Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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

COMMENTS OF COMMON FREQUENCY

May 7, 2012

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I. INTRODUCTION

Common Frequency, Inc. ("CFI"), a nonprofit 501(c)(3) California corporation that advocates for, assists, and educates new community, student, and alternative non-commercial educational applicants here submits a comment concerning the *Fourth Further Notice of Proposed Rulemaking* concerning MM Dockets 99-25 ("NPRM").

II. SECOND AND THIRD ADJACENT SEPARATIONS

A. Waiver of Second-Adjacent Channel Minimum Distance Separation Requirements

The NPRM concludes that the current policy for second-adjacent waiver request[1] has been superseded by Section 3(b)(2)(A) of the Local Community Radio Act ("LCRA")[2] where the proposed facility "will not result in interference to any authorized radio service." It would appear, based upon current assumptions regarding the definition of interference that duplicating the rules currently employed by translator service for LPFM would suffice in fulfilling the statutory mandate. The criteria set in Section 74.1204(d), as confirmed by *In re Application of Living Way Ministries,*[3] permits a translator applicant to demonstrate "no actual interference will occur" due to "lack of population". This is currently demonstrated with a zero population showing via a U/D showing. We believe this same methodology can and should be applied to LPFM.

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[1] Under the current waiver processing policy, the FCC "balance[s] the potential for new interference to the full-service station at issue against the potential loss of an LPFM station." *Third Report and Order*, 22 FCC 21939, Para 65.
[2] H.R. 6533 (111th): Local Community Radio Act of 2010.
[3] *In re Application of Living Way Ministries, Inc, for a Construction Permit for a New Noncommercial Educational FM Translator Station*, Memorandum Opinion and Order, FCC 02-244. September 9, 2002.

In order for LPFM applicants to employ U/D showing, the FCC should accept the use of various types of directional antennas and polarizations. Additionally, it is critical that LPFM applicants be able to select ERP, as that is not currently an option. In many cases, LPFM applicants may need to select a maximum power that allows for zero population to be interfered with. The FCC currently prescribed a power level based on fulfilling a 5.6 km 60 dBu contour. In fact, powers under 50 watts may even need to be considered to allow applicants the flexibility to employ U/D as translator applicants do.

FCC asks, "*Should we require a showing that there are no fully-spaced channels available to the LPFM applicant?"* Common Frequency believes the FCC should not. This stipulation runs contrary to the assumption of adequate spectrum availability within the proposed spectrum-available/spectrum-limited model. Case in point: What if there is one fully spaced channel in a city and there are eight second-adjacent channels open in a city? Thirty LPFM applicants are only allowed to apply for that one fully spaced channel because no applicants are able to meet the threshold with just one fully spaced channel open.

FCC asks a number of questions regarding additional stipulations

> *Should we take into account that the proposal would eliminate or reduce the interference received by the LPFM applicant? Should we consider whether the proposal would avoid a short spacing between the proposed LPFM facilities and a full-service FM station, FM translator or FM booster station on a third-adjacent channel? Should we also take into account the interference protection and remediation obligations such short spacing would trigger? Should we consider whether the proposal would result in superior spacing to full-service FM, FM translator or FM booster stations operating on co- and first-adjacent channels? Are there other factors or showings that we should consider?*[4]

We believe such stipulations going beyond a U/D showing would be unhelpful and bureaucratic in nature. LPFM services on second adjacent channels having to face

[4] NPRM Para. 19.

tougher standards than a proposed translator using the same exact transmitter wattage, antenna height, and channel seems arbitrary. LPFM service was created for applicants that did not need a degree in electrical engineering or a background in FCC legal policy to decipher the application process. A standardized process should apply that can be navigated by an applicant with average intelligence and clear instructions.

B. The Need For Application Technical Exhibits

LPFM service was originally created to provide nonprofits the ability to apply for a radio channel with minimal assistance from broadcast engineering consultants. The additional requirement of proposed second-adjacent exhibits, directional antennas, and possible contour showings beckons the assistance of a broadcast consultant to complete the FCC LPFM form.

In the run-up to the October 2007 NCE Filing Window, many applicants could not find broadcast engineering consultants to draft their technical exhibits because there was an excess of prospective applicants (more than 3500 applications were submitted during the window). Some applicants could not file because they could not find engineers, and others were priced-out from applying because an engineer and lawyer could run as much as $5000.

With at least three times the number of applications expected in an upcoming LPFM window—in a shorter run-up time than the NCE filing window—consultant engineers could find themselves carrying three times the burden of 2007. Delivery of these services cannot match such an expected demand.

CF believes a initial *short form* submitted in a LPFM filing window followed later by a *long form*, might help reduce the workload of the applicant, consultant engineer, and FCC staff. In such a system, the applicant submits a short form with all the information required in the past from a LPFM form, excluding any technical exhibits (including National Environmental Policy Act certification). After the MX groupings have been published, applicants can then decide whether they want to submit a long form, which could require the assistance of an engineer. If a long form is not submitted by a predetermined due date (as announced in the instructions on the short form), the applicant will be automatically dismissed. We believe this will yield a more efficient processing system:

1) **Requiring professional engineering exhibits for all applicants up-front is a waste of limited resources**: Most applicants in urban areas could inevitably end up in MXs with over a dozen other applicants. Each of these applicants might pay upwards of $3500 for application engineering, expecting to eventually run a station, before dropping out. Ultimately, many hastily performed engineering exhibits would be submitted for no reason.

2) **The proposed system significantly reduces the up-front paperwork of the applicant, and workload of all broadcast consultant engineers.**

3) **The proposed system allows the applicant to determine whether they want to submit a full engineering exhibit, and continue within the MX process after they review how much competition or timesharing there will be.**

4) **The proposed system provides workload relief for the FCC staff and serious applicants by weeding-out insincere applicants within the MX who in the past would not drop from the MX, burdening the entire settlement process.** Only serious applicants would pay for engineering exhibits, providing strong incentive to work toward settlements with others MX'd in the group, requiring minimal FCC intervention.

C. Framework for handling Second and Third Adjacent Interference Complaints

Starting with Paragraph 21 in the NPRM, the FCC delves into analyzing Section 7 of the LCRA as it pertains to third-adjacent channel interference remediation. This included determining when Section 7(1) or Section 7(3) was to be applied, and how to employ Sections 7(2), 7(4), 7(5), and 7(6).

The Commission recognizes that LCRA Sections 7(1) and 7(3) set up two different interference and remediation regimes for third adjacent channels. Section 7(1) refers to LPFM stations proposed on short-spaced third adjacent channels, while Section 7(3) refers to LPFM stations proposed on channels third adjacent to protected contours. At first look, stations required to follow Section 7(1) protocols might also follow Section 7(3) protocols. The FCC admits that that "Section 7(1) Stations" could be "subject to different and conflicting interference protection and remediation obligations." But even more problematic, LRCA Section 3(a) specifically directs the Commission to "modify its rules to eliminate third-adjacent minimum distance separation requirements," while LCRA 7(1) directly employs those now non-existent third-adjacent channel separations in its own interference remediation regimen.

The Commission attempts to separate the implementation of LCRA 7(1) and 7(3) to somehow make them make more sense. From NPRM Para. 27:

> We believe our conclusion that Congress has created two different interference protection and remediation regimes is the most reasonable reading of Section 7 of the LCRA as a whole. It makes sense that Congress would impose more stringent interference protection and remediation obligations on stations that are located nearest to full-service FM stations and have the greatest potential to cause interference. [underlining added for emphasis]

This statement would seem to run contrary to broadcast engineering theory. It states that LPFM stations nearer to full power station have the greatest potential to cause interference. U/D methodology predicts LPFM stations proposed closer to full power stations to have less interference to the full power station than ones proposed further away. Again, from NPRM Para. 32:

> …there will be less distance separating Section 7(1) Stations and full-service FM stations on third-adjacent channels and thus a greater potential for these stations to cause such interference…

Our assumption is that LCRA "Section 7(3) Stations" would be within the protected contour of a third adjacent station, and LCRA "Section (1) Stations" would be outside of that protected contour further away from the station, but still short-spaced;[5] Common Frequency is unsure how our interpretation comports to the FCC explanation. Either we do not understand the Commission's argument, or the reasoning behind the distinctions between Section 7(1) and Section 7(3) in the NPRM is flawed. But we are additionally confused by the reference to "short-spacing" when third-adjacent channel separations have been eliminated:

From Para 27:

[5] Short-spaced only according to pre-LCRA definition within Section 73.807.

> The LCRA provides greater flexibility by eliminating third-adjacent channel spacing requirements for LPFM stations, but counter-balances that flexibility with a prohibition on LPFM stations that would be short-spaced under such requirements causing any actual interference to other stations.

This sentence states the LCRA has eliminated third-adjacent spacing, but the second half of the sentence refers to a short spacing that does not exist anymore as LCRA Section 3(a) has eliminated it. Somehow, a new type of interference has been created on paper that is not referenced in any distance spacing table in 73.807, and does not refer to the actual real-word interference between a transmitter on a third adjacent channel imparted to a full power station's protect contour area.

This gray area is problematic for two reasons:

First, the interpretation (e.g., "more stringent interference protection" reasoning above) creates a new interference regimen not rooted in any tangible real-world distinction. Third-adjacent spacing was originally devised by the FCC as an estimate of the interference area (estimate of the protected contour for stations proposed on towers on constant terrain). The area outside the protected contour within the short-spaced area is simply an error of estimation or a buffer. Without a direct definition of third-adjacent minimum spacing within 73.807, no law has been broken, and no interference area—by definition—exists.

Second, third-adjacent short spacing cannot be referenced in the FCC regulations. Para. 28 of NPRM states, "We seek comment on this tentative conclusion and also on whether ultimately to retain the third-adjacent channel spacing requirements in Section 73.807 for purposes of reference or transfer them to another section of the rules." The FCC cannot retain the third-adjacent separations in 47 CFR 73.807 because LCRA

Section 3(a) commands its deletion. It would seem that the FCC could not "transfer them to another section of the rules" because LCRA Section 7(1) refers to (if any) third-adjacent distance spacing restrictions that specifically exist under "47 CFR 73.807". Any tack-on, or re-definition would seem to require explicitly editing the LCRA in order to work.

LCRA Section 7 means well. It intends to establish conservative criteria assuring full power broadcasters are not interfered with. We agree that is valuable. However, when analyzing the language one could imagine the pieces were cut and pasted into a list by communications attorneys who wanted to assure robust protection, but did not completely understand the mandate relative to actual implementation.

The FCC attempts to derive an employable technical explanation of LCRA Section 7 as if Congress actually understood radio engineering. Because the LCRA was crowd-sourced, it is riddled with anomalies, some of which include: (A) The LCRA commands a more in-depth remediation protocol concerning third-adjacent interference than second-adjacent interference. The current FCC interpretation is to have distinct remediation measures for second-adjacent interference, 7(1) Station interference, and 7(3) Station interference. (B) Section 5 ensures availability for *FM booster stations* in equal availability to translators and low-power FM stations, which does not make any sense; then, (C) LCRA Section 7(2) requires certain LPFM services to run announcements targeting *people that listen to other stations* that the LPFM could be the cause of the interference. How could these listeners benefit from these announcements if they are only listening to the station that is being interfered with?

Nevertheless, the law is the law. But the FCC does not need derive a unified technical explanation to employ a Congressional mandate that at its core suffers from some incoherence. Doing so would risk tainting the FCC's otherwise unimpeachable technical rules, which are derived from scientific reasoning.

It would be difficult to design an abstract two-tiered interference-elimination scheme for third adjacent channels that only broadcast attorneys could discern anyway. LCRA Section 7(1) mentions short-spaced channels according to 73.807. LCRA Section 7(2) mentions third-adjacent channels without respect to short spacing within or outside the full power station's protected contour, and LCRA Section 7(3) mentions third-adjacent channels within the protected contour. The Commission attempts to discern between LCRA Section 7(1) and 7(3), but in Para. 32 then states, "We see no reason to distinguish between listeners of stations that may experience interference as a result of the operations of Section 7(1) Stations and those that may experience interference as a result of the operations of Section 7(3)." The reason FCC would say this is because there is no physical distinction.

A better interpretation should exist for Section 7(1) and 7(3). 7(1) pertaining to "those low-power FM stations licensed at locations that do not satisfy third-adjacent channel spacing requirements under section 73.807." According to elimination third adjacent spacing via Section 3(a), this could mean Class D NCE stations. Section 3(a) says that third-adjacent spacing was repealed for full power FM stations, FM translator stations, and FM booster stations. Does this exclude Class D secondary-service stations?

The FCC provides twenty paragraphs of analysis of third-adjacent interference. Our interpretation of Section 7 is as follows with commentary on each item:

Section 7(1): This section is almost moot as Section 73.807 third-adjacent spacings have been repealed except for Class Ds. We stress that it would be confusing to repeal third-adjacent spacings, rename them, and then affix them in a table somewhere else in the rules. This still would not align with the Section 73.807 reference within LCRA Section 7(1).

Section 7(2): *Stations on channels located within the protected contour of the third adjacent station must run interference announcements*. The Commission might specifically define the periodic announcement process, possibly using the post-filing renewal announcement process as a template. *The LPFM must contact the FCC within 48 hours of obtaining a complaint*. The complaint information could consist of location, type of receiver (portable, mobile, hi-fi, etc, year manufactured?), to what channel interfered to, time/day, ongoing or intermittent, name of person, and contact information. LPFM stations should attempt to address the interference.

7(3): *LPFM stations should address interference complaints*. This could mean visiting the impacted area, turning on the receiver in question, temporarily shutting down the LPFM station for 30 seconds, and diagnosing whether the interference went away during that period. If the interference did not disappear, the LPFM station is not causing the interference. If the interference did disappear, the LPFM is interfering with the supposed protected coverage area and this should be addressed utilizing a systematic protocol to be developed.

7(4): The FCC should consider flexible operating proposals if co-location is sought to remediate interference concerns. We suggest this might include upgrade to LP-250 if

the co-located area is far from the current LPFM facility, use of different/directional antennas, and possibility of utilizing towers close-by third adjacent full service facilities instead of direct co-location.

7(5): *The FCC may accept complaints based on interference to a full-service FM station, FM translator station, or FM booster on a third adjacent by the LPFM transmitter site.* We believe these specific complaints should be integrated into a more simplified complaint-fielding process that includes all interference concerns listed in all parts of the LCRA.

D. Translator Input Signals

We agree with the Commission on all points considering protection to translator input signals, including:

1) The testing threshold based upon the Mitre Formula.
2) The two methods outlined in Para. 45 of the NPRM (the 34 dB threshold, and the equation provided in Section 2.7 of the Final Report).
3) The use of a typical antenna pattern for the translator's receive antenna.
4) The LPFM applicant to seek reinstatement nunc pro tunc during dismissal.

We also recommend two other measures:

1) The FCC should require translator licensees to update their off-the-air input channel to the FCC by a certain due date before the LPFM filing window. If the translator applicant does not update this information, the LPFM applicant should

not be dismissed for being unaware of the channel use accommodation because the information was not publicly available.

2) In cases that arise regarding unanticipated interference to a translator input when an LPFM first signs-on to the airwaves, flexible remediation should be allowed in solving the issue.

III. OTHER RULE CHANGES

A. LP-10 Is A Viable Service, But Should Be Modified

The FCC already has two LPFM classes on the books—LP100 and LP10. In the months leading up to the release of the NPRM, several LPFM advocates have rallied behind LP-10 as a viable low power service.[6] We believe there is a compelling case to keep LP-10 service.

Certain cities are either absent or deficient of LP-100 availability: Every city should have the same opportunity to apply for LPFM service, despite the fact that certain cities are deficient of the opportunity. LCRA Section 5 "ensures" licenses "are available to… low-power FM stations" and that "such decisions are made based on the needs of the local community." If there is no LP-100 availability in a city, but LP-10 is available there, we believe that the Commission, through the mandate of LCRA Section 5 from Congress, should ensure that LPFM licenses are available.

[6] Including Prometheus Radio Project, Amherst Alliance, and Rec Networks.

In a previous letter to the FCC,[7] CFI demonstrated that with the absence of LP-10 service, the immediate central city New York City/Brooklyn area would be deficient of any LPFM service, yet a maximum of fifteen translators might be granted to the immediate city. We believe this presents an imbalance considering the sentiment of LCRA Section 5. If LP-10 was opened in New York City, five LP-10 services could be added within the city. In another letter from CFI to the FCC,[8] we demonstrated a scenario where limited LP-100 was available in San Francisco, but five more channels could be opened up for use with LP-10. The contours of these hypothetical LP-10 services were calculated to cover approximately 270,000 to 430,000 people per channel within their 60 dBu contours.

In areas of dense population, LP-10 can serve several times the population of a suburban LP-100. LP-10 is perfect for neighborhood radio stations in areas where the FM band cannot accommodate LP-100.

We believe the Commission should make available LP-10 service only in areas where there is no or limited LP-100 availability, but spacing permits LP-10.

Additionally, we believe the maximum power for LP-10 should be upgraded to 50 watts and revamped as "LP-50". We state this for multiple reasons:

1) The proposed LP-250 class has a minimum wattage of 101 watts. LP-100 has a minimum wattage of 50 watts. LP-50 should be able to bridge the gap down to a

[7] Letter To FCC from Common Frequency, Re: LPFM and Translator Processing, December 27, 2011 (available in FCC ECFS).
[8] Letter to FCC from Common Frequency, Re: LPFM I.F. Spacing in San Francisco, March 9, 2012 (available via FCC ECFS).

minimum of 10 watts at 30 m HAAT. This would allow for a continuously tiered service from 10 to 250 watts. Each service is scaled, but not limited, for logical usage: LP-50 for a dense inner-city neighborhood station, LP-100 for medium-density population, and LP-250 for primarily lower-density population.

2) A continuously tiered wattage system is akin to the flexibility translators are already afforded—and for good reason. Example: In dense urban areas, translators are often lower-wattage in order to comply with zero-population U/D showings. If a 100 watt translator cannot be proposed in an urban area due to a second/third adjacent overlap, a 100 watt LPFM service is not going to be viable either. The Commission should accommodate the second-adjacent limitation by allowing flexible ERP.

3) LP-10 service's main problem is inability to penetrate ground cover and walls. A more robust signal can also better handle incoming interference.

LP-50 can readily use the same full-power distance-spacing chart as LP-10, as a buffer zone has already been built-in to the table. The enactment would be identical to the Commission's recommendation to utilize the LP-100 spacings for LP-250.

In spectrum-limited markets where LP-100 is not available, the reservation of LP-10 (LP-50) should be pursued by the FCC, with integration of those opportunities entered in to the low power FM spectrum availability program and data files.[9]

[9] *Media Bureau Announces Release of Low Power FM Spectrum Availability Program and Data Files*, DA 12-678. April 30, 2012.

B. LP-250 Service Should Be Able To Be Implemented Everywhere, But Only After Initial Licensing

The Commission seeks comment regarding whether to permit a LP-250 class, and whether a market/location limitation should be additionally stipulated. CFI believes such a service should be created, but with no geographical restriction. We believe there are several reasons why LP-250 should be available for use in all cities:

1) In certain situations within cities a LP-100 would cause too much second-adjacent inference to be proposed directly on a building or tower within an immediate neighborhood. In these cases, the only option is to co-locate at a multi-tower facility or mountain tower site (i.e., at higher sites located near less immediate population, a lower wattage is used to fill the same 5.6 60 dBu contour, allowing the U/D interference area to shrink to a zero population interference area). In fact, this remediation option is prescribed in LCRA Section 7(4).[10] However, with the shorter reach of LP-100 with tiny wattage at high elevation, co-location at major tower facilities might be too far away reach the desired coverage area within the urban area. Instead, the coverage would be limited to wherever the co-location site is. With a directional antenna, the LPFM applicant could reach its intended broadcast area while using a low wattage and reach up to 7.2 km. In fact, this is what translator applicants do. However, this option would not be available if LP-250 is not allowed in key urban areas.

2) Licensing an LP-100 does not automatically result in a station having a 5.6 km-radius coverage area. Not all channels have the same incoming interference. In

[10] LCRA Section 7(4) states, "To the extent possible, the Federal Communications Commission shall grant low-power FM stations on third-adjacent channels the technical flexibility to remediate interference through the colocation of the transmission facilities of the low-power FM station and any stations on third-adjacent channels."

fact, since the minimum spacing model approximates the coverage of co - channel stations, incoming interference could be much greater in select cases. On paper the proposed LPFM meets minimum spacing requirements; in reality the LPFM coverage may not cover even a 2 km radius due to extreme incoming interference, making the station less viable. In cases where the opposing full-power co-channel has a much higher AMSL than HAAT, or has a grandfathered wattage, or height much larger than usually permitted per a certain class, an upgrade to LP-250 can remedy problematic coverage. In this situation, allowing an upgrade to LP-250 could allow for equivalent coverage of a regular LP-100.

3) Translators are currently allowed wattages up to 250 watts at higher HAATs in all cities across the United States. Why should LPFM service be limited to 100 watts just because it originates local content? In addition, several translators originate original commercial content via HD2-relayed service, with additional expanded fill-in service. Allowing translator licensees superior coverage while limiting LPFM coverage creates a conflict with the LCRA. Congress mandated ensuring spectrum for LPFM (by Title of Section 5), with Section 5(3) stating the services be equal. We interpret this as implying the overall goal of equal spectrum for each service. If LP-250 is not permitted in certain areas, we believe the FCC should reciprocate and cap translator coverage to 5.6 km in those same areas.[11]

4) In some cities LPFM is not available due to the large amount of translators licensed. However, a channel may clear spacing at the edge of the city on a hill.

[11] 5.6 km is the average 60 dBu contour at 100 watts at 30 meters HAAT.

LP-250 would then be viable as a “rimshot” station to allow LPFM to penetrate back into a city.

5) In some circumstances a city might only have one central tower site on a mountain. Due to the height, the LPFM co-located here may be limited to a watt or two. In those cases, LPFM is unable to penetrate any land-cover or walls, and is unable to cancel incoming interference. Raising the wattage even up to 8 or 10 watts under a LP-250 license may make the facility viable.

LP- 250 Filing Contingency: In return for allowing LP-250 to be located anywhere, we would recommend that no LPFM applicant be allowed to file for a new LP-250 within the upcoming filing window. This limitation will avoid many local channels being sucked up by few applicants. Instead, announced at some date in the future, the FCC should begin to allow any licensed LPFM station a chance to upgrade to LP-250 via minor change if the proposed facility meets minimum spacing and any interference-free showing required by the LCRA.

C. Changes In LPFM Class Should Be Considered A Minor Change

A change of class between LP-50 (LP-10 upgraded, as mentioned above), LP-100, and LP-250 should be able to be accommodated via a minor change form. This would be no different than the freedom full power stations (Class A through C), and translators already are allowed if minimum spacings and/or contour overlap requirements are met.

D. I.F. Channel Minimum Distance Separation Should Be Removed

LPFM stations are currently required to protect full-service intermediate frequency spacings while translators proposed under 100 watts ERP are not.[12] We believe that since translators under 100 watts successfully operate without I.F. interference, this accommodation should be extended to LPFM. In fact, CFI demonstrated that the removal of the I.F. spacing in such cases would open up LPFM channels in San Francisco.[13] We do not foresee any downside regarding this spacing removal.

E. Other Minimum Distance Separation Concerns: International Spacing

If a limited number of LPFM channels are available near the Canadian and Mexican borders, a waiver should be able to be requested for waiving international class spacings only[14] to allow alternative means of meeting international interference compliance. The applicant must demonstrate the proposed facility complies with broadcast agreements with Canada and Mexico[15] using contour-based methodology within Section 74.1204. This is by no way skirting international agreements—the international class spacings within Section 73.807 are not stipulated via treaty or by the LCRA, but transitively enforce the same exact rules as translators. It simply allows LPFM applicants to utilize the same requirements as FM translator applicants for meeting international interference concerns.

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[12] See Section 73.807 and 74.1204(g) of the FCC rules.

[13] Letter to FCC from Common Frequency, Re: LPFM I.F. Spacing in San Francisco, March 9, 2012 (available via FCC ECFS).

[14] Domestic first and co-channel spacings cannot be waived due to LCRA Section 3(b)(1).

[15] Agreement Between the Government of the United States of America and the Government of the United Mexican States Relating to The FM Broadcasting Service in the Band 88-108 MHz, Aug. 11, 1992, Agreement Between The Government of the United States of America relating to the FM Broadcasting Service, Feb. 25, 1991, and US-Canada Agreement Modified to Permit Added Flexibility for FM Translators, 13 FCC 4795, Jul. 28, 1997.

F. Other: Directional Antennas

We urge the Commission to formalize the ability for low power service to use directional antennas in similar manner to translators, without individual proof of performance.

IV. ELIGIBILITY AND OWNERSHIP

A. Native Nations

CFI fully supports the Commission's commitment to see Native Nations are counted as eligible to apply for LPFM facilities intended to serve their communities. A Tribal priority should be considered for those proposing coverage to Tribal lands.

B. Cross Ownership

CF does not have a preference when it comes to LPFM-translator cross-ownership, but we believe any new rules should be simple for LPFM licensees to understand and not promote the building of LPFM-centered translator networks. With that, translators repeating a LPFM signal should only be allowed to rebroadcast signals that can be terrestrially received via FM tuner, without alternative means (internet, satellite), similar to commercial translators.

CFI believes that the cross-ownership rules should be modified to permit a Native Nation entity to apply for an LPFM while holding attributable interest in a full-service permit or license. Applicants should demonstrate that the new facility would provide service to some type of majority threshold of tribal population.

C. Multiple Ownership

CFI believes the Commission should allow multiple LPFM ownership within tribal lands. CFI also believes that in specific cases of rural coverage—where tribal populations might exist in isolated small towns (e.g. rural Eastern Oregon, Arizona)—multiple ownership

should be considered. However, preferential points should be limited to proposals in specifically designated tribal areas. Outside of that area, multiple-owned facilities should be considered in those areas that have ample channels available for other local applicants. CFI additionally proposes multiple ownership changes concerning student-run radio stations (see V-C below).

V. SELECTION AMONG MUTUALLY EXCLUSIVE APPLICANTS

A. Established Community Presence

CFI concurs with the Commission's proposal to revise 73.872(b)(1) to clarify that an applicant must have had an established local presence two years prior to filing its application, while maintaining that local presence thereafter. We believe that two years prior presence, plus maintenance of that presence, is warranted because it mirrors the Commission's qualifications for NCE "established local applicants."[16] These have worked well in the past, when used for granting locally operated FCC reserved-band channels.

The Commission also seeks comment on three additional rule changes:

1) ***Should "established community presence" require that an applicant have maintained a local presence for a longer period, such as four years?*** No. We do not believe the duration of existence of a nonprofit is tied to the level of service to the community. In fact, nonprofits existing for one year could have extensive interaction with a local community compared to one that is the equivalent of a private club, existing for many years. We believe the two-year limitation exists merely to weed-out insincere or dummy nonprofits that were

[16] See 47 CFR Section 73.7000.

created in the weeks leading up to a filing opportunity that have no ties to the community.

2) ***Should the FCC maintain the two-year threshold but award an additional point to applicants that have a substantially longer presence?*** No. We believe this could have unintended discriminatory consequences. Is there anything intrinsic to a nonprofit macramé club that has existed since the 1970's over an on-line community radio station nonprofit that started up five years ago to apply for a radio license? Does a Vietnamese cultural club has that has only existed five years because members are new to the community have less right than the Irish cultural club that has been there for one hundred years? Does a youth club have fewer rights than a seniors club in securing a channel?

3) ***Should 73.872(b)(1) be modified to extend the "established community presence" standard to 20 miles in rural areas?*** Yes, and we believe this standard should be changed for all areas—not just rural areas. Local boards of directors in cities can be spread into suburbs and even adjacent towns. Members of nonprofits local to cities are not always centered in one part of a city.

4) ***Should local applicants be allowed to file as consortia?*** No. We believe this opens a Pandora's Box for unlimited FCC staff intervention and less diversity. First, a consortia is gang-up approach that spawns mega-MXs: Applicants are encouraged to put their friend's organizations on the application for no reason other than to bolster their application. In such an "arms race" for points, instead of nine applications in an MX with nine organizations there could be instantly twenty-seven organizations (9 x 3) looking to share the airtime on one channel.

Even if two applicants tie, that means six groups sharing a channel. Second, even if one consortia is hoping to work as one cohesive group, what if they can't? With a license held by three groups, who is to referee myriad conflicts? The FCC? If the license is held under one organization with two other groups signed-on, who would referee disputes concerning co-ownership? The FCC? In community radio, it is difficult for one group to work cohesively by itself. It would be an unwise experiment to test three or more. Third, it discourages diversity: Instead of several completely different applicants from the community attempting to find common ground in a post-filing universal settlement, it rewards a uniting of plentiful organizations within the community that hold similar viewpoints at the beginning, and discourages single minority groups like foreign-language speakers and LGBT organizations to participate at the end.

B. Local Program Origination

CFI encourages the awarding of one point to an applicant that pledges to run eight hours of locally-originated programming a day if the station is operated by a single licensee. Programming is considered local if it originates within 20 miles of the transmitter site. We also believe, regardless of points, that all LPFM licensees should broadcast a minimum amount of local programming a week—maybe 20 hours. This is to prevent applicants from using a LPFM as a translator.

C. Additional Section Criteria

The Commission seeks comment whether to develop additional selection criteria for the LPFM point system in order to limit the number of involuntary time-share licensing outcomes. [17] CFI suggests the following, as also pertinent to multiple/cross-ownership:

[17] Para. 64, NPRM.

Student Station Policy Revision: Currently the Commission has rules that allow cross-ownership of a LPFM service by a college/university that also owns a full-service broadcast license if the proposed station is operated by students and is not subject to competing applications. We believe that proposed student-operated stations should not receive a handicap.[18] Select student-operated stations offer some of the best true community-inclusive radio services, providing independent news, local public affairs, and one of the few broadcast outlets that play independent and local music.

The Commission should allow flexibility in cases where the university has attributable interest in full power licenses, but pledges student operation of the station. Such other broadcast licenses owned by the university are usually used for NPR affiliates. But in select cases, a statewide university with multiple campuses might have some campuses that already have full power student stations, while other campuses do not. Larger state educational institutions may serve multiple regions via distinct campuses, such as the State University of New York, University System of Georgia, and University of California (UC).

The University of California holds the licenses of KALX at UC Berkeley, KDVS at UC Davis, KZSC at UC Santa Cruz, KCSB at UC Santa Barbara, KUCI at UC Irvine, and KUCR at UC Riverside. All stations are student-affiliated/operated and allow community members to participate in the programming, providing local news and original public affairs programming.

However, the UC's newest campus, UC Merced, is located in an area that does not have any college, community, or NPR station, but is prevented from applying for a LPFM

[18] See Section 73.860(b)(4).

license under the rules because the other campuses have full power licenses. UC San Diego also has non-broadcast station dubbed "KSDT" that has existed in carrier-current then internet-only forms since 1967. UCSD and UCLA are currently also prevented from seeking LPFM licenses.

We urge to the Commission to allow such statewide Universities to apply for a LPFM license while holding other student-run radio licenses at other campuses as long as their 60 dBu service areas do not overlap. Such services are an educational asset to the communities they reside in. Suggested editing of 73.860 could be:

1) Strike Section 73.860(b)(4), which enacts dismissal of such applications when MX'd.

2) Modify Section 73.860(b) to "b) A party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest unless such party is a college or university that can certify that the existing broadcast radio station is not student run *at the campus it is being proposed at*. This exception applies only to parties that;"

3) Modify Section 73.860(b)(2) to state, "Own attributable interest in non-student run broadcast stations *at the proposed campus, or student-run stations that are only located at other campuses.*"

4) Add a Section 73.860(b)(5) that states, "*Propose the LPFM service to be outside the 60 dBu service area (FM full-service or LPFM) or 5 vM/m contour area (AM*

station) of any other student-run station that the college or university may have attributable interest in."

One Point for Main Studio Presence: The Commission could consider allowing an applicant to claim one point for a studio staffed with a DJ/operator during normal business hours. Such staff does not need to be paid. In addition, the Commission could determine whether a local program inspection file might be a part of receiving such a point.

One Point for "Public Access" Program: The Commission already has a requirement for all applicants of non-commercial, educational FM stations to provide an exhibit demonstrating that the station will be used for the advancement of an "education program".[19] The Commission also requires stations that propose to employ five or more full-time employees to have an "Equal Employment Opportunity Program".[20] The Commission could then consider allowing an applicant to claim one point for proposing a "public access" program. There are cable channels in many communities that are operated for public, educational, or governmental use (PEG) in accord with 47 USC Section 531, providing essential local television service. *Public access television* is a specific outlet within PEG in which community members can take part in television production. Any nonprofit applicant could chose to propose its own access program to outline its use in relation to the community. Such program does not need to be granularly defined, but mainly outline its use in relation to the public. Participation may not need to be at all levels of the station, but could relate to volunteer, apprenticing, or internship program open to participation.

[19] Sections 73.503 (radio) or 73.621 (TV).
[20] Section 73.2080.

D. First Tiebreaker, Voluntary Timeshare

The Commission seeks comment on the procedures that should be adopted to address the surrender of a license issued to a participant in a voluntary time-sharing agreement. Currently, if one of the participants in a voluntary time-sharing does not construct or surrenders its station license, the remaining time-share participants are free to divide the vacant airtime as they see fit. We do not believe this arrangement needs to be modified because we do not know of any better policy that could be implemented without increased FCC staff involvement or bureaucratic rule changes. However, we believe the time-share/point aggregation process needs to be more transparent to others within the MX to allow for counter-proposals and objections.

We propose two protocols to assist in settlements:

1) The FCC could set up an online system for submitting settlements in which all applicants within the MX would be contacted in the event of a submitted settlement and would allow viewing of the settlement. Valid objections to the settlement could be lodged—in addition to traditional, formal Petitions to Deny—and counter settlements could be proposed that intend to aggregate more applicants. If applicants are abusing the system long after the Commission has approved the settlement, the losing applicants should be able to contest those abuses. For that reason, final dismissal of the applications within a MX that had been dismissed as a result of point aggregation should not occur until the license to cover has been filed by the voluntary settlement group. We do not know how this would be synched with the current petitioning and construction permit granting process, but the rules and actions should be more transparent to avoid

situations where applicants more attuned to legal loopholes cannot game the system due to lack of information on the competitor's end.

2) The remaining applicants within an MX dismissed as a product of a point-aggregated voluntary settlement should be granted the exclusive availability to exercise a partial voluntary settlement involving technical changes. In other words, the applicants left out of a voluntary settlement within the same MX should be able to form another settlement group that proposes to move to any viable channel if available. This system encourages applicants to work together in order to migrate to other available channels rather than individual applicants exercising first-come, first-served unilateral channel jumps to escape the MX.

Pending NCE applications from 2007 window: There is a small cache of non-commercial applicants that still have pending applications with legal challenges dating back to when they filed for a NCE channel in 2007. It would be advantageous for the FCC to attempt to derive final legal conclusions on those pending applications so that the losers within these MX disputes could move on to apply for LPFM licenses with a clean slate. There are questions whether a simple divestiture request from a nonprofit that has a long-standing pending NCE application can protect the applicant from legal challenges from both sides when applying for an LPFM. The entity's NCE application could be challenged since their number of pending applications is increased by one. The applicant's LPFM application could be challenged because they have a NCE application pending. Clarity on this issue may be important.

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Respectfully Submitted by,

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