

**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

**COMMENTS OF
NATIONAL PUBLIC RADIO, INC.
ON CERTAIN
PETITIONS FOR RECONSIDERATION**

Introduction

National Public Radio, Inc. ("NPR") hereby comments on certain Petitions for Reconsideration seeking reconsideration or clarification of the Commission's Sixth Report and Order in the above-captioned proceeding concerning low power FM ("LPFM") stations.¹

NPR is a non-profit membership corporation that produces and distributes noncommercial educational ("NCE") programming through more than 900 public radio stations nationwide. In addition to broadcasting award winning NPR programming, including *All Things Considered*, *Morning Edition*, and *Talk of the Nation*, NPR affiliated stations are significant producers of local, regional, and national news, information, and cultural programming. NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its Member stations.

¹ In the Matter of Creation of a Low Power Radio Service, Sixth Report and Order, 78 Fed. Reg. 2078 (Jan. 9, 2013) [hereinafter "Sixth Report and Order"].

Discussion

The Prometheus Radio Project (“Prometheus”) has sought clarification or reconsideration of the Sixth Report and Order in several respects. NPR supports some of Prometheus’s specific requests and opposes others. The following discussion addresses those matters as well as petitions filed by two other entities.

Prometheus initially seeks reconsideration or clarification of the final text of Section 73.827(a) of the Commission’s new LPFM rules on the grounds it is contrary to both Section 6 of the Local Community Radio Act (“LCRA”)² and the terms of the Sixth Report and Order itself.³ Section 6 of the LCRA requires the Commission to modify its rules to avoid interference to FM translator station input signals on third adjacent channels as predicted in the so-called “Mitre Report.” As the Sixth Report and Order recounts, the Commission specifically solicited comment on whether the protection afforded by Section 6 of the LCRA was limited to FM translators receiving a third-adjacent channel *FM full-service station* signal or whether it also included FM translators receiving a third-adjacent channel *FM translator station* signal.⁴ The Commission concluded in the Sixth Report and Order that Section 6 imposed an “unqualified mandate” to address potential third adjacent LPFM interference to any FM translator station input signal received from *either* a full service FM or another FM translator station.⁵

As the Prometheus Petition points out, however, the Commission revised the text of

² Pub. L. 111-371, § 6, 124 Stat. 4072, 4073-74 (2011).

³ Prometheus Radio Project, Petition for Reconsideration, MM Docket No. 99-25, at 4-5 (filed Feb. 8, 2013) [hereinafter “Prometheus Petition”].

⁴ Sixth Report and Order, 78 Fed. Reg. at 2086.

⁵ Id.

Section 73.827(a) from how it had been proposed so that it now appears to protect only FM translator stations receiving an input signal from a full service FM station:

This subsection applies when an LPFM application proposes to operate near an FM translator station, the FM translator station is receiving its primary station signal off-air and the LPFM application proposes to operate on a third-adjacent channel to the primary station.⁶

If, by “primary station,” the Commission meant to include third adjacent channel FM translator stations – a secondary class of broadcast station – that intention is unclear.⁷ Accordingly, NPR supports this aspect of the Prometheus Petition seeking clarification or reconsideration.

Prometheus also seeks reconsideration of Section 73.827(a)(1) because the Commission required LPFM applicants to demonstrate protection of third adjacent translator input signals “at all locations,” and not just at the “translator receive antenna.”⁸ As a threshold matter, Section 73.827(a)(1) as promulgated is exactly the same as the rule proposed in the Fourth Further NPRM, and, while Prometheus submitted extensive comments and reply comments regarding the proposed rule, it posed no objection to this aspect of the rule.⁹ The Media Bureau is authorized

⁶ Id., 78 Fed. Reg. at 2106. Compare In the Matter of Creation of a Low Power FM Service, Fourth Further Notice of Proposed Rulemaking, Appendix A, 27 FCC Rcd 3315, at 3356 (2012) (“An LPFM station will not be authorized unless it remains at least 2 km from a translator receiving a third-adjacent channel FM station (as compared to the LPFM) directly off-air, and unless it remains at least 10 km from the translator site within the azimuths from -30 degrees to +30 degrees of the azimuth from the translator site to the site of the station being rebroadcast by the translator.”) [hereinafter “Fourth Further NPRM”].

⁷ But see Sixth Report and Order, 78 Fed. Reg. at 2086 (“After considering the comments and reviewing the text of the LXCRA, we conclude that LPFM applicants must protect the reception directly, off-air of third adjacent channel input signals from any station, including full-service FM stations and FM translator stations.”).

⁸ Prometheus Petition at 5.

⁹ Comments of Prometheus Radio Project, MM Docket No. 99-25, at 23-25 (filed May 7, 2012) [hereinafter “Prometheus Comments”]; Reply Comments of Prometheus Radio Project, MM Docket No. 99-25, at 10-11 (filed May 21, 2012).

to dismiss a petition for reconsideration that relies on arguments not previously presented to the Commission,¹⁰ and it should therefore dismiss the Prometheus Petition to the extent it seeks reconsideration of Section 73.827(a)(1).

Substantively, the request is also without merit. As the Fourth Further NPRM carefully explained, Section 73.827(a)(1) provides an alternative means of complying with Section 6 of the LCRA,¹¹ which, in turn, established a “potential interference zone” for any FM translator station that receives directly off-air, the signal of a third-adjacent channel FM station.¹² Within the “potential interference zone,” no LPFM station may be proposed absent an engineering exhibit demonstrating that interference to the off-air reception of the FM translator will not occur.¹³ The LCRA therefore does not permit the Commission to accept and process an LPFM application based on a showing limited to the translator receive antenna site itself.

Prometheus also seeks reconsideration of Section 73.827(b) in two respects. First, it notes that the rule addresses actual LPFM interference to “an FM translator or FM booster station” but then subsequently references only “the FM booster station’s input signal.”¹⁴ It is unclear why the Commission revised the proposed rule, which correctly referenced both FM translator and FM booster stations,¹⁵ but the omission in the final rule was presumably

¹⁰ 47 C.F.R. § 1.429(1)(2).

¹¹ See Fourth Further NPRM, 27 FCC Rcd at 3333

¹² Id.

¹³ Id.

¹⁴ Prometheus Petition at 6. See Sixth Report and Order, 78 Fed. Reg. at 2086 (Section 73.827(b)).

¹⁵ Fourth Further NPRM, Appendix A, 27 FCC Rcd at 3356.

inadvertent, and NPR agrees with Prometheus that correcting the text of the final rule is warranted.

Second, Prometheus seeks reconsideration of Section 73.827(b) to limit the protection for predicted interference by cutting off protection of an FM translator station's or FM booster station's input signal at the time a public notice announcing an LPFM application window is released or, alternatively, the date the LPFM application is filed.¹⁶ NPR opposes this request. Prometheus commented extensively on the Commission's proposed implementation of Section 6 of the LCRA, and it offered no argument or explanation for why the Commission should limit its proposed protection of FM translator input signals in this manner.¹⁷ Accordingly, the Media Bureau should dismiss this aspect of the Prometheus Petition as procedurally barred.¹⁸

Substantively, this request is also without merit. Existing FM translator stations have long been entitled to protection from new LPFM stations, including to the translator station's input signal,¹⁹ and Section 6 of the LCRA now requires the Commission to address the potential for predicted interference to an FM translator station's input signal. As the Sixth Report and Order acknowledges, the Commission may not abdicate its responsibility for implementing Section 6 of the LCRA through processing rules.²⁰

Prometheus last takes issue with the FM translator station records maintained in the

¹⁶ Prometheus Petition at 6-7.

¹⁷ See note ⁹, supra.

¹⁸ See 47 C.F.R. § 1.429(1)(2).

¹⁹ See Fourth Further NPRM, 27 FCC Rcd. at 3332 & n.113.

²⁰ Sixth Report and Order, 78 Fed. Reg. at 2087.

Commission's Broadcast Radio and Television Electronic Filing System ("CDBS") and asks the Commission to require all translator station licensees to notify the Commission of changes, corrections, or omissions of translator input data.²¹ NPR opposes this request. In its comments on the Fourth Further NPRM, Prometheus asked the Commission to "require all translator FM stations to update their records by a certain deadline prior to the LPFM licensing window."²² The Commission rejected this request, as well as Prometheus's related request that the Commission deny interference protection in the event an FM translator station failed to update its information on file with the Commission, on the grounds that it lacked authority to grant it.²³ The Commission chose, instead, to encourage FM translator licensees to update the Commission's records. Since the Commission has considered and rejected the Prometheus request, the Media Bureau should deny the Prometheus Petition in this respect as repetitious.²⁴

Finally, and for the same reason, the Media Bureau should deny the petitions for reconsideration filed by REC Networks and LET THE CITIES IN!!.²⁵ The Rec Networks

²¹ See Prometheus Petition at 7-10.

²² Prometheus Comments at 25.

²³ See Sixth Report and Order, 78 Fed. Reg. at 2087.

²⁴ See 47 C.F.R. § 1.429(1)(3) ("Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that . . . [r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding.")

²⁵ REC Networks, Petition for Partial Reconsideration, MM Docket No. 99-25 (filed Jan. 11, 2013) [hereinafter "REC Networks Petition"]; LET THE CITIES IN!!, Petition for Reconsideration, MM Docket No. 99-25 (filed Jan. 14, 2012) [hereinafter "LET THE CITIES IN!! Petition"].

petition persists in contesting how the Commission should implement Section 7 of the LCRA,²⁶ even though implementation of Section 7 was one of the central issues addressed in the Fourth Further NPRM,²⁷ Rec Networks presented the same arguments in its comments in response to the Fourth Further NPRM,²⁸ and the Commission rejected those arguments in the Sixth Report and Order.²⁹ LET THE CITIES IN!! has sought reconsideration of the Commission's decision to eliminate the class of 10 watt LPFM stations and to not establish a 50 watt LPFM service.³⁰ Because the Commission fully considered and addressed these matters,³¹ summary denial of the petition is warranted.

²⁶ See REC Networks Petition at 1-2 (“We continue to feel that Congress did not intend on two separate regimes for LPFM stations where it comes to third-adjacent channels”).

²⁷ Fourth Further NPRM, 27 FCC Rcd at 3326-31.

²⁸ Comments of REC Networks, MM Docket No. 99-25, at 4-6 (filed May 7, 2012).

²⁹ Sixth Report and Order, 78 Fed. Reg. at 2801-03.

³⁰ LET THE CITIES IN!! Petition at 5 & 13-15.

³¹ Sixth Report and Order, 78 Fed Reg. 2097-98.

Conclusion

For the foregoing reasons, and as more fully stated above, NPR supports the Prometheus Petition to the extent indicated and otherwise opposes the petitions for reconsideration addressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gregory A. Lewis, hereby certify that a copy of the foregoing Comments of National Public Radio, Inc. on Certain Petitions for Reconsideration was sent this 21st day of March, 2013, by first class mail, postage prepaid to the following:

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