

**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
) FCC 07-204
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TO: THE COMMISSION

**Comments of National Religious Broadcasters to
Second Further Notice of Proposed Rulemaking**

Dr. Frank Wright
President and C.E.O.
National Religious Broadcasters
9510 Technology Drive
Manassas, VA 20110-4149

Craig L. Parshall, Esq.*
Senior Vice-President and General Counsel
National Religious Broadcasters
9510 Technology Drive
Manassas, VA 20110-4149

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*A member in good standing of the bar of the Supreme Court of the United States, and a member in good standing of the bar of the Virginia Supreme Court, as well as a member of various courts in other jurisdictions; Mr. Parshall's bar licensing complies with 47 CFR 1.23(a).

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SUMMARY AND INTRODUCTION

National Religious Broadcasters (NRB) is a non-profit association that exists to keep the doors of electronic media open and accessible for religious broadcasters. We have more than 1400 members, many of whom are radio broadcasters that produce religious programming. Of those, a significant number are full power stations.

NRB addresses, and opposes, the following three Commission proposals that appear in the Third Report and Order (“Report and Order”) and Second Further Notice of Proposed Rulemaking (“SFNPRM”):

1. Creation of new obligations on subsequent filing full-power stations to assist existing LPFM stations, including the incurring of those “expenses” to search for relocation sites for the LPFM station.
SFNPRM, ¶ 76. We oppose this suggestion because: (a) such proposals undermine the existing voluntary cooperative efforts of full-power stations that have already been noted by the Commission. Rather, the Commission should institute incentives to increase and encourage such voluntary accommodations by full-power stations toward LPFM stations. (b) Only one LPFM station has ever been forced off the air due to full-power preclusion; the remaining predictions of LPFM preclusion are speculative. The Commission needs to fine-tune its application process first, before making drastic changes in full-power/LPFM priority rules. (c) A change in priority rules is premature in light of the fact that the Commission will be limiting, substantially, the number of translator applications permitted.

The Commission needs to assess the broadcast landscape after its imposed limitation on applications, first, before considering a change in LPFM priority. This is particularly critical because of the importance of AM broadcasting to “localism,” and those AM stations, many of them religious in format, have now been permitted by the Commission to utilize translators to carry their signals. (d). There is untapped potential for LPFM growth in vast areas of the United States, where there would be little or no interference with full-power stations. (e). There is a lack of evidence that by favoring LPFM stations through a reversal of priorities the goal of “localism” will actually be advanced.

2. Altering existing priorities, so as to give preference to LPFM stations over full-power translators. SFNPRM, ¶ 84. We oppose this proposal for the same reasons that we oppose the new obligations for full-power stations, as stated in 1. above.
3. Recommending to Congress that it remove the requirement that LPFM stations protect full-power stations operating on third adjacent channels. SFNPRM, ¶ 85. We oppose this recommendation because there is an unresolved issue of third adjacent interference with HD signals by LPFM signals, and one major LPFM advocate has inferred that the more LPFM stations there are in a given market the more the risk of interference.

I. DISCUSSION

A. The proposal of new obligations and priorities contradicts the Commission's recognition that full-power stations have been cooperating with LPFM stations in an effective way

The Commission has expressed the belief that in “most instances the interests of both full-service and LPFM stations can be accommodated.” SFNPRM, ¶ 62.

Apparently, one of the methods for such accommodation has been the *voluntary* efforts of full-power stations which have assisted LPFM stations to stay on the air, including voluntarily consenting to short-spacing to avoid LPFM signal displacement. *Id.* Another method has been the efforts of the Media Bureau in “crafting technical solutions to preserve LPFM stations potentially at risk ...” *Id.*

However, rather than encouraging these kinds of voluntary and/or administrative methods of accommodation, through *incentives*, the Commission's proposals would now *mandate* that full-power stations bear new financial burdens to assist LPFM stations which are placed at risk. Regulatory mandates crush innovation and cripple creative efforts at accommodation. In the LPFM context, it sets LPFM stations at greater odds against full-power stations with increased acrimony, and less cooperation between broadcasters being the likely outcome.

The Commission has a variety of incentives for full-power stations who would be willing to incur the expense of assisting a LPFM station at risk in exchange for the lessening of administrative burdens on that full-power station: decreased record-keeping and reporting, including those materials that must be kept in the “public file,” or more favorable license renewal terms; such full-power stations could also receive credit toward

any new reporting or community-interaction requirements imposed as part of the Commission's new emphasis on "localism."¹

These kind of voluntary inducements are much more preferable to the Commission's proposed solution, which would work a significant, dramatic reversal of the existing priorities between full-power stations and LPFM stations. Many of NRB's members are *non-profit* religious broadcasters. They have created broadcast entities, based on donor contributions, which depend on donors in certain geographical areas being able to receive the programming of that full-power station. Neither their budgets, nor the realities of maintaining a donor base, can withstand the kind of reversal of priority that the Commission now proposes.

B. There is a lack of demonstrable proof of harm to LPFM stations to warrant these dramatic new proposals

Nearly the entire fabric of the low power advocates' prediction of preclusion because of full-power translator applications is based on a speculative analysis regarding LPFM stations that might be frustrated by translator applications. See: Petition for Reconsideration of National Religious Broadcasters Regarding Order Imposing Cap on Translator Applications, page 6, & n. 1, filed in this proceeding contemporaneous with this Comment.

The Commission concedes that "to date, *only one LPFM station* has been forced off the air pursuant to the requirements of section 73.809" relating to the priority of full-

¹ See: Report on Broadcast Localism and Notice of Proposed Rulemaking, MB Docket No. 04-233, January 24, 2008 ("Report on Broadcast Localism.") It would make sense that full-power stations that assist LPFM stations would be credited with a contribution toward the Commission's "localism" goal, as the Commission has made the assumption that advancing LPFM stations is synonymous with helping to achieve localism. Report on Broadcast Localism, ¶¶ 131 – 141.

power stations. SFNPRM, ¶ 60 (emphasis added). In contrast to this one, single, *objective* example of preclusion, the Commission cites the studies of LPFM advocates that predict possible harm, yet consistently couches those conclusions in tentative, inconclusive terms: “*threat* of ... encroachment” ... “LPFM construction permits and licenses ... *at risk*” ... “LPFM stations *could suffer* at least some signal degradation” ... “LPFM stations *might be required* to cease operations.” SFNPRM, ¶ 60 (emphasis added).

The Commission appears ready to entertain a severe reversal of priority between full-power stations and LPFM stations, primarily for two reasons: “increased filings [of full-power stations] under the new Rules and the arguments of LPFM advocates ...” SFNPRM, ¶ 63.

As to the first reason, relating to the number of filings, we suggest that the Commission needs to reasonably review its application process in order to winnow out speculative or non-substantial applications which cloud the picture, and create a false scenario of possible drastic preclusion for LPFM stations.² For instance, one Commenter, CSN International, notes that in the translator application process, “one application mill [an organization which mass produces applications for other parties for a fee] filed more than 4000 applications for FM translators, using an undirected software automatic filing system ...” Petition for Reconsideration, CSN International, filed February 4, 2008 (MM Docket 99-25), page 1.

² Arbitrarily limiting applications down to a number of ten per applicant, is, we have argued elsewhere, not a reasonable solution to the application process problem. See: Petition for Reconsideration of National Religious Broadcasters Regarding Order Imposing Cap on Translator Applications.

To mandate rules that drastically alter existing priorities between full-power stations and LPFM stations *because of the plethora* of full-power facility modification applications pending, but *before* rationally, or fully analyzing the degree of speculation or insubstantiality inherent in those applications, is simply a case of letting the “tail wag the dog.” This point is further elaborated in section C. below.

As for the second reason cited by the Commission, (“the arguments of LPFM advocates”), the conclusions advanced by those advocates are speculative at best. The Commission has recognized this: “ ... it is impossible to accurately predict future demand for LPFM stations licenses ...” (Report and Order, ¶ 52); “... precise preclusionary calculations are not possible ...” (Report and Order, ¶ 53). The LPFM advocates argue a preclusionary effect based not on actual, past incidences of preclusion (only one LPFM license has been precluded, see: section B. above) but on the lessening of “opportunities ...” (Report and Order, ¶ 53 referring to translator filings and their affect on potential LPFM filings).

When basing its rules on predictions of future communications needs and trends, the Commission may reach only those conclusions that have a rational connection to the facts. *FCC v. National Citizens Comm. For Broadcasting*, 436 U.S. 775, 803 (1978); *NAACP v. FCC*, 682 F.2d 993, 997-98 (D.C. Cir. 1982). Here, unfortunately, the Commission’s reliance on the speculative arguments of the LPFM advocates is misplaced. We have pointed out in our related filing that there were several categories of information, for instance, that should have been produced to the Commission to substantiate the LPFM arguments, and the FCC findings, relative to the translator application issue but which were not. Petition for Reconsideration of National Religious

Broadcasters Regarding Order Imposing Cap on Translator Applications, page 6, n.1. In light of the fact that “to date only one LPFM station has been forced off the air ...” because of full-power FM priority rules (SFNPRM, ¶ 60), there is a heavy burden of proof during this proposed rule-making period for compelling facts to be produced to justify a drastic reversal of priority between full-power and LPFM stations.

We do not believe that those kinds of facts have emerged.

C. These new rules are premature in light of the effect of the Order limiting translator applications

In the Report and Order in this proceeding, the Commission has limited translator applications, retroactively, to a total of ten per applicant. Applicants must now choose which applications to jettison, and which ten to preserve. NRB has filed its Petition for Reconsideration of National Religious Broadcasters Regarding Order Imposing Cap on Translator Applications (“Petition”) arguing, *inter alia*, that a cap of ten is unreasonable, and fifty would be at least minimally reasonable. Petition, pages 8-11.

What appears certain, however, is that some substantial limitation will be placed by the Commission on translator applications, retroactively. The wholesale disruption of broadcast coverage plans for full-power stations who filed applications in good faith remains to be seen.³ But we believe that it is entirely premature for the Commission to reverse the established priority of full-power stations over LPFM stations before quantifying (a) the impact of the translator application cap on the full-power applicants,

³ NPR argues that translators are critical to its broadcast infrastructure, and the Commission has noted the comments of NCE entities that translator “chains” are essential in particular to serve listeners in rural areas. Report and Order, ¶ 45. Many of NRB’s radiobroadcast members use translators in a similar way. We find nothing in the record in this proceeding that refutes the importance of translators to public and non-profit broadcasters, especially in reaching rural audiences.

and (b) the effect, if any, of the remaining, valid translator applications on actual, real-world LPFM applications or licensees.

A final concern is the fact that, as Commenter CSN has noted, “the Commission has granted a number of special temporary authorities to allow AM stations to rebroadcast signals in the FM band. That being true, the demand for translators is likely to increase substantially.” Petition for Reconsideration, CSN International, filed February 4, 2008 (MM Docket 99-25), page 2. See: Report on Broadcast Localism, ¶¶ 51-54 (finding that AM radio stations, including many that provide “religious programming formats” are “vital providers of local broadcast services”). Thus, the use of FM translators by AM band broadcasters furthers the goal of localism. Thus, an arbitrary rule that prioritizes LPFM stations over full-power stations, including those that use translators, thus advances LPFM stations, but ironically does so at the expense of AM broadcasters which the Commission has called “vital providers of local broadcast services.” Report on Broadcast Localism, ¶ 52.

D. The presence of vast areas presently available for new LPFM stations contradicts the Commission’s proposal for LPFM priority

Commenter Edgewater is noted to have demonstrated that there are “vast areas in the country [that] remain available for new LPFM stations.” Report and Order, ¶ 46. This finding is not refuted in the record. However, the Commission counters by noting that “LPFM stations, due to their limited service area potential, generally require higher population densities to be viable.” Report and Order, ¶ 50.

The Commission’s comment in that regard presumes, we believe unfairly, that the kind of “localism” under-girding the Commission’s desire to advance LPFM coverage

nationally is focused merely on urban expansion of LPFM stations. Why not first consider expanding, by rule-making, the allowable coverage and service of LPFM stations in those rural areas that are currently under-served with LPFM broadcasts and where there is little or no risk of interference with full-power FM broadcasters?

E. Favoring LPFM by eliminating full-power priority does not help achieve the goals of “localism”

The Commission has elsewhere determined that “the centerpiece of localism is the communication between broadcasters and the members of the public...” Report on Localism, ¶ 2. Given that, it is curious that LPFM stations, which the Commission has determined to uniquely serve the goals of localism, have already been given accommodations which militate *against* the goal of localism: they are not required to maintain a main studio or a public file, and need only operate for a limited number of hours. SFNPRM, ¶ 45.

In its recent Report on Localism, the Commission has noted that LPFM stations have been granted a doubling of the required proximity-to-transmitter-site requirements, allowing both LPFM board members and LPFM applicants to be situated *farther away* from the transmitter location, rather than closer. Report on Localism, ¶ 133.

By contrast to LPFM’s limited hours of operation, reach and budget realities, “[m]ost [full-power] translators serve the community continuously, 24 hours a day, with a professionally-produced mix of fresh information, news and entertainment.” Comments of Western Inspirational Broadcasters, Inc., filed January 24, 2008 (MM Docket 99-25), page 4.

We believe that the laudable aim of the Commission to achieve the goal of localism, while also balancing the interests of full-power and LPFM stations, necessarily

requires a more nuanced approach than is evidenced in the proposals outlined in the SFNPRM.

F. The Commission should not prejudge the third-adjacent channel protection issue in its recommendation to Congress

We urge the Commission not to pre-determine the third adjacent channel protection issue by recommending to Congress that it may be removed, as it proposes. SFNPRM, ¶ 72. This is important in light of unresolved technical issues.

Among other potential problems, as NAB has argued, LPFM can compromise and interfere with HD terrestrial digital radio. Comments of the National Association of Broadcasters, (filed in the Further Notice of Proposed Rulemaking), page 13, paragraph 2.

LPFM advocate Prometheus Radio Project counters that in the MITRE study it was determined that only a small service area will be affected on the third adjacent channel of full power incumbent stations, and then adds, “*and there would never be more than a few low power stations in any given market.*” Reply Comments of Prometheus Radio Project (filed in the Further Notice of Proposed Rulemaking, September 26, 2005), page 15 (un-numbered page).

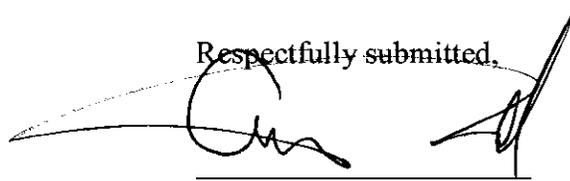
The Comments of Prometheus reveal the necessary corollary that the more the number of LPFM stations in a given market, the higher proportion of interference on the third adjacent channels of full-power stations. We have no guarantee at this point how many LPFM stations will be licensed and operating in the future if the Commission reverses its priority rules, nor where they will be broadcasting. As a result, we urge

caution on the part of the Commission not to predetermine this issue in light of these unanswered questions.

II. CONCLUSION

For the foregoing reasons, we request that the Commission abandon the following proposed rules, to-wit: imposing new obligations on subsequent filing full-power stations to assist existing LPFM stations, including the incurring of the “expenses” of searching for relocation sites for LPFM stations; and altering existing priorities, so as to give preference to LPFM stations over full-power translators. We further request that the Commission abandon its proposed recommendation to Congress that it remove the requirement that LPFM stations protect full-power stations operating on the third adjacent channels.

Respectfully submitted,



Dr. Frank Wright
President and C.E.O.
National Religious Broadcasters
9510 Technology Drive
Manassas, VA 20110-4149

Craig L. Parshall
Senior Vice-President and General Counsel
National Religious Broadcasters
9510 Technology Drive
Manassas, VA 20110-4149
Counsel for National Religious Broadcasters