

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Creation Of A)
Low Power Radio Service) FCC Docket No. 99-25

ADDITIONAL REPLY COMMENTS OF
DON SCHELLHARDT, ESQUIRE KI4PMG AND NICKOLAUS E. LEGGETT N3NL
TO THE EX PARTE WRITTEN COMMENTS
OF THE UNITED CHURCH OF CHRIST

We are Don Schellhardt and Nick Leggett. Our names have appeared often in FCC Docket 99-25. In fact, we helped to start up FCC Docket 99-25.

Back in 1997, we jointly filed the first Petition For Rulemaking to request establishment of a Low Power FM (LPFM) Radio Service. In 1998, under the leadership of then Chairman William Kennard, the Commission responded by opening Docket RM-9208. In this Docket, public comment was sought on our Petition.

3 weeks after the Commission announced the opening of Docket RM-9208, a second Petition For Rulemaking, proposing an LPFM Radio Service with higher wattage stations, was filed by J. Rodger Skinner of Florida. This other Petition led to Docket RM-9242. Then the Commission combined RM-9208 and RM-9242 to form Docket 99-25, under which an LPFM Radio Service was established in early 2000.

Even before our Petition For Rulemaking opened the door to Docket RM-9208 and subsequent events, the two of us in general -- and Nick Leggett in particular -- had been active participants in FCC affairs. Notably, our 1986 Petition For A Notice of Inquiry, regarding shielding of vital civilian electronics equipment against a man-made or solar-generated ElectroMagnetic Pulse (EMP), triggered Docket RM-5528. (A followup Petition For Rulemaking on EMP -- filed shortly after the events of September 11, 2001 -- led to Docket RM-10330, which is officially still "pending".)

Schellhardt & Leggett

November 16, 2012

Page Two

A. Addressing An Argument Against A Local Programming Mandate

On November 6, 2012, we joined 13 other people to file Reply Comments to the Ex Parte Written Comments of the United Church of Christ (UCC). In that filing, the 15 commenters strongly seconded UCC's call for a local programming requirement, uniformly applicable to all new LPFM stations in all locations.

However, the two of us now perceive a need to go beyond simply advocating a local programming mandate -- which we have been doing for years, both individually and through our work with THE AMHERST ALLIANCE. Today, we are filing these Additional Reply Comments in order to address an argument which religious radio networks have advanced in an effort to block a local programming mandate.

We have never seen this argument against a local programming mandate gathered together in one place. Assembling pieces of the argument, however, the argument seems to go like this:

"A local programming requirement for new LPFM stations may prevent full utilization of the radio spectrum in all geographical areas.

"In locations where there is not enough radio spectrum left to accommodate both truly local LPFM applicants *and* LPFM applicants which relay out-of-town programming 24 hours per day, the locally oriented new applicants will prevail in the competition for spectrum because the Commission awards a 'bonus point' for a minimum level of local programming. (The size of the bonus can be increased if the Commission does not believe that one point is enough to guarantee this result.)

"However, there are locations where enough spectrum is left to accommodate *both* locally focused LPFM applicants *and* LPFM applicants who plan to relay, exclusively, standardized national programming. Opinions differ sharply on how many 'zero spectrum scarcity' locations exist, but there *will* be *some* in the new filing window.

Schellhardt & Leggett

November 16, 2012

Page Three

“In practice, an LPFM station’s standardized national programming is most likely to be provided by a religious radio network, but it could also be provided by NPR, or even by Pacifica, or by some new non-profit radio network. In any event, it is virtually certain that *some* people in the local community will value that programming.

“Since we are dealing *by definition* with a community where there are not enough locally oriented LPFM applicants to fill up the remaining spectrum that is available, why deprive local listeners of the opportunity to hear standardized national programming that they might value? Why displace potential national programming just to replace it with dead air?”

We believe we have just presented the basic argument of the religious radio networks more persuasively than they themselves have done.

Now we will explain why the argument should be rejected.

B. A Philosophical Response

The argument of the religious radio networks is consistent with certain established philosophical traditions of the Western world. However, it is time -- indeed, past time -- to rethink those philosophical traditions, at least in some areas.

We question the widespread Western world premise that everything in Nature should always be put to use for the material benefit of human beings -- or at least the material benefit of *some* human beings -- and, if possible, put to use immediately.

In his book, *Small Is Beautiful: Economics As If People Mattered*, British economist E.F. Schumacher describes how this philosophical assumption is so ingrained that it often produces an unthinking reflex. For example, he asks, why do lawyers and realtors routinely refer to land in its natural state as “unimproved land”?

Schellhardt & Leggett

November 16, 2012

Page Four

Will the addition of concrete automatically improve it?

To cite another example:

In 2005, Don Schellhardt took a graduate level course in Water Law at the University of Denver School of Law. Among other things, the course reviewed various ways in which the State of Colorado, other States and the Federal Government have divided often limited water supplies for allocation to various uses.

In the historically recent past, he discovered, the State of Colorado stumbled upon the radical notion that *some* water should simply be left alone -- to look at, in an undisturbed condition, and to serve as a home to species other than human beings.

However, the belief that all of Nature should be used for human benefit -- indeed, *must* be used for human benefit -- was so powerful that the Colorado Legislature could not bring itself to call the new policy "preservation" or "conservation". Instead, the Colorado Legislature referenced "allocation of water" for "in stream uses". Apparently, leaving water alone and undisturbed could only be justified if leaving water alone and undisturbed was described as a "use".

We urge the FCC not to fall into the reflexive posture that an unused frequency is automatically a wasted frequency. It is neither wasteful nor sinful to hold a frequency in reserve for *future* use -- by *future* broadcasters -- when the only use that is *currently proposed* involves a low social value. It would be, we submit, *more* wasteful to confer a precious radio frequency, indefinitely, so that yet another colony can be added to a broadcasting empire which is already too large.

C. A Less Abstract Response

If the Commission is nevertheless determined to "confer a radio frequency ... so that yet another colony can be added to a broadcasting empire which is already too large", then perhaps the Commission will at least make this conferral less *permanent*.

Schellhardt & Leggett

November 16, 2012

Page Five

Under current Commission policies, a frequency which is awarded to a non-local LPFM station -- a functional translator -- is lost to truly local LPFM broadcasters *forever*. This result flows from the Commission's decision to treat all LPFM stations alike, from a class of service priority standpoint, combined with the FCC's usual practice of according "first come first served" rights to licensees once they have been licensed.

Unless these FCC policies are revised, a non-local LPFM station, once it has been licensed, can only be displaced in the future by a full power radio station with a Primary Service status. This displacement can occur *regardless* of whether or not the Primary Service station offers any locally originated programming. Yet a new LPFM applicant, which *does* offer locally originated programming, would not be permitted to displace the licensed but non-local LPFM station. Under *current* policies, the FCC would view both LPFM broadcasters as equal because they both can claim Secondary Service status. However, THE AMHERST ALLIANCE has offered a solution.

Amherst has stressed to the Commission, repeatedly, that: (1) the Local Community Radio Act (LCRA) effectively prevents the FCC from elevating most of the LPFM stations to Primary Secondary Service status; *but* (2) no statute, including the LCRA, bars the Commission from sub-dividing the *Secondary Service* class of stations into two or more sub-categories. This would empower Secondary Service stations with a higher social value to displace Secondary Service stations with a lower social value. Using this statutory authority to sub-divide the Secondary Service class of stations, the FCC can and should allow LPFM stations which offer local programming the ability to displace LPFM stations which do not. Amherst's proposal to this effect was placed in Docket 99-25 years ago.

THE AMHERST ALLIANCE also supports a policy of allowing *translators* to offer a minimum level of local programming. Once the Commission has made the decision to do this, then Amherst favors allowing *either* a translator or an LPFM station with a minimum level of local programming to displace *either* a translator or an LPFM station which has not agreed to a minimum local programming requirement.

The two of us support Amherst on all of these policy recommendations.

Schellhardt & Leggett

November 16, 2012

Page Six

D. Conclusion

We urge the Federal Communications Commission to adopt, in its present LPFM expansion proceedings, *both*: (1) the longstanding proposal, by THE AMHERST ALLIANCE, for a local programming requirement set at 8 hours per day, after a 2-year “ramp up” from 2 hours per day; *and* (2) the longstanding proposal, by THE AMHERST ALLIANCE, to allow new LPFM stations which provide a specified minimum level of local programming to displace established LPFM stations which do not.

Of the two proposals, we view the second one as more important in the long run.

E. Notifications

A copy of this document is being sent, electronically, to Cheryl Leanza, Esquire of A LEARNED HAND in Maryland (cleanza@ALHmail.com), who represents the United Church of Christ Office of Communications in this matter ... Wesli AnnMarie Dymoke of Cheshire (wesdym@gmail.com) ... and Brandy Doyle of PROMETHEUS RADIO PROJECT in Pennsylvania (brandy@prometheusradio.org)

Schellhardt & Leggett

November 16, 2012

Page Seven

Respectfully submitted,

Don Schellhardt, Esquire KI4PMG

3250 East Main Street

#48

Waterbury, CT 06705

djlaw@gmail.com

(203) 982-5584

Nickolaus E. Leggett N3NL

1432 Northgate Square

#2A

Reston, VA 20190

leggett3@gmail.com

(703) 709-0752

Dated: November 16, 2012