

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

To: The Commission

COMMENTS OF NATIONAL PUBLIC RADIO, INC.

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Summary

The Local Community Radio Act (“LCRA”) represents a careful compromise by Congress to permit additional licensing of low power FM (“LPFM”) stations while protecting full power FM stations from interference and ensuring the effective remediation of interference when it does occur. Accordingly, the Commission should avoid adopting significant rule changes unrelated to the LCRA that undermine Congress’s effort.

In particular, the Commission should not establish a new category of higher powered 250 watt LPFM stations. Even if the current distance separations would accommodate such stations, Congress enacted the LCRA with a clear understanding of the LPFM service as comprising 100 watt LPFM stations. In addition, an entity that wishes to construct and operate a higher powered facility is already able to construct or obtain a Class A station, and the Commission should not license the same broadcast facility under two very different sets of service rules. The Commission also should not eliminate the intermediate frequency (“IF”) interference protection requirement, and it should strictly construe Subsection 3(b)(2) of the LCRA permitting second adjacent channel waivers.

With respect to LPFM interference to third adjacent stations, Section 7 of the LCRA requires LPFM stations to remediate interference regardless of whether the adjacent station is short spaced or fully spaced. The difference between short-spaced and fully spaced third adjacent stations concerns only the location of the interference, not the extent of LPFM remediation required.

Finally, the Commission should avoid changing the LPFM rules in ways that fundamentally alter the character of the service. LPFM was established as and understood by

Congress to be a low power broadcast service, providing access to broadcast facilities to new entrants at modest cost to provide highly local service to the LPFM licensee's community.

Higher powered 250 watt LPFM stations are inappropriate as a policy matter, as is allowing LPFM licenses to operate FM translator stations.

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Introduction

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, National Public Radio, Inc. ("NPR") hereby submits its Comments in response to the Fourth Further Notice of Proposed Rulemaking ("Fourth Further Notice") in the above-captioned proceeding seeking comment on proposals to amend the Commission's Rules, including to implement certain provisions of the Local Community Radio Act of 2010 ("LCRA").¹

NPR is a non-profit membership corporation that produces and distributes noncommercial educational ("NCE") programming through more than 900 public radio stations nationwide. In addition to broadcasting award winning NPR programming, including *All Things Considered*[®] and *Morning Edition*[®], NPR affiliated stations are significant producers of local, regional, and national news, information, and cultural programming. NPR also operates the

¹ Pub. L. No. 111-371, 124 Stat. 4072 (2011). See In the Matter of Creation of A Low Power Radio Service, Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration, 2012 FCC LEXIS 1205 (Mar. 19, 2012) [hereinafter "Fourth Further Notice"].

Public Radio Satellite Interconnection System and provides representation and other services to its Member stations.

I. The LCRA Represents a Carefully Crafted Compromise, Which The Commission Should Be Careful Not To Undermine

In promulgating rules to implement the LCRA, the Commission should assume a restrained approach for two important reasons. First, the LCRA represents a carefully crafted compromise, many years in the making, and balances the desire for new low power service with the need to both avoid and remediate harmful interference. Second, the Commission should avoid authorizing LPFM service in situations in which displacement by full power service is likely so as to minimize such displacements.

Although enacted in 2011, the LCRA traces back to legislation introduced in the Senate in 2004.² As explained during consideration of the final legislation by the House of Representatives, LCRA represents a “compromise,” authorizing additional LPFM service by removing the third adjacency protection, while confirming LPFM’s secondary status and obligation to avoid causing interference.³ Given the carefully constructed and detailed provisions of the LCRA, the Commission should avoid adopting significant changes that go beyond the compromise Congress enacted.

In particular, the Commission should not establish an entirely new category of 250 watt LPFM stations. See Fourth Further Notice at ¶¶49-51. It is clear from the legislative history underlying the LCRA that Congress understood LPFM stations to operate with no more than 100

² S. 2505, 108th Cong., 2nd Sess (2004).

³ See 155 Cong. Rec. H14905 (Dec. 15, 2009).

watts of power. For instance, the House Report accompanying the legislation flatly states that “LPFM radio services . . . must operate at less than 100 watts.”⁴ This characterization of the LPFM service is consistent with congressional testimony provided by the Commission: “The modest maximum technical facilities – 100 watts effective radiated power with an antenna height of 30 meters above average terrain – create licensing opportunities not available to full power stations.”⁵ A service comprising 100 watt LPFM stations is also how the principal LPFM advocates characterized the service in seeking to generate Congressional support for the LCRA.⁶ While the Commission observes that the distance separations it adopted for 100 watt LPFM stations could accommodate 250 watt LPFM stations, Fourth Further Notice at ¶51 n.125, Congress enacted the LCRA based on the current Commission rules and distance separations, in addition to the legislative history before it.

250 watt LPFM stations are also unnecessary because the Commission already licenses Class A full power stations to operate with the same effective radiated power (“EAP”).⁷ When the Commission previously considered, but ultimately declined to authorize, 1000 watt LPFM stations, it proposed such stations to operate on a primary basis governed by the rules applicable

⁴ H.R. Rep. No. 375, 111st Cong., 1st Sess. 4, 10 (2009) [hereinafter “H.R. Rep. No. 375”].

⁵ A Legislative Hearing on H.R. 1147, the Local Community Radio Act of 2009, H.R. 1133, the Family Telephone Connection Protection Act of 2009, and H.R. 1084, the Commercial Advertisement Loudness Mitigation Act (CALM Act) Before the Subcommittee on Communications, Technology, and the Internet of the House Committee on Energy and Commerce, 111th Cong., 1st Sess. (June 11, 2009), *reprinted at* <http://energycommerce.house.gov/hearings/hearingdetail.aspx?NewsID=7082> (statement of Peter H. Doyle, Chief, Audio Division, Media Bureau) [hereinafter “FCC Congressional Testimony”].

⁶ See note ²⁵, infra, and accompanying text.

⁷ See 47 C.F.R. § 73.211.

to primary full powered stations generally.⁸ Since an entity can already apply to construct a 250 watt FM broadcast station, there is little justification for creating another class of such stations governed by a different set of rules.

For similar reasons, the Commission should not eliminate the intermediate frequency (IF) protection for LPFM stations operating with less than 100 watts of power. Fourth Further Notice at ¶52. The Commission reasons that, since FM translator stations operating with less than 100 watts ERP are not required to provide IF protection, LPFM stations operating with less than 100 watts ERP should be similarly exempt. There are several problems with this rationale.

First, Congress specifically addressed the licensing of LPFM stations and gave no indication of an intent for the Commission to eliminate the obligation of LPFM stations to afford IF interference protection. Second, before extending the IF interference protection to LPFM stations operating with less than 100 watts ERP, the Commission should assess the interference consequences of exempting FM translator stations from the IF protection obligation in the roughly 20 years since the exemption was adopted. See Fourth Further Notice at 52 n. 128. The absence of IF-related interference complaints involving FM translator stations does not mean the interference is inconsequential. Third, while the Fourth Further Notice proposes to exempt LPFM stations operating *with less than* 100 watts ERP from having to protect full powered stations from IF interference, Fourth Further Notice at ¶52 (*emphasis added*), the proposed rule requires LPFM stations operating *with more than* 100 watts ERP to protect IF channels. Id., Appendix B (proposed Section 733.809(a) (*emphasis added*)).

Finally, the Commission should strictly construe the provisions of LCRA authorizing

⁸ In the Matter of Creation of A Low Power Radio Service, Notice of Proposed Rulemaking, 14 FCC Rcd 2471, 2481 (1999).

Commission waivers of the second adjacency protection. Section 3(b)(2)(A) of the LCRA only authorizes such a waiver when the LPFM can establish that interference will not result “using methods of predicting interference taking into account all relevant factors, including terrain-sensitive propagation models.”⁹ By its terms, the LCRA standard supersedes the Commission’s interim waiver processing policy by focusing exclusively on the absence of interference. See Fourth Further Notice at ¶18.

As a matter of public policy, the Commission should bear in mind the time and expense associated with raising funds and constructing an LPFM station when considering a second adjacent waiver request, as well as the Commission’s basic understanding of “an LPFM service that is designed to allow small stations to operate where full powered stations cannot.”¹⁰ It will dis-serve the LPFM station and its supporters to have to close down or relocate the facility or undertake other remedial measures if it causes interference to adjacent full power service. The Commission therefore should only grant a second adjacent waiver if there are no other fully spaced channels available to the applicant. See Fourth Further Notice at ¶19. Unlike the Commission’s interim waiver policy, the Commission cannot simply accept the interference as the cost of the LPFM service. See Fourth Further Notice at ¶18.

II. The LCRA Requires the Commission to Ensure Effective Remediation of Interference Associated With Third-Adjacent LPFM Operations

The Fourth Further Notice tentatively concludes that section 7 of the LCRA establishes different interference protection requirements for LPFM stations that are fully spaced from third

⁹ LCRA, ¶3(b)(2)(A).

¹⁰ In the Matter of Creation of A Low Power Radio Service, Memorandum Opinion and Order, 15 FCC Rcd 19208, 19237 n.93 (2000)

adjacent full power stations and those that are less-than-fully-spaced. Fourth FNPRM at ¶26.

We agree. In both cases, however, Section 7 still requires the “effective remediation of interference.”¹¹ Accordingly, while the particular circumstances will determine which process applies in any given case, the end result must be to ensure the effective remediation of any interference cognizable under the relevant subsection of Section 7 of the LCRA.

As the Fourth Further Notice explains, Section 7 of the LCRA addresses two categories of full power stations that might suffer interference from third adjacent LPFM stations. Under Section 7(1), full power stations are to be protected from interference by third adjacent LPFM stations that are less-than-fully-spaced because of the elimination of the third adjacent distance separations by the LCRA.¹² Under Section 7(3), full power stations are to be protected from interference by third adjacent LPFM stations that are fully spaced. Short-spaced third adjacent stations are entitled to receive “the same interference protections that FM translator stations and FM booster stations are required to provide under Section 74.1203 of the Commission’s Rules, which, in turn, requires the remediation of interference to the “direct reception by the public of the off-the-air signals of *any* authorized broadcast station.”¹³ Fully spaced third adjacent stations are also entitled to interference protection but only with respect to “complaints of interference within the protected contour of the affected station.”¹⁴

Although Section 7 contemplates two standards distinguished by whether the LPFM

¹¹ LCRA, § 7.

¹² See id., § 3.

¹³ 47 C.F.R. § 74.1203(a)(3) (*emphasis added*).

¹⁴ LCRA, § 7(3).

station is short-spaced or fully spaced to an affected station, there is no significance to the phrasing used in Section 7(1) (“to provide the same interference protections”) compared to the phrasing used in Section 7(3) (“to address complaints of interference”) in terms of remediating the interference. See Fourth Further Notice at 34. In both cases, the LPFM station is obligated to “remediate the interference.” In addition to the plain meaning of the statute, the legislative history underlying the LCRA demonstrates that “addressing” interference is meant to require the remediation of interference.

The legislation was introduced without a Section 7 interference remediation section.¹⁵ During consideration by the Subcommittee on Communications, Technology, and the Internet of the House Energy and Commerce Committee, the legislation was amended to include what became Sections 7(2)-(5) of the LCRA, under the heading “Ensuring Effective Remediation of Interference.”¹⁶ When the House of Representatives subsequently acted on H.R. 1147, Section 7(1) was included as part of the legislation under consideration by the House.¹⁷ The Chairman of the Subcommittee on Communications, Technology, and the Internet commented that the bill under consideration “provides for remediation of interference complaints between low-power FM stations and full-power stations as well as FM translator and booster stations.”¹⁸ In commenting on the addition of Section 7(1), Congressman Doyle (D-PA), co-author of the original bill, noted that the additional provision “requires LPFM stations to fix any instance of

¹⁵ H.R. 1147, 111th Cong., 1st Sess (2009).

¹⁶ See H.R. Rep. No. 375, 111st Cong., 1st Sess. 4, 10 (2009).

¹⁷ See 155 Cong. Rec. H14903 (Dec. 15, 2009).

¹⁸ Id. at H14904 (remarks of Cong. Boucher).

interference to full power stations on the third adjacent channel, even outside an incumbent station’s legally protected coverage area,” an obligation he described as an “extremely unusual obligation to remediate interference outside of the broadcaster’s legal coverage area.”¹⁹

This legislative history makes clear that Section 7 was intended to ensure “effective remediation of interference,” regardless of whether the affected station was short- or-fully-spaced to the third adjacent LPFM station causing the interference. In addition, the significance of the difference between Section 7(1) and Section 7(3) situations is that interference protection is required in the former case even where the interference occurs outside the protected station’s authorized service area. Section 7(3) was not intended to mean that the obligation to “address” an interference complaint requires something less than remediating the interference.

III. The Commission Should Preserve the LPFM Service as a Highly Localized Service

In addition to proposing to amend the Commission’s technical rules as required by the LCRA, the Fourth Further Notice considers other rule changes that are intended, among other things, to “promote the LPFM service’s localism.” See Fourth Further Notice at ¶47. In considering possible rule changes, the Commission should remain focused on the rationale for why it created the LPFM service: to fill in gaps in spectrum that would otherwise go unused by full powered stations²⁰ and to provide highly localized broadcast service.²¹ Accordingly, the

¹⁹ Id. at H14905.

²⁰ See In the Matter of Creation of A Low Power Radio Service, Memorandum Opinion and Order, 15 FCC Rcd 19208, 19236 (2000) (“Now, when radio service is widely available throughout the country and very little spectrum remains available for new full-powered stations, we conclude that licensing very low powered stations will fill in the gaps in the spectrum that would otherwise go unused.”).

²¹ See In the Matter of Creation of a Low Power Radio Service, Report and Order, 15 FCC

Commission should resist the urge to authorize new higher-powered 250 watt LPFM stations or the licensing of FM translator stations to LPFM stations. Other changes the Commission has proposed, such as making the “established community presence” requirement more rigorous, Fourth Further NPRM at ¶¶61-62, and imposing mandatory time sharing where a particular LPFM station does not operate for at least 12 hours per day, are appropriately tailored to advance the purposes of the LPFM service. Fourth Further NPRM at ¶66.

The legislative history underlying the LCRA reflects the underlying policy rationale for the LPFM service as a service of “highly local,” extremely low power broadcast stations constructed at modest cost:

- “LPFM radio services are limited to noncommercial educational programming and must operate at less than 100 watts, with a preference given to licensees for stations that are locally owned and offer locally-originated programming.”²²
- “Low-power stations are operated by noncommercial entities and broadcast very weak signals (100 watts or less) that reach a limited geographic area.”²³
- “Low-power stations, which are community-based nonprofits which operate at 100 watts or less of power and which have a broadcast reach, typically, of only a few miles, play a unique role in our media.”²⁴
- “Low Power FM (LPFM) stations are noncommercial stations that operate at 100 watts or less – with a broadcast radius of approximately three to five miles. As uniquely local outlets, LPFM stations directly serve their communities.”²⁵

Rcd 2505, 2508 (2000) (“Our goal in creating a new LPFM service is to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities.”) [hereinafter “LPFM Report and Order”].

²² H.R. Rep. No. 375, at 4.

²³ Id. at 8.

²⁴ 155 Cong. Rec. H14904 (Dec. 15, 2009) (statement of House Communications, Technology, and Internet Subcommittee Chairman Boucher)

²⁵ Id. at H14906 (“Dear Representative” letter signed by American Association of People

- “In establishing the first new radio service in more than 30 years, the Commission sought to respond to a broad and deep interest in creating outlets for highly local stations grounded in their communities.”²⁶
- “The modest maximum technical facilities – 100 watts effective radiated power with an antenna height of 30 meters above average terrain – create licensing opportunities not available to full power stations. LPFM stations, which have a typical service range of 3.5 miles, can be constructed for less than fifty thousand dollars.”²⁷

Even where the Commission is purporting to adopt rule changes not required to implement the LCRA, it should maintain the LPFM service true to its foundational principles as Congress understood them: a service of low powered broadcasting, providing access to broadcast facilities at modest cost and highly local service to the LPFM licensee’s community.

Establishing 250 watt LPFM stations and authorizing LPFM licensees to construct or obtain FM translator facilities are contrary to the nature and character of the LPFM service. The Fourth Further Notice states that 250 watt LPFM stations could be sited within the existing distance separations because of the additional 20 km buffer, Fourth Further Notice at ¶51 n.125, but even if so, that does not mean that such stations should be authorized. Moreover, even if confined to more rural areas, Fourth Further Notice at ¶51, entities interested in operating higher

with Disabilities (AAPD), Access Humboldt, American Federation of Musicians, Capitol Community TV – or, CCTV – Vermont, Chicago Media Action, Consumers Union, Free Press, Future of Music Coalition, Industry Ears, Institute for Local Self-Reliance, Intercollegiate Broadcast System, Media Access Project, Media Alliance, Media Bridges, National Hispanic Media Coalition, National Federation of Community Broadcasters, National Organization for Women, Native Public Media, New America Foundation, Prometheus Radio Project, Public Knowledge, Reclaim the Media, Rainbow PUSH, United Church of Christ, Office of Communication, Inc., and U.S. PIRG)

²⁶ FCC Congressional Testimony at 1 (statement of Peter H. Doyle, Chief, Audio Division, Media Bureau)).

²⁷ Id.

powered broadcast facilities are free to construct or obtain such facilities under current Commission Rules.²⁸

Likewise, the Commission originally considered, but ultimately rejected, the option of allowing LPFM licensees to operate FM translator stations.

We will prohibit common ownership of LPFM and any other broadcast station, including translators and low power television stations, as well as other media subject to our ownership rules. . . . We conclude that our interest in providing for new voices to speak to the community, and providing a medium for new speakers to gain experience in the field, would be best served by barring cross-ownership between LPFM licensees and existing broadcast owners and other media entities.

LPFM Report and Order, 15 FCC Rcd at 2217-18. In reaching this conclusion, as the Fourth Further Notice recounts, the Commission found that one of the most important purposes of establishing this service is “to afford small, community-based organizations an opportunity to communicate over the airwaves and thus expand diversity of ownership.” Fourth Further Notice at ¶56 (quoting LPFM Report and Order, 15 FCC Rcd at 2217). While allowing LPFM licensees to own and operate FM translator stations may seem like a modest change, it is inconsistent with the “highly local” nature of the LPFM service, especially if the Commission allows LPFM licensees to employ alternative delivery mechanisms to “feed” FM translators. Fourth Further Notice at ¶56. Accordingly, we urge the Commission to refrain from authorizing 250 watt LPFM stations or the use of FM translator stations as inconsistent with the LPFM service.

²⁸ See 47 C.F.R. § 73.211.

Conclusion

For the foregoing reasons, NPR urges the Commission to (1) implement the LCRA with respect for the carefully constructed compromise between additional LPFM service and interference protections, (2) ensure the effective remediation of interference subject to Section 7 of the LCRA, and (3) maintain the intended character of the LPFM service in considering other rule changes.

Respectfully Submitted,



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