

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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

**JOINT WRITTEN COMMENTS OF WESLI ANNEMARIE DYMOKE
AND DON SCHELLHARDT, ESQUIRE**

Identification of the Commenting Parties

Wesli AnneMarie Dymoke of Connecticut is President Emeritus of THE AMHERST ALLIANCE and current Chair of the Amherst Advisory Board on the FCC's *Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration*¹ (“*Fourth Further Notice*”) in MM Docket 99-25. Amherst itself was founded in 1998 and operates as a Net-based, nationwide citizens' advocacy group for media reform, including (but not limited to) the Low Power FM (LPFM) Radio Service.

Wesli is also Executive Director of PROVIDENCE COMMUNITY RADIO in Rhode Island.

Don Schellhardt is Co-Founder of THE AMHERST ALLIANCE as well as its President for 12 of the last 14 years. Joined by Nickolaus E. Leggett of Virginia, Don co-filed the 1997 Petition For Rulemaking which led to Docket RM-9208, the Commission's first deliberations on whether to authorize and license LPFM stations.

Explanation of the Circumstances

We submit these Written Comments in order to assure Commission consideration of a proposal regarding whether proposed new LP250² licenses should be limited to currently licensed LP100 stations only. The Commission has explicitly sought input from the public on this matter.³

1 FCC 12-28, released 19 March 2012

2 We here presume an LP250 service tier more or less as proposed in the *Fourth Further Notice* at Appendix B, at 3 (proposed amendments to § 73.811).

3 *Fourth Further Notice* at 51: “We ask that commenters address whether we should limit eligibility to operate in excess of the current 100 watts/30 meters maximum to previously licensed LPFM facilities in order to provide those LPFM licensees that have demonstrated their ability to construct and operate a limited opportunity to expand their listenership.”

The proposal we here submit was recently debated during internal voting by Members of THE AMHERST ALLIANCE. The proposal received only one third of the votes within Amherst, but the two of us feel it has sufficient merit to be brought before the Commission as a "Minority Report."

In so doing, we act as individuals, not as representatives of THE AMHERST ALLIANCE.

The Dymoke/Schellhardt Proposal on Eligibility for LP250 Stations

THE AMHERST ALLIANCE wants to keep the LPFM community open to newcomers.

Therefore, assuming spectrum ability and compliance with applicable FCC regulations, all Amherst Members—including those who currently hold LP100 licenses—believe that LP250 licenses should be available for BOTH "upgrading" LP100s AND qualifying newcomers. Within Amherst, there is absolute unanimity on this point.

However, the proposed LP250 stations will be required to meet significantly more stringent operational standards than LP100 stations. We understand there is some concern within the Commission, that some newcomers may not be able to master immediately the more demanding operational requirements for LP250 stations.

We share this concern. Some newcomers may be able to meet, immediately, the LP250 operational standards. Unfortunately, there is a definite risk that some may not.

The Dymoke/Schellhardt proposal is, we believe, a more moderate and equitable solution to this possible problem than the FCC's proposal to reserve all LP250 stations for "The LPFM Establishment."

Under our proposal:

- *Currently licensed* LP100 stations would be able to "upgrade" directly to LP250 status, assuming that enough spectrum is available and other FCC policies permit the upgrade.
- *New* LP250 applicants, when and if licensed, would have spectrum for an LP250 station set aside on their behalf. However, before allowed to operate at 250 Watts ERP, they would first be required to undergo a two-year "shakedown cruise" at 100 Watts ERP.
- At the end of two years, based on its assessment of the station's performance during the "shakedown cruise," the FCC would either: (1) approve an upgrade to operation at the authorized 250 Watts ERP; (2) delay the decision on a possible upgrade until specified improvements have been made by the station; or (3) deny the upgrade, toss the unused

spectrum "back in the pool" for other stations to use, and order the station to keep operating at 100 Watts ERP permanently.

- The station itself would be able to opt, at the end of two years, to waive its opportunity for an upgrade to LP250. In that case, however, the station would be required to remain at 100 Watts ERP permanently, and its unused spectrum would be "thrown back in the pool" for other stations to use.

We believe this approach would avoid the risk of awarding LP250 licenses for immediate use by newcomers, while still keeping LP250 licenses available for newcomers over the longer term.

Conclusion

For the reasons set forth herein, we urge the Commission to incorporate the Dymoke/Schellhardt proposal in its final regulations on the licensing of LP250 stations.

Respectfully submitted,

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