

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Lahaina and Waianae, Hawaii)

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MB Docket No. 02-387
RM - 10623

To: Assistant Chief, Audio Division
Media Bureau

REPLY COMMENTS

Pacific Radio Group, Inc. ("Pacific"), licensee of Station KLHI(FM), Lahaina, Hawaii, by its counsel, hereby files its Reply Comments in the above-captioned proceeding. In support hereof, Pacific states as follows:

1. The *Notice of Proposed Rule Making* in this proceeding proposed to reallocate Channel 266C from Lahaina to Waianae, Hawaii as its first local service. Ohana Broadcasters Corporation ("Ohana") filed comments. Ohana states that 11 applications for Low Power FM ("LPFM") stations have been filed for the island of Oahu specifying operation on Channel 266. Ohana requests that the Waianae reallocation be denied because it would likely prevent the operation of some of these applied-for facilities. However, the objection is without merit. Full-service licensees are clearly permitted to *make* modifications to their facilities, and in doing so, take precedence over any LPFM facilities, whether applied-for or operational.

2. The Commission created the LPFM service three years ago. In striking the appropriate balance between the rights of new LPFM broadcasters and existing full-power broadcasters, the Commission freed LPFM licensees from many of the restrictions applicable to full-power licensees. In return, the Commission made clear that LPFM could not interfere with full-power operations:

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For these reasons, we do not believe that an LPFM station should be given an interference protection right that would prevent a full-service station from seeking to modify its transmission facilities or upgrade to a higher service class. Nor should LPFM stations foreclose opportunities to seek new full-service radio stations. Accordingly, operating LPFM stations will not be protected against interference from subsequently authorized full-service facility modifications, upgrades, or new FM stations.'

3. For this reason, full-power FM licensees are not required to consider spacing distances to LPFM facilities, whether applied-for or operational. Since allotments are made according to the distance spacing tables, LPFM considerations simply are not applicable in allotment proceedings such as this one.

4. While Pacific has not been furnished with the technical details of the pending LPFM applications, Pacific recognizes the possibility that the Waianae reallocation will interfere with some LPFM applications on Channel **266** on Oahu. However, the situation is not so one-sided as Ohana paints it. First, as Ohana concedes, not all of the pending LPFM applications are grantable. To the extent that they are mutually exclusive with one another, the Commission must decide which application or applications to grant and which to deny. Accordingly, Ohana has not established that any *grantable* application is subject to interference from the Waianae reallocation. Indeed, the mountainous terrain may create pockets in which an LPFM station can operate. Second, Ohana is incorrect that any delay in the Commission's action on the pending LPFM applications has had any adverse effect upon their viability. The LPFM applications were required to protect only full-service allotments proposed or in operation prior to the announcement of the filing window. 47 C.F.R. § 73.807(a). Since the applications were on file before the Waianae reallocation was proposed, they do not have to protect it, and can go on the

¹ *Creation of Low Power Radio Service*, 15 FCC Rcd 2205, ¶65 (2000).

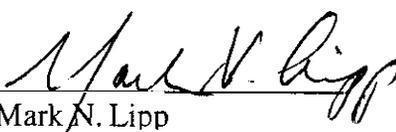
air regardless of any full-power operations at Waianae.² It does not matter that the Commission has not yet taken action on the LPFM applications as far as their rights are concerned.

5. Finally, the Waianae reallocation has had no *net* effect on the area in which an LPFM station may be located in Channel 266. Although potential LPFM operations on Oahu may have been impacted by the relocation of Channel 266C to Waianae, an equally large area has been created on Maui and nearby islands where new LPFM stations may be located – the area formerly precluded by Channel 266C at Lahaina. Accordingly, grant of Pacific’s proposal would not adversely affect opportunities for local, community-oriented low-power programming.

6. Pacific hereby reaffirms its interest in applying for Channel 266C at Waianae if the proposal is granted and constructing the facility if the permit is granted. Accordingly, Pacific urges the Commission to grant the proposal and provide Waianae its first local service.

Respectfully submitted,

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March 3, 2003

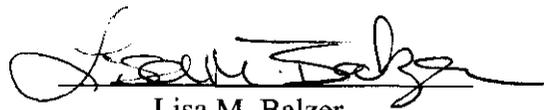
² **There is one exception: an LPFM station will not be permitted to operate if it causes any interference within the community of Waianae or the 70 dBU contour of the full-power station. See 47 C.F.R. § 73.809. Still, this would have been true even if the LPFM station were already on the air.**

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 3rd day of March, 2003, have hand delivered a copy of the foregoing "Reply Comments" to the following:

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