

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

To: The Commission

COMMENTS ON PETITION FOR RULEMAKING

Americom Limited Partnership, Beasley Broadcast Group, Inc., Clarke Broadcasting Corporation, Entercom Communications Corp., Galaxy Communications LLC, Greater Media, Inc., Journal Broadcast Corp., Reno Media Group, L.P., and Sovereign Communications, LLC (collectively, “Joint Commenters”), by their attorneys, hereby submit comments on the Petition for Rulemaking (the “Petition”) filed by Low Power FM Advocacy Group (“LPFM-AG”) in the above-captioned proceeding.¹ Joint Commenters are the direct or indirect licensees of more than 250 full-power radio broadcast stations.

The Petition essentially requests that the FCC create a new “subclass” of commercial FM stations, and convert the noncommercial LPFM service into “commercial FM lite.” Under LPFM-AG’s proposal, LPFM stations could or would:

- Receive full interference protection as “primary” stations.
- Substantially increase their transmission power to levels approaching Class A status.
- Sell commercial advertising.
- Receive preferential treatment by the Enforcement Bureau in the form of reduced forfeitures for FCC rule infractions, and

¹ Low Power FM Advocacy Group, Petition for Rulemaking (July 27, 2015).

- Broadcast the same, or much the same, programming as full-power commercial stations.

Joint Commenters respectfully oppose the Petition and encourage the Commission to dismiss it. LPFM-AG's proposals are directly contrary to the policy goals espoused by the Commission in establishing the LPFM service and its conclusions regarding the design, role and function of LPFM stations. Additionally, in calling for co-primary status between low power and full power FM stations, the proposals run counter to unambiguous federal law.

Certain themes pervade the Petition. LPFM-AG apparently considers all Commission-licensed audio services (commercial or noncommercial) that are not LPFM to be "competitors" of the LPFM service that seek its ultimate demise.² LPFM-AG believes that the LPFM service should have been established as "small town local [commercial] FM radio,"³ but that the Commission instead forced noncommercial educational ("NCE") status on the LPFM service at the behest of LPFM's "competitors" in order to "victimize" LPFM.⁴ LPFM-AG believes that allowing LPFM stations to sell commercial advertisements will be a virtual panacea for the many ailments that LPFM's "competitors" (and the FCC) have allegedly thrust on the LPFM service, because selling commercials will allow LPFM stations to "barter" for and broadcast the same commercial programming already provided by thousands of commercial stations across the country.⁵

² See, e.g., Petition at 7 (referring to NPR and NAB as "competitors"); *id.* at 20 (including HD channels and AM stations rebroadcasting on FM translators as among LPFM's "new competition").

³ *Id.* at 22.

⁴ *Id.* at 7. ("LPFM was understandably destined to fail . . . [because] it has become a victim of rules created by its competitors.")

⁵ *Id.* at 16-17.

Contrary to LPFM-AG's numerous claims that it has been "victimized" by the commercial radio industry, the record thoroughly demonstrates that the Commission's intention, from the beginning, was for LPFM stations to provide service that is notably *different* from that already provided by commercial radio. The LPFM service was authorized to deliver unique, hyper-local, hyper-specialized programming, and to "allow local groups, including schools, churches and other community-based organizations, to provide programming responsive to local community needs and interests."⁶ LPFM stations provide a distinctive service "responsive to the needs and interests of small local community groups, particularly specialized community needs."⁷ There is no evidence that the Commission intended the LPFM service to act as a "competitor" to commercial radio, or that it wanted LPFM licensees to view commercial radio as their "competition."⁸ The Commission absolutely did not establish the LPFM service simply to emulate the programming already provided by commercial radio broadcasters.⁹ In fact, just the opposite is true – the expectation was that LPFM would be "a new dimension in radio broadcasting"¹⁰ offering unique programming not already provided by full power commercial or noncommercial stations. The LPFM rules adopted by the Commission were designed to protect

⁶ *Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2213 (2000) ("*LPFM R&O*").

⁷ *Id.*

⁸ *See, e.g., Creation of a Low Power Radio Service*, Notice of Proposed Rulemaking, 14 FCC Rcd 2471, 2535 (1999), Statement of Commissioner Susan Ness (the LPFM service "may enable students, community organizations, and those underrepresented in conventional broadcasting to provide programming of special interest to small and niche populations.") ("*LPFM NPRM*").

⁹ *See, e.g., LPFM R&O* at 2316, Statement of Chairman William E. Kennard (the LPFM service will provide programming from "churches and schools, community groups and public safety officials, civic organizations, and non-English speaking communities."); *see also id.* at 2318, Statement of Commissioner Susan Ness (the LPFM service "responds to the needs expressed by thousands of individuals and community based groups who envision a vehicle to provide a very localized service, including high [school] sports and debates, local campaign coverage, and other local public service needs.") ("*Ness Statement*").

¹⁰ *LPFM R&O* at 2282.

and foster the unique nature of the LPFM service, not to “hinder” LPFM from becoming something it was never intended to be: “a miniaturized replica” of full power FM radio.¹¹

The vast majority of the Petition’s proposals were considered – and rejected – by the Commission when the LPFM service was established. Some are contrary to federal law. None merit further consideration.

The Secondary Nature of the LPFM Service. In 2011, the Local Community Radio Act of 2010 (“LCRA”) became law. One of the provisions of that Act, which LPFM-AG quotes, states that the FCC, “when licensing new FM translator stations, FM booster stations, and low-power FM stations, shall ensure that [such] stations remain equal in status and secondary to existing and modified full-service FM stations.”¹² LPFM-AG seizes on the words “when licensing” and claims that the law only applies “when a new LPFM is licensed.” In other words, LPFM-AG asserts that “the only time LPFM must be equal to the FM translators and FM boosters is during the licensing of a new LPFM station,” and “during that very defined time [upon initial licensing] is only when LPFM must be secondary to full-service stations.”¹³ This argument makes no sense. “Licensing” is not a one-time event; an LPFM station (or any Commission licensee) remains “licensed” throughout its license term. Moreover, the law plainly states that the Commission must ensure that low-power FM stations “*remain . . . secondary to existing and modified full-service FM stations.*”¹⁴ Clearly, the LPFM service is, under LCRA, a

¹¹ See Ness Statement (“*In no way* is this service a miniaturized replica of a full powered station.”) (emphasis added).

¹² Petition at 47, quoting LCRA § 5 (Pub. L. No. 111-371, 124 Stat. 4072 (2011)).

¹³ *Id.* at 48.

¹⁴ LCRA § 5.

secondary service. Accordingly, LPFM-AG's proposal to afford LPFM stations primary status is contrary to federal law.

The LPFM Technical Rules. LPFM-AG also argues that LPFM stations should share the same technical rules used by FM translator stations, claiming that using separate rules for separate services is burdensome.¹⁵ But LPFM-AG's appeal to "administrative efficiency" is really an attempt to give LPFM stations authority to increase power to a level approaching that of Class A stations, while substituting a contour-based allocation scheme for the mileage-based method that currently applies to LPFM.

The Commission has thoroughly vetted the technical rules that apply to LPFM, including those setting maximum power levels and the LPFM allocation system, and has emphasized that LPFM stations should not prevent existing FM stations from modifying their facilities or preclude opportunity for new full power stations.¹⁶ There is no reason to readdress them now. LPFM-AG's proposal would add further interference to an already clogged FM band, and would directly contravene the FCC's intention by precluding certain service improvements by full power stations.¹⁷

The Noncommercial Nature of the LPFM Service. One of the Petition's main premises is that LPFM should not have been created as a noncommercial educational service, and that allowing LPFM stations to sell commercial advertisements will alleviate the symptoms of what LPFM-AG portrays as LPFM's death spiral. When the Commission created the LPFM service, it

¹⁵ Petition at 69.

¹⁶ See *LPFM R&O* at 2209 and 2227-52.

¹⁷ LPFM-AG's proposal could also block relocations of full power FM stations that may become necessary due to circumstances beyond their control.

carefully weighed the arguments for and against allowing LPFM to operate as a commercial service. In its 1999 Notice of Proposed Rulemaking, the Commission sought comments on the specific issue of allowing LP100 stations to sell “some form of advertising.”¹⁸ In the very same paragraph, the Commission sought comment “on whether programming on these stations should be strictly noncommercial.”¹⁹ After considering the comments, which “favored establishing LPFM as a noncommercial service *by a substantial margin*,” the FCC ultimately determined that the goals of the LPFM service could best be met by establishing LPFM as a noncommercial service, with stations licensed to local nonprofit entities.²⁰ In sum, the commercial versus noncommercial status of LPFM has been thoroughly considered by the FCC, and there is no need to reconsider this long-resolved issue.

LPFM-AG states that, because of their noncommercial status, LPFM stations are “banned” from providing “commercially available” public safety programming,²¹ and limited to “duplicating” the programming of full power noncommercial stations (which it apparently considers undesirable).²² This claim is simply not supportable. LPFM stations may face budgetary limitations (like all broadcasters), but they are in no way “limited” in the types of programming they can produce and air. LPFM-AG’s real complaint seems to be that because LPFM stations cannot sell commercials, they cannot “barter” for prepackaged commercial programming. Setting aside whether airing the same programming already broadcast on

¹⁸ *LPFM NPRM* at 2498.

¹⁹ *Id.* at 2499.

²⁰ *LPFM R&O* at 2213 (emphasis added).

²¹ Petition at 16.

²² *Id.* at 17.

commercial stations is a laudable goal for LPFM licensees, it is simply incorrect that LPFM stations do not have “fair access”²³ to such programming. NCE service rules do not prohibit the collaboration of noncommercial stations with commercial programming providers. Indeed, the rules expressly permit the broadcast of programs “produced by or at the expense of, or furnished by persons other than the licensee, if no other consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee.”²⁴ NCE stations can enter into agreements where they provide acknowledgements of support in exchange for services provided by commercial entities, including programming providers.²⁵ NCE stations can, and do, partner with commercial entities (such as local television stations) to present weather, traffic, sports and news reports. Moreover, much of the programming that LPFM-AG says LPFM stations cannot access due to their inability to “barter” can be generated by LPFM stations themselves. NCE status does not prevent an LPFM licensee from producing “weather services,” “traffic reports,” “educational and historical” programs, news, and “local sports events for colleges and high school[s]” – using readily available, and often free, resources. The Petition’s insinuation that commercial stations merely “trade out” for their programming is simply incorrect. Commercial stations often produce these program elements *themselves*. LPFM stations are free to do the same.

Lower Enforcement Standards for LPFM Stations. The Petition also proposes that LPFM stations receive preferential treatment in the form of lesser forfeitures for FCC rule violations.

According to LPFM-AG, forfeiture amounts should be based on a sliding scale related to a

²³ *Id.* at 16.

²⁴ 47 C.F.R. § 73.621(d).

²⁵ *See id.* § 73.621(e).

station's wattage and the number of "jurisdictions" served by a station.²⁶ This is an arbitrary and impractical proposal. Logically extended, an LPFM station with 50 watts would be fined less for the same violation than an LPFM station with 100 watts (even though the 50 watt station might, in fact, serve more listeners and "jurisdictions" than the 100 watt station), while a Class A station would pay less than a Class B, which would pay less than a Class C, etc. Moreover, the Commission already considers inability to pay as a mitigating factor in forfeiture matters. LPFM-AG's "sliding scale" forfeiture proposal is simply unworkable and unnecessary.

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²⁶ Petition at 65.

