

Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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In the matter of)	
)	MM Docket No. 99-25
Creation of a Low Power Radio Service)	
)	

COMMENTS OF REC NETWORKS

REC Networks (“REC”) is an entity that is involved in the entertainment, information and support of our community. REC supports a citizen’s access to the airwaves, especially in rural areas. REC is the leading provider of free broadcast engineering data¹ and reports to the Low Power-FM (“LPFM”) community².

In the *Second Further Notice of Proposed Rulemaking (“NPRM”)*, the Commission has raised several questions regarding the placement of LPFM stations, encroachment and LPFM’s status to translators. REC will address these questions.

SECOND ADJACENT CHANNEL WAIVER STANDARDS

In the NPRM, the Commission offers the ability for LPFM stations faced with encroachment issues to be permitted to change channels without regard to second adjacent channel if specific requirements are met. REC agrees that such a waiver should be permitted in situations where a station could be engineered in. This policy should be codified as to increase awareness of the

¹ - <http://www.lpfm.ws>

² - While REC has extremely close connections with the LPFM community, both secular and faith-based, our comments are those of our own based on overall analysis of the situation and the strategic goals of REC Networks and should not be construed as “speaking for” the entire LPFM community.

availability of such a waiver as well as streamlining the process for those who need to use it. REC feels that in some ways, LPFM and full power FM stations (“FPFM”) are alike as they are both capable of providing a local service and that they are required to be equipped with EAS, unlike translators. While LPFM is subject to fewer administrative rules, the end product to the listener is still a local service. All local services must be protected.

We feel that these second adjacent channel waivers be made available when the result is a reduction in theoretical or actual interference. This does not just help the LPFM but it also helps the FPFM assure that they have a service area free of any potential interference. We do not feel that such a waiver should be limited to cases of interference under §73.809, but should be allowed at any time to permit an LPFM station to improve their interference situation. We feel that this can be done as a minor change request and done outside of filing windows in the spirit of §73.870(e).

REC feels that such a waiver should not be limited to second adjacent but also permitted in co-channel and first adjacent channel situations.

Extending the waiver to TV Channel 6

We also feel that this waiver should be extended to the protections of TV, LPTV and Class A TV stations operating on Channel 6 when the LPFM station is proposing operation in the reserved band (Channels 201-220). As we have stated in previous comments, the current rule §73.825 substantially overprotects LPTV and Class A stations as the rule assumes that all such stations operate at maximum facilities. We have already made showings that such a restrictive rule has foreclosed on opportunities to place LPFM stations in the reserved band. Therefore, we ask that LPFM stations be permitted to

use a contour overlap model including population waivers and be able to protect LPTV and Class A stations based on their actual facilities.

Financial and technical assistance to displaced LPFM stations

REC views encroachment by FPFM stations as a form of *eminent domain* in a way. As like with cases of eminent domain that involve property, we feel that the imposition of encroachment by an FPFM station, which is mainly motivated by profit, should not foreclose on the local service provided by LPFM stations and when an FPFM station imposes this substantial financial impact on LPFM stations, which normally have very limited budgets. Therefore, we feel that it is totally appropriate for FPFM stations to provide reasonable compensation to LPFM stations that have to change facilities due to FPFM change activity. This is no different than the compensation that is provided to other FPFM stations that are required to change their facilities in Table of Allotments cases. In the case of an FPFM station encroaching on multiple LPFM stations, the FPFM should be required to accommodate all of the impacted LPFM facilities.

Other rule changes to provide flexibility to propose LPFM station modifications.

The Commission asks if there are any other rule changes that could add flexibility to propose station modifications. REC feels that the Commission should look at the following changes that would not only afford some additional flexibility both at the time of original application and modification, but also brings LPFM to a more level playing field with translators.

Elimination of Intermediate Frequency (IF) protection requirements. The IF channels are those channels that are 53 and 54 channels added or reduced (+/- 10.6 and 10.8 MHz) from the subject channel. Current rules in the FM Translator service do not require translators to protect a full power station's

IF channels if the translator is operating less than 100 watts ERP³. With these rules in place, the Commission has acknowledged that any interference caused by a translator to a full power station's IF channel is insignificant when the translator is operating such low powers. We feel that the LPFM service should also be able to enjoy such an exception.

Elimination of second adjacent channel requirements in respect to translators. Current rules require that LPFM stations protect translators on their second adjacent channel⁴ but translators are not required to protect LPFM stations on their second adjacent channels⁵. REC feels that this rule change will not put LPFM on more of a level playing field with translators, especially if LPFM goes to a contour overlap model.

Permit operation on "Channel 200". REC has always supported the use of Channel 200 (87.9 MHz) as a transition channel for LPFM stations⁶ similar to how Class-D (secondary) stations have and translators⁷ been able to retreat to this channel in the past. We feel that especially following the conclusion of the DTV transition, there may be some displacement opportunities for operation on Channel 200 where such operation is currently permitted and would put LPFM on a more level playing field with translators.

³ - See §74.1204(g).

⁴ - See §73.807(d)

⁵ - See §74.1204(a)(4).

⁶ - We do note that in July 2004, we had filed a Petition for Rulemaking which among other things calls for the use of Channel 200 as an LPFM transition channel in the event of displacement in limited cases. We do note that the Media Bureau has yet to assign an "RM" number to it.

⁷ - We do note that translators faced with displacement have been permitted to change to Channel 200. See *Calvary Chapel of Twin Falls*, file number BPFT-20040211AAW. K200AA, facility ID 83363.

FPFM downgrades from Class C to C0. REC feels that if based on displacement, especially in a distance spacing scenario that an LPFM station can petition to Commission to have an *Order to Show Cause* issued towards a Class-C FPFM facility which operates actual facilities at or below that of Class C0 if such a change could accommodate the placement of the LPFM station.

LPFM STATION DISPLACEMENT

In the NPRM at 75, the Commission requests comments on whether §73.809 should be amended to establish a licensing presumption that would protect certain operating LPFM stations from subsequently proposed community of license modifications. REC supports rulemaking that would protect established LPFM stations that are providing a true local service from such move-ins.

We feel that instead of looking at 8 hours per day that it would be more appropriate to look at 40 hours per week of locally originated programming⁸. We do feel that stations that are on timeshare agreements have that 40-hour minimum prorated based on the number of hours⁹ a particular station is on the air per week.

Local programming may be live or pre-recorded and played back at particular times using an automation system. While REC shares the Commission's concerns about "repetitive automated" programming, we feel that, based on the specific needs and budgets of LPFM stations, that the use of automation

⁸ - Stations with limited staff may be more likely to operate automated on the weekend vs. during the week. We feel that a minimum requirement with the same number of hours that span a work week would be appropriate.

⁹ - A time share station that is only on the air for 12 hours a day should be subject to a 20 hour requirement for local origination.

systems to present local programming should be permitted and encouraged as the use of such automated systems could result in the community receiving even more local programming¹⁰. REC feels that a station that plays entertainment or informational material created or performed by a local artist (defined as within 25 miles of the transmitter) should count towards the daily programming requirement.

We feel that LPFM stations should definitely be protected against “one step” class upgrade by FPFM stations. If a station is filing for a one-step, they are attempting to reach communities well outside their community of license. Since the FPFM station is already serving their city of license with their existing authorized facility, doing an upgrade expands their ability to program to areas outside their local city of license. It would be in the public interest only if another LPFM station trying to serve its own community of license is not foreclosed on.

OBLIGATIONS OF FPRM NEW STATION AND MODIFICATION APPLICATIONS TO POTENTIALLY IMPACTED LPFM STATIONS

In the NPRM at 76, the Commission reaches various conclusions regarding the process that FPFM stations would be required to go through in order to displace an LPFM station.

REC agrees that a notice of an application filing be served on the LPFM station. The FPFM’s application should include a certificate of service to the LPFM station as an attachment. The FPFM should act in good faith to develop the best technical approach, including site relocation. We agree that this is a burden that needs to be on the FPFM to accommodate the existing LPFM and be able to prosecute its own change.

¹⁰ - As programming can be repeated or played at times when the station is not staffed.

REC feels that FPFM stations need to compensate LPFM stations for their expenses involved with the modification of the LPFM station. REC disagrees with the Commission that the expenses be limited to physical changes in the LPFM station's transmission system. In certain cases, especially in the case of channel changes, it should be expanded to include reasonable expenses to cover administrative and promotional changes including station imaging, letterhead, ID and jingles, signage, domain names, etc.

We agree with the Commission that these procedures should apply if the LPFM authorization was issued or a pending LPFM facility application was filed prior to the filing of the FPFM station application for CP or license including one that proposes a community of license modification.

We agree with the Commission that the obligation for the FPFM station to compensate the LPFM station would be limited to cases where the interference distance spacing requirements shown in §73.807 would be short spaced or even more short spaced.

CONTOUR BASED LICENSING

REC feels that those organizations that have the resources to engage in engineering studies should be permitted to engineer in a new LPFM station or a change to an existing station. REC feels that these stations should be permitted to operate between 1 watt at 30m HAAT (1.8 km service area) and 100 watts at 30m HAAT (5.6 km service area). When contour overlap is used, directional antennas will be permitted. Overlap should be permitted if a study is made that a lack of population¹¹ would receive interference.

¹¹ - REC would like the Commission to define "lack of population" in any rulemaking or policy as it relates to LPFM. This will help REC and other organizations determine if this means zero population in the overlap area or a very minimal amount of population.

REC agrees with the Commission that an LPFM station licensed under a contour-based model would be under more scrutiny for interference than a distance spacing-based station. We need to make sure that in a contour-based model that there is no 20km “buffer zone” like there is in the distance-based model.

REC feels that distance spacing should remain as an option at the LP-100 level. We feel with the new contour overlap allowing flexible power levels between 1 and 100 watts, there is no longer a need for the LP-10 service. REC therefore proposes the elimination of the LP-10 service using a distance spacing model. There has not been an LP-10 filing window and based on our studies over the years, the LP-10 distance spacing model will not achieve a significant number of new LPFM stations in urban areas when compared with similar facilities engineered with a contour based model and variable power levels (including under 10 watts) could. This will also eliminate various rules where LP-10 stations are sub-secondary to LP-100 stations. REC wants to make it clear that those stations operating contour based should not be in any way considered sub-secondary to LP-100 distance spacing model stations and to translators as the current LP-10 rules are written¹².

REC feels that the Commission should open up one more filing window for LP-100 stations operating in a distance spacing model. In this window, existing LPFM stations should be permitted to make major changes. Since the creation of the service, we have not had one fully open major change

¹² - See §73.807(a). An LP-100 station is not required to protect LP-10. See also §74.1204(a)(4) where a translator is not required to protect a LP-10 station.

window. Once that window is complete, a contour based model window should be opened.

REC also wants to make it clear that we are not at this time recommending any power levels for LPFM to be higher than the current 100 watts at 30 meters HAAT (5.6 km service contour). While there is some support for higher-powered LPFM stations, especially those in rural areas, we do not feel that this proceeding would be the appropriate place to address that at this time.

LPFM – FM TRANSLATOR PRIORITIES

REC appreciates the value of translators, especially in mountainous and rural areas where FPFM services are more minimal. Since MM Docket 80-90, there has been a significant number of new FM allotments that have been established and therefore more FM white areas being eliminated. What we can not justify is the use of translators in metropolitan areas where there are a considerable number of full power stations serving the same area.

While some translators may rebroadcast a regional station, many broadcast stations from other states, including from places thousands of miles away. We feel that localism is achieved through the establishment of LPFM stations even if it displaces a translator *however*, we also feel that some translators in a particular area would increase the diversity of broadcasting available in the area. Therefore, we must strike a balance.

We feel that translators in metropolitan areas using one of various measuring methods (urbanized area, Arbitron market, distance to a city center) should be secondary to LPFM, especially in cases where an LPFM can make a showing that no channels are available to establish a new LPFM service without displacement of one or more metro area translators. We do

note that translators that are established as fill-in stations in *bona-fide* cases of holes in coverage in FPFM service (where the translator is entirely within the service contour of the FPFM station) should be subject to such displacement nor should FM booster stations be subject to any displacement. With these metropolitan restrictions in place, we do not feel that it is necessary to determine if the primary station is “distant” or not.

Bottom line, with the exception of fill-in stations, there is absolutely no justification for translators operating in major urban areas that are already well served by FPFM and LPFM stations.

CONCLUSION

REC appreciates the hard work of the Commission and their Media Bureau staff on this issue. LPFM supports not only the Commission's localism goals but also its broadcast diversity goals. For the past several years, we have learned a lot about the LPFM service and the direction it is going in as well as the issues that many licensees and permit holders have faced. It's now time to take those lessons learned as well as react to changes made by the non-LPFM interests and enhance the Low Power FM service for the next decade.

Respectfully Submitted,

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April 7, 2008