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DON SCHELLHARDT Reply Comments
To REV - PEOPLE'S PRODUCTION HOUSE
And COLLEGE RADIO DAY
November 24, 2012

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APPENDIX

A Report To Members of THE AMHERST ALLIANCE:
Dealing With Spectrum Scarcity In LPFM Licensing
Reply Comments of Amherst, REC, Nexus, Christian
Community Broadcasters Et Al. To Maneesh Pangasa
(May 16, 2012)

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Creation of A)
Low Power Radio Service) FCC Docket 99-25

REPLY COMMENTS OF
DON SCHELLHARDT, ESQUIRE KI4PMG
TO THE EX PARTE WRITTEN COMMENTS OF
REV - PEOPLE'S PRODUCTION HOUSE
AND COLLEGE RADIO DAY

Along with Nickolaus E. Leggett N3NL of Reston, Virginia, I co-wrote and co-filed the 1997 Petition For Rulemaking that triggered the FCC's first deliberations on creation of a Low Power FM (LPFM) Radio Service. The Schellhardt & Leggett Petition led in turn to the issuance of Docket RM-9208 in 1998, which led in turn to the issuance of Docket 99-25 later that year, which led in turn to the actual establishment of LPFM radio stations in early 2000.

In addition to helping to inspire the Commission to consider creation of the LPFM Radio Service, I also Co-Founded THE AMHERST ALLIANCE at a September 17, 1998 meeting in Amherst, Massachusetts. Amherst became a Net-based, nationwide citizens' advocacy group for LPFM and other media reforms.

I now serve as President of Amherst and have held this position for most, but not all, of the last 14 years. Today, however, I speak only for myself, as an individual.

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LP100 Stations Are Too Large For “Urban Cores” Of The Top 100 Arbitron Markets

These Reply Comments address the November 15, 2012 Ex Parte Written Comments of REV – PEOPLE’S PRODUCTION HOUSE in New York City and the November 19, 2012 Reply Comments of COLLEGE RADIO DAY in New Jersey.

As one of the pioneers of the LPFM Radio Service, I stand *in vigorous agreement* with both of these Ex Parte filings. I can also report that my Co-Petitioner in FCC Docket RM-9208, Nick Leggett, holds the same viewpoint.

If the LPFM Radio Service is to have any kind of meaningful presence in urban America at all, *it is absolutely essential* for the Commission to allow lower wattage LPFM stations -- much smaller than LP100s -- into the urban cores of the Top 100 Arbitron Markets.

In cities such as New York and Detroit, *only* stations operating at 10 watts -- or perhaps even less -- will be small enough to “fit” into the spectrum for some neighborhoods. Despite some technical drawbacks associated with low wattage, including reduced radio signal penetration in some buildings, even very small LPFM stations can still be financially viable -- in highly urban areas -- because their service area populations are absolutely huge by usual LPFM standards.

In this regard, I refer the Commission to the first document in the APPENDIX to this filing (which is identical to the APPENDIX in the November 23, 2012 AMHERST ALLIANCE Reply Comments to the November 21, 2012 Ex Parte Written Comments of PROMETHEUS RADIO PROJECT). The document is entitled “A Report To Members Of THE AMHERST ALLIANCE: Dealing With Spectrum Scarcity In LPFM Licensing”.

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The referenced report -- completed with the help of the "LPFM Channel Search Tool" developed by Michelle Eyre (mae@recnet.com) of REC NETWORKS in Maryland (<http://home.recnet.com/lpfm>) -- shows that even a humble LP10 station in the semi-rural town of Prospect, Connecticut can reach 10,000 people: basically, several hundred more souls than the entire town's population of 9,400. An LP50 in Prospect can reach 27,000 people. By contrast, an LP10 based at 30 Rockefeller Plaza, in Manhattan, can reach 618,000 people. (That's a lot of "safety margin" to cover audience erosion due to low building penetration.) An LP50 in the same location can reach 1,188,000 people.

However, an LP100 at 30 Rockefeller Plaza can't reach *anyone* -- because it is too large to "fit" into the available spectrum for that location. Yet the FCC's currently proposed "LP100s only" policy for urban core areas -- the justification for which has *never* been presented to the public by the Commission -- would forbid LPFM applicants from addressing this problem by broadcasting below 50 watts.

So the FCC can limit *urban* LPFM power levels to 50 watts, or 10 watts, or even *less* than 10 watts, without undercutting the LPFM station's financial viability. This isn't true in most of the country, but it's definitely true in New York City ... and Detroit ... and Boston ... and San Francisco ... and Los Angeles ... and so on. An LP1 station at 30 Rockefeller Plaza can probably reach more people than an LP250 station on the Prospect Green. (The Prospect LP250 would reach 127,000 people.)

The referenced quantitative analysis, which I prepared for THE AMHERST ALLIANCE, shows that REV - PEOPLE'S PRODUCTION HOUSE and COLLEGE RADIO DAYS are right "on target" in concluding that the FCC's currently proposed "LP100s policy" is *a death sentence for LPFM in New York* -- and not "just" New York City. The new analysis indicates that the entire New York City metropolitan area -- *including* the suburbs -- is closed to new LPFM stations unless the Commission *both* authorizes routine use of 2nd adjacent channel spacing waivers *and* limits maximum power levels to 50 watts (or perhaps less).

Also:

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As THE AMHERST ALLIANCE has mentioned in previous filings to the FCC, earlier research by REC NETWORKS has confirmed that there will be *no* LPFM stations in New York City unless broadcasts below 50 watts are permitted -- and *no* LPFM stations in the City of Detroit unless broadcasts at 10 watts are permitted. In the cities of Los Angeles and San Francisco, abandoning the Commission's proposed policy of "LP100s only" (a "floor" of 50 to 100 watts) would more than triple the number of LPFM stations.

However, an artificial reduction of LPFM frequencies is not the *only* problem with imposing "LP100s only" policy on America's Top 100 Arbitron Markets.

The other problem, to put it bluntly, is this:

An LP100 in a highly urban environment, when and if it *can* find a frequency, would serve too many people and make too much money.

It would be too ... damn ... big.

By the same token:

An *urban* LP250, despite support for the idea in some quarters, would be worse. LP250s belong in rural areas, isolated small towns and perhaps some small cities. LP250s do *not* belong in the cities *or* the suburbs of the Top 100 Arbitron Markets.

In any event:

Now you can see why I am writing and filing these Reply Comments in my own name. I'm sure that not every Member of Amherst agrees with my point.

Nevertheless:

When Nick Leggett and I wrote the Petition For Rulemaking that started the FCC's deliberations on LPFM, we called our idea the Low Power FM Radio *Service*. The phrasing lives on in the very title of Docket 99-25: "Creation of A Low Power Radio *Service*."

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Not a Low Power FM Radio *Industry*. Certainly not a Low Power FM Radio *Empire*. And certainly not a Low Power FM Radio *Extension* of EMF ... or Calvary Chapel ... or NPR ... or Pacifica.

As Nick and I envision LPFM stations, they should be *servants* of the communities in which they are located. They should be led by people whose most powerful motivation is advancement of the public good.

To this end, Nick and I have tried to keep LPFM stations *large* enough, within a given geographical context, to generate enough potential income for financial viability -- or even financial comfort. At the same time, we have strived to keep LPFM stations *small* enough, again within a given geographical context, so that circumstances compel them to keep much of their programming locally focused and/or innovative if they want to survive.

Striking this balance is a tricky proposition -- and geography is a crucial variable in the equation. In some highly rural areas, even an LP250 station may not reach enough people to be financially viable. At the other extreme, an LP50 in Manhattan which reaches 1,188,000 people will likely be sorely tempted to become "just another" radio station.

Unfortunately, I have personally seen this happen -- at an urban LPFM station which reaches a lot fewer than 1,188,000 people. I won't mention the station's name, but I *will* say that the station has been too financially successful for its own good. As the station's prosperity has grown, the Board of Directors has acquired a more corporate coloration ... the station's brilliant and workaholic (but also eccentric) primary founder has been banished ... and the most creative, independently originated programming has been slowly "phased out" in favor of additional standardized programming from NPR and Pacifica. Board Members have begun to wander around the building, wondering aloud how long it will take before the station can afford plush seats and plush carpeting like they've seen at the local NPR affiliate.

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With more money coming in than the station needs, the station has acquired a potentially fatal disease:

Respectability.

Please, FCC, don't let this happen to the *next* generation of LPFM stations.

Please keep the urban power levels low enough to keep LPFM stations from becoming too comfortable to "stretch".

LP50s Are Good, But LP10s Are Better

It is now time to mention the second document in the APPENDIX to these Reply Comments. That document is a copy of May 16, 2012 Reply Comments -- by THE AMHERST ALLIANCE of Connecticut, REC NETWORKS of Maryland, NEXUS LPFM ADVOCACY of Colorado, CHRISTIAN COMMUNITY BROADCASTERS of Georgia and several others -- to Maneesh Pangasa of Arizona. These Reply Comments, which strongly support limiting LPFM stations in urban cores to 50 watts or less, were signed by almost every major LPFM advocacy group in the LPFM community.

Mr. Pangasa has since become a Member of THE AMHERST ALLIANCE.

In any event, this document comes closer than any other document to expressing the core consensus of the LPFM community on LP50 stations in the urban cores of the Top 100 Arbitron Market.

By "urban cores", I mean the areas where the FCC presently plans to prohibit licensing of LP250 stations: within 18 miles (30 kilometers) of the center of Arbitron Markets 1-20 ... within 12 miles (20 kilometers) of the center of Arbitron Markets 21-50 ... and within 6 miles (10 kilometers) of the center of Arbitron Markets 51-100.

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The referenced May 16 Reply Comments -- once again, signed by Amherst, REC, Nexus LPFM Advocacy, Christian Community Broadcasters and several others -- concludes with this declaration:

“(1) In the center city areas [aka “the urban cores”] of the Top 100 Arbitron Markets, the FCC should not proceed with its proposal to allow only LP100 stations in such areas.

“And

“(2) The REC NETWORKS proposal for a new LP50 class of stations, with a range of 1 to 49 watts, will be a far superior alternative for the center city areas of the Top 100 Arbitron Markets.”

These words were carefully crafted to allow individual signatories to vary from the points of consensus.

That is:

All signatories agree that the FCC should withdraw its present plan to license *only* LP100 stations in the referenced “center city areas”. *Some* signatories -- not including THE AMHERST ALLIANCE!! -- would accept the licensing of LP100s in such areas if other, lower wattage stations could also be licensed in such areas. Amherst does not believe that any stations larger than LP50s should be allowed in “urban cores”.

And

All signatories agree that LP50s would be “a far superior alternative” for urban cores than the currently proposed “LP100s only” policy. This phrasing leaves room for LPFM advocates like me to assert that LP50s are “a far superior alternative” to LP100s for urban cores, while adding that LP10s are the *best* alternative in such areas.

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Let me be clear. I will consider it a great victory if the Commission limits “urban core” areas to LP50 stations only. Nevertheless, this would not be an *ideal* outcome.

Speaking for myself -- and also for Nick Leggett -- rather than for all of THE AMHERST ALLIANCE, Nick and I would *personally* go beyond the LPFM community’s consensus in our recommendations:

First, we *personally* believe that “urban cores” should be limited to *LP10s only*, not LP50s only. Applicants should be urged to consider the lower end of LP10 scale.

Second, we *personally* believe that an “LP50s only” policy should apply in all parts of the Top 100 Arbitron Markets which lie outside the “urban cores”.

From these declarations, it follows logically that we favor licensing of LP100s and/or LP250s *solely* in areas outside the Top 100 Arbitron Markets.

If the Commission wants to avoid the administrative complexity of handling multiple wattage Tiers, then we would recommend shifting to *LP250s only* outside the Top 100 Arbitron Markets.

Let me note that an LPFM applicant can file for an LP50 license, in the form proposed by REC NETWORKS, and still operate at 10 watts -- or less -- if this is necessary to find a “fit” in the radio spectrum. I say this because REC’s proposed LP50 license allows broadcasting from 1 to 49 watts. Therefore, LPFM applicants can “shrink” their station’s profile on the spectrum.

Having said this, it is still true, in some locations, that limiting all applicants to 10 watts will produce more LPFM frequencies than limiting all applicants to 49 watts. For example, 30 Rockefeller Plaza can host either two LP10s or one LP50.

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I Will File A Petition For Rulemaking

If LP50 Stations Are Not Allowed In "Urban Cores"

As I have just stated, Nick Leggett and I would personally prefer to see a policy of LP50s *only* -- not simply LP50s *allowed* -- in the Top 100 Arbitron Markets.

Further, we would personally prefer to see a policy of *LP10s* only -- not LP50s only -- in the "urban cores" of those Top 100 Arbitron Markets.

Nevertheless, I am practical enough not to "draw the line" at the ideal outcome.

Instead, I will "draw the line" at a less-ideal-but-still-acceptable outcome:

Allowing LP50s (with a range of 1 to 49 watts) to be licensed in the "urban cores" of the Top 100 Arbitron Markets.

If the Commission's final rule does not provide for this, I will file a Petition For Reconsideration -- urging the Commission to open its mind and change it.

This Petition is my personal idea and I will pursue it as an individual. However, I will not be alone. Nick Leggett has already told me that he will join me on the Petition, should it become necessary. In addition, THE AMHERST ALLIANCE has already voted to join me on this Petition. From there, the list goes on to include a number of other signatories.

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I plan to indicate to the Commission, in this hypothetical Petition, that I see no need to delay the LPFM filing window as a whole. Since the requested policy change will only affect LPFM applications in the Top 100 Arbitron Markets, only the filing window in the Top 100 Arbitron Markets should be delayed.

Naturally, to keep the unclaimed sliver of urban spectrum that still exists from eroding away while the LP50 issue is being debated, I will ask the Commission to refrain from issuing *any* new radio station licenses in the Top 100 Arbitron Markets -- for fundamentalist Christian translators, NPR translators, full power stations or Whatever -- until the LP50 question has been resolved.

Should the Petition For Reconsideration be denied by the Commission, I will take the matter to court *if* I can gather the resources to do so. I am, after all, an attorney, licensed in both the State of Connecticut and the Commonwealth of Virginia. Although my legal experience has primarily involved legislation and regulation, I also have several years of trial law experience.

I will not bluff about court action. I may or may not be able to make it happen. Although I have held some well paid, high profile positions in the past -- notably, Director of Legislative and Regulatory Affairs at the American [Natural] Gas Association and GS-15 Policy Advisor with the U.S. Environmental Protection Agency -- my worldly standing has become much more modest since I left Washington, DC for areas with much less traffic. For the moment, I have little status and even less money.

However, let me tell you what I *do* have. I have high intelligence, high ideals, good character, great political experience and -- when motivated -- a will as hard as iron. I also have the continuing ability to pick up telephones, write and send E-Mails and knock on doors.

Some of those doors might be on Capitol Hill or -- well -- 30 Rockefeller Plaza.

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Can I win this fight? I don't know. That depends, at least in part, on how many people are willing to support me -- and how many decision makers and reporters are willing to listen to me.

All I can control is how hard I fight. I think the Commission already knows that I fight *hard* when I believe the cause is a good one.

I also advise the Commission to consider its legal vulnerabilities.

If the FCC proceeds as currently planned, metaphorically ramming LP100s down the throats of urbanites who don't have room for them on the radio spectrum, then the FCC will be disproportionately harming our major cities ... which means it will be disproportionately harming racial and ethnic minorities ... which means it had better be ready to explain how the racially discriminatory effects of its policies can be squared with the "equal protection of the laws" clause of the Fourteenth Amendment to the U.S. Constitution.

(Incidentally, the same Constitutional argument can be made if the Commission does not make 2nd adjacent channel spacing waivers readily available in urban areas.)

The FCC may also be asked to explain why it has never once revealed to the public *why* it adopted an "LP100s only" policy for urban areas. By failing to disclose its rationale, the Commission has denied public commenters both the right to debate that rationale and the right to develop counterproposals which might address the FCC's actual concerns. These impairments of the public commenting process clearly raise questions under the Administrative Procedure Act.

Finally -- as REV – PEOPLE'S PRODUCTION and COLLEGE RADIO DAY have already stressed -- Congress, when it enacted the Local Community Radio Act, told the Commission to "ensure" that both translator stations *and* LPFM stations are made widely available throughout the country.

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Does the Commission *really* want to explain to Congress, and/or to a reviewing court, *why* it took a handful of urban LPFM frequencies that were already painfully few -- and then greatly reduced their number through its policies on minimum wattage and/or channel spacing waivers?

To tell you the truth:

I'll fight if I must, to give urban LPFM a fighting chance, but ...

I really hope I don't have to fight the Commission over this.

I really hope I can read the Commission's final rule, say to myself "It's great!" (or at least "It's OK!") and then sheath my sword. I will probably *never* leave the world of public policy, for as long as I live, but I could sure use a change of scenery.

I'd like to see things reach a point at which the best leader for Amherst is not a politician/lawyer but a "techie" -- who can deal with the implementation details of matters on which the political conflicts have been equitably resolved.

Are Urban LP100s "A Bridge Too Far"?

In closing, let's consider what I consider "the worst case" for urban LPFM.

Let's suppose the Commission issues a final rule which denies urban LPFM either or both of the two things it needs to survive as a significant presence: minimum power levels down to 1 watt and readily available 2nd adjacent channel spacing waivers.

Let's suppose I file a Petition For Rulemaking to save urban LPFM and it's denied.

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Let's suppose I don't go to court after that, because I can donate my legal labor but I can't raise enough money to cover the other costs of litigation ...

Or let's suppose I do raise the money to litigate, but I lose in court anyway ...

So urban LPFM languishes and there's no unclaimed urban spectrum left for any additional LPFM stations.

At that point ...

Have NPR, the NAB and other enemies of urban LPFM won?

It depends on whether those who advocate urban LPFM give up.

If they *don't* give up, then they are left with the knowledge that the only remaining way to gain more urban LPFM stations is through *displacement of existing* stations. Urban translators -- perhaps including some NPR translators -- would be one good place to start.

The Session of Congress which passed the Local Community Radio Act didn't focus on the possible displacement of translators by LPFM stations. *Future* Sessions of Congress, however, would be dealing in this scenario with the knowledge that the FCC has made an *eminently avoidable decision* that denied New York City a single LPFM station ... denied the City of Detroit a single LPFM station ... and denied other metropolitan areas half or two thirds or three quarters of the LPFM stations to which they would otherwise have been entitled.

If urban LPFM advocates do their job of informing the voters in adversely affected cities, then the voters may do their own job of pressuring legislators in Congress.

Should the FCC choose to abandon its currently proposed policy of "LP100s only" for urban areas, deciding instead to license urban LP50s (and/or urban LP10s), then NPR, the NAB and the translator stations can walk away from this situation with all of their existing stations still On Air. They may not be so lucky, in the long run, if urban LP50s are blocked this year.

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When and if the “stonewall” finally breaks, the public’s long-denied hunger for additional local and/or innovative programming may turn out to be more dramatic than anyone envisions today.

In all honesty, even the licensing of urban LP50s this year may not delay more sweeping reforms indefinitely. It is probably inevitable, sooner or later, that stations with a comparatively high “social value” will be authorized to push aside stations with comparatively low “social value” when there isn’t enough spectrum to go around.

Still, releasing some of the mounting public pressure now, by adding some LP50s (and/or LP10s) to the urban mix, will “buy time” for NPR, the NAB and the rest.

And time -- as any businessperson will tell you -- is money.

Notifications

Copies of this document have been sent, by U.S. Postal Service First Class Mail, to Carlos Padera of REV – PEOPLE’S PRODUCTION HOUSE, 666 Broadway, Suite 500, New York City, New York 10012 and to Rob Quicke, COLLEGE RADIO DAY, P.O. Box 107, Hewitt, New Jersey 07421. Copies of this document have also been sent, electronically, to Brandy Doyle of PROMETHEUS RADIO PROJECT (brandy@prometheus.org) ... Michelle Eyre of REC NETWORKS (mae@recnet.com) ... Leo Ashcraft of NEXUS LPFM ADVOCACY (leo@nexusbroadcast.com) ... John Broomall of CHRISTIAN COMMUNITY BROADCASTERS (johnbroomall@yahoo.com) ... William Walker of WILW (wilw@wilw.com) ... John Anderson (jander26@illinois.edu) of Brooklyn College and DIYMEDIA (www.diymedia.net) ... Cheryl Leanza of A LEARNED HAND Consulting (cleanza@alhmail.com) ... and Connie Yu of the LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS (Yu@civilrights.org).

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Respectfully submitted,

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Dated: November 24, 2012

APPENDIX

A REPORT TO MEMBERS OF *THE AMHERST ALLIANCE*:
DEALING WITH SPECTRUM SCARCITY IN LPFM LICENSING

By Don Schellhardt, Esquire

President, THE AMHERST ALLIANCE

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November 23, 2012

Earlier this week, I decided to do some new quantitative analysis on this issue. I wanted to see for myself which FCC policy was more important in LPFM licensing: channel spacing waivers or urban LP50 stations.

With the absolutely invaluable assistance of the free “LPFM Channel Search Tool”, developed by Michelle Eyre of Maryland (mae@recnet.com) and located on the REC NETWORKS Web Site (<http://home.recnet.com/lpfm>), I was able to compare LPFM frequency availability -- under different scenarios -- in 8 different communities.

In appreciation for this help, I have sent a small donation to: REC NETWORKS, 11541 Riverton Wharf Road, Mardela Springs, MD 21837.

For the study, I selected imaginary LPFM transmitter sites in various locations.

Three sites were in the most urban of America’s “urban cores”: New York City. Manhattan was selected, as were the outlying Boroughs of Queens and Brooklyn. The fourth transmitter was placed in my hometown of Livingston, New Jersey: *just outside* the FCC’s 18-mile boundary for defining metropolitan New York’s “urban core”, where LP250 stations would be banned under the FCC’s current proposed rule.

November 23, 2012

Another three imaginary transmitter sites were placed in Central Connecticut, where I currently reside. I chose the communities of Waterbury (where I presently live), Middletown (where I went to college) and lightly populated Prospect. Here, population density and spectrum scarcity are less than in Metropolitan New York. Nevertheless, the communities fall within the Arbitron Market for New Haven, which ranks as Arbitron Market No.116 and is classified by the FCC as "Spectrum Limited".

As a baseline, I used the town of Wakeeny, Kansas: the seat of Trego County, found right off Interstate 70. The County's population averages less than 3 people per square mile. However, because most of the County's small population is concentrated within the boundaries of Wakeeny, William Walker, Co-Founder of THE AMHERST ALLIANCE, believes a part time Part 15 station could operate here successfully.

(The specific transmitter sites are discussed in greater detail at the end of this Report in "Notes On The Hypothetical LPFM Transmitter Sites".)

In any event, the major findings from my quantitative analysis were as follows:

- 1. In the communities located outside of metropolitan New York City, 2nd adjacent channel spacing waivers had much more of an effect on LPFM frequency availability than variations in station wattage. In the three Central Connecticut communities, waiver availability boosted frequencies per community from one or none to several. As a secondary factor, reducing station wattage amplified this effect in some cases.*
- 2. Even in Wakeeny, where frequencies were abundant under even the most restrictive scenario, making 2nd adjacent channel spacing waivers routinely available increased potential LPFM frequencies from 37 to 47.*
- 3. In the metropolitan New York communities, however, there was no room to "trade off" spacing waivers for lower wattage stations, or vice versa. Even with a combination of LP10 stations -- not LP50 stations, but LP10 stations -- and spacing waivers, no frequencies were in either Brooklyn or Queens.*

4. *The only hope for those Boroughs might be stations which actually operate at a few watts, even though they hold an LP10 or LP50 license. Manhattan could have one LPFM frequency if spacing waivers are coupled with a station wattage limit of 50 watts. Two LPFM frequencies might be available if LPFM stations are limited to 10 watts. Even 20 miles into New Jersey, in the suburb of Livingston, two LPFM frequencies were available only if channel spacing were available and LPFM stations were limited to LP50 licenses.*
5. *As for the impact of maximum permissible LPFM wattage on service area population, even an LP10 in Manhattan would have a service area population that is huge by LPFM standards: 618,000 people. In New York City, an LP1 station would probably be economically viable -- and an "LP1s only" policy, limited to this kind of location, is worth some consideration. Farther west in Livingston, just outside the metropolitan area's "urban core", an LP50 station -- the largest one the local spectrum can accommodate -- could reach 41,000 people. Moving to the three Connecticut communities of Waterbury, Middletown and Prospect, the spectrum in each community could accommodate anywhere from at least one LP10 station to at least one LP250 station -- with the exact number of such stations being highly dependent on whether channel spacing waivers are readily available. Service area populations for these three communities would range from 10,000 to 67,000 for an LP10 ... 27,000 to 101,000 for an LP50 ... 50,000 to 122,000 for an LP100 ... and 99,000 to 154,000 for an LP250.*

TABLE I:
ALTERNATIVE PUBLIC POLICY APPROACHES
CORRELATED WITH LPFM FREQUENCY AVAILABILITY

Prepared by Don Schellhardt, Esquire

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Source:

REC NETWORKS LPFM SEARCH TOOL

<http://home.recnet.com> ... (Michelle Eyre) mae@recnet.com

*NPR/NAB Approach (National Public Radio and National Association of Broadcasters):
LP100 stations (51-100 watts) are the only option in all locations. Rare use of 2nd
adjacent channel soacing waivers.*

*FCC Approach (as of 11/20/12): LP100 stations are the only option in urban cores of
Top 100 Arbitron Markets (within 18 miles of center of Arbitron Markets 1-20 ... within
12 miles of center of Arbitron Markets 21-50 ... and within 6 miles of center of
Arbitron Markets 51-100.) LP100s and LP250s elsewhere else. Routine use of 2nd
adjacent channel spacing waivers.*

*LPFM Community Consensus (Amherst Alliance, REC Networks, Nexus LPFM
Advocacy, Christian Community Broadcasters and, as of 11/23/12, Prometheus Radio
Project): Urban cores of Top 100 Arbitron Markets [defined above] limited to LP50
stations (1-49 watts) and/or lower wattage stations. LP100s and LP250s everywhere
else. (Existing LP100 stations may apply to upgrade to LP250 stations, where
applicable.) Routine use of 2nd adjacent channel spacing waivers.*

This approach is acceptable to Don Schellhardt & Nick Leggett, but not ideal.

Schellhardt/Leggett Preference: Urban cores of Top 100 Arbitron Markets [defined above] limited to LP10 stations (1-10 watts). Remainder of Top 100 Arbitron Markets, and areas elsewhere which are deemed Spectrum Limited, restricted to LP50 stations. LP250 stations everywhere else. (All new LP250 stations must successfully complete 2-year “shakedown cruise” at 100 watts. Existing LP100 stations are “grandfathered” ... may apply for upgrade to LP250 stations, where applicable, if they can demonstrate 2 years of operating experience.) Routine use of 2nd adjacent channel spacing waivers.

- Population numbers are in thousands. Service area populations may be overstated due to impaired radio signal penetration in some buildings.
- All LP10 projections assume 10 watt broadcasts or the HAAT/wattage equivalent. Some LP10 stations might be able to find a frequency by seeking lower power levels (down to 1 watt) ... In locations such as Manhattan or Queens, even a 1-watt LP10 could reach tens of thousands of people.

ALTERNATIVE PUBLIC POLICY APPROACHES

	<u>NPR/NAB</u>	<u>FCC (11/20/12)</u>	LPFM Groups <u>Consensus</u>	Schellhardt & Leggett <u>Preference</u>
Manhattan, NY				
Freq. Avail.	NONE	NONE	1	2
Serv. Area Pop.	NONE	NONE	1,188K	618K
Brooklyn, NY				
Freq. Avail.	NONE	NONE	NONE	NONE
Serv. Area Pop.	NONE	NONE	NONE	NONE

<u>NAB/NPR</u>	<u>FCC (11/20/12)</u>	LPFM	Schellhardt
		Groups	& Leggett
		<u>Consensus</u>	<u>Preference</u>

Queens, NY

Freq. Avail.	NONE	NONE	NONE	NONE
Serv. Area Pop.	NONE	NONE	NONE	NONE

Livingston, NJ

Freq. Avail.	NONE	NONE	2	2
Serv. Area Pop.	NONE	NONE	41K	41K

Waterbury, CT

Freq. Avail.	1	9	7	7
Serv. Area Pop.	122K	154K	154K	101K

Middletown, CT

Freq. Avail.	NONE	7	7	10
Serv. Area Pop.	NONE	67K	67K	41K

Prospect, CT

Freq. Avail.	1	9	9	10
Serv. Area Pop.	50K	99K	99K	127K

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NOTES ON THE HYPOTHETICAL LPFM TRANSMITTER SITES

The LPFM transmitter sites were not selected scientifically. However, they are all located in or near the approximate center of the communities involved.

In *Manhattan*, I selected 30 Rockefeller Plaza (aka “30 Rock”) in honor of Tina Fey -- and the broadcasting industry in general.

According to the LPFM Search Tool developed by Michelle Eyre (mae@recnet.com), of REC NETWORKS in Maryland (<http://home.recnet.com>), “30 Rock” can accommodate one LP50 frequency or two LP10 frequencies. In both cases, second adjacent channel spacing waivers would be needed. In neither case could an LP100 station be accommodated: unfortunately, at present the FCC is willing to license *only* LP100 stations in Manhattan.

In *Brooklyn*, I selected the site of Brooklyn College of the City University of New York (CUNY). It is located at 2000 Bedford Avenue. I chose it because John Anderson, an inactive AMHERST ALLIANCE Member who edits and publishes www.diymedia.net, and recently earned a Ph.D in Communications from the University of Illinois at Champaign/Urbana, now teaches at Brooklyn College.

In *Queens*, I selected the site of Queens College of CUNY at 65 Kissena Boulevard. aQueens College is the undergraduate *alma mater* of Wendy Finkel: a Queens native whom I now date in Waterbury, Connecticut.

Even with channel spacing waivers *and* the option of an LP10 license (which the Commission is not currently planning to make available), there is no room for even a single LPFM station at either the Brooklyn location or the Queens location. Perhaps a station of 1 or 2 watts should be considered, since it might be economically viable with this level of population density.

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In *Livingston, New Jersey* -- a suburb, 20 miles west of Times Square, and also my hometown -- I placed the imaginary LPFM transmitter inside a single family home. The home, at 64 Amelia Avenue, is where I grew up.

Livingston may be able to host two LP50 stations, or two LP10 stations, if channel spacing waivers are added to the mix. Without the option of waivers, *plus* the availability of licenses for stations below 50 watts, Livingston is “shut out of the game”. Yet the town is 20 miles from the crowded streets of Manhattan.

In *Waterbury, Connecticut*, I placed the transmitter in the steeple of St. John’s Episcopal Church. The church faces the Waterbury Green and hosts a number of community activities, including a soup kitchen. You can find it at 16 Church Street.

In *Middletown, Connecticut*, I based the transmitter on the campus of Wesleyan University at 300 High Street. Wesleyan is where Nick Leggett and I first met, as college students and fraternity brothers, in 1967.

In *Prospect, Connecticut*, the transmitter was placed in the steeple of Prospect Congregational Church. My father, Roy Schellhardt, is a member of this church -- along with several friends of mine. The church is on the Prospect Green.

In all three Connecticut communities, the availability of channel spacing waivers makes an enormous difference. Making them easily available, as in every approach except the NPR/NAB proposal, increases available frequencies several times over.

I chose *Wakeeny, Kansas* as my rural “baseline” for the study because I once had dinner there with William Walker, Co-Founder of THE AMHERST ALLIANCE. At the time, I was taking a Water Law course at the University of Denver School of Law. William was working near Kansas City but spending many of his weekends in Wakeeny.

William loves the town and sees it as the possible home of a Part 15 AM station. While the population of Trego County is less than 3 people per square mile, most residents live within Wakeeny’s few square miles. So a part time Part 15 might work.

TABLE II:
MAXIMUM PERMISSIBLE LPFM WATTAGE
CORRELATED WITH PROJECTED SERVICE AREA POPULATION

Prepared by Don Schellhardt, Esquire

djlaw@gmail.com ... (203) 982-5584

Source:

REC NETWORKS LPFM SEARCH TOOL

<http://home.recnet.com/lpfm> ... (Michelle Eyre) mae@recnet.com

POPULATION (Rounded, In Thousands)

	LP10	LP50	LP100	LP250
Manhattan, NY				
1,589K	618K	1,188K	1,614K	2,147K
Brooklyn, NY				
2,533K	618K	1,232K	1,654K	2,293K
Queens, NY				
2,248K	320K	700K	994K	1,454K

	:LP10	LP50	LP100	LP250
Livingston, NJ				
29K	31K	41K	75K	147K
Waterbury, CT				
110K	67K	101K	122K	154K
Middletown, CT				
48K	29K	41K	50K	67K
Prospect, CT				
9K	10K	27K	50K	99K
Wakeeny, KS				
2K	2K	2K	2K	2K

TABLE III:
CORRELATION OF MAXIMUM PERMISSIBLE LPFM WATTAGE
AND
SECOND ADJACENT CHANNEL SPACING WAIVERS
WITH LPFM FREQUENCY AVAILABILITY

Prepared by Don Schellhardt, Esquire

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Source:

REC NETWORKS LPFM SEARCH TOOL

<http://home.recnet.com/lpfm> ... (Michelle Eyre) mae@recnet.com

LPFM FREQUENCIES AVAILABLE

WITHOUT	WITH
2 nd Adjacent	2 nd Adjacent
Channel	Channel
Spacing	Spacing
<u>Waivers</u>	<u>Waivers</u>

Manhattan, NY

LP10	<i>NONE</i>	2
LP50	<i>NONE</i>	1

	WITHOUT 2 nd A.C.S. <u>Waivers</u>	WITH 2 nd A.C.S. <u>Waivers</u>
LP100	NONE	NONE
LP250	NONE	NONE
Brooklyn, NY		
LP10	NONE	NONE
LP50	NONE	NONE
LP100	NONE	NONE
Queens, NY		
LP10	NONE	NONE
LP50	NONE	NONE
LP100	NONE	NONE
LP250	NONE	NONE
Livingston, NJ		
LP10	NONE	2
LP50	NONE	2
LP100	NONE	NONE
LP250	NONE	NONE
Waterbury, CT		
LP10	1	10
LP50	1	9

	WITHOUT 2 nd A.C.S. <u>Waivers</u>	WITH 2 nd A.C.S. <u>Waivers</u>
LP100	1	7
LP250	1	7
Middletown, CT		
LP10	<i>NONE</i>	11
LP50	<i>NONE</i>	10
LP100	<i>NONE</i>	8
LP250	<i>NONE</i>	7
Prospect, CT		
:LP10	1	11
LP50	1	10
LP100	1	9
LP250	1	9
Wakeeny, KS		
LP10	36	53
LP50	37	54
LP100	31	46
LP250	31	47

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Creation Of A Low Power Radio Service)

FCC Docket 99-25

JOINT REPLY COMMENTS OF THE AMHERST ALLIANCE, NEXUS LPFM ADVOCACY, NEXUS BROADCAST, REC NETWORKS, CHRISTIAN COMMUNITY BROADCASTERS, NICKOLAUS LEGGETT N3NL, RIVERTON RADIO PROJECT, MUSIC RADIO 95, SCOTT TODD, JOHN RICHMOND AND LEROY F. SCHELLHARDT TO MANEESH PANGASA

The undersigned advocates of Low Power FM (LPFM) Radio hereby respond to the May 7, 2012 Written Comments of Maneesh Pangasa of Yuma, Arizona. We are sending an electronic copy of this filing to Mr. Pangasa at maneeshpangasa@gmail.com

We wish to underscore for the Commission the following statement by Mr. Pangasa:

" LPFM stations provide opportunities for women and people of color to work in radio programming, run local radio stations, and address issues that are often neglected by commercial radio stations.

"Women are 51% of U.S. population, but own only 6% of all local AM and FM stations.

"Racial and ethnic minorities make up 33% of the population, but own just 7.7% of all radio stations.

"Currently, people of color make up only 6% of the nation's radio newsroom workforce."

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We agree with Mr. Pangasa that an expanded LPFM Radio Service will help to broaden participation in radio broadcasting by racial and ethnic minorities and women. We also note that LPFM stations, with their smaller size, will typically be more oriented toward serving individual neighborhoods than metropolitan areas. As one beneficial result, a greater number of minority neighborhoods will be able to enjoy programming which is oriented specifically toward them.

Unfortunately, much of LPFM's favorable impact on minorities will be swept away if the Commission insists on allowing only LP100 stations into urban areas. If smaller LPFM stations are struck from the urban landscape, the potential presence of LPFM in urban areas will be reduced dramatically.

While the undersigned LPFM advocates do not agree on every issue posed by the Federal Communications Commission in its proposed rule on LPFM, all of us agree on the following points:

(1) In the center city areas of the Top 100 Arbitron Markets, the FCC should not proceed with its proposal to allow only LP100 stations to be licensed in such areas

And

(2) The REC NETWORKS proposal for a new LP50 class of stations, with a range of 1 to 49 watts, will be a far superior alternative for the center city areas of the Top 100 Arbitron Markets.

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Respectfully submitted,

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May 16, 2012