

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

In the Matter of:
Creation of a Low Power Radio Service

MM Docket No. 99-25

To: Federal Communications Commission

Comments of Brian Helvey and Edward Voccia

Previous Comment Paper Submitted November 30th, 1998.
Request to Incorporate by Reference.

These comments were submitted in an effort to argue both the merits of Low Power Radio (LPFM), and to advocate that the Commission issue a Notice of Proposed Rulemaking (NPRM). Now that the Commission has proceeded to this stage, we would like to attach our previous Paper as a supplement to the current comments.

Our earlier Paper addressed the following issues:

- Generic Merits of LPFM
- Congressional Intent and the Telecommunications Act of 1996
- Specific Local/Community-Based Advantages of LPFM
- Selected Technical Considerations
- The Issue of Piracy
- Suggested Rulemaking Parameters
- Caliber of Programming
- Rationale For Appropriate FCC Licensing and Regulation
- The Pilot Option

Many of the issues raised in this Paper were based on urging the Commission to proceed with a Notice of Proposed Rulemaking, (NPRM). Now that the Commission has taken this step, many of our points do not have to be repeated. However, a number of other

issues we raised are still germane to how the Commission may proceed with final authorization and licensing. of Low Power Radio. Accordingly, we ask that the Commission again consider our previous Paper, as supplemented for the Record by the following, for the current comment period:

I. The Licensing Process

The allocation or award of licenses in our view is the bottom line consideration for the Commission. Based on our review of the Rulemaking on this matter, we believe that the following licensing options are the most important that the Commission may be considering. Our brief appraisals follow for each:

- **The 1st Come/First Serve Method**

We believe that this option is the most antithetical approach the Commission could choose to achieve the merits of Low Power Radio. It essentially is inequitable. Just because an entity is first "In Line" doesn't mean that it can perform along the standards that this service warrants. We would urge the Commission to reject this approach..

- **A Straight Lottery Process**

This alternative has the advantage of being very equitable. However, it does not insure caliber of product delivered over the air. A "luck of the draw" system could easily bypass entities who are prepared and ready to truly bring Low Power Radio into their communities, but just didn't "get picked". We also feel the Commission might be concerned that licensees under this system might pose potential down-the-road enforcement or other oversight issues that would rather be avoided if possible. We recommend that the Commission also disapprove of this option.

- **A Straight Auction Method**

Our view is that this alternative would be the worst possible method the Commission should choose if the generic benefits of Low Power Radio are to be realized. It essentially could result in a "highest bidder" scenario. This might eliminate people of more limited means from continuing to build a wider base for community radio that they may have worked on diligently through outreach and networking. We would strongly urge the Commission to reject this alternative.

- A Lottery/Bidding Credit Hybrid

Under this approach, the equity advantages of a Lottery would be combined with a merit-based system designed to reflect the work and commitments of potential licensees. In other words, factors such as local support and programming format would be added as “bidding credits” into the hopper. The argument here is that local entities who are prepared to offer Low Power Radio in a constructive and accessible manner should be given the right to have a greater “weighting factor” than those who have not gone to the effort to promote this service to its possible potential. The only disadvantage to this approach, we do acknowledge, is that establishing the bidding credit “definitions”, and subsequent review thereof, would likely add to FCC administrative costs and related staff workload. Yet because we are so supportive of this approach, we would request that the Commission in their deliberations specifically address the advantages and disadvantages of this licensing method from both a policy and cost-effectiveness point of view.

- A Sole Merit-Based System

While philosophically this option has the most appeal in our view, it would likely place the Commission staff in an arguably undesirable position of having to establish a ranking and evaluation system. We are certainly sensitive to the fact that public agencies at all levels of government wish to minimize additional administrative burdens. Therefore, as with the above option, we would respectively request the Commission address for the Record what specific advantages or disadvantages it believes would be associated with a merit-based license procedure.

II. Ownership Parameters

As stated in our earlier paper, we believe that the FCC has legitimate policy grounds to establish ownership restrictions for Low Power Radio licensees. We support the 50-mile radius parameter as the basis for the ownership structure, as this in our view is a reasonable recognition of both jobs/housing ratios and the goals of “localism” with this new service.

We would also like to recommend that the Commission address the issue of potential “collusionary” interests in this new service. Specifically, we recommend that the Commission consider barring any potential Low Power Radio Licensee from being involved with another FCC licensed “broadcast interest”.

III. Power Flexibility

This issue is clearly one of the key foundations for making Lower Power Radio a reality to desired communities served. Based on the NPRM, the Commission appears to be considering a range of 100 to 1000 Watts, based on a spread of Antenna Height between 100 to 200 feet above average terrain.

Our earlier paper stressed the importance of adequate power levels to make Low Power Radio a reality. Yet further calculations and a review of the NPRM suggest that this matter is variable within certain ranges.

We recommend that the Commission establish a policy for this new service that would combine the principles of Desired Coverage (locally-based), and Flexibility in power allotment. For example, in the Orange County, California area in which we are based, sufficient power could range from 100 to 1000 watts, at a HAAT of 100 to 300 feet (Obviously, the area served would be less at the lower of these levels.)

To meet this goal of flexibility, we recommend that the Commission consider a graduated scale of power allotments between 100 and 1000 Watts, linked to corresponding Antenna height requirements. For example, in our case here in Orange County, we could successfully operate at a mix that ranges from 300 watts at 200 feet, to 1000 watts at 100 feet.

Our main argument here is that potential Low Power Radio Licensees will likely range from stations serving small rural communities, to those that will cross-cut major metropolitan areas. Flexibility in power allotments and corresponding Antenna heights we feel would enhance access to Low Power Radio, with the accompanying advantages to local communities.

IV. Commercial vs. Non-Commercial Licenses

Our review of this issue concludes that there is considerable debate as to whether Low Power Radio should be confined to either commercial or non-commercial formats.

As stated in our earlier Paper, we feel that commercial viability is essential to allow this service to serve local communities effectively. First, a commercially-based station would obviously provide local businesses with an opportunity to advertise on a medium at prices that may be otherwise unavailable to them on larger stations. Second, a commercial avenue would allow operators of Low Power Stations to meet their financial/operational obligations. These basic economic factors we know the Commission FCC appreciates.

This being said, we also realize that Low Power Radio can also be very successful on a non-commercial basis. The Pacifica Network, and other listener-sponsored stations come to mind. However, the audience ranges of these stations tend to be quite narrow, and their financial base is often hinged on a variety of grant options and/or contributions from the area served.

Our recommendation on this issue is that the FCC authorize a mix of both commercial and non-commercial stations, based primarily on the intended programming format and expected audience.

V. Programming Format

Our transmittal of November 30th, 1998 (Attached), clearly outlines our views on this issue. We are serious about the fact that Low Power Radio should be strongly-community based, and be dedicated to providing a forum for communities to exchange views and issues that absent access to more costly forums would be unavailable to them. To put that into reality is a matter of developing a caliber and responsive programming format.

The basic programming format principles we support for Low Power Radio, again as noted in our previous paper (Reference the Addendum), are the following:

- Community Service.

This in our view is the essential anchor of a viable and service-based Low Power Radio station. Given adequate power levels, community groups of all varieties would have the incentive to present their activities and information over the air. And if marketed correctly, civic, educational, and other community groups could build a bond with anticipated local radio listeners. The FCC should be vigilant in their review of potential licensees as to their commitment on this issue.

- Local Education.

The values of Low Power FM at the community level for educational purposes are frankly self-evident. Programming formats should be reviewed to establish that a commitment to this goal is in place, and that the medium will be responsibly used for this purpose. Endorsements from local educators can be appropriately referenced as desired.

- Enhanced Access.

Potential Licensees should be required to demonstrate that their use of the FCC license will in fact allow and implement enhanced access at the

community level to civic, educational, non-profit, and other organizations that wish to have their views/events shared locally.

VI. Prohibitive Contour Overlaps

The FCC already has established standards and rules regarding Contour Overlaps as applied to LPTV. We see no reason why these standards should not be extended to apply to LPFM as well. This would not only be an advantage to LPFM providers, but would also reduce FCC Administrative costs and oversight responsibilities.

VII. Narrower Bandwidth

We oppose restricting bandwidth for LPFM. There is no evidence to our knowledge that LPFM stations, that will operate at power levels substantially lower than full power stations, will cause any interference whatsoever. In fact, our research indicates that reducing bandwidth will inhibit the commercial viability of LPFM.

VIII. Summary

We understand fully that authorizing LPFM stations is a significant step for the Commission. Those opposed to this new service are concerned that these locally based stations might result in a competitive threat. Our view is that this argument has no substantive merit. On the contrary. Locally-based, low power radio stations on the FM Band will stimulate competition among advertisers, provide greater visibility for local businesses, and provide an access avenue for local public affairs and educational organizations to present their programs.

All of this can be accomplished with LPFM WITHOUT interfering with the established markets that are already adequately served by the higher-power radio stations. We must emphasize here that the merits of LPFM have nothing to do with trying to drain market share, or divert listeners from existing broadcasters. Rather, LPFM should be viewed as an extension of the medium to add enhanced responsiveness and commercial opportunities to the local communities served.

Respectively Submitted,

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IX. Appendix

**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.
- 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.

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