

**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
)	
Amendment of Service and Eligibility Rules for)	MB Docket No. 07-172
FM Broadcast Translator Stations)	RM-11338

To: The Commission

COMMENTS OF CATHOLIC RADIO ASSOCIATION

In response to the *Third Further Notice of Proposed Rule Making*,¹ The Catholic Radio Association (“CRA”),² by counsel, hereby submits its Comments in the above-captioned matter and responsive to the Third Further NPRM. To a considerable extent, the Third Further NPRM invites feedback on matters addressed by the CRA in Comments submitted in this same proceeding as of June 10, 2011,³ and rather than repeat those Comments wholesale, by this reference we incorporate them herein. We nonetheless submit these Comments to address certain specific issues raised in the Third

¹ *Creation of Low Power Radio Service*, MM Docket No. 99-25, Third Further Notice of Proposed Rulemaking, FCC 07-172 (2011) (the “*Third Further NPRM*”).

² CRA serves as the trade association for radio station licensees and applicants (among others) who provide, or who wish to provide, Catholic programming in their local communities. CRA members operate in more than 150 communities across America, and many additional CRA members are in the process of building or purchasing new facilities. The tremendous growth of the Catholic radio format reflects a significant expansion over just a few years ago. Working on behalf of official Church institutions, as well as ministries founded and operated by lay members, CRA supports the efforts of Catholic radio programming producers, distributors, and broadcasters alike. Association members include not only broadcast licensees but also program providers and several (Arch)dioceses. An Episcopal Advisory Board supports CRA’s efforts to operate in a manner true to the inherited body of authoritative Catholic teachings.

³ *Comments of Catholic Radio Association*, MM Docket No. 99-25 (June 10, 2011).

Further NPRM or to emphasize and elaborate on the points that CRA made in its June submission.

Many CRA members operate FM translators, and many others own LPFM facilities. Moreover, the number of CRA members that are expected to apply for new LPFM facilities is likely to number in the hundreds. Each of these members of CRA, whether current or prospective operators of a broadcast facility, will add significantly to the diversity of programming in its local radio market by introducing the Catholic programming format where in all likelihood it does not yet exist.⁴ The continued vitality of each service is an anticipated source of tremendous growth for our membership and for the unique format that is Catholic radio.

CRA therefore has no particular interest in the expansion or preservation of one of these services at the expense of the other. Rather, each has a unique contribution to make in order to provide listeners in local communities all across America with additional perspectives and greater diversity in the local radio marketplace.

We contend that policy decisions which invite litigation and produce protracted paralysis will constitute the worst of possible outcomes of this proceeding, both because such an end result would be contrary to the public interest in the expeditious introduction

⁴ The growth of the Catholic radio format presents a genuine opportunity to dramatically increase the availability of a unique radio format not historically present in most communities. Although most noncommercial educational formats air inspirational music from a religious perspective or news-talk programming from a secular perspective, Catholic radio offers listeners a predominantly talk format that is both intellectually robust and profoundly influenced by faith. This programming format is uniquely responsive to listeners and fills a void for this underserved minority that other broadcasters fail to meet. Furthermore, in many rural communities where the local populations are small, as well as in many urban centers where new full power FM stations cannot be authorized, the barriers to entry for would-be Catholic broadcasting organizations are simply too great to overcome. LPFM and FM translator facilities offer economical means of providing greater programming diversity to populations that are craving new choices.

of new service and because that outcome would contradict the intentions of Congress as it enacted the Local Community Radio Act of 2010. Thus, in its previous Comments, CRA emphasized (a) the urgent need to adopt policies that will be conducive to quickly processing (*as distinct from dismissing*) the current backlog of FM translator applications and (b) the importance of the FCC fostering a robust and speedy opportunity for new LPFM stations to begin broadcasting.

CRA maintains that these goals must be advanced in such a way that will minimize the litigation that could result from some of the *post hoc* solutions being proposed or advocated by those interested primarily in the rights of the FM translator applicants or of the interests of proponents of more widespread opportunities for low power FM broadcasting. With a foot planted squarely in each “camp”, so to speak, we herein attempt to illuminate a path forward that would promote both services in the manner most reasonably reconciled with the language of the LCRA.

COMMENTS

The *Third Further NPRM* invites comment on several topics on which the CRA previously provided its input, and on which we hereby elaborate or emphasize key aspects, as follows:

1. *Whether the Commission’s primary focus in effectuating Section 5(1) must be to ensure translator licensing procedures do not foreclose or unduly limit future LPFM licensing.*

CRA agrees with the Commission’s assessment that asymmetries between the translator and LPFM services make it unlikely that LPFM licensing will preclude

licensing opportunities for FM translators. We therefore support the agency's tentative conclusion that in effectuating Section 5(1) of the LCRA, the Commission must ensure translator licensing procedures do not foreclose or unduly limit LPFM licensing. Yet, this does not amount to a conclusion that any policies that expand opportunities for LPFM licensing, no matter the imposition to translator applicants, must be employed. The key word is unduly limit. The LCRA does not purport to through out the entire legacy of FCC protections for applicants or licensees. The Act simply puts both services on equal ground going forward and directs the agency to make spectrum available to each service. Impliedly, the FCC has not been asked to make spectrum available that simply is not available because others are using it, or because others have pre-existing claims to its proposed use. We caution against so expansive an interpretation of the Act as to invite litigation and, ironically, delay the deployment of new services far and wide while the interests of the LPFM and FM translator advocates are argued *ad infinitum*.

2. Whether both translator and LPFM service provide important programming to their local communities. Whether to compare these services in assessing local community needs, and whether the Commission should take cognizance of differing eligibility, licensing, and service rules for translators / LPFM services in assessing "Needs of a community" for additional radio service.

The Commission referenced speculation that FM translator service cannot be expected to provide "meaningful" local service, and therefore, the Commission might only fulfill the Section 5(2) directive of the LCRA by concerning itself solely with the need for LPFM service. However, this view manifestly contradicts not only the Commission's prior determination that FM translators also serve local communities, it contradicts the directive of Section 5(3) of the Act, as well.

Although CRA is highly supportive of LPFM radio and its proliferation throughout the country, CRA agrees with the Commission's 2007 assessment that translator service may also serve the needs of local communities. The diversity of communities and the attendant diversity in programming throughout the United States necessitates a variety of tools to meet the needs of each unique locale. In some cases, translator service may better serve a community than LPFM service, and the FCC should remain open to that possibility. Moreover, it is completely unnecessary for the agency to explore and attempt to resolve the question as to whether one service is better or worse than the other in serving local communities. The important determination here is that both services do serve local communities. We urge the Commission to refrain from making the task at hand more difficult than it need be. There is, after all, plenty of work to be done without becoming embroiled in an endless debate as to whether one service is better than the other. Each has its way of bringing valuable service to local communities, and each should be protected and promoted without either service receiving an advantage. This is the clear intent of Congress as articulated in Section 5(3) of the LCRA.

3. Whether the Commission should dismiss all 2003 translator applications and open a Joint FM Translator / LPFM Application Window.

CRA cannot endorse a course of action that contemplates dismissing the translator applications already submitted, as this course is certain to invite extensive litigation from parties who perceive that they have been disadvantaged by such an action by the Commission. Consistent with its earlier-submitted comments, CRA recommends an

approach designed to minimize litigation, particularly inasmuch a litigation will only further delay opportunities for the introduction of new LPFM and FM translator service in local communities across the nation. The LCRA should not be twisted to suggest Congress sought to delay the introduction of the very same broadcast services the widespread deployment of which the Act was intended to facilitate.

4. Whether the FCC may lawfully consider translator applications only after the next LPFM window.

CRA is not so concerned with whether this approach is, in fact, legal as it is with the practical consideration of whether it is likely to invite prolonged litigation, bogging down the activity of processing the next LPFM Window, regardless of which approach is deemed legal. The Commission's question foretells the certainty that parties will challenge the FCC in court on these very grounds, delaying the process of bringing programming to the listening public.

5. Whether a Market-Specific, spectrum availability-based translator application dismissal policy would most faithfully implement Section 5 of the LCRA, and how to limit translator speculation. Whether the FCC limit engineering solutions to groups of mutually exclusive FM translator applications.

CRA respectfully disagrees with the Commission's conclusion that a market-specific spectrum availability-based translator application dismissal policy would most faithfully implement Section 5. This process would fail to distinguish serious applicants from speculators, and risks burdening the FCC staff with additional analysis that could bog the process down.

CRA instead advocates, consistent with earlier comments on the LPFM issue, the Commission dismissing applications contemplating noncommercial facilities that are

mutually exclusive with applications contemplating commercial facilities, and bringing the remaining commercial applications to auction. This approach will relieve some of the burden on Commission staff, and will better weed out speculators.

The way to limit translator speculation and to process the tremendous backlog of FM translator applications is to do so without allowing for engineering solutions or settlements. The greatest methodology available for limiting the number of FM translator permits that are awarded which may preclude LPFM opportunities is simply to process the backlogged translator applications pursuant to the normal auctions rules. Mutually exclusive applicants should be allowed to compete at auction as expeditiously as possible so that the remaining spectrum can be identified and made available to LPFM and translator applicants equally going forward. The FCC already has a well developed rationale for how auctions generate outcomes consistent with the public interest, and we need not repeat that rationale here. The best overall policy here is not to re-invent the wheel. The Commission ought to apply the rules it already has on its books, and make those who want the spectrum for FM translators pay for it. Of course, this will have the added benefit of producing revenue for the U.S Treasury at a time when the federal government has had a notoriously difficult time paying its bills.

6. Whether LPFM Floors should be proposed for each market.

We unequivocally oppose the imposition of any sort of quota for LPFM or for translator facilities in a local radio community. First, it would be difficult if not impossible to accurately predict whether the demand for a certain type of opportunity is sufficient to satisfy the minimum quota for such facilities in a given market. Second, the

approach is much more heavy-handed than is necessary in order to achieve the desired outcome of fostering opportunities for both LPFM and FM translator facilities. A much less intrusive and sounder approach is available. That is, the FCC can simply invite waiver requests with respect to LPFM spacing requirements as the facts in particular markets seem to warrant. The agency can on a case by case basis determine whether exercising its discretion in granting waivers will be necessary in order to achieve the purposes of the LCRA. The FCC could even aggressively allow the use of contour protection rules as a substitute for strict compliance with the LPFM spacing requirements.

7. Whether to Limit the use of FM translators to rebroadcast AM signals?

Any proposal to limit the use of FM translators to rebroadcast AM signals would undermine a tremendous tool for re-invigorating AM stations and facilitating the long-term economic vitality of the AM radio service. This tool should not be curtailed as a cost of invigorating the LPFM service.

CONCLUSION

In view of the foregoing, the Commission should not make the implementation of the LCRA more difficult than it needs to be. It should refrain from imposing local market quotas for LPFM, dismissing timely filled translator applications, or wading into an argument between LPFM and translator camps as to which does a better job of serving the local community. Instead, the Commission should treat the two services in an even-handed manner and respect the rights and interests of previously-filed applicants, relying on its waiver authority to allow for LPFM facilities in the markets where new facilities

