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

REPLY COMMENTS OF
NATIONAL PUBLIC RADIO, INC.

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 Reply Comments in response to the comments on the Commission's Fourth Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

NPR's initial Comments assessed the Commission's fidelity to the careful compromise Congress struck in the Local Community Radio Act ("LCRA"). That compromise generally balanced the additional licensing of low power FM ("LPFM") stations with protecting full power FM and FM translator stations from interference. NPR urged the Commission not to establish a new category of higher powered 250 watt LPFM stations as inconsistent with Congress's clear understanding of the LPFM service as comprising 100 watt stations and the hyper-local character of the LPFM service. Indeed, parties interested in constructing such facilities are free to do so –

[1] 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"]. Unless otherwise indicated, all citations to comments are to comments filed in response to the Fourth Further Notice in this proceeding.

by applying for a Class A station construction permit or license.[2] Likewise, the Commission should not relax its current cross-ownership rules to permit LPFM licensees to operate FM translator stations to extend the reach of the LPFM station. Such a change also threatens to undermine the character of the LPFM service.

NPR also highlighted the important ways in which the LCRA required the Commission to protect FM stations from LPFM interference. Thus, while the LCRA contains two interference remediation measures to compensate for the elimination of the third adjacent channel distance separation, both measures require the LPFM to remediate the interference regardless of whether the adjacent station is short- or fully-spaced. Similarly, although the LCRA permits waivers of second adjacent channel distance separations, the Commission should only grant such waivers in exceptional circumstances. Finally, the Commission should not eliminate the intermediate frequency ("IF") interference protection requirement without having first examined the sensitivity of modern receivers to IF interference.

I. The Record Reflects Considerable Concern For Additional LPFM Interference

While many individual commenters and LPFM advocacy groups submitted comments urging the wholesale expansion and restructuring of the LPFM service,[3] other interested parties urged the Commission to approach the implementation of the LCRA with care to avoid undermining the carefully balanced legislation. These commenters shared NPR's concern with establishing an entirely new class of 250 watt LPFM stations,[4] authorizing LPFM use of FM

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[2] See 47 C.F.R. § 73.211.

[3] See Section II, below.

[4] See Comments of Grant County Broadcasters, Inc. at 2 ("The original intent of highly localized, community oriented service of limited scope and coverage becomes more blurred with each proposal to grab more signal by these secondary service providers.").

translators,[5] and the elimination of the IF protection for LPFM stations operating with less than 100 watts of effective radiated power solely to mirror the Commission's FM translator rules,[6] among other problematic changes.

Like NPR, commenters counseled respect for the general prohibition on authorizing second adjacent LPFM stations.[7] While the LCRA authorized the Commission to waive the second adjacent distance separation, it established a strict non-interference standard and a far reaching obligation to suspend operations immediately and eliminate any interference to any authorized radio service.[8] Efforts to undermine the redress of second adjacent channel interference by, for instance, ignoring interference to a so-called "de-minimis population" in more rural areas,[9] is plainly contrary to the LCRA and must be rejected.

Commenters also explained why limiting second adjacent waivers to compelling circumstances is in the best interest of the LPFM service. The Educational Media Foundation relied on its considerable experience as an owner of FM translator stations to observe that as many as five percent of its FM translator stations cause interference despite the use of

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[5] Id. at 2-3.

[6] Comments of duTreil, Lundin & Rackley, Inc. at 5. The Commission should reject the suggestion that it go farther and eliminate the IF protection obligation for LPFM stations operating with 100 watts ERP. See Comments of Prometheus Radio Project at 34 [hereinafter "Prometheus Comments"].

[7] See Comments of National Public Radio, Inc. at 4-5 [hereinafter "NPR Comments"]. See also Comments of the National Association of Broadcasters at 4-12; Comments of Educational Media Foundation at 2-6 [hereinafter "EMF Comments"].

[8] LCRA, § 3(b)(2). See NPR Comments at 4-5.

[9] Comments of REC Networks at 13-16.

sophisticated interference prediction software.[10] For an entity that relies on FM translator stations to fill-in or extend the signal of a primary station, the loss of an individual FM translator is costly, but the remaining broadcast facilities continue to operate. For an LPFM station, a lack of technical sophistication is likely to lead to less-than-rigorous engineering analysis, while having to cease operations in the event interference occurs could result in the permanent demise of the station and of the licensee. The record thus provides a significant basis for a much more cautious approach to implementing the LCRA than the Fourth Further Notice has taken.

For these reasons, we also urge the Commission to ensure the effective remediation of LPFM interference in implementing the LCRA and not erect barriers to the identification of interference, as some commenters appear to desire.[11] The LCRA simply and unconditionally obligates LPFM stations operating with second adjacent channel distance separations waivers to suspend operations immediately and not resume until the interference has been eliminated.[12] The statute does not sanction a laundry list of Commission-imposed requirements to establish the *bona fides* of a listener interference complaint.[13] Indeed, by its terms, the LCRA does not even require a listener complaint to trigger the interference remediation provisions,[14] and adversely

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[10] EMF Comments at 4-5.

[11] See Prometheus Comments at 22.

[12] LCRA, § 3(B)(2).

[13] Compare Prometheus Comments at 22 (advocating for such regulatory requirements as the filing of a formal affidavit with detailed information about the complainant, interference to fixed radio receivers, and service of the complaint on the LPFM licensee and the Commission within 1 year after the LPFM commenced operations).

[14] LCRA, § 3(B)(2). Compare Fourth Further Notice at 10 ("request[ing] comment on whether and how we should define what constitutes a *bona fide* complaint").

affected stations should be able to present informal evidence of interference at any time, just as the statute permits in the case of third adjacent channel interference.[15]

In addition, the Commission should reject the suggestion that Section 6 of the LCRA, which obligates LPFM stations to protect FM translator input signals from interference, is limited to protecting input signals generated by full power stations,[16] and only when the main analog channel is being retransmitted.[17] By its plain terms, the LCRA requires protection of translator input signals, period.[18] The statute is consistent with the current Commission rule categorically requiring LPFM stations to effectively remediate actual interference to an FM translator input signal.[19]

II. LPFM Proponents Offer Various Prescriptions For Substantially Recasting the LPFM Service, But The Commission Should Focus On Implementing The Compromise Embodied in the LCRA

For a number of LPFM advocacy organizations, the Fourth Further Notice appears to represent an opportunity to fundamentally remake the LPFM service. Thus, commenters advocate for additional classes of LPFM stations,[20] a new application filing process,[21] new

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[15] LCRA, § 7(5). Thus, in response to the Fourth Further Notice, the LCRA interference protection obligation is not dependent on the filing of a *bona fide* listener complaint within 1 year of the offending LPFM station having commenced broadcast operations. Fourth Further Notice at 17.

[16] Prometheus Comments at 25.

[17] Comments of REC Networks at 12.

[18] LCRA, § 6.

[19] See 47 C.F.R. § 73.827.

[20] See, e.g., Prometheus Comments at 28-29 (proposing a 50-watt LPFM class); Comments of MonsterFM.com at 2 (proposing a single class of LPFM stations, authorized to operate with "as little as 1 watt to as much as 250 watts or any level between the two."); Comments of Community Media Assistance Project at 5 (CMAP believes that the LP 10 designation should be dropped, and LP100 stations should be allowed to use any power level of 1 watt or above at any

LPFM eligibility criteria,[22] new criteria for selecting among mutually exclusive applications,[23] and the discretion to utilize the kinds of engineering tools currently entrusted to full-power broadcast operations.[24] As we explained above and in our initial Comments, overhauling the LPFM service is inconsistent with Congress's understanding of the LPFM service and the compromise it struck. As explained below, moreover, many of the changes now being sought are fundamentally at odds with the nature and character of the LPFM service.

Several commenters advocated the creation of a new class of 250 watt LPFM station as well as authorizing LPFM licensees to own and utilize FM translators to extend service.[25] While such changes would enable LPFM stations to cover significantly greater areas, that objective is inconsistent with the fundamental character of the service. The comments of Prometheus Radio Project discussing a recent research study concerning the LPFM service reinforce the point, albeit unintentionally.[26]

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height, if the reduced power is needed to allow the proposed station to 'fit'.") [hereinafter "CMAP Comments"].

[21] See, e.g., CMAP Comments at 2-4 (proposing multiple LPFM filing windows based on state); Comments of Common Frequency at 4-6 (proposing to permit the filing of LPFM applications without technical exhibits).

[22] See, e.g., Prometheus Comments at 35-47 (proposing a local origination commitment as a threshold eligibility criterion).

[23] See id. at 49-62. See also Comments of Common Frequency at 24-26 (proposing comparative criteria regarding educational institutions with existing student-run stations, main studio presence, and "public access" programming); Comments of REC Networks at 45-46 (proposing comparative credit for broadcasting children's radio programming).

[24] E.g., Comments of Common Frequency at 20; CMAP Comments at 6.

[25] E.g., Prometheus Comments at 30-34; Comments of REC Networks at 24-30.

[26] See Prometheus Comments at 41-44.

The research study found that, of the approximately 1000 LPFM stations operating during the study period (November 2008 – August 2009), between 20 and 25 percent were affiliates of one or more national networks and broadcast little locally originated programming.[27] In response, Prometheus urges the Commission to adopt a "command and control" approach to the programming practices of LPFM stations.[28] While we question the wisdom of such an approach for Constitutional reasons and because of the Commission resources that would be required, it also overlooks the larger point: allowing LPFM stations to serve substantially greater coverage areas, whether by operating at substantially higher power or by using FM translator stations, calls into question the stated basis for the LPFM service as organs of highly local community expression.

If LPFM stations are already attractive as outlets for national network programming fare, increasing the geographic reach of such stations will only make them more attractive for such purposes. Tightening the LPFM eligibility rules, as the Fourth Further Notice proposes,[29] may help, but the highly local character of the LPFM service is directly related to the coverage area that LPFM stations are permitted to serve. Indeed, the Commission's recent analysis of the economic impact of the LPFM service on commercial FM radio found that "the popular LPFM

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[27] Connolly-Ahern, Schejter, Obar & Martinez-Carillo, A Slice of the Pie: Examining the State of the Low Power FM Radio Service in 2009 at 17-19 & & 21-22 (Penn State University 2009). In adopting the local origination comparative credit, the Commission expressed its "belie[f] that an applicant's intent to provide locally-originated programming is a reasonable gauge of whether the LPFM station will function as an outlet for community self-expression." In the Matter of Creation of A Low Power Radio Service, Report and Order, 15 FCC Rcd 2205, 2262 (2000) [hereinafter "LPFM Report and Order"].

[28] Prometheus Comments at 35-47.

[29] See Fourth Further Notice at 24-26.

stations tend to attract a small but loyal fan base, which tunes in for long periods of time and/or switches stations less frequently than the average full-service station listener."[30]

In their zeal to realize substantially more LPFM stations, some LPFM advocates also seek a permissive standard for waiving the second adjacent channel distance separation mandated by the LCRA.[31] Acceding to these demands would be a grave mistake. Many of these commenters reflexively point to rules governing FM translator stations as justification for granting second adjacent channel waivers.[32] There are significant differences between the two services, however.

FM translator stations are used to extend service, either to an area within the retransmitted station's coverage area blocked by terrain or other factors from receiving service or to an area beyond the retransmitted station's coverage area, and they are prohibited from originating programming. LPFM stations, by contrast, are origination services and are encouraged by the Commission's selection criteria to originate programming. Particularly in more rural areas, FM translator stations are sited on mountain tops or other isolated locations because service to the immediate vicinity of the FM translator transmitter is less important than coverage overall. LPFM stations, by contrast, are intended to provide highly local service to the community into which the LPFM licensee is directly integrated. Finally, FM translator station licensees are usually experienced owners of other broadcast facilities, familiar with the

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[30] In the Matter of Economic Impact of Low-Power FM Stations on Commercial FM Radio: Report to Congress Pursuant to Section 8 of the Local Community Radio Act of 2010, 27 FCC Rcd 3, 20 (2012).

[31] See, e.g., Prometheus Comments at 17 ("The Commission Should Make Second-Adjacent Channel Waivers as Simple and Accessible as Possible for LPFM Applicants.").

[32] See, e.g., id. at 17-20.

Commission's rules and the technical aspects of broadcasting. The LPFM service, by contrast, was expressly intended as a means of encouraging "new voices on the airwaves."[33]

By virtue of these and other differences, the ability to identify a non-interfering second adjacent channel and the adverse consequence of unanticipated interference are significantly different. Even for a broadcaster as experienced as the Educational Media Foundation, many of the FM translator stations it has constructed were forced to cease operations or implement other remedial measures to avoid unanticipated interference.[34] Even so, if an FM translator station ceases operations, only the service of that facility is disrupted, leaving the service of the primary station and any other related FM translator stations intact.

For an LPFM applicant, the stakes and likelihood of failure are substantially greater. Though relatively modest compared to the cost of constructing a full power station, applying for and constructing an LPFM station are significant undertakings for most non-profit educational organizations. As prospective "new voices on the airwaves," it is unreasonable to expect most LPFM applicants to possess the engineering expertise to select a second-adjacent channel without interference occurring in at least some cases. When interference inevitably does occur, the termination of the LPFM service could fatally impact the mission and continued viability of the station licensee. For these reasons, while the LCRA addresses the relative spectrum priority

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[33] LPFM Report and Order, 15 FCC Rcd at 2213 ("Our goals in establishing this new service are to create opportunities for new voices on the air waves and to allow local groups, including schools, churches and other community-based organizations, to provide programming responsive to local community needs and interests."). As noted by one commenter, "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. Comments of Common Frequency at 4. We agree, but this aspect of the LPFM service makes it ill-suited for sophisticated engineering approaches, such as second adjacent channel waivers and directional antennas.

[34] See EMF comments at 4.

of LPFM, FM translator, FM booster, and full power stations when the Commission licenses new stations,[35] it does not mandate equal treatment between LPFM and FM translator stations in all instances as some commenters appear to believe.[36]

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, and (3) maintain the intended character of the LPFM service in considering other rule changes.

Respectfully Submitted,

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[35] LCRA, § 5.

[36] See Comments of Common Frequency at 17; Prometheus Comments at 20.