

RECEIVED

AUG 22 2005

BEFORE THE Federal Communications Commission
Office of Secretary
Federal Communications Commission

WASHINGTON, D.C.

DOCKET FILE COPY ORIGINAL

In the Matter of:

Creation of a Low Power Radio Service

To: The Commission
ATTN: Marlene H. Dortch, Secretary, FCC

)
)
) MM Docket No. 99-25
)
)
)

COMMENTS OF LIMESTONE COMMUNITY RADIO

Limestone Community Radio (hereinafter "Limestone"), by Counsel, and pursuant to Section 1.415(a) of the Rules and the Second Order on Reconsideration and Further Notice of Proposed Rulemaking ("Further Notice")¹ and its Extension Order², hereby respectfully submits the following comments in response to the Further Notice. In support whereof, the following is shown:

Background

1. Limestone is the licensee of Radio Station WKEG-LP, Limestone, New York, and has been serving the small community of Limestone located in rural western New York since 2002. Radio Station WKEG-LP has been on the air at 100 watts since that date.

2. As an early licensed LPFM, Limestone has experienced many difficulties as a new broadcaster, however, it has overcome most obstacles and has been successful in bringing community program to its community.

¹ Second Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 05-75, MM Docket 99-25 (released March 17, 2005).

² Order, DA 05-2253, MM Docket 99-25 (released August 3, 2005). (Extension Order).

No. of Copies rec'd 0+4
List A B C D E

3. Because of its community focus, Limestone is very pleased to see that the Federal Communications Commission ("FCC" or "Commission") is making an effort to improve the state of LPFM by its Further Notice.

ISSUES

4. The Commission by its Further Notice set out several issues, some of which are technical (engineering) and some are legal (ownership). Limestone will provide its position on these issues below, however, the focus of these comments will primarily be on the technical proposal.

LPFM/FM TRANSLATORS

5. Limestone has determined that it could move slightly to a new transmitter located approximately 1.3 km from its existing site. This new site would provide better coverage to Limestone and its neighboring communities. The new site as set forth in the attached engineering statement of Joseph M. Davis, P.E., meets all separation requirements except for a pending new FM Translator.

6. Like many other LPFM Stations, the great avalanche of 2003 Translators has adversely affected the ability for Limestone and other LPFM Stations to maximize the use of the spectrum.

7. As stated by the Commission, FM Translators were developed to provide secondary service to areas in which direct reception of signals from FM broadcast stations is unsatisfactory due to distance or intervening terrain obstruction.³

³ Creation of a Low Power Radio Service, 15 FCC Rcd 19208, 19223 (2000) ("Reconsideration Order").

8. LPFM was developed to provide local communities with new voices which are tied to that community. These new stations are not a secondary service, but "real" radio stations. As it is now, LPFM's and FM Translators are essentially the same and Limestone does not believe that to be the Commission's original intent of the LPFM service.

9. In our instant case, Limestone is prevented from maximizing its transmitting ability due to this translator problem. If LPFM's were granted a status "above" that of the FM Translator, there would then be no problem. As such, Limestone believes and requests that LPFM facilities be granted primary status over FM Translators.

10. Limestone believes that out of fairness to previously existing FM Translators, the status of those FM Translators should be "grandfathered". However, the Rules must protect all new and existing LPFM facilities by granting them status above any new FM Translators.

CONSTRUCTION PERIOD

11. Although Limestone is already a licensed LPFM station, it believes that an eighteen month construction permit period is completely unfair to LPFM permittees. Under Section 73.3598 of the Commission's Rules, all services, including FM Translators have three years in which to build. If the goal, as Commissioner Adelstein has said is to provide "communities with new voices", ⁴ the first step to accomplish that is to allow for the additional time to construct. Three years in most cases is more than sufficient, but an

⁴ Further Notice at page 31.

eighteen month limit is simply too short of a period. Limestone therefore supports the Commission proposal to extend the Construction Permit for an LPFM to three years.

LICENSE TRANSFERABILITY

12. In the Further Notice, the Commission has raised issues regarding allowance of the ability to transfer LPFM licenses. Specifically, questions have been raised in connection with what to do with sudden changes in Board of Directors. Limestone supports the Commission's proposal to allow the typical changes of control of Board of Directors of entities. Since most of these entities are organizations, groups, and associations with volunteer Board of Directors, there can be sudden changes occurring in the Board. It would be logical in those cases to allow changes via FCC Form 316 from an "old" Board to a "new" Board.

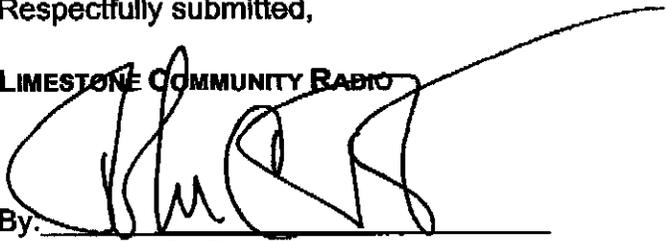
13. The next and most serious issue is whether a sale of a LPFM station should be allowed. The nature of the LPFM station is designed to be "community radio". If the buyer of a LPFM facility is based locally and meets the requirements of a local entity, then a sale to such a local entity should be permitted. Therefore, Limestone supports the sale of a LPFM which is limited only to local entities.

CONCLUSION

14. Limestone applauds and supports the Commission action in reviewing the status of LPFM service today. Limestone urges the Commission to consider the comments provided herein and respectfully requests the prompt issuance of new LPFM Rules.

Respectfully submitted,

LIMESTONE COMMUNITY RADIO

By: 

John C. Trent
Its Attorney

August 22, 2005

Law Offices

PUTBRESE, HUNSAKER & TRENT, P.C.

200 S. Church Street

Woodstock VA 22664

(540) 459-7646

Engineering Statement
prepared for
Limestone Community Radio
MM Docket 99-25

This engineering statement has been prepared on behalf of *Limestone Community Radio* ("*Limestone*"), in support of comments filed regarding the *Second Order on Reconsideration and Further Notice of Proposed Rulemaking* ("*FNPRM*") in MM Docket 99-25.¹ The FNPRM seeks comments regarding expansion and strengthening of the Low Power FM ("LPFM") service.

Limestone is the licensee of LPFM station WKEG-LP, Channel 284L1, Limestone, NY (BLL-20020815AAP). In an effort to provide better service, *Limestone* has recently identified a prospective new transmitting location, which is located 1.3 km from the existing WKEG-LP site. The NAD-27 geographic coordinates for prospective site are 42° 01' 54" N-Lat, 78° 37' 13" W-Lon. This location 1.3 km from the licensed WKEG-LP site and is therefore within the present 2 km maximum distance for a minor change to an LPFM facility as specified in §73.870. The new site is situated at a significantly higher elevation and would provide better line of sight service to Limestone and the surrounding area.

The prospective new transmitting site meets all minimum distance separation requirements of §73.807 to all authorized and proposed stations except for a pending application on file for a new FM translator at Olean, NY for Channel 285D (BNPFT-20030317FJG), first-adjacent to WKEG-LP. Further review showed that the translator application facility creates a new short-spacing for the licensed WKEG-LP, at a distance of 15.1 km to the east of the present WKEG-LP site (21 km is required,² according to §73.807(d)(1)). The prospective new site for WKEG-LP (14.3 km from the translator application site) would worsen this short-spacing and therefore would not be permitted by current FCC Rules and policy.

¹ *Creation of a Low Power Radio Service*, FCC 05-75, released March 17, 2005.

² The proposed translator's 60 dBμ contour distance is 9.4 km, based on the standard 12-radial antenna height above average terrain.

Engineering Statement
(page 2 of 3)

The Olean translator application was filed during a window opportunity in 2003,³ and is mutually exclusive with another translator application (Ch. 285D, BNPFT-20030312AAJ) at Smethport, PA. The translator mutual exclusivity may be resolved voluntarily by the applicants, otherwise they may ultimately proceed to auction. There is no conflict between WKEG-LP and the Smethport translator application, so if Olean is ultimately eliminated then WKEG-LP could be granted at the new site.

Although the Olean translator "Tech Box" application does not fully comply with §74.1204(a)(4) in that it would create prohibited contour overlap to WKEG-LP, such protection is not required at the "Tech Box" (Form 175) auction stage. At the subsequent Form 349 "application" stage the Olean translator could be specified to fully protect WKEG-LP but still preclude WKEG-LP's prospective relocation. This is because a translator facility must protect LPFM's on the basis on contour overlap, while LPFM protection of a translator is based on minimum distance spacing requirements (§73.807).

Since WKEG-LP would be moving closer to the Olean translator application facility, Commission staff processing of WKEG-LP's prospective relocation application would not occur until the translator application is acted on. A temporary freeze on the grant of new FM translator facilities has been established by the Commission pending the outcome of the *FNPRM*. Thus, *Limestone's* comments in the *FNPRM* are supportive of establishing a higher priority to LPFM stations over FM translator stations.

³ *FM Translator Auction Filing Window and Application Freeze*, Public Notice, DA 03-359, February 6, 2003.

Engineering Statement
(page 3 of 3)

Certification

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief.



Joseph M. Davis, P.E.
August 22, 2005

Cavell, Mertz & Davis, Inc.
7839 Ashton Avenue
Manassas, VA 20109
703-392-9090

CERTIFICATE OF SERVICE

I, Sharon L. Hinderer, a Legal Assistant in the law firm of **Putbrese Hunsaker & Trent, P.C.**, hereby certify that I have on this 22nd day of August, 2005, caused to be sent, by hand-delivery, copies of the foregoing, "**Comments of Limestone Community Radio**" to the following:

Honorable Kevin J. Martin, Chairman
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Honorable Kathleen Q. Abernathy, Commissioner
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Honorable Michael J. Copps, Commissioner
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Honorable Jonathan S. Adelstein, Commissioner
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Donna C. Gregg, Acting Chief
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington DC 20554


Sharon L. Hinderer