

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of:)
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Creation of a Low Power Radio Service) MM Docket 99-25
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To: FCC / Mass Media Bureau

Comments on MM Docket 99-25

Submitted by: Americans for Radio Diversity (ARD)

Americans for Radio Diversity (ARD) is a nonprofit organization, composed of concerned radio listeners and consumers, dedicated to promoting community orientated public and commercial broadcasting. ARD is pleased that the FCC has recognized the need for an LPFM service and put forward what we believe is a workable proposal subject to these comments on the applicable line items of the Notice of Proposed Rulemaking (NPRM) filed by the FCC.

19) In section 19 the FCC raises the question of whether all LPFM should be strictly non-commercial, a central issue to many in the LPFM movement. ARD is of the opinion that, ideally, some stations could and would operate as commercial in nature. Such stations would help small “mom and pop” businesses in the area afford radio advertising currently beyond their reach. This revenue source could help maintain a higher level of signal and broadcast content quality. We also feel a commercial option may produce greater diversity in the service, both in applicants and the programming they provide.

However, ARD has serious reservations about certain “side-effects” that result from allowing commercial licenses. The Commission offers the opinion that auctions will be required to choose among competing applications of this kind. This would automatically favor entities with greater access to capital (and possibly delay launch of the service). Weak ownership restrictions, such as those in the FCC’s proposal, leave room for possible financial exploitation of LP licenses, possibly attracting applicants with “deep pockets” but lacking a commitment to broadcasting in the local public interest, despite the low power levels.

We ask the Commission to either seek from Congress exemption from auctions for commercial LPFM, or pursue a rationale for this under current authority "consistent with legislative intent." It would also be wise to determine how well the FCC's proposed national and local ownership limits might withstand Congressional and/or judicial scrutiny under the shadow of the 1996 Telecom Act.

We believe that the part of the radio spectrum reserved for non-commercial should also apply to LPFM with LP stations outside the reserved area being permitted to be either commercial or non-commercial at the license holder's discretion.

We are opposed to any license holder utilizing a station solely to promote another business in which they are vested. At the least, any advertisement aired for such a business should disclose the financial interest of the LP owner.

31) ARD does not feel that the LP100's should be a secondary service. We propose a modified primary service under which LP-100 stations would be protected from being "bumped" but would NOT be able to "bump" others. Without this restriction it may be extremely difficult for LP100's to survive, as they would constantly be under threat of being moved off the air by a primary service station.

33) ARD feels that LP100s should be primary to translators. Stations that originate programming better serve the public interest and should therefore always be primary to those that don't.

34) In paragraph 34, the FCC asks for comments on whether 1-10 watt service should be established. ARD believes that there is a place for such a service. This service would be ideal for those whose goals do not require them to have a large broadcast radius. An example would be a college or high school where the goal is to serve that campus community and to act as a broadcast educational facility. ARD suggests that the FCC should establish primary status for LP10 stations. Once again, this would be a modified primary status where LP10's would be shielded from possible "bumping" but would not be able to "bump" stations themselves.

41) LPFM station should be allowed to accept an increased level of interference at the sole discretion of the LP license holder.

57) The goal of the proceeding at hand is to provide opportunity for a local, community-oriented service on the FM band, not to fill remaining "nooks and crannies" in the radio spectrum with programming that merely duplicates what full-power stations currently broadcast. However, the minimal rules proposed by the Commission -- namely no cross-ownership, no more than one LPFM (per owner) in the "same community", and *possibly* a national limit of "five or ten" -- are not sufficient to protect the new service.

The FCC is right to prevent anyone with attributable interest in a full-power station from having any ownership in any LPFM station. A current broadcaster or financially interested individuals (such as shareholders) would be likely to buy up nearby LP

licenses (for what to them could be very little money) for no other reason than to prevent competition.

60) ARD is in favor of only one station per owner, as we have stated in previous comments to the FCC. We feel that the benefits of a greater number of people and more diversity in the service outweigh possible 'efficiencies' of multiple ownership (which in this case may be achievable by alliances short of ownership).

67) Had it not been for the tenacity of dozens of current LP broadcasters this NPRM would likely not have come about. ARD therefore believes it would be wrong to preclude those broadcasters from "going legit" with a licensed LPFM. To do so would in many cases penalize individuals whose sole purpose was to promote the public interest by nonviolently opposing what they saw to be an unjust law, a rich tradition in American history.

68) It is important that the FCC guard against the new low-power service being subsumed, either at the outset or later on, by non-local interests. It would be a shame for these stations to become simply "provincial outposts" of distant entities, controlled by them with no meaningful (and ongoing) local input.

ARD has proposed (in previous comments) a requirement that a license holder live no more than 25 miles from the transmitter; increasing perhaps up to 50 miles in rural areas where there are fewer potential broadcasters. Preferably the owner should live within reception range of their station. The FCC has rejected either a local residency or an "integration" (involvement by the licensee in day-to-day management) requirement for LPFM owners, citing (in part) court rulings against previous use of that criterion. We ask the Commission about the possibility of requiring local residence for *management*, irrespective of ownership. We are concerned in particular that the current proposal could allow many stations to operate with *no* local management presence for the community to interact with.

In the instance of commercial LPFM, there is a danger of large, national commercial entities, either directly or through proxies (such as area managers), controlling chains of LP stations for the narrow purpose of self-promotion. For instance, certain retailers already have such audio programming playing inside their stores, and could transfer it to an LP station with relative ease. Such a use of public spectrum would not be in the public interest. All LP owners should be required to disclose employment (or other financial compensation) by any corporation exceeding (at its top controlling level) Small Business Administration standards, and be disallowed from accepting either programming or other non-local advertising from that corporation.

A similar potential problem exists with non-commercial stations as well. National groups (for example religious organizations) may move to create 'networks' by recruiting members in different areas as owners to broadcast generalized, non-local programming subsidized from afar. Such stations could arise and operate with no real local input and effectively block out community-based groups. Any outside entity that produces (or

otherwise provides) more than half of an LP station's programming (if this is allowed at all) should be barred from providing direct or indirect financial support to that station, either before or after they commence operation (this is similar to an established FCC rule for certain translators).

More directly addressing both of these negative possibilities, ARD has proposed a limit to how much daily programming a low power station may devote to non-locally produced (i.e. "canned", syndicated, or satellite fed) material. We have previously suggested no more than 15%. Although the FCC is not inclined towards imposing any local origination requirement, in favor of "discretion" on the part of the licensee, we reemphasize the wisdom of mandating some standard (even if a generous one). A majority of an LP station's programming should originate locally, insuring benefit to the community in coverage of local issues, playing of local music, and/or an outlet for residents to participate in radio broadcasting.

For similar reasons ARD feels that no LPFM station should be permitted to serve as a translator for another station or have a translator of its own.

96-102) ARD recognizes the potential benefits of the sophisticated electronic filing system contemplated by the Commission, both to filers (interactive assistance) and the FCC (easing workload). But we disagree with its use being made *mandatory*, limiting potential broadcasters with inadequate on-line access or experience. We propose that a paper version of this process be available.

As for selecting among applications, we previously have advocated a first-come first-served system to minimize mutually exclusive situations. We did not envision an absolute such system based on the precise moment of an electronic filing. In conjunction with a file-by-mail option, ARD proposes a day-based first-come first-served system, where applications received electronically on a particular date are on equal footing to those postmarked the same day. This would be equivalent to a system of consecutive, short filing windows (as the FCC proposes) of 24 hours in length. To prevent this system from being overwhelmed, these dates could be spaced apart (with electronic applications accepted at no other time), and a geographic separation could be used as well. For example, the first Friday of each month could be the filing date for the Eastern Time Zone, second Friday Central Time Zone, etc.

103) Mutual Exclusivity and Auctions: The Commission is right to explore other means to avoid mutual exclusivity before ordering auctions (or other either/or selection among applicants).

In an instance where the number of overlapping applications is small enough, the parties involved should be given a brief (but reasonable) opportunity to voluntarily amend one or more of their applications to remove conflicts. Changes in frequencies, power levels, and/or transmitter locations may resolve the issue. If three or fewer applicants are in preliminary conflict they should also have the option of entering into a straightforward time sharing agreement on a single station (thus each avoiding the risk of ending up with

no airtime at all). As a final resolution, ARD proposes that a lottery be used to award licenses where mutually exclusive applications still exist.

Respectfully submitted,

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