

Federal Communications Commission  
Washington, D.C.

Tuesday, March 30, 1999

Re: Notice of proposed rule making: MM Docket No. 99-25, Creation of a Low Power Radio Service (RM-9208, RM-9242)

Dear Sirs:

Thank you for the opportunity to comment on the proposal to license Low Power FM stations as proposed in MM Docket No. 99-25 (RM-9208, RM-9242).

I live in remote, northern Arizona town where we have one (1) AM station and one (1) FM station. The nearest town with a radio station is, I think, 70 miles away. Back when we had only the AM station, an entrepreneur applied for a license for an FM station. As I recall, the existing AM station protested licensing the FM station citing a lack of "need" and the license was not granted. Curiously, it was the owner of the AM station that subsequently established the ("unneeded") FM station.

At long last it has been recognized that within any community there are smaller constituencies -- communities -- that need to be served, and that "needs" are not the same for everyone.

It is laudable that the FCC is working toward the "...goals of encouraging community participation and the proliferation of local voices, while protecting the integrity of the spectrum."

As stated in the above goals, I find the goals to be the only concerns that need be addressed. Any rule that is not necessary to protect the spectrum should not even be considered if it has the effect of discouraging "community participation and the proliferation of local voices."

Specifically:

20. Regarding: "We seek comment on whether all LPFM stations, whether primary or secondary stations, should be permitted to seek authority to use radio broadcast auxiliary frequencies."

The auxiliary frequencies should be available to all licensed broadcasters, be they high power or low power. By definition, Low Power FM is simply lower in power and serves a smaller geographical area. Why impose restrictions that would limit the types of coverage they can provide?

22. I heartily approve of the proposal to create multiple classes of LPFM service, LP100, LP1000 and I highly recommend a microbroadcast service as well. I am encouraged that you do not propose a minimum HAAT for LP100 stations. This will give station operators maximum flexibility to make use of available sites.

33. Regarding: "We tentatively conclude that the proposed LP100 secondary service would serve the public interest. We invite comment on our technical proposals for this service, including power and antenna height limits and the secondary status of the service. "

I find that all technical aspects of the proposal are acceptable and prudent. Licensing LP100 as a secondary service with lesser protections is reasonable.

57. Regarding ownership and Eligibility: "First, we propose not to permit a person or entity with an attributable interest in a full power broadcast station to have any ownership interest in any LPFM (or microradio) station in any market, and to prohibit joint sales agreements, time brokerage agreements, local marketing or management agreements, and similar arrangements between full power broadcasters and low power radio entities."

Inasmuch as the proposed LPFM services are intended to permit entry into the market of more broadcasters, this proposal would work toward that goal.

Regarding the proposed rule: "...to limit multiple ownership by prohibiting any individual or entity from owning more than one LPFM (or microradio) station in the same community."

Given the goal of making access available to more individuals or groups, this is good. Clearly, "community" would have to mean a geographical area rather than a constituency within an area as I often use the term.

60. Regarding: "...we seek comment on whether a limit of five or ten stations nationally would provide a reasonable opportunity to attain efficiencies of operation while preserving the availability of these stations to a wide range of new applicants. "

This is a reasonable restriction providing, however, that it would not prevent someone from establishing locally-owned affiliates or franchisees in as many locations throughout the country as the market calls for.

61. Regarding: "...we do not propose to establish a local residency or an "integration" requirement for any LPFM stations. "

Good.

68. Regarding Local Programming: "..we expect that a significant amount of programming will be locally produced as a matter of course."

Agreed.

"Moreover, and importantly, programming does not have to be locally-produced to have interest or value to the listeners in any particular locale."

Quite right.

"Accordingly, we are inclined to give low power (and microradio) licensees the same discretion as full- power licensees to determine what mix of local and nonlocal programming will best serve the community."

I am in agreement with this approach.

"However, in order to promote new broadcast voices, we propose that an LPFM station not be permitted to operate as a translator, retransmitting the programming of a full-power station. "

Again, I am in complete agreement.

69. Regarding: "We seek comment on whether programming on these stations should be strictly noncommercial... "

To limit to noncommercial the new service(s) you are creating would be to stifle the voices of those you seek to empower. Broadcasting is not without its costs, obviously, and to prohibit income from LPFM broadcasts is to put such operators at a significant disadvantage -- perhaps even making many unviable -- thus defeating the purpose of establishing these services in the first place.

Protests from existing (commercial) stations should be recognized as self-serving. The market should determine outcomes. The local radio station is no more deserving of protection from competition than the local auto repair shop or burger joint. Clearly, the communities in a given area will be BETTER served by a multiplicity of broadcasters than is possible by relying on just a few (in the case of my home town, one) broadcasters. Cries of "unneeded" and "unnecessary" are simply monopolists protecting their favored position.

70. "...we propose to require LP1000 licensees to adhere to the same Part 73 requirements regarding public interest broadcasting as apply to full power FM licensees."

This is a strange requirement. There is no reason to suppose that, just because its broadcast will cover a larger area, the audience for a LP1000 operator's signal is any more homogenous that that of a LP100 operator. If the target audience is

only 5% of the population, why would non-targeted "public interest" programming be required just because the operator is aiming at 5% of the population of a now larger geographical area?

Is not 5% of the population "the public"? Doesn't serving them serve the public interest? In paragraph 72 is written: "We expect the very nature of LP100 and microradio stations will ensure that they serve the public. Therefore, we are disinclined to put the burdens of complying with specific programming requirements on these licensees..." I fail to see how the scale of an LPFM operation will affect "the very nature of ... stations..." All are LPFM being made available for a diverse range of uses. Imposing content requirements imposes uniformity and removes some of that diversity.

It is the profusion of stations that will serve the public interest, not including something for everyone on each station. I am opposed to any content requirements beyond, perhaps, call sign identification.

73. Other Service Rules: "Given the purposes and power levels of LP1000 stations, we tentatively conclude that LP1000 licensees should generally meet the Part 73 rules applicable to full power FM stations."

Each additional requirement is a hindrance to adoption of that service.

"However, we seek comment on whether sufficient useful purpose would be served in applying each rule to these licensees."

I would suggest starting at zero and adding only those rules which contribute positively to ensuring that the new services "...serve our goals of encouraging community participation and the proliferation of local voices, while protecting the integrity of the spectrum."

76. Operating Hours: "Because we intend LP1000 stations to help new entrants eventually participate in the full power radio industry, and because these stations may be able to compete with full power stations, we propose to require them to maintain the same minimum hours of operation as are required of the lowest class of full-power stations..."

I am at a loss to understand why any station, even full-power stations, should be required to operate for a minimum duration each day. To the degree that a station does not operate, it leaves a market for other stations. Indeed, if stations were not required to operate at times when they would otherwise not, we might already have more different stations than we do. Instead we have stations that turn out the lights and go home leaving a satellite feed of canned programming from a syndicator going out over the air. This hardly fosters diversity.

Just because one operator (LP1000) proposes to cover a larger geographical area than another (LP100) is no reason to suppose that she has the means to afford the hours of broadcast that you intend to require. Many of these stations will be start-ups that will need to prove market concept and capture an audience - and generate revenues - before than can afford long hours of operation.

I see no reason to disqualify someone because they want to reach a large audience for a relatively short time.

77 "Should we determine after an initial period of operation that spectrum is being inappropriately underutilized by LP100 or microradio stations and that spectrum is being wasted (i.e., that LPFM stations are not actually broadcasting very often yet are preventing others from utilizing their frequencies), we could then revisit the issue."

Should you go forward with requiring a minimum duration of operation each day (I am against it), I would hope that "underutilized" spectrum would not in and of itself be cause to revoke a license, absent any shortage of spectrum in the instant geographical area. If my "under-utilization" is not preventing someone else from being licensed, it should not be viewed as a problem. In areas where would-be licensees are waiting for the availability of a channel, I would be more sympathetic to a rule of this kind.

80. The construction periods proposed are reasonable.

"Also, we seek comment on the Community Radio Coalition's proposal to prohibit the transfer of low power radio construction permits in light of the ownership and construction terms proposed."

I do not agree with the Community Radio Coalition which contends that low power (or microradio) construction permits should not be transferable. Such a prohibition would prevent, along with speculation, licensees from transferring their license if they simply came upon economic hard times. To prohibit transfer under such circumstances would serve only to aggravate the financial strife of the licensee, many of whom are expected to be persons of modest means.

Given that the rules propose to limit ownership to one station in a community, I do not foresee rampant "scalping" of licenses that the Community Radio Coalition imagines.

82. "Would a pro forma process satisfy any statutory requirement, in the absence of specific public complaint, for the new classes of stations contemplated here?"

Yes.

83. "...we are open to comment on whether stations in other classes should be authorized for finite non-renewable periods, such as five or eight years, so that others may eventually take their turns at the microphone. "

All licenses should be renewable. Broadcasters adapt as the audience and needs change. My local station has been Country and Western, Oldies and Pop all in the space of the last 10 or so years. I believe that the dynamics of broadcasting, together with the turnover caused by give LPFM a try and then move on to something else, will provide sufficient turnover that pretty much anyone wanting a "turn at the microphone" will be able to get it.

Even a LP100 station may invest considerably in equipment and perhaps a soundproof room as a studio. While much equipment may be transferable easily when the non-renewable license expires, modifications to one's home or office to accommodate a studio cannot be so easily recycled. Nor would one be particularly keen on taking down that antenna mast that was so much trouble to get approved by Planning and Zoning.

Should experience demonstrate that many people are not getting their turn at the microphone, by all means address the issue at that time.

84. "However, we recognize that this interpretation might not be consistent with Congress's intent to give broadcasters greater assurance that their licenses would be renewed. Therefore, we ask commenters to address our interpretation."

I believe your interpretation to be in error.

85. "We ask commenters to address whether non-renewable licenses would be inconsistent with this statutory provision."

Non-renewable licenses would indeed be inconsistent with this provision of current law.

88. "Commenters should explain whether the local population benefits by having an LPFM station's status identified through its call sign."

I see no benefit to identifying LPFM stations as such via their call signs. Neither do I see any benefit to be derived from such a distinction.

89. "we propose to apply Section 73.1225 of our rules, regarding stations inspections, to all classes of LPFM stations ... all LPFM stations would be made available for inspection by Commission representatives at any time during their business hours or at any time they are in operation."

I strongly object to this proposal. Many of these stations will doubtless be in homes -- private residences. If the Commission has a need to inspect such a station, its representative should call to explain the need and request an appointment.

91. Electronic Filing. "In order to speed the introduction of this service to the listening public, it is critical that we have the capacity to process the applications promptly and efficiently."

I would hope the process could be as efficient and responsive as applying for an Internet Domain Name. Presumably, the Commission would employ a geographic database to aid in discovering wherein conflicts may arise.

95. "Accordingly, we propose to develop an electronic filing system for LPFM (and microradio) whereby applicants would submit their applications by e-mail.

If Internet application is to be utilized, avoid email and use the more structured application via a web page processed by a cgi (common gateway interface) to your database program. This would permit the maximum amount of automation. Since you state: "Such a system could then promptly inform the filer whether the requested frequency is available and if the application is acceptable for filing based on current data.", you obviously intend something other than email.

Email formats and email client programs are much too varied in their formats and conventions to be able to automate much. Email would scarcely be better than "snail mail" -- the postal service.

I sincerely hope that in stating "e-mail" someone simply utilized the wrong term, having intended all along to use a web server for application processing. ;)"

96. Filing Windows/Mutual Exclusivity. "We are proposing to adopt a processing system with short windows of only a few days each for the filing of applications. "

If automation is employed, windowing and batch processing is not necessary. The Commission needs to establish a database of all license applications, granted and pending. Before filing an application, an applicant should be able to submit to the database the desired frequency, class of license and geographical data. These should be sufficient to notify the inquirer whether her application is in conflict with someone else's.

The Internet company Network Solutions could be used as a model. Applicants for domain names can query the database to see if their particular "dot com" is already in use or not. While the determination of potential interference with another LPFM licensee, either granted or pending, would be complicated by the variations in transmitter power for each class and by the need to take geography

into account, this is very doable in real time with proper server software. There is no need to batch process applications.

97. "We are concerned, however, about whether short filing windows would result in a flood of applications in a short period that would be so great as to overwhelm any filing system we might be reasonably able to devise."

Again, filing windows are unnecessary if the automation process is done correctly. Unless you intend to have human review of each application before it is processed, automate the entire process with web servers. Web servers have the ability to limit the number of simultaneous connections and thus you can limit the rate of application submission to that which will not overwhelm your filing system. It's just a matter of designing the process competently.

99. "With a filing window, however, the Commission could choose to accept new LPFM applications only once all of the previously-filed ones had been fully processed, thereby shortening the period of time that members of the public might have to wait to learn the status of their applications."

The total time waited would not be lessened. Much of it would be moved to before application submission, rather than after it. I would point out that the Internet domain name system automatically processes hundreds of thousands of applications for new domain names and changes to existing records each day. I encourage the Commission to abandon the windowing method and aim for real-time processing of the application with no intentional periods when applications are not accepted.

100. "We also recognize that internet service is less convenient or immediately available for some potential applicants than for others, and that internet providers are sometimes erratic. This could result in inequities to some applicants that are disadvantaged by a poor internet connection..."

Your windowing proposal would only add to the inconvenience of such potential applicants as they would have to try repeatedly to send an application in only to find that the "window" wasn't open and they must try again later.

101. " We are concerned that a longer filing window would also increase the number of mutually exclusive applications filed."

If you must, for technical reasons, use a filing window, you might allow for multiple frequencies to be applied for: 1st choice, 2nd choice. With such a system, presumably, more applications might be fulfilled on first submission. If one has to completely reapply, the process might indeed be frustrating.

102. "We note our concern that while a strict first-come system might result in an initial crush of applications that could overload any system we devise, a window

period might only delay the same onslaught of applications until the end of the window period."

Which is why would should drop all thought of windowing and devise a real-time system.

### 103. Resolving Mutually Exclusive Applications.

The first step is to avoid mutually-exclusive applications in the first place by providing an up-to-date database that can tell someone whether the frequency she wants is available or spoken for.

There will never be mutually exclusive applications pending if applications are processed one at a time as each is received. It is the proposed windowing, batch filing method that permits conflicts.

One way to resolve conflicts between mutually exclusive applications would be to time stamp each application as it is received. (Even though you may process them as a batch, they are still received one at a time.) Thus, with batch processing, a conflict could be resolved by awarding the license to the earlier application.

Alternately, ask applicants for the desired class license and geographical data and have the Commission's computers find an available frequency from among those available in the area. When no more channels can be allocated without causing interference, stop granting licenses in that area. Indeed, in very congested areas, the Commission may want to retain the option to change assigned frequencies for a period after a license has been granted (grant a provisional license so as to allow an applicant to know that she will in fact get a license) in order to juggle things so as to maximize the number of licenses that can be granted. For example: "If we change provisional licensee Smith to xx.x frequency, we can use xx.x for applicant Brown otherwise we'll have to deny Brown."

(Or is this what you mean by "windowing"?)

106. "We note in this connection that under Section 309(j)(6)(E) of the Act, the Commission has the "obligation, in the public interest, to continue to use engineering solutions, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings."

Exactly, see above.

In summary, any rule that increases an operator's costs beyond that needed to protect the spectrum works counter to the stated purposes of empowering local voices, smaller communities within the larger community.

Protecting existing FM stations from interference is necessary; protecting them from competition is not.

Once again, thank you for the opportunity to comment on this proposed rulemaking.

Cordially,

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