

UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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

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**REPLY OF PUBLIC MEDIA OF NEW ENGLAND, INC. (C/B/A WHAV)  
OF MASSACHUSETTS  
TO THE PETITION FOR RECONSIDERATION  
OF LET THE CITIES IN!! OF CONNECTICUT**

I am Timothy Coco, President & General Manager of WHAV, operated by non-profit PUBLIC MEDIA OF NEW ENGLAND, INC. in Ward Hill, Massachusetts: a suburb of Boston. I was employed by WHAV, which was an On Air station, until it was consolidated in a group of radio stations and its heritage call letters and local programming abandoned in 2002. In 2004, I revived WHAV as an Internet radio station (at [www.whav.net](http://www.whav.net)) -- and I hope to obtain a Low Power FM license for it in this October's LPFM filing window.

The FCC Should Grant The LET THE CITIES IN!! Petition

As an aspiring LPFM station in one of our distinguished metropolitan areas, PUBLIC MEDIA is a proud member of LET THE CITIES IN!! We strongly support its Petition.

The FCC Is Currently Imposing Unequal Treatment of Translators and LPFM Stations

The LTCI Petition contains several excellent legal arguments against the FCC's current ban on urban LPFM stations below. However, the Petition has overlooked one legal argument.

Reply of PUBLIC MEDIA to LET THE CITIES IN!! Petition

March 19, 2013

Page Two

In urban locations, and in fact in *all* locations, translator applicants may seek power levels below 50 watts, or even below 10 watts, while LPFM applicants may not. Instead, in any given location, new translators -- and, ideally, *all* new license applicants -- should be barred from seeking wattages below the lowest permissible wattage for a new LPFM station.

To prevent unlawful distortion of future competition for radio licenses, the policy we have proposed should be added to any other reforms adopted in response to the LTCI Petition.

The FCC's Policy May Violate A Statutory Mandate

That Translators and LPFMs Must Be "Equal In Status"

This statutory mandate, in the Local Community Radio Act (LCRA), is probably focused mainly on the displacement priority assigned to both translators and LPFM stations, as equals within the Secondary Service Status class of stations. That is: Other things being equal (including the presence or absence of locally originated programming), a new translator may not "bump" a licensed LPFM and a new LPFM may not "bump" a licensed translator.

However, the statutory language can also be interpreted more broadly. That is: The LCRA arguably bars the FCC from allowing either translators or LPFMs to have any *exclusive operational prerogatives* which create an artificial edge in the competition for licenses.

The FCC's Policy *Definitely* Violates A Statutory Mandate

To Assure Abundant Licensing Opportunities For Both Translators and LPFMs

If the LCRA mandate we have mentioned arguably requires new translators and new LPFMs to have roughly equal *capabilities*, another LCRA mandate clearly requires the competitive licensing process to yield roughly equal *results*.

Reply of PUBLIC MEDIA to LET THE CITIES IN!! Petition

March 19, 2013

Page Three

That is: The FCC is directed to assure that spectrum is abundantly available for both translators and LPFMs, with license allocations turning on “the needs of the communities”.

However, in many (if not most) of America’s urban areas, this statutory mandate simply *cannot* be met under the FCC’s current Report & Order.

Unless current policies are changed, this is what will happen in America’s urban areas:

- (1.) In their own filing window, which comes first, the LPFMs will scoop up most, or possibly all, of the remaining urban frequencies, not already reserved for pending translator applicants, between 50 watts and 100 watts.
- (2.) Then translators, in their own filing window(s), will then claim whatever urban frequencies are still left in the 50-100 watt range *plus* all available frequencies below 50 watts *plus* the few available urban frequencies in the range of 101 to 250 watts.

Quantitative analysis, by REC NETWORKS and others, has demonstrated clearly that there is far more room for small urban stations below 50 watts than above 50 watts.

To note a primary example, which has been cited in various Docket 99-25 filings by THE AMHERST ALLIANCE, a study by REC NETWORKS of Maryland found that the incorporated cities of New York, Los Angeles and San Francisco will have more than 4 times as many LPFM stations between them under a policy of licensing only LP10 stations (1-10 watts) -- compared to a policy of licensing only LP100 stations (50-100 watts).

These results are just another way of saying that *more than three quarters of the remaining small station frequencies in New York City, Los Angeles and San Francisco* can only be found below 50 watts.

Under the scenario just outlined by PUBLIC MEDIA, new translators will have *exclusive* access to those small slices of urban spectrum where the vast majority of remaining frequencies are located. As a result, translators will fare far better than LPFMs, numerically, in our cities. The smaller translator stations will greatly outnumber the *involuntarily enlarged* LPFM stations.

Reply of PUBLIC MEDIA to LET THE CITIES IN!! Petition

March 19, 2013

Page Four

Such an outcome would violate the cited LCRA mandate and also constitute terrible public policy. The FCC can prevent this result only by licensing LPFM stations between 1 and 50 watts, at least in specified areas, *and/or* adopting PUBLIC MEDIA's proposed approach.

Combining the two policies would be the wisest choice -- allowing expanded LPFM expansion in some areas while preserving open spectrum elsewhere, for thoughtful review later.

PUBLIC MEDIA's Proposed Approach Should *Also* Be Applied

When The FCC Reconsiders Possible Licensing of LP250 Stations

The Commission has stated that it may reconsider the licensing of LP250 stations (101 to 250 watts) after the LPFM filing window has closed in October. To this end, a new citizens' advocacy group, THE POWER BOOST COALITION of Colorado ([John@conexus.fm](mailto:John@conexus.fm)), has been formed to file a Petition For Rulemaking on LP250s in the spring.

PUBLIC MEDIA advocates the FCC's reconsideration of LP250 stations, for rural areas and small cities, in a way which will not disrupt the LPFM filing window that is now in progress.

With this goal in mind, PUBLIC MEDIA proposes a corollary to the proposal we advanced on page 1 of this Reply: Just as the lowest wattage for new translators in a given location should be limited to the lowest wattage that is available for new LPFM stations in the same location, so the *highest* wattage for new translators should be limited to the highest wattage that is available for new LPFM stations in the same location.

The FCC should either: (a) lower the low end for new urban LPFMs (ideally, in areas such as Brooklyn or Detroit, to levels below 10 watts) or (b) raise the low end for translators (and, ideally, all new radio stations) to 50 watts. Elsewhere, the FCC should either raise the high end for new LPFM stations to 250 watts or lower the low end for translators to 100 watts.

This approach seems to be the only way to make key portions of the spectrum -- urban frequencies between 1 watt to 49 watts, and frequencies elsewhere between 101 to 250 watts -- either equally accessible to both groups of competitors, or equally *inaccessible* to both groups of competitors, during the next rounds of LPFM and translator filing windows.

Reply of PUBLIC MEDIA to LET THE CITIES IN!! Petition

March 19, 2013

Page Five

*If* the FCC declares some portions of the spectrum -- such as rural and small city frequencies between 101 to 250 watts -- to be “off limits” to both parties, at least for the time being, the preserved spectrum can always be re-opened for development later. When and if such re-opening occurs, parity between competing groups will have been preserved throughout the intervening filing windows.

### Conclusions

For the reasons set forth, PUBLIC MEDIA urges the Federal Communications Commission to grant the Petition For Reconsideration submitted by LET THE CITIES IN!! We *further* urge the FCC to adopt as well our proposal for equality of options between new LPFMs and other new stations, including translators, in any competition for frequencies.

### Notification of Parties Referenced In This Reply

Electronic copies of this Reply are being sent to Don Schellhardt, Esquire, attorney for LET THE CITIES IN!! of Connecticut ([djlaw@gmail.com](mailto:djlaw@gmail.com)) and to John Gutierrez, President of THE POWER BOOST COALITION of Colorado ([John@conexus.fm](mailto:John@conexus.fm)).

Respectfully submitted,

Timothy Coco, President & General Manager

PUBLIC MEDIA OF NEW ENGLAND, INC. (D/B/A WHAV)

Reply of PUBLIC MEDIA to LET THE CITIES IN!! Petition

March 19, 2013

Page Six

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