

LET THE CITIES IN!!

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February 9, 2013

Marlene Dortsch, Secretary

Office of the Secretary

Federal Communications Commission

Washington, DC 20554

Re: ADDENDUM To LTCI Petition For Reconsideration (in FCC Docket 99-25)

Dear Ms. Dortsch:

As Attorney for LET THE CITIES IN!! (LTCI), I am filing an ADDENDUM to LTCI's Petition For Reconsideration in FCC Docket 99-25. The ADDENDUM contains important new information, which will hopefully interest the Commission.

The ADDENDUM's Appendix contains a February 9 quantitative analysis of "shortchanged cities" under the FCC's current "LP100s only" licensing policy. Of the nation's 50 largest incorporated cities, 17 -- one out of every three -- will have 2 LPFM stations or less. 10 will have one LPFM station or less, 3 cities will have none.

The Appendix also includes a February 1 RADIO WORLD article -- entitled "FCC Should OK Smaller LPFMs" -- plus LTCI's December 4, 2012 press release.

Sincerely,

Don Schellhardt, Esquire

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Creation of A Low Power Radio Service)

FCC Docket 99-25

ADDENDUM TO PETITION FOR RECONSIDERATION
BY LET THE CITIES IN!!

:LET THE CITIES IN!! (LTCI) is a Net-based, nationwide group of 20 Low Power FM (LPFM) Radio supporters -- including aspiring LPFM broadcasters, radio listeners and LPFM advocacy groups.

We have filed a Petition For Reconsideration which urges the FCC to end its current "LP100s only" licensing policy -- but *only* in the "urban core areas" of the Top 100 Arbitron Markets. This means *LTCI's Petition would affect only the most urban 1% of America's land area.*

In light of the possibility of litigation, in the event our Petition is denied, we note that almost half of LTCI's Members reside in areas that would be directly affected by LTCI's Petition. That is: They would clearly have "standing" in a court case.

LTCI hereby submits an ADDENDUM to our Petition For Reconsideration in FCC Docket 99-25. The ADDENDUM contains important new information, which will hopefully interest the Commission.

The ADDENDUM's Appendix contains a February 9 quantitative analysis of "shortchanged cities" under the FCC's current "LP100s only" licensing policy. We consider a city "shortchanged" if it has less than 3 frequencies for LPFMs.

LET THE CITIES IN!!

ADDENDUM To Petition For Reconsideration

February 9, 2013

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Of the nation's 50 largest incorporated cities, 17 -- one out of every three -- will have 2 LPFM stations or less. 10 cities will have one LPFM station or less. 3 cities -- New York City, Detroit and San Jose, with 10 million residents between them -- will have no LPFM stations at all.

The Appendix also includes a February 1 RADIO WORLD article -- entitled "FCC Should OK Smaller LPFMs" -- plus LTCI's December 4, 2012 press release regarding its Petition.

Once again, LTCI urges the FCC to grant our Petition For Reconsideration. Doing this would end the FCC's current ban on absolutely every LPFM radio station, anywhere, that transmits below 50 watts -- but the ban would *only* end the ban in *the most urban 1% of America's land area*.

Respectfully submitted,

Don Schellhardt, Esquire

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Dated: February 9, 2013

APPENDIX

FEBRUARY 9, 2013

ANALYSIS BY

LET THE CITIES IN!!

LARGE, INCORPORATED CITIES

WHICH ARE SHORTCHANGED

BY THE FCC'S

"LP100s ONLY" LICENSING POLICY

FOR URBAN LPFMs

THE 17 SHORTCHANGED CITIES [FOR LPFM STATIONS] AMONG THE
U.S. TOP 50 -- *ONE LARGE CITY OUT OF EVERY THREE*

Under The FCC's Current "LP100s Only" LPFM Licensing Policy

(Population rank is in parentheses)

*NOTE: This data is for incorporated cities, not metropolitam areas or
Arbitron Markets. Communities near these cities are not included.*

PREPARED BY:

Don Schellhardt, Attorney For LET THE CITIES IN!!

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DATA SOURCE:

REC NETWORKS' "My LPFM Channel Search"

at www.recnet.com

(1)	New York City	0
(10)	San Jose	0
(18)	Detroit	0
((8)	San Diego	1
(21)	Baltimore	1
(22)	Boston	1
(26)	Denver	1
(31)	Oklahoma City	1
(34)	Fresno	1
(48)	Oakland	1

(2)	Los Angeles	2
(3)	Chicago	2
(13)	San Francisco	2
(19)	El Paso	2
(24)	Washington, DC	2
(36)	Long Beach	2
(50)	Arlington, TX	2

RAW DATA:

LPFMs PER INCORPORATED CITY AMONG THE U.S. TOP 50

Under the FCC's current "LP100s only" licensing policy

Shortchanged Cities (2 or fewer LPFMs) are in ITALICS

(Population rank is in parentheses)

(1) *New York City, 0*

(2) *Los Angeles, 2*

(3) *Chicago, 2*

(4) Houston, 13

(5) Philadelphia, 3

(6) Phoenix, 11

(7) San Antonio, 8

(8) *San Diego, 1*

(9) Dallas, 3

(10) *San Jose, 0*

- (11) Jacksonville, 14
- (12) Indianapolis. 6
- (13) *San Francisco, 2*
- (14) Austin, 8
- (15) Columbus. 4
- (16) Fort Worth, 5
- (17) Charlotte, 3
- (18) *Detroit, 0*
- (19) *El Paso, 2*
- (20) Memphis, 9
- (21) *Baltimore, 1*
- (22) *Boston, 1*
- (23) Seattle, 9
- (24) *Washington, DC, 2*
- (25) Nashville-Davidson, 3
- (26) *Denver, 1*
- (27) Louisville-Jefferson County, 6
- (28) Milwaukee, 4
- (29) Portland, OR, 7
- (30) Las Vegas, 7
- (31) *Oklahoma City, 1*
- (32) Albuquerque, 7

- (33) Tucson, 4
- (34) Fresno, 1*
- (35) Sacramento, 6
- (36) Long Beach, 2*
- (37) Kansas City, 8
- (38) Mesa, AZ, 7
- (39) Virginia Beach, 6
- (40) Atlanta, 4
- (41) Colorado Springs, 5
- (42) Omaha, 13
- (43) Raleigh, 4
- (44) Miami, 11
- (45) Cleveland, 5
- (46) Minneapolis, 6
- (47) Tulsa, 6
- (48) Oakland, 1*
- (49) Wichita, 12
- (50) Arlington, TX, 2*

FEBRUARY 1, 2013

ARTICLE IN *RADIO WORLD*

BY DON SCHELLHARDT,

ATTORNEY FOR

LET THE CITIES IN!!:

"FCC SHOULD OK SMALLER LPFMs"

FCC Should OK Smaller LPFMs

by Don Schellhardt

on 02.04.2013

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[NOTE TO THE FCC: The map for this article could not be “copied and pasted”. Still, it can be found at <http://www.radioworld.com/article/fcc-should-ok-smaller-lpfms/217586> OR on page 6 of the February 1, 2013 print copy of RADIO WORLD. -- Don Schellhardt]

This FCC map shows potential availability for new LPFM stations based on rules adopted in November. This does not assume protection of other second-adjacent FM stations.

(Click to Enlarge)

A newly formed citizens' group, Let The Cities In, has filed a Petition for Reconsideration of the FCC's final rule on low-power FM implementation. The petition asks the commission to allow LPFM stations below 50 watts in the most urban 1 percent of America's land area.

The sources cited [see sidebar] will confirm that only LPFM stations below 50 watts are small enough to “fit” into the spectrum in certain metropolitan areas. However, written statements made by commissioners on Nov. 30, when the final LPFM rule was adopted, indicate they may not have not been informed of this fact.

For example, at the meeting, Chairman Julius Genachowski stated: “These stations are doing fantastic things, but now only a handful of low-power FM stations operate in large markets. With today's vote, we are fully realizing the vision of creating an opportunity to

bring the diverse voices of community radio to Americans across the country, including those in large urban areas.”

These do not sound like the words of a man who knows he has just voted to ban all LPFM stations in New York City and Detroit. That is: By voting to allow only LP100 stations (50 to 100 watts) in all locations, he has left these cities with no LPFM stations at all, we believe.

Commissioner Mignon Clyburn addressed Pennsylvania Democrat Rep. Michael Doyle and Nebraska Republican Rep. Lee Terry, the two leading LPFM advocates in the House who were present. She stated:

“Special thanks are due to you, for none of this would be possible without your tireless efforts. Now, more constituents in Pittsburgh and Omaha may have their voices heard, and their interests expressed.”

Unfortunately, Commissioner Clyburn — a sincere and fervent friend of LPFM — was only halfway correct. According to REC’s “My LPFM Channel Search Tool,” Omaha will have 13 frequencies for LPFM stations. However, Pittsburgh will have only one.

Perhaps the commissioners overestimated the positive impact of allowing second-adjacent channel spacing waivers. In some cases, the waivers are decisive. They are the only reason for LPFM frequencies in Seattle (nine), Philadelphia (three), Los Angeles (two), Chicago (two), San Francisco (two), Washington (two), Boston (one) and Pittsburgh (one). Also, waivers increased frequencies from three to 11 in Phoenix, three to 13 in Omaha and two to 13 in Houston. Still, the impact of waivers is uneven, and some cities lack any LPFM at all. Even with waivers, America’s three largest cities have four frequencies between them, while the country as a whole has thousands.

Someone at the FCC apparently did not apprise the commissioners that they were approving a seriously truncated version of urban LPFM.

The reconsideration petition

The remedy for flawed commission consideration is a Petition for Reconsideration. I filed such a petition in December, asking for stations below 50 watts in “urban core” portions of the Top 100 Arbitron Radio Markets. I added that the LPFM filing window should be suspended only in these highly urban areas.

I acted as attorney for the newly formed citizens’ group behind the petition called “Let The Cities In!!”

Our group asserted that the commissioners evidently were under-informed when they voted. However, our most important argument is constitutional. As the FCC was already apprised in earlier written comments, the “LP100s only” policy, when applied to highly urban areas, violates the constitution’s “Equal Protection of the Laws” clause. The policy disproportionately disempowers our cities, which means — in practice — that it disproportionately disempowers racial and ethnic minorities. Case law establishes that government policies with a racially discriminatory effect, even if there was no racially discriminatory intent, are unconstitutional unless a “compelling state interest” can be shown. There is no “compelling” reason to ban urban LPFM stations below 50 watts.

Don Schellhardt, a former Washington attorney, is a grassroots activist for media reform. He co-founded the advocacy group The Amherst Alliance and represents other “under-represented” causes including reform of homeowners’ associations and equipment shielding against an electromagnetic pulse. Contact him at: djlaw@gmail.com

Spectrum Scarcity

Docket 99-25 is the LPFM rulemaking file in the public comments portion of www.fcc.gov. There, posted on Dec. 11, find the text of the final rule and statements by individual commissioners as well as reply comments by The Amherst Alliance of Connecticut and separate reply comments by myself as an individual. Both documents contain, in the appendices, an LPFM frequency analysis titled “Dealing With Spectrum Scarcity in LPFM Licensing.”

Also see the website for REC Networks of Maryland, led by Michelle Eyre, at www.recnet.com/lpfm. In her “My LPFM Channel Search Tool,” check out what Eyre believes to be the availability of frequencies for new LPFM stations nationwide. Readers can select specific locations to determine how many frequencies may really be available under the FCC’s new rule.

■ By Don Schellhardt

DECEMBER 4, 2012

PRESS RELEASE

ISSUED BY THE NEW GROUP

LET THE CITIES IN!!

NEW GROUP FILES PETITION TO RE-OPEN FCC'S URBAN LPFM POLICY

WATERBURY, CT, December 4 -- A new citizens' group, LET THE CITIES IN!!, has filed a Petition For Reconsideration on the FCC's recent expansion of the Low Power FM (LPFM) Radio Service of community radio stations (in Docket 99-25). The Petition urges the FCC to allow "radio stations below 50 watts" in highly urban areas.

The 15-member group is composed of aspiring LPFM broadcasters and radio listeners who reside in "urban core" areas of the Top 100 Arbitron Markets. These urbanites are joined in the group by concerned Americans across the nation. The group's attorney is Don Schellhardt of Connecticut (dsgoodmind@gmail.com), who also leads THE AMHERST ALLIANCE, and its Technology Advisor is Nick Leggett of Virginia (leggett3@gmail.com).

The current policy in the FCC's final LPFM rule limits all LPFM licenses in all locations, even highly urban areas, to LP100 status (50-100 watts). Because stations above 50 watts are often too large to "fit" into crowded urban spectrum, the present "LP100s only" policy would leave no room on the radio spectrum for any LPFM stations at all in New York City, Detroit and San Jose. The cities of Boston, Pittsburgh, Denver and San Diego would have only one LPFM station apiece. The cities of Washington, D.C., San Francisco and Los Angeles would have only two LPFM stations apiece. LTCI estimates that, overall, at least 40 million Americans would have "severely restricted LPFM coverage or no LPFM coverage at all".

As a solution, most LTCI Members prefer a policy of licensing only LP10 stations (1-10 watts) in highly urban areas. This shift to "LP10s only" would more than quadruple the number of LPFM stations in San Francisco and Los Angeles. Despite this preference, however, the Petition adds that LTCI Members could accept, as a "fallback", a policy of licensing only LP50 stations (1-49 watts) in highly urban areas.

The Petition also asserts that the FCC's November 30, 2012 decisions to eliminate the LP10 class of stations completely, and impose an "LP100s policy" absolutely everywhere, were legally questionable for several reasons:

- Statements by Commissioners at the November 30 meeting "suggest, strongly" that the Commissioners were under-informed regarding how much damage the universal "LP100s only" policy would do to urban LPFM
- The Commission never provided the public with an explanation for its rejection of LP10s until the rulemaking process was over, thereby depriving commenting parties of the opportunity to assess and address the FCC's rationale
- When the FCC finally presented to the public, on November 30, a late-arriving explanation that the FCC has "technical" concerns about LP10s, the expressed technical concerns were "flimsy" and "might be a smoke screen" for an actual motivation that remains undisclosed
- The "LP100s only" policy is counter to the Local Community Radio Act mandate to assure abundant licensing opportunities for both translator stations and LPFM stations
- Because members of racial and ethnic minority groups are disproportionately represented among the 40 million Americans who would lose adequate LPFM coverage, as a direct and exclusive result of the FCC's single decision to ban urban LP10s, the FCC has adopted a policy with a "racially disparate impact" that is both negative and massive
- Because the late-arriving "technical" concerns expressed by the FCC are too debatable and too minor to constitute a "compelling state interest" that could justify massive racial discrimination, the FCC's "LP100s only" policy for highly urban areas is violating the Equal Protection Clause of the U.S. Constitution.

In a statement to the press, LTCI attorney Don Schellhardt, who joined Nick Leggett as a founder of the LPFM movement in 1997, added this:

"None of the basic assertions in this Petition should surprise the Commission. I expressed to the FCC all of these concerns, including the legal concerns, in filings I made as an individual in May 2012 and November 2012. Further, some of the same points were raised in filings by Nick Leggett, THE AMHERST ALLIANCE and others. Also, I told the FCC explicitly, in both May and November, that I would file a Petition For Reconsideration if the FCC failed to allow stations below 50 watts in highly urban areas.

"I don't know whether the FCC was listening, but I was certainly speaking."