

Before the

Federal Communications Commission

In The Matter of)
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) MB Docket No. 04-203
Broadcast Localism)
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Reply Comments Of The Prometheus Radio Project

Introduction:

The Prometheus Radio Project (“PRP”) is a grassroots organization that works to promote a more democratic media by helping community groups at every step of the process as they build their own community radio stations. Our work includes policy advocacy, assisting civil society groups in navigating the licensing process, building radio stations, training activists, and grassroots organizing. We fight for the right of all citizens to have access to the public airwaves.

These reply comments are in response to the comments filed by the Educational Media Foundation (EMF) in connection with the relative spectrum priority granted to LPFMs versus FM translators.

Translators provide service, but as a matter of FCC regulation and sound agency policy, this service must be secondary to bona fide local service. Translators were intended as a supplemental service in areas where local service was impractical at the time of the issuance of license, but were very specifically given secondary rights to other stations that wanted to use that spectrum at a later date. LPFMs and translators were accorded relative spectrum priority based on order of application, but we believe that LPFMs should be made primary to all translators. There is widespread perception that the translator service needs some fundamental changes. A recent editorial in Radio World expressed the sentiment of countless radio engineers:

“Instead of fulfilling its role as regulator of broadcast spectrum, the FCC created a Wild, Wild West free-for-all that resulted in more than 10,000 applications for new translators. A couple of organizations filed for thousands of individual translators each.

The FCC also should strictly enforce the requirement that all translators be able to receive an off-air signal from the station being translated. Translators are intended to extend the coverage of a local station; they are not intended to be used to develop a national radio network. A reasonable standard could be developed to prevent applications that proposed translating unbuilt stations (such as construction permits) or stations located many states away.”

(RW Opinion 01.14.04: [Translators: Do Better Next Time](http://www.rwonline.com/reference-room/special-report/02_Rw_opinion_jan_14_b.shtml); http://www.rwonline.com/reference-room/special-report/02_Rw_opinion_jan_14_b.shtml)

LPFM Needs More Spectrum Opportunities To Fulfill Its Promise

As has been testified at every hearing on broadcast localism, Low Power radio is one of the few bright spots towards promoting localism in media in the FCC’s recent record. Many of the low power stations that have gone on the air have exemplary records of public service, and locally oriented programming with a level of seriousness and ambition that is rare today in the world of commercial radio. But the FCC has a number of steps it needs to take in order to make Low Power Radio stations available to the many communities that are currently denied the ability to even apply for a low power station. Of the over 3200 applicants for low power stations more than half were dismissed, many of these for want of an available channel for their proposed operation. The popularity and impact of the low power service is actually amazing, considering that no LPFM channels have been released in the top 50 urban markets in the United States.

In response to the questions raised in the localism docket 04-233, EMF has made a number of contentions in its comments before the Commission. We believe that neither the facts, nor the laws, nor the mission of the FCC in regulating the airwaves in the public interest can find in favor of the recommendations of EMF.

EMF Contends That Incumbency Is More Important Than Localism

EMF states that “ non-commercial FM translator stations, such as those operated by EMF, provide an important public benefit by serving rural areas as well as underserved, niche markets that are often overlooked by full power radio stations. While LPFM stations may expand the options available to underserved groups, it is not in the public interest to deprive the public of service on which it has come to rely. “ (Comments of EMF, 04-203, page 1-2)

We would argue that this position has no basis in law or the Commission’s goals and policies. Making incumbency a factor is entirely inconsistent with the very concept of a secondary service, and it therefore would be arbitrary and capricious to recognize it here.

Moreover, translators, by definition, do not broadcast locally originated or oriented programming. Localism has clearly been a cornerstone of the FCC’s radio policies since the Telecommunication Act of 1934. It may have served the Commission’s goals of promoting radio service to allow translators to provide radio service where it would otherwise not have been provided for want of economic sustainability for full power, full service radio stations. Nonetheless it makes no sense to perpetuate a policy of denying local communities the ability to use the airwaves for local, non-commercial educational benefit merely because a national network at some point in the past set up a repeater in that area that extended their national programming to that area.

Where there are no local organizations that are interested in using the airwaves, we support the continued existence of translators that are fed remotely. This is in keeping with the original intent of the translator radio service. Their programming provides value where there would otherwise be no other organizations using the airwaves. But where there are groups that are eager to create locally responsive broadcasting institutions, the mandate of the Commission is clear.

EMF claims that they have made a “substantial investment” in their network of translators. To the extent EMF refers to investment in hardware, it is exaggerating the financial harm. Electronic equipment and towers are easily utilized in other locations and depreciate slowly, as there is a strong resale market for such materials. The vast majority of their existing translators would probably not be harmed as a result of any of the proposals for translator reform before the

Commission, since only translators in locations where there is a local group wanting to use that channel could be affected by a FCC policy more responsive to local needs. Translators are a secondary service, and EMF and other translator owners were aware of this when they made the application for these frequencies. It is secondary because it is a supplemental service, which was never intended to displace the aspirations of local organizations to create local stations.

In fact, the aspirations of local organizations to communicate using broadcast stations can only be limited because of scarcity of available frequencies. The basis of the FCC's mandate to regulate the spectrum is that there are not sufficient frequencies for everybody in a community who might want to broadcast. But the current unforeseen policy outcome of past decisions is that the Commission currently makes frequencies available to non-local entities, while local groups are told that there are no frequencies available. When granting translator frequencies, the Commission was careful to make them secondary to bona fide local services. The only problem is that in the LPFM rulemaking, the FCC failed to give low power stations full primary status with regard to translators. The Commission did this in part because they believed at the time that channels would be open to LPFMs on third adjacent channels. Because the legislation to redress that situation is stuck in Congress right now without a clear timetable for passage, the Commission should do what it can to improve localism in broadcasting that is clearly within its own technical authority.

We believe that translators that would be displaced by any policy changes should be given every reasonable opportunity to make major changes that can accommodate their continued broadcasting.

EMF claims that “ In this case, the ability of new LPFM stations to initiate service cannot outweigh the detriment to the public interest that will be caused by the disruption of established listening patterns and the potential deprivation of millions of listeners of programming on which they have come to depend.” (Comments of EMF, 04-203, page 2)

EMF frankly overstates this case. Programming that has “millions of listeners” will likely find outlets in any community. Even LPFMs may play such popular programming in the hours that

they are not locally originating. Many LPFM applicants are churches that would happily play some of the programming of EMF, but they will use it in a secondary manner after playing the programming that is being particularly produced for their community. Even in cases where EMF's programming is displaced in favor of locally produced programming, their programs are available on the Internet, and thus can be accessed by increasing numbers of people.

We have elsewhere argued that the Internet is not yet a replacement for radio, and we believe that radio has special characteristics that make it, by nature, the electronic medium that is best suited for the promotion of localism. Because it is inexpensive to produce, unthreatening for ordinary people to participate in, and geographically limited in its range, radio should have policies that promote local origination of programming. People that are interested in nationally produced programming have many options to receive it-- through satellite, cable, network television, commercial and non-commercial radio empires and the internet...but those seeking local content have fewer and fewer opportunities to receive, produce or participate in locally based media. The LPFM/Translator issue is an example where current Commission policies are frustrating localism, rather than promoting it.

Does the privilege of EMF programming to reach its 100th market trump the opportunity for a local group to start a radio station of local interest? We think not. Does a listener of EMF programming, who has the ability to receive this programming often on several channels in a market, or receive it over an Internet connection which can serve many other purposes as well, trump the ability of their neighbors to create locally based programming directly relevant to their neighborhood? Again, we think not. Due to the relative flexibility of translators to allocate using contour overlap, they have the ability to start up in many of the spaces in the spectrum where LPFMs are not currently permitted to due to the restrictive nature of the adjacent channel requirements. A translator displaced by a LPFM may well be able to move to another portion of the radio dial, just a spin away from its original location for the average listener.

EMF Beats Dead Horse Of Interference, While Operating Identical Facilities

EMF claims that LPFM has “the additional disadvantage of potentially causing interference to existing full power stations and thereby disrupting service to their listeners.” (Comments of EMF, 04-203, page 3)

This has been shown to be untrue by the results of the MITRE study http://svartifoss2.fcc.gov/cgi-bin/websql/prod/ecfs/comsrch_v2.hts?ws_mode=retrieve_list&id_proceeding=99-25&date_submission=06/30/2003 and the various findings of the Commission. Additionally, the Commission has an extremely thorough interference remediation procedure, (73. 810) which was adopted despite the fact that the engineering staff of the Commission felt that it would rarely be used for want of real world instances of interference. *“Although we expect it to be a rare case where an LPFM operating on a 3rd adjacent channel causes more than a de minimus level within the service area of a full service radio...such a result would be unacceptable were it to occur.”* (FCC 00-349, Memorandum Opinion of Order on Reconsideration, Low Power Radio Service).

Translators are allowed up to 250 watts, as close as second adjacent channels. They use technically identical equipment to LPFMs. It is true that they are regulated differently, but the allocation rules are in many ways looser than those for LPFMs. We believe that at this stage, LPFMs that are allocated under similar rules to translators can manage the modest amounts of remediation that are required of translators by law.

EMF Questions Record Of Local Public Service, Without Citing Any Form Of Evidence

“Accordingly, there would seem to be no urgent need to potentially displace scores of translators operated by EMF and others that serve millions of loyal listeners with a service in its infancy and without a solid record of public service.” (Comments of EMF, 04-203, Page 4-5)

EMF also makes the claim that because the LPFM service is “in its infancy,” it is impossible to evaluate whether there are any real public service benefits. This assertion is philistine at best. A

casual glance at the record of service over the past four years will show the enormous achievements of the new low power radio stations during the period that they have been allowed to exist. Two archives are maintained which include hundreds of recent articles about low power radio stations have served their community. (one at:

<http://www.mediaaccess.org/programs/lpfm/index.html>

and another at:

<http://www.prometheusradio.org/presscenter.shtml>).

The following example is typical. It is from a May 2003 article by Columbia Journalism Review, available here: <http://www.cjr.org/issues/2003/5/radio-kelliher.asp> cited below:

“On the west side of South Bend, losing out meant a Hispanic community with no Spanish-language radio station. When WSBL-LP began its Spanish-language broadcast in September 2002, the community not only heard traditional and contemporary Hispanic music but also received English-language vocabulary lessons during the breaks. The station raises money for a local scholarship fund and helps collect corn flour for the local food bank. WSBL-LP regularly runs public service announcements for early-childhood vaccinations, prostate cancer testing, and HIV screenings, and can measure the results. "The statistics at local clinics jumped from last year to this," says Eliud Villanueva, director of WSBL-LP. "We have really made a difference, and that surprised us more than anyone else."

Low power stations already have a record of providing emergency assistance in times of catastrophe, in a way that no translator station ever could:

In September of 2002, Clear Creek Radio, Inc. received its Low Power license to broadcast. The station is located in downtown Idaho Springs, Colorado. Six months later, in March of 2003, several freak snowstorms hit the state. The first storm dumped four feet of snow at my house. It knocked out the electric power, and I decided to evacuate my family. We just barely got to town. An hour later a snow slide took out the road, preventing us from returning for 5 days. We got one of the last motel rooms in town, just a few blocks from the radio station.

The second storm, which arrived immediately after the first, left an additional three feet of snow. This blizzard took out the electric power in a wide area of the Front Range. Interstate 70 was not only closed; it was covered in several areas with avalanches, some 30 feet high. I made my way to the radio station and dug my way in. I wanted to make sure the furnace was still going. The power was out and we were not broadcasting, but the phone lines were okay.

It suddenly dawned on me what the situation was. Nobody was getting any information. Even if the power came on, there was no local outlet to inform the public, except for the radio station. I

called the Power Company and explained to them the urgency in getting us back on the air. They actually had us back on in three hours. People were either holed up in their homes, living at the school gymnasiums, in motels, or stuck in their cars somewhere. The local supermarket actually ran out of food. Some mobile homes caved in.

I called some of the other deejays. We contacted the emergency services, the county offices, the Colorado Department of Transportation. We went on the air and for the next four days we were the hub of information for our county. People called in for help; people called in to offer help. We sent out emergency PSAs'. People with snow mobiles and snow cats were able to get to those who called in. One lady, who was pregnant, and trapped in her buried cabin, was worried about her husband who went for help. We were able to get a snow cat to him. He was stuck in a drift and totally exhausted. (Greg Markle, Prometheus De-Livered, Fall 2004).

Communications professors have begun to study low power radio stations as well. Professor Keith Brand, of Rowan University, in the current issue of The Radio Studies Journal, states

“Many of the licensees whose content category was identified as “community” were formed for the purpose of presenting specific types of music and information to their areas of service. From the content areas indicated on the survey and the programming schedules that were collected, evidence would indicate that these stations are broadcasting new content. (Conclusion, Winter 2005 Radio Studies Journal)

This ‘new content’ is exactly what the FCC is mandated to promote. It is locally-originated with a high potential for community involvement in its creation, and it is created to serve only the specific locale in which it originates.

We are confident that the low power radio service can demonstrate dramatic public service using any sociological test that the Commission chooses to use. However, the public service value of low power radio is untested in the major radio markets, where low power radio stations have not been allowed to locate. In order to give low power radio stations the ability to locate in markets of any size, low power stations that pledge to create local programming for more than 8 hours per day should be made primary to translator services.

EMF Contends That LPFMs Are Not Obligated to Produce Local Programming, Prometheus Agrees and Recommends That Only LPFMs Which Pledge Local Origination Receive Preference.

Prometheus agrees with EMF that there would be little public interest benefit in giving spectrum priority to Low Power FMs which do not pledge to create locally originated programming. Thus, we believe that only LPFMs which pledged that they were eligible for a “preference point” on the basis of a pledge to create 8 hours or more per day of locally produced programming should be primary to translators. (application form 318, and instructions, for low power radio stations Section III, Question 3- and page 8 of instructions for form).

Prometheus Recommends Additional Engineering Measures.

We believe that LPFMs, ultimately, should be allowed to use two methods for receiving a license. Generally, LPFMs would use the minimum distance spacing method developed for LPFM, which saves FCC staff time and money for the applicants. If no frequency can be found using the minimum spacing method, LPFMs would have the option, during a second filing window, of making an engineering showing and applying using the translator rules. LPFMs allocated using the translator rules would be subject to all of the same rules as translators, but LPFMs that had pledged to create 8 hours of local programming would be primary to all translators. Thus, LPFMs licensed by contour overlap would be subject to the same rule (47 C.F.R. 0 74.1203(a)(3)) that forces them to address interference to any regularly used signal.

There is precedent for using this selection criteria to decide between applicants for the same channel. In LPFM, Low Power FMs that have made the pledge to create more than 8 hours of locally produced programming per day receive preference over other applicants. This is a sufficient basis to give some LPFMs privilege in the selection process over others who refuse to make this pledge from Section III, question 3, on form 318.

If there are objections from stations that rely on translators for bona fide regional fill-in coverage, an additional provision could help.. Any signal that is translated more five times could be made secondary to any LPFM that will provide 8 hours or more of locally originated programming. This would protect stations that rely on translators for state wide networks or fill in coverage, but would make locally originating LPFMs primary to large networks of translators.

The minimum spacing rules for LPFM were good at the time of the original implementation of LPFM, but at this point a more subtle allocation method would be appropriate given the lack of available channels. The FCC could not foresee at the time of the original FCC rulemaking that Congress would choose to pass the Radio Broadcasting Preservation Act of 2000, so re-examination of the allocation method is appropriate given the changed circumstances since the last evaluation.

Conclusion:

Prometheus recommends that the Commission reject the arguments of EMF and proceed as soon as possible to create more opportunities for low power stations by giving locally originating LPFMs full spectrum priority over non-local translators. While there are many issues that have been raised in this docket which are beyond the jurisdiction of the FCC to change, this is one area where the localism docket can clearly make a difference. It is fully within the power of the FCC to change the details of priority between LPFMs, which have “modified primary” status, and translators, which have secondary status. We appreciate the attention of the Commission to this issue.

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