

THE ISSUE – How should the FCC LPFM EAS policies be understood and interpreted as the year 2002 begins? In the light of present regulatory, financial, logistical, and functional circumstances, how should the policies be clarified or modified?

FCC OFFICIAL EAS POLICY – On January 20, 2000, the FCC's First LPFM Report & Order (MM Docket 99-25) devoted sections 193 through 197 to EAS. This is the only official statement on LPFM EAS. This topic is not covered in the Memorandum Opinion & Order on Reconsideration adopted September 20, 2000, nor in the Second LPFM Report & Order 01-100 adopted March 22, 2001.

While sections 193 – 197 all cover EAS we believe that the all-important heart and core of the FCC LPFM EAS policy is stated in the following verbatim quote from section 195 (we have highlighted in **bold** what we believe is most relevant):

*“Accordingly, we will require the use of Commission-certified EAS decoders or decoder/encoders by all LPFM stations when they commence operations. It will be several months before the first LPFM stations are on the air. Given that decoders are already on the market, this should be ample time to obtain Commission certification and make certified units available for purchase. **If certified decoder equipment is not available at that time, we can grant a temporary exemption for LPFM stations until such time as it is reasonably available.**”*

ANALYSIS OF FCC LPFM POLICY – “At that time” refers to the present; as of December 31, 2001, 178 LPFM CPs have been issued and approximately a dozen stations are operating (one licensed, several applications for License to Cover, plus others in equipment / program test mode).

“Certified decoder equipment is not available” is a true statement to the best of our knowledge. June 30, 2002, is the earliest date that full-compliance decoders “might” be available from one source. Since one-or-more manufacturers of EAS equipment have exited the industry, we believe that only five or fewer companies produce certified encoder-decoder units.

IDEAL SOLUTION TO PROBLEM – If our research is incorrect and the needed certified equipment exist, then the problem is solved! LPFM groups are quite willing to purchase and operate the required decoder equipment if they are notified of a source. When the FCC issues CPs, a list of approved decoder manufacturers could be included. If only one company is listed, this is not favoritism since other firms could be added to the list by producing the appropriate equipment. Help in disseminating this information would include news releases and other items on the FCC website, publicity by LPFM advocacy and media groups, and promotion by the manufacturer(s) of the equipment.

TEMPORARY / SHORT RANGE ACTION – Unfortunately we believe that the “ideal” solution does not currently exist. LPFM applicants ready to go on the air apparently only have four options:

1. Purchase currently available encoder-decoder systems, thereby wasting the \$1,000 or more difference over the projected cost of decoders (FCC projections in the First R&O),
2. Purchase economical uncertified units to comply with “the spirit of the law” while running the risk of both FCC fines and the future replacement of equipment that might never be certified.
3. Delaying sign-on of the station until this problem is resolved. Since there is no timetable for a permanent solution, this option is inadequate like the two above.

SHORT- TERM WAIVERS (Option 4) – “We can grant a temporary exemption” – in the absence of an unpublicized decoder-only unit already on the market, we believe that all the circumstances exist for temporary exemptions. We acknowledge that the wording is “can grant” not “should grant” or (ideally) “will grant.” Surely the FCC agrees that the first three options are unsatisfactory. We believe that the circumstances are such that the FCC (or inactions) has amounted to temporary exemptions until the matter is clarified.

Even though no structured LPFM EAS procedure / waiver form exist, we filed an exemption / waiver request on September 20, 2001 for a CP holder with an FCC Enforcement staff member having EAS responsibility. Our request was acknowledged on September 28 with a statement that we should expect a “response shortly.” Later the station went on the air and has filed a Form 319. We notified the EAS staff that the station did not have EAS equipment and was operating under an assumption of a “temporary exemption.” The only FCC response to this and other staff dialog concerning EAS is the current official FCC action to “seek comment” on this matter.

We request that the FCC immediately acknowledge that no fines or sanctions will be issued while this matter is currently being discussed and clarified. Further, we request that an immediate blanket exemption be granted to all LPFM licensees and permittees until June 30, 2002, with an automatic extension to December 31, 2002 if this matter is still unresolved on June 30. LPFM applicants should not be held responsible for actions (or inactions) that are not under their control. Since nearly 200 LPFM CPs have been issued, we request some immediate temporary action to ease the immediate uncertainty these permittees have.

INTERMEDIATE ACTION: EAS MANUFACTURERS – Our research indicates that most EAS manufacturers are so busy with profitable orders from hundreds or thousands of cable systems seeking to meet the October 2002 deadline that they have no desire to develop new, low-cost equipment for the “tiny LPFM marketplace.” Other firms’ production lines are busy with orders from foreign governments and other customers outside the USA. Some of these companies are “too busy” to even file comments on this issue! It might be necessary for the FCC to directly and individually request a detailed response from each manufacturer.

THE CERTIFICATION ISSUE – We understand that one or more manufacturer requested certification months ago but it has never been granted. (Is “self-certification” a possibility?) If indeed certification has been requested, the FCC has the ability to solve the problem by giving expedited approval to such pending request(s). What might complicate the issue is that various groups and some manufacturers believe that the rules need further relaxation before new equipment can be economically produced. Home “alert systems” are currently available which functionally perform the essential notification task, but lack the ability to store ten messages and other procedural requirements that will prevent them from ever receiving certification. These are all issues that must be dealt with before this issue is permanently resolved.

NRB PUBLIC HEARING – In mid-February broadcasters from throughout the United States will be meeting at the annual *National Religious Broadcasters* convention in Nashville. Several key FCC staff members will be in attendance and will be participating in workshops. We suggest that a meeting be scheduled during NRB to solicit verbal comments in person from broadcasters, permittees, and manufacturers. Some EAS manufacturers already plan to attend; the rest could be invited. We believe that such a meeting at NRB offers several advantages over a similar meeting at NAB:

1. NRB meets several months ahead of NAB,
2. Nashville is more centrally located to LPFM groups, who generally have very limited travel budgets,
3. We anticipate the general atmosphere at NRB which is dominated by small / nonprofit organizations is more receptive than that at NAB which is dominated (literally and figuratively) by large for-profit mega corporations, and
4. Since a very high percentage of LPFM groups are directly or indirectly church-related, these groups will feel more “at home” at the *National Religious Broadcasters*.

We are not opposed to the FCC seeking comments also at NAB. Frankly, we hope that this matter can be resolved even before NRB meet.

EXISTING WAIVERS – We are aware that the FCC has a waiver / exemption system in place for full-power broadcasters who desire to “opt out” of EAS. Because of the uniqueness of LPFM, we believe that to suggest that LPFM groups apply for this exemption would be diversionary and delay resolution of the problem. Processing such requests would be time-consuming and overly taxing on the FCC’s limited resources. Also, the FCC from the very beginning sought to make EAS as simple as possible, which is contrary to the complexity of the existing waiver system.

LACK OF COMMENTS – We believe that few LPFM applicants have, or will, submit comments. This should not be interpreted as a lack of interest or the willingness to spend \$1,000 or more needlessly. Most LPFM groups are unaware that the FCC is seeking comments since they do not have FCC counsel on retainer to notify them. Most have developed specific methods of checking on their own application with little concern of what else is going on at the FCC. Other contributing factors are that the original notice could not specify the deadline (because of the *Federal Register*). The deadline turned out to be Christmas Eve. Many groups may not realize that late comments are still being accepted. Since these groups are inexperienced with FCC procedures (other than Form 318), many may have considered the comment procedure “too complicated” without even trying. Many applicants are simply relying on advocacy groups to speak for them.

BACKGROUND ON OUR ORGANIZATION – *Christian Community Broadcasters (CCB)* is a new national professional organization of churches, ministries, and community organizations, from Hawaii to Florida to New England, with an interest in low power FM. Virtually all have filed LPFM applications. CCB is an outgrowth of *Christian Community FM (CCFM)*, a consulting service providing education and current information on LPFM, assistance in preparing Form 318, and the purchase / installation of equipment.

Even though we have directly assisted fewer than 100 applicant groups, we inform several hundred additional groups through our Internet informational digest / list, and our monthly column in *LPFM TIMES*. CCB and CCFM were both founded by John and Henri Broomall. John has been interacting with the FCC since the late 1980s when he started several LPTV stations; currently he serves as Underwriting Manager for a full-power private NCE TV station. Henri is a PC specialist with expertise in web design.

SUMMARY - *It will be several months before the first LPFM stations are on the air* is a verbatim quote from the First R&O on January 20, 2000. This statement documents the FCC’s desire for a speedy LPFM process. We urge a continued commitment to promptness, as you seek to resolve this matter. Virtually any clear solution would be acceptable except the necessity of purchasing expensive encoder units that has never been required. There are many, many extremely complex issues and procedural decisions that will be required concerning LPFM – we hope that this one issue will be resolved soon!

