

UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

Economic Impact Of Low Power FM )  
Radio Stations On Full Power ) Docket 11-83  
Commercial Radio Stations )

REPLY COMMENTS OF DON SCHELLHARDT, ESQUIRE KI4PMG

I am one of the co-authors of the 1997 Petition For Rulemaking, in Docket RM-9208, which triggered the FCC's first deliberations on establishment of a Low Power FM (LPFM) Radio Service.

On June 23, 2011, Written Comments in Docket 11-83 were filed by Nickolaus Leggett N3NL, my RM-9208 Co-Petitioner, and myself. In addition, on June 29, 2011, I filed personal Reply Comments to CHRISTIAN COMMUNITY BROADCASTERS. Now I am filing personal Reply Comments to the June 24, 2011 Written Comments of the NATIONAL ASSOCIATION OF BROADCASTERS (NAB).

Because I am also President and Co-Founder of THE AMHERST ALLIANCE, I will stress that in these Docket 11-83 filings I am speaking only for myself (or, in the case of the first filing, Nickolaus Leggett and myself). Amherst has not been involved.

Consideration Of Future Possibilities

I agree with NAB that it is entirely appropriate for the Commission to consider future possibilities in its study, rather than limiting itself strictly to data which reflects the historical experience of LPFM stations to date.

With enactment and implementation of the Local Community Radio Act (LCRA), the radio industry has indeed entered a new world. Hopefully, as NAB notes, the changes will include the frequent appearance of LPFM stations in the kind of urban markets from which they have been largely excluded so far.

Given the LCRA, as well as other changes in the world of radio since the establishment of LPFM in 2000, the FCC would be wise to look forward as well as backward in its analysis.

Having said this, I stress two important caveats:

1. As NAB acknowledges, speculation about future possibilities is inherently speculative. Therefore, conclusions about the future generally have to be considered more tentative than conclusions about the past. They must be discounted appropriately to reflect the higher risk of inaccuracy.

2. As Nickolaus Leggett and I stressed in our Written Comments, the impact of LPFM stations on full power commercial stations can be positive, at least in some cases. If the FCC is open to speculation about possible competition between full power commercial stations and LPFM stations that don't even exist yet, it should also be open to speculation about possible cooperative arrangements that don't exist yet either. It should also be open to speculation about the "shopping mall effect" that Nick and I discussed in our Written Comments.

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### Possible Congressional Action

I agree with NAB that Congress, when it enacted the mandate for an economic impact study, was reserving *the option* of possible future legislation based on the results of that study.

Having said this, I stress three important caveats:

1. Congress *always* retains the option of enacting future legislation. The mandate for a study creates no new authority that Congress doesn't already have.

2. Reserving *the option* of possible future legislation is not the same as *making a commitment* to possible future legislation. The LCRA does not contain any hint of an automatic "trigger" for a Congressional response of some kind. There are no specified "findings" which -- when and if they are made -- will automatically result in some form of Congressional action.

For all we know, Congress just wants to know what's going on. Period.

3. Significantly, NAB limits itself to referencing possible future action by *Congress*. It does not suggest that any kind of action by *the Commission* will be mandatory, or otherwise necessary, *regardless* of what the mandated study concludes.

I believe NAB, by implicitly assuming that no action by the Commission is required in response to any possible conclusions, is interpreting the LCRA correctly. There is no automatic "trigger" for action by either Congress *or* the Commission.

NAB's Competition Scenarios

(A.) NAB raises the possibility of one-on-one competition between “niche market” full power commercial stations and full power LPFM stations. I agree that this could happen and probably *will* happen.

Having said this, however, I stress two important caveats:

1. The Commission must consider *how often* this is going to happen. For direct competition to occur, you need more than simply two stations which both serve niche markets. You need two stations which both serve *the same* niche markets.

In the “real world”, how often is this going to happen? Once? Twice? 5 times? 10 times? Often enough to make a statistically significant impact on full power commercial stations as a whole?

2. Even when and if one-on-one competition occurs, only a *fraction* of the full power station's service area will be affected. Even as a direct competitor, how much damage can a 10 watt or 100 watt LPFM station do to even a 6,000 watt full power station -- let alone a 50,000 watt “blowtorch”?

(B.)NAB cites three LPFM stations which have been caught airing commercials.

I condemn the actions by these stations and support full FCC enforcement of penalties against them. I also support heightened enforcement activities in the future.

At the same time, three LPFM stations out of more than 800 are a very low percentage of the LPFM community. There is not nearly enough data here to justify assuming that illegal

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airing of commercials will have a statistically significant impact on full power commercial stations as a whole.

If this problem grows in the future, the solution will be more vigorous enforcement of the regulations that already exist.

### Conclusion

For the reasons set forth herein, I urge the Commission to conduct its study with the observations I have noted in mind.

Respectfully submitted,

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