

RM-9242

PUBLIC POLICY CONSULTANTS
345 UNIVERSITY DRIVE, SUITE B4
COSTA MESA, CA 92627
(949) 650-2705

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 30, 1998

Chairman William Kennard and
Members of the Commission
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Dear Chairman Kennard and Members of the Commission:

Please find attached for your review and consideration selected comments and recommendations on the matter of LPFM. This issue is now pending before you for a potential decision on whether to proceed with an NPRM (FCC RM-9242).

We strongly support the merits of LPFM, and would urge the Commission to take the process forward by issuing an NPRM as soon as appropriate. This would allow for further input and argument on the numerous technical, commercial, and service-based issues involved.

We represent a group of individuals who are desirous and capable of efficiently owning and operating an LPFM station here in the Orange County, Southern California area. Yet, we believe prior to Rulemaking, it is not appropriate to describe in detail our proposal at this time.

As noted in our comments, we believe the public would be well served by LPFM being authorized and regulated under an appropriate FCC regulatory framework. We understand that there are numerous technical and market issues about which the Commission continues to have concerns. Our view is that an NPRM would aid in the resolving these issues.

Should issues remain following the NPRM process, but merits and public support are also evident, the Commission could decide that LPFM would warrant implementation on a pilot basis in selective markets. We are prepared to argue the merits of this approach more fully once an NPRM be issued.

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November 30, 1998

It is hoped the attached comments will aid in your deliberations on this important issue.

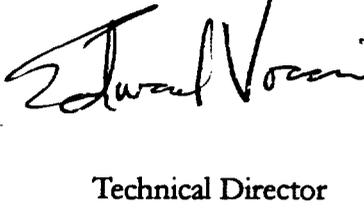
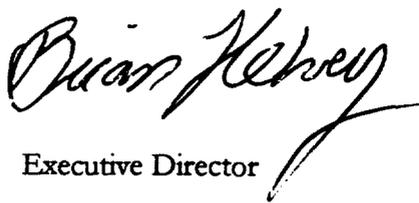
Thank you for your consideration.

Respectively Submitted,

Brian Helvey

Edward Voccia

Chris Kelly



Executive Director

Technical Director

Programming Director

cc:

Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani

Roy Stewart, Chief,
Mass Media Bureau

Bruce Romano, Deputy Chief,
Policy and Rules Division, Mass Media Bureau

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(949) 650-2705

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

In the Matter of:
Proposal for Creation of the Low Power FM
(LPFM) Broadcast Service

FCC RM-9242

To: Federal Communications Commission

Reply-Comments of Brian Helvey, Edward Voccia and Chris Kelly

I. Generic Merits of LPFM

- LPFM provides and promotes diversity, and a greater public access to the powerful medium of radio on the FM band.
- Localism in broadcasting would have positive benefits in the areas of public information, education, and community service.
- Additionally, LPFM would provide economic avenues for local businesses that might otherwise be unavailable to them, with resulting benefits to local economic growth.
- LPFM does not represent a competitive threat, but rather a supplement, to existing FM stations that reach wider markets.
- A well structured and regulated LPFM system could offset the “piracy” problem by providing legitimate means for communities to address and discuss their own needs. Yet it should not be viewed solely as a means to eliminate this problem.

- Technical concerns such as signal interference, ownership, and location can be effectively addressed through an appropriate FCC licensing and regulatory framework.
- LPFM represents an opportunity for minorities, small businesses, and others of limited financial means to utilize a significant communications medium heretofore unavailable to them.
- LPFM may also represent the last opportunity to marry community service and educational resources to available technology in radio at the local level.
- LPFM is consistent, rather than inconsistent, with the original goals of the 1934 Telecommunications Act, and with Congressional intent under the most recent 1996 Act.
- Concerns over technical, financial and other issues need not impede the FCC from proceeding with LPFM on a “trial” or demonstration project basis in selective markets to see how the concept actually works.

II. Congressional Intent and the Telecommunications Act of 1996

- Much has been stated about the increased consolidation of ownership in radio following the 1996 Act. LPFM has been touted as one possible means to reverse this trend.
 - This argument understates the value of LPFM on its own merits. This new service should not be viewed as a political panacea for offsetting consolidation, even though this trend is a sensitive issue. LPFM should not be evaluated solely to address this concern.
 - Rather, LPFM should be viewed as consistent with Congressional intent under Section 25 of the 1996 Act to facilitate the lowering of barriers to entry into the broadcasting medium.
 - The 1996 Act further reveals that Congressional intent was to foster greater opportunities for small businesses and local community organizations to have a fuller voice on the FM band.
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- LPFM provides the Commission with a vehicle to implement this Congressional intent without infringing on the rights and concerns of existing FM broadcasters.

III. Specific Local / Community-Based Advantages of LPFM

- Stimulated by the access LPFM would provide, communities would have a dynamic mechanism by which to communicate through the various groups and organizations that would have the opportunity to air their views and interests. This would have across-the-board benefits in such areas economic growth, public service, education, and civic awareness. Thus, LPFM would provide diversity and alternatives in broadcasting that are not currently available on a community level.
- Local economic benefits from LPFM are an important consideration. The opportunity for small businesses to reach their public over the radio at reasonable and more affordable rates cannot be ignored as a major boost to local commerce.
- The public service advantages from LPFM on the basis of “localism” are also significant. Ranging from programming formats to public service announcements, LPFM would provide a medium for dialog and information which would be of benefit to a wide sector of interests such as businesses, schools, local governments, and community service organizations.
- LPFM can also be utilized for valuable educational purposes. In-studio programs, field presentations, and other means could be developed cooperatively to supplement and enhance local educational programs.

IV. Selected Technical Considerations

A. Signal Interference

- It can be demonstrated that LPFM need not conflict with signal carriage from existing licensed stations. This would of course be a function of antenna height and power levels, but the FCC can evaluate these factors during the NPRM and licensing process.

B. Adequate Power Levels

- It is essential that LPFM, if authorized, be granted adequate power levels to effectively meet the objectives intended. To do otherwise would negate the merits of proceeding with LPFM in the first place.
- Inadequate power levels would compromise the key principle of commercial viability, as market reach would be insufficient at the local level to generate requisite advertising revenue to allow new stations under this service to sustain operations.
- Inadequate power levels would also jeopardize the ability to reach and involve community organizations and educational institutions at a level sufficient to justify their participation in a manner that would be relevant to their goals.

C. Local Ownership

- We support the obvious linkage between LPFM and local ownership. The 50-mile radius parameter is reasonable in our view. To relax this standard would defeat the integrity of the LPFM concept.
- There obviously must also be a mechanism to “qualify” local ownership. This is a function not only of residence, but more importantly of financial recourses and community ties. We believe that both are addressable during the NPRM and licensing process, and must reflect adequate documentation, local references and endorsements.

D. Classes of Service

- Given the very nature of “localism” in broadcasting, an initial step might arguably entail the FCC authorizing differing classes of LPFM service. This would provide an “umbrella” approach that could reinforce the goal of diversity.
- More specifically, a particular license application could be evaluated on the basis of audiences served. This need not be all encompassing: for example, stations premised just on serving local businesses, or those serving local community organizations. However, these limited definitions could raise the issue of commercial viability and local penetration, to be summarized later in this paper.
- We feel this service classification scenario, if pursued, should be based on local input to the greatest extent feasible. This in fact may be the most important matter which the FCC will face if LPFM is launched as a true community based medium.

E. Channel Adjacency

- For LPFM to succeed, it is essential that the FCC consider deleting the current 2nd and 3rd channel restrictions, thereby making more channels available for local based programming.
- Accordingly, we would support protection of co-channel and first adjacent channels as exist under current FCC rules regarding protected contours<Sec.73.333>.

V. The Issue of Piracy

- The issue of “piracy “ is one that the FCC has a legitimate authority to address. Many advocates of LPFM suggest that this new service could substantially alleviate this problem by “legalizing” it. We disagree.
- To the contrary. LPFM should be pursued on it’s own merits, and not as a means to mitigate an enforcement or other legal problem that “pirates”

represent. Surely, many pirate stations can be expected to pursue opportunities under an LPFM system, but it is our view that specific community based standards will “weed-out” potential broadcasters that do not reflect the full spectrum of their community interests. This is another regulatory issue which the FCC should consider closely. We all know communities differ. This matter is addressed further below under suggested Rulemaking parameters.

VI. Some Suggested Rulemaking Parameters

- There are clearly numerous factors which the FCC must consider in deciding whether to pursue LPFM. Many of these are technical; many others are community-based allocation issues. Should the FCC, as we advocate, move forward with a NPRM, these factors will be addressed during the comment period. For now, we suggest the following parameters for consideration as a basis for LPFM rulemaking and eventual licensing:

1) Commercial Viability

- There is no reason to proceed with LPFM unless commercial viability is required. The FCC (as noted earlier) could enhance this prospect by ensuring adequate power levels. However, commercial viability should always and ultimately be the responsibility of the licensee. This entails requisite financial support, accounting and operating data, and a projected revenue stream based on advertising and other contributions from the area served. The FCC should require such financial projections as part of the rulemaking and licensing process.

2) Community Service

- One of the primary considerations the FCC should also use as criteria for potential LPFM licensees is the extent to which the station will provide community service. While this is certainly a function of power and commercial base, the Commission should also consider the programming format of the potential licensee. There are numerous avenues to involve the community in the station’s format, not the least of which is providing appropriate airtime for promoting and discussing community issues/events.
- This is one of the most exciting aspects of LPFM, being able to serve as a conduit for issues and activities that local communities consider important,

a conduit that is probably economically unavailable to them on the existing spectrum.

3) Local Education

- Our view of the broadcasting “privilege,” which it really is, is that an important responsibility is to provide a programming format that reinforces local education. There are many ways to accomplish this, but intent and commitment to this goal are the most important factors.
- With a viable and sufficient (power level) LPFM service, numerous creative means exist to involve local students, faculty and other educators on the air to share views and information. The prospects are truly exciting.

4) Enhanced Access

- Access is an overused term. It is often utilized by groups who advocate only specific points of view. Yes, there is a First Amendment right to free speech, but this is often used as a pulpit rather than as a means to provide public information.
- Our view is that LPFM can carry the “access” principle to a productive level locally, allowing the parameters noted above regarding commercial viability, community service and education to take root effectively. Wider access need not mean abuse of the medium.
- Greater access through LPFM would also offer an important opportunity for those of limited means to participate on the FM spectrum with their talents and ideas. That represents true and viable attention to the diversity in our local communities, and LPFM can be a valuable mechanism that can be responsibly used to bring this goal into reality.

VII. Caliber of Programming: A Key Ingredient

- LPFM cannot succeed on its merits without a quality product being provided over the air. For many in the larger FM audience markets, this means music and related formats of some variety that appeal to their tastes. LPFM cannot ignore this basic listener (customer) factor.

- What LPFM can do, rather than compete with “established”, more powerful FM stations, is to tailor programming formats to those tastes discerned from the specific communities served. The premise here is for balance, along with diversity, and to open the airwaves to formats beyond just entertainment.
- The FCC should be vigilant in their review of proposed LPFM programming formats should LPFM be authorized. To proceed with such a new service in absence of this essential element would negate the merits of LPFM’s generic potential and appeal.
- In summary, quality product, done cost-effectively, is essential to make this new service viable and attractive to the communities served. Formats should of course be evaluated on market factors, but also on the basis of local support and cooperation.

VIII. Rationale for Appropriate FCC Licensing and Regulation

- The FCC has clear statutory authority to approve or deny LPFM through rulemaking and subsequent licensing. Our view is that, at a minimum, the Commission should proceed with a NPRM, and subsequently determine its final decision based on thorough review and consideration of the comments provided. More specifically, we believe that the Commission could best serve its public mandate by allowing the LPFM issue to gain its widest possible exposure through a formal rulemaking process.
- Given this, we also feel the FCC could address any concerns it has regarding market, financial, technical and other issues raised during rulemaking by structuring a licensing and regulatory framework that directly deals with such concerns. The comment process under NPRM could certainly provide the Commission and staff with the basis to structure such a framework.
- Concerns that remain following the NPRM process need not inhibit the Commission from proceeding with LPFM, but rather provide a basis for FCC regulation and licensing to “test” whether the concept would effectively work as argued by its advocates. This reinforces our suggestion for a “Pilot Program” as mentioned earlier in these comments and further below.

- The issues are clearly numerous and controversial. This “democratization” of the airwaves is certainly new ground for the FCC. The social, economic and even political factors involved present a unique challenge for the Commission. They also present a unique opportunity for responsible advocates of localism in broadcasting to deliver on the merits and potential argued for LPFM.
- The regulatory framework should address such issues as ownership, number of stations and markets, allocation mechanisms such as merit-based or lottery, financial capability, local support, and the numerous technical matters regarding power levels, channel adjacency, etc. The FCC is clearly capable of structuring and regulating an initial LPFM service that could be effectively overseen under the decided-upon regulatory standards.
- Essentially, LPFM- at least on a “pilot” basis – can be tested, reviewed and overseen hopefully with existing FCC resources in a manner that allows the concept to proceed within both policy goals and in the public interest.

IX. An Initial Step: The Pilot Option

- The FCC may well be concerned on the question of whether to proceed with LPFM. While the merits have been articulated by many, the issue of authorizing such a visible new service may remain problematic.
- In this context, we would strongly urge the Commission to consider, as mentioned above, proceeding with LPFM on a “Pilot” or demonstration basis in selected markets. At a minimum, it should proceed with a NPRM.
- The concept of a “Pilot” Program would allow the Commission to monitor the actual benefits or disadvantages of LPFM without compromising existing market penetrations and signal contours. Parameters as we have suggested in these comments could be observed and appraised under this proposal. LPFM could be given a legitimate opportunity to succeed under this “initial phase” approach.