

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of  
Proposal for Creation of the Low Power FM  
(LPFM) Broadcast Service  
Docket No. MM 99-25

To: Federal Communications Commission

Comments of Russ Painter

Need for low power radio service

Low power FM service will clearly allow a greater measure of service to local communities than is possible through existing outlets. In areas where a population segment is not large enough to justify airtime on a full-power station, an LPFM could easily be established to meet this need. In areas where no full-power station is offering a particular programming format, an LPFM could provide it to at least some segment of the population. Where possible, establishing an LPFM means that the unique needs of the particular community it serves can be consistently addressed through news, public service, and other forms of programming. This singular benefit is impossible for a full-power station to duplicate, due to the inherent demands of serving a much larger area. This last point refutes the NAB's assertion that "existing radio stations are already serving the myriad needs and interests of their communities..." (Sec. B, Par. 9). Furthermore, NPR's argument that no evidence exists that small geographic areas have sufficiently common programming interests merely illustrates the typical arrogance of large broadcasters. Such organizations and companies cannot and will not grasp the realities of local community needs, needs that those of us "on the ground" are acutely aware of.

Spectrum Considerations

We agree with your proposal to limit LPFM to current channels, as well as limiting low power services to the FM band, for the reasons cited.

We also agree and request that no limit be placed on which channels may be used for LPFM. To do so would severely limit the number of stations that could be established, thus negating the very purpose of the proposed rulemaking, which is to expand and diversify involvement in broadcasting.

As regards non-profit status, we see no compelling reasons for allowing commercial LPFM stations to operate on channels 201-220, and request that the existing restriction be extended to cover low power service. We further agree and request that existing eligibility criteria and requirements be extended to cover potential applicants for

noncommercial LP1000 licenses on these channels. The size of these operations is sufficiently large in our view to warrant such requirements and oversight. Noncommercial LP100 and smaller stations should be exempt, however, because of their extremely small size and coverage areas.

**We strongly disagree with the proposal to limit LPFM to solely non-profit status.**

We can see no benefit in this whatsoever. On the contrary, most LPFM stations, like their higher power counterparts, will rise or fall on the basis of revenues generated through the sale of commercial spot time. To not allow LPFM stations this vital component of successful operation would again severely limit diversity and expansion of involvement in this area of broadcasting. Under our system of free enterprise and other coexistent freedoms, applicants must be allowed to choose the mode of operation that they believe will afford them the greatest opportunity for success. Anything less is unacceptable, as it will impose an undue burden on licensees and contravene the intended purpose of this rulemaking.

We request that all LPFM stations be permitted to seek authority to use radio broadcast auxiliary frequencies. The difficulty of establishing a successful LPFM station must not be exacerbated by restrictions on operational choices. Since each station will be somewhat unique, the Commission must allow those who would benefit from such technology to apply for and implement it, pursuant to existing regulations.

#### Technical Overview of LPFM Service

##### LP1000

To create the most fair and efficient use of remaining available spectrum, we request that this class be amended to include ERP ratings of 900, 800, 700, 600, 500, 400, 300, and 200 watts. This will allow the greatest flexibility in siting LPFM stations, as well as increase the potential number of available channels. We request that mileage separation tables be provided for each of these power levels. In this way, a site that will not support the full 1000 watts could still be established, though at a lower power level.

In order to assure the success of LP1000 stations, they must be given primary status and protected to the limit of each respective 1 mV/m (60dBu) contour. By nature, LPFM stations must be sited to accommodate existing higher-class service. We believe the application process can and should take into account any potential for increases in power or coverage by existing primary stations before an LPFM license is issued. We suggest that a database be created at your web site that will allow potential applicants to view the classes, power levels, etc., of existing stations in their area, along with the Commission's determination regarding each station's ability to apply for greater power/coverage. Using this data, the appropriate LPFM power level can be determined for a particular site. As a result, once an LPFM station is approved, its success will not be compromised by future encroachment into its listening area.

In conjunction with the above-mentioned database, we request that a computer program similar to "LP-ONE" for LPTV be created and made available to LPFM applicants. This would allow LPFM stations to implement standard directional antennae and patterns for their signals, and would thus open up many more channels than would be possible under a strict mileage separation paradigm. Without this capability, many communities within or near major markets will be deprived of any LPFM service. By adopting for LPFM the "prohibited contour overlap" method of predicting interference, as used by LPTV, many more stations can be established in or near major markets than would otherwise be possible. We believe the Commission's goal in this rulemaking should be to open the airwaves to as many as possible, while continuing to protect existing service. The use of this "prohibited contour overlap" method will clearly result in a more efficient allocation of the remaining available channels nationwide and a greater number of potential applicants being awarded licenses.

We disagree with the proposal to limit HAAT to 60 meters. Since Class-A stations are allowed 100 meters, we see no reason why LP1000 class stations should not have the same limit. Clearly, where interference issues are a concern, the Commission should prevent it by issuing a license requiring a lower HAAT for a particular LPFM. The additional coverage area afforded to those who can use this height, however, will only increase their success and service to their community. We believe that the Commission's philosophy in this rulemaking ought to include removing every possible obstacle to the success of this new service. In less populated areas, the extra height will often be critical to achieving a sufficiently large coverage area for generating necessary revenue. Communities in these areas are also more spread out, and without the extra height some sections may not receive service. Conversely, in more urban/suburban areas, the greater population density means that lower heights and smaller coverage areas will not be as detrimental to these goals.

We agree with the proposal to implement no minimum HAAT, again because it will allow the greatest flexibility in siting stations in the remaining available channels.

As to a minimum ERP level, if the proposal for graduated levels (200 to 1000 watts) is accepted for the LP1000 class, this will be unnecessary. We further propose that all LPFM stations be licensed to operate at whatever maximum ERP is approved for their site. If a station cannot immediately commence operations at its licensed power level, we propose they be issued a temporary waiver for a period of 24 months. If the station cannot upgrade to its full licensed power level during this time, the license would then be amended to reflect its present power, and there would be no future opportunity to increase it. This procedure would free up unused coverage areas for possible use by other LPFM stations.

As regards new FM boosters and translators, these services must not interfere with LP1000 stations, for the reasons cited above. In fairness, existing FM boosters and translators should receive protection from LP1000 stations. Due to the nature and focus of LPFM stations, we believe that they should not be permitted to establish boosters or translators for areas outside their primary coverage area. In the event that some terrain

anomaly prevents a station from realizing the benefits of its expected normal coverage area, we believe that a booster should be allowed to remedy the problem.

## LP100

We agree with the proposal giving these stations secondary status, and the requirement to provide protection to primary stations. Because of their limited coverage area, we do not believe the potential for IF interference is great enough to warrant regulation. We also agree that primary stations should not have to protect LP100 stations from interference. As the Commission rightly notes, these stations will “fill in the gaps” in locked congested areas, and in less congested areas they can more easily move to a new channel if necessary.

In our view the likely impact of LP100 stations on translators and boosters will be to create increased competition for remaining spectrum. Since translators and boosters only serve to increase the coverage area of a larger primary station, we believe priority should be given to authorizing LP100 stations, which can more effectively serve the needs of the local communities in which they are sited. This means new translator/booster service must protect existing LP100 service. Existing translators and boosters should, in fairness, be protected from new LP100 service. As with LP1000, LP100 stations should not be permitted to establish any translator or booster service.

In keeping with the philosophy of opening up the airwaves to create the greatest diversity and involvement, we agree that LP100 stations should be permitted to select channels that may receive some interference from other primary stations. The value of allowing a community to establish its own radio service far outweighs any inconvenience caused by minor levels of interference. Clearly, potential applicants should be free to choose this option, especially in those cases where no other options exist for establishing any local service.

We are proposing that LP100 and so-called microradio stations be combined into one class. As with LP1000, we propose for LP100 that the Commission permit all power levels from 1 to 100 watts ERP. Using the same computer tools and methods cited for LP1000, the siting of LP100 stations can be accomplished expediently and with greater flexibility. In conjunction with a flexible antenna height policy (i.e., no minimum and up to a maximum 30m HAAT), this will result in more channels being available for LP100 service and establish a more effective allocation of these channels.

To prevent an undue administrative burden on the Commission, we believe these stations should be free from many of the regulations that apply to primary service. We feel that tracking listener complaints will provide enough oversight for these small stations, without significantly adding to administrative responsibilities on both sides. We agree that there needs to be FCC certification of transmitter equipment to prevent spurious emissions and to maintain broadcast quality. We believe that with every privilege or freedom comes a concomitant responsibility, such that those who wish to participate in

LPFM must be willing to comply with reasonable reporting and certification requirements.

#### Interference Protection Criteria

As noted previously, we are strongly in favor of the “prohibited contour overlap” method for predicting interference as opposed to simple mileage separation tables, as this will allow remaining channels to be allocated most efficiently and to the greatest number of potential applicants. We question the Commission’s view that utilizing this procedure will be “resource intensive.” The computer program used for LPTV can surely be modified for LPFM and does not have to be written from scratch. Database information is already in place and can be easily ported to web use by existing software packages. We urge the Commission to reconsider this view and implement the contour overlap method so as to allow as many as possible to participate in local community broadcasting.

We agree and request that all 3<sup>rd</sup> and 2<sup>nd</sup> channel restrictions be eliminated for LPFM. As the Commission aptly notes, the benefits of “creating opportunities for new LPFM service should outweigh any small risks of interference to and from LP1000 and LP100 stations.” Past experience with “grandfathered” short-spaced stations amply proves that 2<sup>nd</sup> channel restrictions are unnecessary. Improvements in FM receiver design add further weight to the argument, owing to the far greater sensitivity and off-channel signal rejection capabilities this equipment now possesses. We continue to stress that every effort should be made to remove all major impediments to greater diversity and involvement in LPFM, including lifting 3<sup>rd</sup> and 2<sup>nd</sup> channel restrictions for these stations.

While we whole-heartedly agree with the proposal to require certified transmitters, we are just as much in **disagreement** with the proposal to require a spectral mask or bandwidth reduction. Unless and until data is forthcoming that clearly proves the necessity of such measures, we do not wish to see the sound quality of LPFM service suffer in any way. Though smaller in size and coverage, these stations will nonetheless be in constant competition with other stations in their area for listenership. It would simply not be fair to force them to overcome the added handicap of poorer sound quality in their quest to become successful. Countless times people “discover” a station that is new to them as they tune around the dial, and if that station’s sound is in any way inferior to others on the band, most will not linger long. We urge the Commission not to saddle LPFM stations with another undue burden that would result from the implementation of these proposals. Only if the very passage of this rule making was at stake would we agree to such proposals, and even then only grudgingly. In short, we want our FM to sound like FM.

#### Ownership and Eligibility

We agree with the proposal to prohibit those with attributable interest in a full power station from owning an LPFM station anywhere in the U.S. It’s time to allow others their opportunity to participate.

As regards multiple ownership of LPFM's, we recommend using a signal-overlap distinction in formulating this restriction, as this will ensure that each station must focus on its specific coverage area.

We also commend the Commission on its decision to accept applications from former "pirate" operators who comply with a desist order, or do so voluntarily. The existence of such stations proves the critical need for this rule making, and the Commission is correct in choosing to work with those who are willing to cooperate with the necessary procedures.

### Service Characteristics

We agree and request that LPFM stations be given freedom to determine what programming will best meet the needs of their coverage area. It is clearly in the best interests of each licensee to provide the kind of programming that will garner and keep listeners satisfied and in so doing ensure an adequate revenue stream for their operation. In our free market society these decisions are best made at the local level.

As stated earlier, it is imperative that LPFM stations be permitted to operate commercially. Having worked at a major market non-commercial station (WAWZ, Zarephath, NJ) I can attest to the difficulty of raising funds for this purpose. The hard fact of the matter is that the smaller the coverage area, the more difficult this process becomes. Consequently, commercial operation will likely be the only viable alternative for LPFM stations. We strongly urge the Commission to not limit this in any way.

We agree with the Commission's proposals for Public Service programming requirements, both for LP1000 and LP100 stations. We also believe that the distinction between LP1000 and LP100 stations regarding applicability of other rules should be observed (i.e. reduced obligations for LP100 stations).

We agree with the proposal to require minimum operating hours for LPFM stations for several reasons: Each potential applicant must realize the seriousness of this endeavor, and must be willing to provide a significant amount of programming, otherwise why bother owning a station? Secondly, it is in our view entirely unprofessional for a station to be off the air for extended periods. With the advent of computer automation it is now a fairly simple matter to remain on the air even with no personnel present. Lastly, the service commitment we make to our listeners should be reason enough to establish a full-time format.

Regarding License renewal, we agree and request that LP1000 stations follow Part 73 rules, while LP100 stations use a pro forma process in conjunction with complaint tracking. We strongly disagree with any proposal to create a non-renewable license for any LPFM class. Our reading of the applicable statute (Section 309(k)(1)) leaves us with no doubt that it does not discriminate between various broadcast licensees. For **any** licensee who submits an application for renewal of their license, the Commission **shall**

grant the application [emphasis ours], unless there are serious violations. The intent clearly seems to be that if a licensee submits a renewal application and there are no violations against it, the Commission **must** grant the renewal. We further believe that it is within this context that Section 307(c) must be understood. The wording, “a renewal of such license may be granted...” refers to whether or not the Commission finds something wrong with the licensee when the renewal is applied for. It does not, in our view, in any way grant the Commission authority to issue non-renewable licenses.

As regards Station Identification, we do not believe it is necessary or helpful to adopt a special call sign system for LPFM. We feel this would engender a “secondary status” perception with listeners that may work against the efforts of LPFM stations to achieve success in the marketplace. Given the amount of competition out there, LPFM’s need to sound and appear every bit as professional as their larger neighbors. As was discovered with LPTV stations, we require and request real call signs for LPFM.

### Applications

We agree and request that an electronic filing process for LPFM be established to expedite application filing and tracking. As the Commission is undoubtedly aware, every e-mail transmission is time-stamped the moment it is sent. Whether an open or windowed filing process is chosen, this time-stamp can easily be used to resolve first-come, first-served issues, irrespective of any internet or queuing delays.

We believe a combination window and first-come, first-served process will work best. To spread out the workload for Commission personnel, we suggest the following: Announce a 24-hour window for potential applicants to e-mail the Commission signifying their intent to apply. By using an e-mail auto-responder program, applicants could then be immediately notified of the date when their e-mail application will be accepted. These dates would be chosen based on the amount of time it will take to process a certain number of applications. For example, if it takes a week to process 100 applications, the auto-responder could be set up to generate a new date for each group of 100 applicants. Any applications received outside of the proper date would be automatically rejected. In this way the fairness of first-come, first-served is maintained without overwhelming the capacity of the Commission to respond.

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