with the full panoply of Emergency Alert System rules, including the purchase of encoder/decoder equipment,[15] and according to other LPFM advocates, come under Commission's cross ownership rules, which could allow large radio stations groups to own

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[13] *Id.* at 2213, *citing* 47 U.S.C. § 309(j).

[14] 47 U.S.C. § 159(h); 47 C.F.R. § 1.1162.

[15] LPFM R&O, 15 FCC Rcd at 2281-82.

commercial LPFM stations.[16] Indeed, granting the Petitioner's proposals may raise more questions than it answers.

Finally, NAB submits that Petitioner's proposals do not seem to represent the majority view of the LPFM community. Leading LPFM advocacy groups REC Networks and Prometheus Radio Project are both on record opposed to a commercial LPFM service,[17] as are the majority of organizations that supported the creation of LPFM. Given this lack of consensus in the LPFM community, we respectfully request that the Commission dismiss the notion of permitting LPFM stations to sell advertising or be owned by commercial enterprises.

III. LPFM Must Remain a Secondary Service to Preserve the Integrity of FM Service

Petitioner urges the Commission to reconsider the secondary status of LPFM service, claiming that primary status is needed to preserve LPFM stations' ability to serve their audiences.[18] LPFM-AG also baldly asserts that some primary full-power FM stations move their transmitters for the sole purpose of displacing or shutting down a neighboring LPFM station.[19] NAB submits that granting LPFM primary status would violate both Commission and statutory policy mandating the protection of full-power FM service.

When establishing LPFM, the Commission was "determined to preserve the integrity and technical excellence of existing FM radio service,"[20] and prevent "unacceptable interference to existing radio service."[21] The Commission further clarified that LPFM stations

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[16] REC Networks, *REC Position Statement on a Commercial LPFM Service*, supra note 8.

[17] *Id*; Comments of the Prometheus Radio Project, MM Docket No. 99-25 (filed July 29, 1999), at 2.

[18] Petition at 44-48.

[19] *Id.* at 44.

[20] LPFM R&O, 15 FCC Rcd at 2206.

[21] *Id.* at 2209.

"should not prevent FM stations from modifying or upgrading their facilities, nor should they preclude opportunities for new full-service stations."[22] Toward this aim, the LPFM rules set forth minimum distance separations that protect the contours of FM stations,[23] and specifically reject providing LPFM stations with any interference protections rights that would hinder full-power services.[24]

The Local Community Radio Act of 2010 reinforced the importance of protecting full-power services,[25] stating plainly that LPFM stations are secondary to existing and modified full-service FM stations.[26] The LCRA also mandated that the Commission retain certain minimum distance spacing requirements LPFM stations and adopted specific remediation procedures for LPFM interference to full-power FM services. LCRA, §§ 4 and 7. The LCRA House Report explained: "We are committed to creating a low-power FM service only if it does not cause unacceptable interference to existing radio services."[27]

The Commission and Congress took this approach because FM stations provide tremendous public service that warrants interference protection. FM broadcasters deliver local news, public affairs, weather and traffic programming, as well as entertainment and sports content, and most importantly, emergency information to their local communities.[28] LPFM licenses are granted with the clear understanding that service may be limited by

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[22] *Id*. at 2230.

[23] 47 C.F.R. §§ 73.807, 73.809 and 73.827.

[24] LPFM stations are afforded flexibility to receive interference from FM stations as an option to continue service. 47 C.F.R § 83.809.

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

[26] LCRA § 5. Petitioner's nonsensical interpretation of the LCRA as requiring that LPFM stations remain secondary to full-power services only during the Commission's licensing window, but not thereafter, contradicts both the plain language and legislative history of the Act. Petition at 48.

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

[28] *See, e.g.*, Reply Comments of Cox Radio, Inc., MM Docket No. 99-25 (filed Apr. 21, 2008), at 2.

subsequently licensed or modified full-power stations. All LPFM operators are fully aware of these rules of the road before lighting up their facilities.

Physics dictate that LPFM cannot become a primary service without impeding full-power services; LPFM therefore must remain secondary. Fortunately, Petitioner's outrageous claims that FM stations leverage their superior status by purposely displacing LPFM stations are mistaken, if not spurious. It is not a simple matter for an FM station to execute a change in community of license, power increase, antenna relocation, or some other modification. These are cumbersome, expensive projects that are typically undertaken because of landlord-related and other issues. It would make no sense for any FM station to spend its precious resources to displace an LPFM station with whom a commercial broadcaster does not compete for listeners or advertisers. Indeed, LPFM-AG fails to offer one single example of broadcaster abuse of its primary status, presumably because no such abuse exists.

To the contrary, it is common for full-power FM stations to assist LPFM stations that may be affected by a modification of the FM operation. FM and LPFM broadcasters routinely work together to find another frequency for an affected LPFM station, if needed, or take other steps to minimize the impact on the LPFM station. Indeed, some FM stations help LPFM stations with various technical needs, or provide free antenna space on a tower or rack space. FM stations consider LPFM service as a complementary, not competitive, service, so they have no incentive to deliberately harm neighboring LPFM stations.

Accordingly, the Petitioner's suggestion that LPFM stations should be upgraded to priority status is unjustified. Petitioner offers no evidence to supports its claim, or valid legal argument for overriding statutory and Commission policy.

IV. Conclusion

For the reasons set forth above, NAB respectfully requests that the Commission dismiss the LPFM-AG Petition for Rulemaking.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Patricia Jones, a legal secretary with the National Association of Broadcasters, hereby certify that on this 30th day of August 2015, I served copies of the foregoing "Comments on Petition for Rulemaking" on the following via first-class United States mail, postage prepaid:

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