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NOTE: This filing is long for an "Express" Message, I know. I have "cut and paste" a more conventional filing, dated 9/28/15, that failed to go through ECFS successfully. -- Don Schellhardt

UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

Docket RM-11753: Proposed Changes to the Low Power FM (LPFM) Radio Service  
REPLY COMMENTS OF DPM SCHELLHARDT, ESQUIRE  
TO THE LPFM-AG, PETE TRI DISH, SUMMIT MEDIA AND REC NETWORKS

My name is Don Schellhardt. In 1997, joined by my longtime friend and colleague Nickolaus Leggett, I filed the first Petition For Rulemaking to propose establishment of a Low Power FM (LPFM) Radio Service. In 1998, at a meeting in Amherst, Massachusetts, I co-founded THE AMHERST ALLIANCE -- which I later served as President, for a total of 12 years. In these Written Comments, I speak solely for myself as an individual -- not for Amherst.

A. FOUR MAIN ISSUES IN THE LPFM-AG PETITION

AIRING OF COMMERCIALS ON LPFM STATIONS, I support allowing each LPFM station the option of choosing to air commercials if -- and only if -- this can be done without making future license transfers subject to the mandatory auctioning of commercial stations. This is needed because selling LPFMs to the highest bidder would reverse the Service's mission. Still, an auctions exemption for commercial LPFMs would require action by the FCC -- or, failing that, by Congress. This would be a difficult challenge to meet. Also, if the Commission is interested, there are ways to revitalize small commercial radio without disrupting present arrangements for LPFMs. I will discuss this in separate Reply Comments.

PROPOSED LP250 STATIONS. Like REC and LPFM-AG, I strongly support establishing LP250 stations. Unlike these parties, however, I strongly oppose licensing of LP250s in areas with high population density. If the FCC really wants LPFM to promote localism and diversity on the airwaves, it shouldn't let one viable station of 250 watts soak up spectrum that could otherwise support two or three viable stations of 50 watts or less.

DON SCHELLHARDT  
Reply Comments In RM-11753  
Page 2

As for the much more typical LPFM that is in a rural area, small town or small city, the FCC might find it useful to analyze what LPFM-AG calls "the 600 failures" of LPFM stations. REC NETWORKS is correct, I believe, that the 3 of 4 stations which never made it On Air -- which "died stillborn", you might say -- will not yield as much information as the 1 in 4 "failures" that closed after experience with "the real world". Still, while the "real world failures" hold extra value and should be analyzed separately, the other cases might teach something as well. I suspect -- subject to rebuttal or confirmation by the facts -- that the station "failures" have been disproportionately concentrated in areas with relatively low population density. In such locations, the smaller potential audience is likely to mean lower potential revenues. If I'm right about this, then it will be additional evidence for increasing LPFM stations to 250 watts in many communities. REC, THE LPFM ADVOCACY GROUP, THE AMHERST ALLIANCE, Nick Leggett and I all agree that LP250 stations should be licensed in many locations. The difference is that the first two parties seem to favor licensing LP250s everywhere, while the other three parties should be excluded from areas with high population density. In such areas, LPFMs below 100 watts -- and even below 50 watts -- should be viable. There, counter to the usual FCC priorities, small but viable LPFMs

60001325589.txt

should stand first in line ahead of larger LPFMs.

In the diversity-driven world of LPFM, efficiency does not mean reaching the maximum number of listeners per unit of broadcast energy. Efficiency means transmitting the maximum number of On Air voices per unit of broadcast energy.

It is, of course, a difficult task to create a measuring stick for determining, with some precision, which geographical areas are urbanized enough to warrant a prohibition of LP250 licenses. At one point, in Docket 99-25, the Commission proposed to exclude LP250 stations from the geographical center of large to medium sized Arbitron Markets. However, the boundary lines would have been too imprecise, raising the possibility of accidentally allowing an LP250 in a highly urbanized area and/or barring an LP250 from an outer suburb and/or rural area.

THE AMHERST ALLIANCE has proposed a more precise alternative: the use of Standard Metropolitan Statistical Areas (SMSAs). Data on SMSAs is prepared by the U.S. Department of Commerce for the express purpose of delineating what parts of the country are most urban.

DON SCHELLJARDT

Reply Comments In RM-11753

Page 3

Amherst has urged the Commission to bar licensing of an LP250 if any or all of the proposed service area falls within an SMSA.

For the recent FCC proceedings in Docket RM-11749 (the REC proposal for LP250s), Nick Leggett came up with an alternative that is even more precise than SMSAs: a direct referencing of population density. I incorporate by reference my July 20, 2015 Written Comments, endorsed by Nick Leggett, in RM-11749.

Nick and I suggested that an LPFM applicant could add up all of the residents in a proposed service area, divide the total population by the number of square miles in the proposed service area, and proceed to requesting an LP250 if the average population density falls below 3,000 persons per square mile.

For purposes of illustration, the City of Richmond has an average population density of 3,600. Thus, applying this standard would probably bar an LP250 from being based downtown, but would probably allow an LP250 to serve some suburbs and outlying areas of the city.

Nick Leggett and I assume, of course, that the service area population data would have to be certified by the applicant, subject to severe penalties for falsification.

PROPOSAL OF PRIMARY SERVICE STATUS FOR LPFM STATIONS. I absolutely love this idea! In fact, I had this idea myself -- and persuaded Members of THE AMHERST ALLIANCE to present it to the FCC. Of course, this was long before THE LPFM ADVOCACY GROUP existed.

Unfortunately, other people were considering the same possibility. They persuaded Congress to put Section 5 (3) into the otherwise wonderful Local Community Radio Act:

75. ENSURING AVAILABILITY OF SPECTRUM FOR LOW-POWER FM STATIONS. The Federal Communications Commission, when licensing new FM stations, shall ensure that (3) FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified full-power FM stations.?

DON SCHELLHARDT

Reply Comments in RM-11753

Page 4

At most, this statutory language might be construed to allow the FCC to allow parity between some LPFM stations and translators. On The One Hand and, On The Other Hand, full power FM stations which are not existing (licensed after enactment?) or modified (after enactment?)?

You could not drive the proverbial truck through this loophole. Maybe a Mini-Cooper would do.

However, you can accomplish quite a bit more if you: (a) forget, at least as a primary goal, achieving Primary Service Status for either LPFMs or translators: and

Page 2

(b) focus on setting priorities within the Secondary Service class. The LCRA Section 5 (3) says that translators and LPFM stations must "remain equal in status", but the Act does not prohibit the FCC from making sub-divisions inside the Secondary Service community. While an LPFM station cannot "outrank" a translator, or vice versa, LPFMs and translators which share a socially valuable characteristic can be allowed to "outrank" LPFMs and translators which do not share the socially valuable characteristic.

Under this approach, LPFMs and translators "remain equal in status" because "rank" within the Secondary Service class does not depend on whether a station is an LPFM or a translator. "Rank" depends upon whether a station has the socially valuable characteristic.

What I have just described is the approach developed by THE AMHERST ALLIANCE after LCRA Section 5 arrived on the scene. What I have left out of the discussion, until now, is the "socially valued characteristic" that Amherst proposes to use as a dividing line for the new classes within the Secondary Service community. The proposed "socially valued characteristic" is this: a minimum number of hours per day of locally originated content.

Amherst has recommended a target of 8 hours per day, starting at 2 hours per day and phased in over a period of 2 years. LPFMs could commit themselves to this path immediately, but translators would first need a Commission decision which allows them to generate at least some locally originated programming. Some translators have sought this authority for years/

This proposal has been submitted to the Commission, by THE AMHERST ALLIANCE, and continues to warrant consideration. The proposed new "hierarchy" would look like this:

DON SCHE: :HARDT  
Reply Comments In RM-11753  
Page 5

PRIMARY SERVICE STATUS  
Full power FM stations

SECONDARY SERVICE STATUS -- TIER 1  
LPFM stations and translators committed to 8 hours per day of locally

SECONDARY SERVICE STATUS -- TIER 2  
LPFM stations and translators not classified in Tier 1

This proposal would create a powerful incentive for LPFMs and translators to heartily embrace localism.

PROPOSED RELAXATION OF FCC ENFORCEMENT. I am absolutely opposed to this idea. In fact, a case could be made for tightening enforcement -- particularly during the current "formative period", when many new LPFM personnel are still learning how to do their jobs.

Let me stress that I believe the vast majority of LPFM broadcasters, whether actual or aspiring are decent and motivated. I would not have labored so long and hard for LPFM if I believed otherwise. However, it has been my experience in life that most human beings, in practically any setting, need to have some sense of being accountable if they are going to do their best.

Moving to a less theoretical level, I was deeply disturbed to read the reports, by Summit Media of West Virginia, concerning alleged misbehavior by multiple LPFM stations. I certainly hope that these complaints will be fully investigated, with corrective action taken if warranted. In The Meantime, I incorporate by reference the June 17, 2015 Written Comments Nunzio A. Sergei, writing on behalf of Summit Media, in RM-11749.

DON SCHELLHARDT  
Reply Comments In RM-11753  
Page 6

B. FACTUAL CORRECTIONS

?NON-SMSA COUNTIES?. As I mentioned earlier, LP250 stations are supported, as a general rule, by THE AMHERST ALLIANCE, Nick Leggett and myself. However, THE AMHERST ALLIANCE -- in an effort to maximize room on the spectrum for small but viable LPFM stations in urban neighborhoods -- would exclude LP250s from Standard Metropolitan Statistical Areas (SMSAs). REC NETWORKS may have misunderstood Amherst's SMSA proposal, referring to it as an attempt to limit LP250s to ?non-SMSA counties?. This terminology can be read to imply that LP250s would be banned from any county which has an SMSA -- even if the SMSA covers only part of the county. In reality, however, the LP250 van would not be triggered only if the station's signal would penetrate the SMSA itself. Incidentally, as an alternative to Amherst's SMSA approach, Nick Leggett and I have recently suggested to the FCC that an LP250 license should be denied whenever the proposed service area has an average population density exceeding 3,000 persons per square mile.

INTENTIONS OF ?THE FOUNDERS OF LPFM?. THE LPFM ADVOCACY GROUP has stated that ?the founders of LPFM? envisioned the Service as fully commercial. This is not correct. I'm not sure how to define the term ?founders of LPFM?. By any reckoning, however, it would have to include Nick Leggett and myself -- since we filed the first Petition For Rulemaking, which became Docket RM-9208. Our Petition urged the Commission to allow LPFM applicants the choice of whether or not to seek authorization to air commercials. Several months after Nick and I filed our Petition, and three weeks after the FCC solicited public comments on it, Rodger J. Skinner filed his own Petition For Rulemaking, which was Docketed DON SCHELLHARDT Reply Comments In RM-11753 Page 7

as RM-9242 (compared to RM-9208). The Skinner Petition did advocate a fully commercial LPFM Radio Service -- but it was only one half of the Petitions that were filed. When I look beyond the initial Petitioners, to other prominent LPFM advocates during the ?founding years? of FCC deliberation and Congressional consideration, I think of -- among others -- Pete Tri Dish, Michelle Eyre (now Michelle Bradley), Christopher Maxwell Wesli Dymoke, Chuck Conrad, Bill Doerner, William A. Walker, Scott Todd, M. J. Honner and Stephanie Loveless. Adding these LPFM advocates together, I count 5 against allowing commercials and 5 for allowing commercials. If I throw the 3 Petitioners back into the pile, the count goes to 5 against allowing commercials versus 8 for allowing commercials. In short: The early advocates of LPFM were a ?mixed bag?, ideologically. By no means were they uniformly ?pro-commercial?. For that matter, some of those who were viewed as ?pro-commercial?, like Nick Leggett and myself, only wanted LPFM stations to have the choice to air commercials if they wished. A ?fully commercial Service? was never a goal for most of us.

C. CONCLUSION

For the reasons I have stated, I urge the Commission to adopt the recommendations I have made.

Respectfully submitted,  
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