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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

In the Matter of)

Creation of a Low)
Power Radio Service)

MM Docket No. 99-25

To: The Commission

REPLY COMMENTS OF
NATIONAL PUBLIC RADIO, INC.

Introduction and Summary

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, National Public Radio, Inc. ("NPR") hereby responds to the comments on the Second Further Notice of Proposed Rulemaking ("Second Further NPRM") in the above-captioned proceeding.¹

NPR's comments addressed the foundational implications of proposed rule changes that would, in several material respects, elevate the LPFM service to co-primary status with full power broadcasting. While NPR has endorsed prior LPFM rule changes to promote the service's long-term stability, and we continue to support the service, the fact remains that the LPFM service was created as a secondary service to fill gaps in full power station coverage. In proposing to (1) eliminate the obligation to remediate interference caused by LPFM stations to second adjacent full power stations; (2) waive the second adjacent channel distance separations, (3) deny full power station applications due to LPFM interference, and (4) require full power stations to bear

¹ In the Matter of Creation of A Low Power Radio Service, Third Report and Order and Second Further Notice of Proposed Rulemaking, MM Docket No. 99-25, 22 FCC Rcd. 21912 (2008) [hereinafter "Third Report and Order" and/or "Second Further NPRM," as appropriate]. Unless otherwise indicated, all citations to comments are to comments filed in this proceeding in response to the Second Further NPRM.

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the cost of LPFM station interference, the Commission is proposing to fundamentally change the status of the LPFM service without reconciling the proposed changes with the original rationale for the service or offering a new approach to managing the broadcast spectrum.

Even assuming the Commission were free to weaken LPFM interference obligations, moreover, we do not believe the Commission can justify a spectrum policy that elevates LPFM stations to co-equal status with full power stations. Accordingly, NPR's comments urged the Commission to withdraw or, at a minimum, limit the proposals.

NPR's comments also addressed the Commission's continuing efforts to reconsider the current spectrum priorities accorded FM translator and LPFM stations. Having now raised the issue 3 times in recent years, the Commission has established an extensive record demonstrating the important public service FM translator stations provide and the absence of any justification for downgrading the spectrum priority status of all or a subset of FM translator stations. It is time, therefore, for the Commission to resolve the matter by declaring its intention not to alter the current balance between the FM translator and LPFM services.

I. The Record Of This Proceeding Does Not Support The Commission's Proposals To Elevate The LPFM Service To Co-Equal Status With Full Power Stations

While the Commission may revisit and alter a prior regulatory course in appropriate circumstances, the Commission's proposals are contrary to a clear statutory mandate and represent a profound departure from longstanding spectrum policy.² Accordingly, the

² See Comments of National Public Radio, Inc. at 6-7 [hereinafter "NPR Comments"]; Comments of Cox Radio, Inc. at 4-10 [hereinafter "Cox Comments"]; Comments of The National Association of Broadcasters at 6-16 [hereinafter "NAB Comments"]. See also Comments of Oak Ridge FM, Inc. at 3 ("It is a violation of fundamental due process when a long standing, full service licensee is forced to accept interference from a subsequently authorized, secondary service.")

Commission should withdraw the proposed changes to Sections 73.807 and 73.809 of the Commission's rules.

In particular, the Commission is statutorily bound to prescribe minimum distance separations between LPFM and full power stations for third as well as co-, first-, and second-adjacent channels and to refrain from eliminating or reducing the minimum distance separations for third-adjacent channels.³ The Commission's proposals recognize the latter proscription but ignore the former one. The proposals also require a statutory interpretation that would preserve existing interference protections for third adjacent stations but permit the Commission to weaken or even eliminate protections for second or even co- or first adjacent stations, where the interference harm would be far greater.⁴

Commenters also agree that the Commission has not justified a departure from long-standing spectrum policies and rules. In numerous decisions dating back decades, the Commission has favored high power broadcasting over low power broadcasting based on a much higher ratio of coverage to interference area.⁵ The reason given for the proposals -- a one-time flurry of community of license change applications following a temporary freeze -- does not justify such a broad departure from prior LPFM policy and spectrum policy generally.⁶

The commenters also oppose the proposal to force full service station licensees and applicants to assume the expense of relocating and otherwise redressing LPFM interference.⁷

³ See NAB Comments at 6-9; Cox Comments at 8.

⁴ NAB Comments at 10-12; Cox Comments at 9.

⁵ See NPR Comments at 5-7; Cox Comments at 4-5.

⁶ See NPR Comments at 4-5; Cox Comments at 6.

⁷ See NPR Comments at 9-10; Comments of Ace Radio Corporation, Auburn Network,

NCE stations, in particular, are historically under-resourced governmental or non-profit entities largely dependent on federal, state, and local public funding and listener and other charitable support. If an NCE station seeks to construct a new station or modify an existing one, it is doing so to advance its noncommercial educational mission by serving or improving service to a local community. An NCE station should have to comply with the Commission's technical rules, it will likely seek to avoid or minimize any disruption to other stations, but it should not be forced to pay to move or modify the facilities of another station.

The principal comments in favor of the Commission's proposals spend little time justifying them, arguing, instead, for even more expansive regulatory changes.⁸ Thus, beyond

Inc., Great South Wireless, LLC, Matinee Radio, LLC, Radio K-T, Inc. Scott Communications, Inc., and Great Scott Broadcasting at 10-11; Comments of Saga Communications, Inc. at 5-6.

⁸ Comments of Prometheus Radio Project, National Hispanic Media Coalition, Reclaim The Media, Common Cause, United Church Of Christ, Office Of Communication, Inc., National Federation Of Community Broadcasters, Free Press, Benton Foundation, New America Foundation, Native Public Media, Consumers Union, Future Of Music Coalition, CCTV Center For Media & Democracy, Center For Digital Democracy, Media Alliance, Common Frequency, Media Mobilizing Project, KFOK-LP, KFOK Community Radio, Georgetown, CA, KOWS-LP And The Occidental Arts And Ecology Center, Occidental, CA, KPYT-LP, Pasqua-Yaqui Indian Tribe, Tuscon, AZ, KYRS-LP, Thin Air Community Radio, Spokane, WA, Media Bridges, Cincinnati, OH, Montague Community TV, Montague, MA, WCNH-LP, Highlands Community Broadcasting, Concord, NH, WCOM-LP, Community Radio Of Carrboro, Carrboro, NC, WEZU-LP, Roanoke Rapids, NC, WCRX-LP, Bexley Public Radio Foundation, Bexley, OH, WPVM-LP, Mountain Area Information Network, Asheville, NC, WRFN-LP, Radio Free Nashville, Pasquo, TN, WSCA-LP, Portsmouth Community Radio, Portsmouth, NH, WXOJ-LP, Valley Free Radio, Northampton, MA, Austin Airwaves, Inc., Austin, TX, Chirp-Chicago Independent Radio Project, New Mexico Media Literacy Project, KDRT-LP, Davis Community Radio, Davis, CA, KREV-LP, 104.7, United Methodist Church Of Estes Park, CO, KXRG-LP, Honolulu, HI, WXCS-LP, Cambridge Community Radio Association, Cambridge Springs, PA, WCRS-LP, Simply Living, Columbus, OH, WRYP-LP, WRYP Community Radio, Sherwood, MD, WXBH-LP, Louisville Community Radio, Louisville, KY, KPCN-LP, Pineros Y Campesinos Unidos Del Noroeste, Woodburn, OR, Multicultural Association Of Southern Oregon, KSKQ Community Radio, WIDE-LP Madison, WI, Forest Hills School District, Cincinnati, OH, KKDS-LP, Blue Ox Youth And Community Radio, Eureka, CA at 21 [hereinafter "Prometheus Comments"].

briefly declaring distance separation waivers to be in the public interest, the joint commenters urge the Commission to grant waivers "under a variety of equitable conditions," such as the following:⁹

- ⇒ second adjacent channel waivers must be available in case of *any* interference¹⁰
- ⇒ the Commission should extend the waiver policy to Intermediate Frequency ("IF") channels as well as to co- and first adjacent channels, at least in certain circumstances¹¹
- ⇒ an LPFM station should enjoy a 90 day period to determine whether to seek a waiver, with the possibility of an additional 90 day extension¹²
- ⇒ in determining whether an alternative, rule compliant channel is available in lieu of a distance separation waiver, the LPFM station should enjoy a 30 day test period before the Commission may approve the full power station application¹³

Likewise, the joint commenters would have full power stations bear the LPFM station's direct costs to eliminate interference as proposed, but also a host of other costs:¹⁴

- ⇒ the search for an alternative channel or transmitter site should include evidence that the new channel or site would afford equal or better coverage and "demonstrably reasonable evidence" that a new transmitter site is as "viable" as the old one, with lease price being the apparent test of viability¹⁵

⁹ Id. at 5-6.

¹⁰ Id. at 6. Another commenter would extend the waiver when there is a reduction in theoretical interference. Comments of REC Networks at 2 [hereinafter "REC Comments"].

¹¹ Prometheus Comments at 6-7. See also REC Comments at 2-3 (proposing to extend distance separation waivers to address IF, co- and first adjacent channel interference unconditionally as well as to television channel 6 station interference).

¹² Prometheus Comments at 8.

¹³ Id. at 9-10.

¹⁴ The Commission proposal would limit the obligation of the full power station licensee or applicant to "the physical changes in the LPFM station's transmission system." Second Further NPRM, 22 FCC Rcd at 21944.

¹⁵ Prometheus Comments at 15-16.

- ⇒ the full power station or applicant should absorb "all costs, such as legal and engineering costs," associated with the change¹⁶
- ⇒ the full power station or applicant should also pay the following costs:¹⁷
 - ⇒ new equipment associated with the channel change
 - ⇒ printing of new logs and stationary
 - ⇒ out-of-pocket expenses while the station is off the air
 - ⇒ advertising for the new frequency
 - ⇒ undocumented "miscellaneous expenses"
 - ⇒ promotional support, including give-away items
 - ⇒ lost underwriting
 - ⇒ engineering and legal representation for the LPFM station during negotiations with the full power station

To assuage those who might view these demands as excessive, the joint commenters assure the Commission that these costs are a pittance compared to the riches full power station will reap.¹⁸ Nowhere do the joint commenters differentiate between commercial and NCE full power stations, however, even though, as the Commission has recognized, NCE often have limited financial resources.¹⁹

Significantly, the joint commenters also urge the Commission to extend the "displacement" proposal to new full power station applications and not just community of license

¹⁶ Id. at 16. See REC Comments at 7.

¹⁷ Prometheus Comments at 16-18. See also REC Comments at 7 (full power stations should cover "administrative and promotional changes including station imaging, letterhead, ID and jingles, signage, domain names, etc.").

¹⁸ Prometheus Comments at 18-19.

¹⁹ See In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants, 15 FCC Rcd. 7386, 7394 (2000), aff'd, Am. Family Ass'n v. FCC, 365 F.3d 1156 (D.C. Cir.), cert. denied, 543 U.S. 1004 (2004).

modifications.²⁰ In so doing so, the commenters challenge *any* spectrum preference for full power service.²¹ Indeed, we submit that, if adopted, this joint commenter's proposals would eliminate any pretense regarding LPFM's secondary status. Such radical changes are not justified and should be rejected.

II. The Comments Support Retaining The Relative Spectrum Priorities Currently Accorded LPFM And Translator Stations

NPR's initial comments summarized the essential facts found in the existing record of this proceeding establishing the important public service FM translator stations have long provided.²²

A number of commenters offered similar testimony in support of maintaining the current protections for FM translator stations.²³ In particular, a joint filing by a number of public radio stations included a detailed accounting of the many FM translator stations used to provide locally responsive news, information, and cultural service to rural and other traditionally

²⁰ Prometheus Comments at 13.

²¹ Id.

²² Thus, the record demonstrates that (1) FM translator service has evolved as an important means by which public radio stations extend their services, particularly in rural areas; (2) substantial Federal, state and local funding and other support have been instrumental in constructing public radio translator stations; (3) public radio stations localize their services by ascertaining and addressing issues of particular interest to the community served by the translator station; (4) translator stations provide the only public radio service in many communities, making them essential services in emergency situations; (5) many public radio station licensees utilize "daisy chains" of translator stations to extend service economically over wide geographic areas, such that the displacement of a single translator could eliminate the service provided by a number of translators beyond that point; and (6) public radio translator stations are more likely to be displaced by an LPFM station because full power stations are less likely to serve sparsely populated areas where FM translator stations are most common and valuable. NPR Comments at 11-12.

²³ See NAB Comments at 27-32; Comments of Educational Media Foundation at 6-12 [hereinafter "EMF Comments"].

underserved communities across the country.²⁴ These and other comments demonstrate the fallacy of attempting to distinguish between FM translator stations based on the use of satellite technology or imposing a narrow limit on the number of FM translator stations an entity might protect from displacement by an "encroaching" LPFM station.

Although a number of individuals and other entities submitted comments opposing FM translator service, these comments are predicated on the unsupported contention that LPFM service is inherently more valuable. For instance, one commenter proclaimed that all FM translators should be secondary to LPFM stations because the former are prohibited from originating programming and the latter show "great promise".²⁵ Likewise, while offering yet another scheme for reallocating spectrum priorities among FM translator and LPFM stations, the Prometheus joint commenters simply asserted that "the Commission must improve the LPFM service's spectral priority with respect to translators" because of the Commission's repeatedly expressed commitment to localism and diversity.²⁶ As NPR and others have pointed out, however, the services of FM translator and LPFM stations vary from station to station, and the Commission simply cannot assume that all LPFM stations are inherently more valuable than all FM translator stations, particularly where a given FM translator service may have an established and sizeable audience of listeners.²⁷

²⁴ See Comments of The Public Radio Regional Organizations at 2-7 & Attachment A [hereinafter "PRRO Comments"].

²⁵ Comments of Stephen Gajdosik, President, Catholic Radio Association at 3.

²⁶ Prometheus Comments at 21.

²⁷ See NPR Comments at 13. As the EMF comments observe, LPFM stations are permitted, but not required, to originate programming, and they can and do broadcast programming supplied by national program producers. EMF Comments at 12. LPFM stations also bear fewer public interest obligations than full power stations. See In the Matter of Creation

It is worth noting that the Prometheus joint commenters have apparently abandoned the proposal to elevate LPFM stations over full power stations used as part of a network.²⁸ As NPR and others pointed out, this proposal is administratively unworkable because full power stations can alter their programming at any time and without notice to the Commission.²⁹ More fundamentally, the proposal cannot be justified in terms of the Commission's core spectrum management responsibilities given the secondary status of LPFM stations.³⁰

Otherwise, the newest proposal appears to be a variation of the proposal in the Second Further NPRM. In lieu of preserving no more than 25 FM translator stations licensed to a given entity, Prometheus proposes a limit of 10 FM translator in the top 303 Arbitron markets.³¹ Neither the old nor the new proposal provide any explanation for the number chosen. While the new proposal appears skewed towards displacing FM translator stations in somewhat more populous areas, no data are presented to show the effect of applying a reduced numerical cap to FM translator stations operating in Arbitron markets. Even accounting for the focus on Arbitron markets, a limit of 10 translator stations or repetitions of an originating stations signal will likely result in the loss of existing services on which many people rely for the promise of a service that may appeal to very few people. Attempting to micro-manage an LPFM station's programming by according various points for pledges of different types of programming only adds administrative complexity without necessarily promoting the public interest. It also draws the

of Low Power Radio Service, Report and Order, 15 FCC Rcd. 2205, 2270 (2000).

²⁸ See Second FNPRM, 22 FCC Rcd. at 21946.

²⁹ See NPR Comments at 14; EMF Comments at 8 n.11.

³⁰ See NPR Comments at 14; PRRO Comments at 8.

³¹ Prometheus Comments, at 21-22.

Commission into day-to-day content management, which has profound First Amendment implications.

Accordingly, NPR urges the Commission to maintain the current spectrum priorities accorded LPFM and FM translator stations.

Conclusion

As set forth in above and in NPR's initial Comments, NPR urges the Commission to withdraw or limit its proposals elevating LPFM stations to co-equal status with full power stations and refrain from downgrading the spectrum priority accorded FM translator stations.

Respectfully Submitted,



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