

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	MM Docket 99-25
)	
Creation of a Low- Power Radio Service)	RM-9208
)	RM-9242

COMMENTS OF DAVID J. MATTHEWS

Background and Qualifications of Commenter

David J. Matthews started in broadcasting as a radio station Chief Engineer (WTKO Ithaca, and WPXN/WPXY Rochester) from 1976 to 1982. In July of 1982 he was certified as a Senior Broadcast Engineer by the Society of Broadcast Engineers. In 1984, he filed for a construction permit to build a first local radio service in Reston, Virginia; a comparative proceeding which lasted for over 5 years.

From 1985 to 1993, Mr. Matthews was an appraiser with Broadcast Investment Analysts, Inc. ("BIA"). In this capacity, he participated in many appraisals and fair market valuations of radio stations, and the consulting related to the purchase and sales of radio stations. After the 5-year comparative proceeding mentioned above, Mr. Matthews left the broadcasting field entirely. He is currently the Information Technology Manager of a leading environmental consulting firm, and submits these comments in the hope that this proceeding will finally provide an opportunity for Reston, VA to obtain local radio service.

Clear Need for LPFM Service

The Commission is bound by Section 307 of the Communications Act of 1934 to provide "fair and equitable" allocation of radio facilities. Yet the current state of radio broadcast allocations is clearly based more on history than on actual current need.

For example, the community in which I reside (Reston, Virginia) is a thriving community of over 60,000 people. Yet, because this community did not exist prior to 1963, and did not become of significant size prior to the mid 1970's, there is currently no local radio service, nor any possibility for service under the existing regulations. I have visited many smaller cities of lesser population that have several local radio stations. The central city of this urbanized area (Washington DC), is 20 miles away and not in the same state. Newscasts from the Washington, DC radio stations carry little of interest for the people of Reston and ignore many local items that would be of great interest to the people of Reston or Fairfax County. Many other communities across the United States, dwarfed by a nearby city that is either much older or much larger or both, face the same problem.

At the same time, few would dispute that there are distinct ethnic and cultural communities within major urban areas whose broadcast needs are either unserved or under-served because they do not reach the financial critical mass required to attract large urban radio stations.

Last, we have all heard the ongoing lament about "the disappearance of Main Street, U.S.A." over the past few years. One of the most significant factors in this erosion of local community centers is that it is not financially practical for the local merchants and service providers on "Main Street U.S.A." to buy commercial radio time to advertise their products. Why? Since many radio

stations cover an entire metropolitan areas or other substantial geographic region, it is cost-effective for national chains, franchises, and regional malls to buy advertising, driving up the cost of spot advertising. This has the effect of pricing the small single-location local merchant out of the market. The truly local merchant only serves a small fraction of the typical radio station's coverage area, cost and therefore lacks the scale necessary to make cost-efficient usage of spot radio advertising. This seriously damages the local merchant's ability to attract and retain customers.

The only practical way to provide truly local radio service is to have radio stations that are truly local. The problems addressed above can be at least partially addressed by the LPFM service proposed in this proceeding.

Possible Risk to Existing Service

The Commission has seen numerous cases of "pirate" radio stations operating in the FM band. Human nature being what it is, it is important that any low-power FM radio service that is authorized in the future is established within a regulatory framework that includes substantial safeguards to preclude the possibility of the FM broadcast band exhibiting the same anarchy has been seen in "Citizens Band" radio. The easy availability of very low-cost FM transmitting gear of questionable integrity from both domestic and foreign sources raises the distinct possibility of serious destructive interference and an uncontrollable boom in pirate operations or operations not in compliance with the Commission's technical rules. Several things are needed to prevent this from happening:

a) The small LPFM facility that has little invested has little to lose. It is paramount that any low power FM service be conducted for the purpose of serving the public, not merely for the personal amusement of the operator(s). This can be encouraged through reasonable threshold qualification barriers to entry, assuring that those who would be licensees are serious about providing

an ongoing, reliable, useful service that is unlikely to cause interference. Perhaps a threshold barrier to entry might involve some sort of requirement wherein each such licensee would be required to post a cash deposit or some form of bond prior to beginning normal program operations. In the event of serious violation, that deposit or bond would be subject to immediate forfeiture, an addition to any other administrative sanctions or legal proceedings which may be applicable.

b) The availability of transmitting equipment must be more tightly controlled. A legal requirement to individually register ownership of FM broadcast transmitters, and the tracking of changes in ownership and location of these transmitters may be necessary.

c) The suggestion by some commenters that “home built” LPFM transmitters be permitted is absurd on its face. If the applicant wants to build transmitters for fun, Amateur Radio licenses and spectrum are available for that purpose.

Economic considerations

I was employed for seven years as an appraiser of radio broadcast facilities for Broadcast Investment Analysts, Inc. During this time, I had an opportunity to review key financial information of numerous radio stations of all sizes and in markets ranging from the smallest to the largest, and to observe how these stations were performing economically, technically, and in terms of providing service to the public. I wish to be clear that the following comments are intended to apply solely to the LPFM proceeding at hand, and not to existing primary FM stations.

Based on my experience, it is my professional opinion that there is no demonstrable public interest benefit to private “ownership” of LPFM radio

licenses. Indeed, there is substantial economic inefficiency caused by same. This is because one of the largest expenses of operating the average radio station is servicing debt arising from the chain of previous purchases and sales of the radio station.

In the early days of broadcasting, there was a significant public interest justification for *de facto* “ownership” of radio broadcast licenses. Early broadcasters were pioneers, taking significant risks and making significant investments in an uncertain technology. Today, FM broadcasting is mature. A broadcaster granted a new FM license today bears relatively little risk provided his business plan was realistic to begin with.

We have seen appalling examples in the LPTV, Cellular, and PCS proceedings of how speculators, not intending (or even unqualified) to actually provide any real service, filed many thousands of applications for construction permits for which no facilities were ever built. In other cases, speculators acquired rights from the FCC, and then sold them at a substantial profit. How is this in the public interest?

Broadcast spectrum is a scarce resource, owned by the public, and regulated by the Commission as a trustee of the public interest. Benefits will flow to the public if commercial LPFM licenses are treated as spectrum leases for the period of the license. The licensee would pay the Commission a percentage of annual gross revenues in exchange for the privilege of using this scarce public resource. In the event that the broadcaster did not wish to continue providing service, the license could not be “sold” as with a primary FM station, but would be required to be surrendered to the commission for re-allocation. There are several benefits to this approach:

a) If the broadcaster’s profits are gained solely through operations rather than simply the sale of a scarce resource, then the broadcaster will focus on

operational matters, as opposed to “fattening the goose” for a sale.

b) The only people who would apply for LPFM facilities are the ones that actually want to provide service. Speculators interested solely in capital gains via resale of the LPFM facility will be discouraged. This results in a more efficient initial allocation process.

c) Revenues derived as a result of the scarcity of the spectrum resource will flow to the owners of that resource (the American people) via the trustee of that resource (the Commission), instead of being concentrated in the wallets of speculators.

d) LPFM stations would not be saddled with a heavy debt load resulting from previous sales of the station. This makes available more resources for quality programming. Who knows... the local newsroom may actually reappear.

e) It is highly probable that administration and enforcement costs of LPFM operations (and pirates masquerading as LPFM's) will be significantly higher than currently exists for primary stations. The spectrum lease model provides the revenue stream to offset these costs from the facilities most likely to generate these costs.

It has been suggested in this proceeding that it would be a good idea to permit a single entity to own numerous LPFM stations, due to the “economies of scale” resulting from a centralized ownership and management. This is circular logic. Such “economies of scale” are only made necessary by the cumulative debt load arising from a history of private sales, frequently to ever-expanding group owners.

I am very concerned that allocation of LPFM stations in areas where an AM station is currently “barely surviving” could ultimately result in the demise of

the AM station. An owner of a single existing stand-alone AM station should be allowed to apply for an LPFM station to serve the same general area, provided that if they are awarded the LPFM license, they agree to **surrender** their AM license to the FCC within 90 days after commencing LPFM program operations.

Allocation Considerations

Since the very purpose of this proceeding is to provide for localized service, diversity, and additional opportunities for participation in broadcasting, the Commission should carefully consider whether or the proposed LP1000 class meets these objectives. Specifically, the addition of a small number of new LP1000 stations can have such significant preclusive effects on a larger number of potential LP100 stations.

Nothing thus far in this proceeding has established that 1000 Watts, 100 Watts, and 10 Watts are magic numbers in terms of maximizing the benefits of this proposed new LPFM service. More statistical analysis is needed from the Commission's engineers in order to establish where the statistical "sweet spot" is in balancing power levels versus the extent and quality of new service to be provided. It is possible that eliminating the proposed LP1000, LP100, and LP10 classes, and substituting LP300 and LP50 classes in their place may provide the best balance. So that the outcome of this proceeding is truly in keeping with its origins, I strongly encourage the commission to find ways to authorize as many LP100's (or LP300's) as possible initially, before authorizing any LPFM's of either higher or lower power levels.

It has been suggested that in order to provide sufficient spectral protection while reducing or eliminating the mileage separations to second adjacent allocations for existing primary operations, it may be necessary to restrict or prohibit the use of sub-carriers on LPFM stations. As a practical

matter, and speaking both as a potential LPFM licensee and as a potential recipient of local service provided by a future LPFM station, I can assure you that a monaural local service is better than no local service at all.

There is no public interest justification for any limitation on interference **received** by an LPFM station from a primary station which is operating in accordance with the Commission's rules, and generally accepted standards of good engineering practice. As above, a new local LPFM service receiving some degree of interference from a primary station is better than no local service at all. The applicant would be fully aware of the interference at the time of application, and would make a reasoned business decision on whether the interference presented on substantial obstacle to the new service.

Where a new LPFM station cannot be allocated because it would cause interference to a primary station, the relative extent of the interference caused should be taken into consideration. For example, if the area of overlap is over a body of water, or an area of very low population density, it seems pointless to use this a basis for denying new local service to a substantial population.

Since US Census data for population densities is available in electronic form and could be integrated with the allocation program, there is no reason why this should slow the allocation process, and could result in much more equitable and fair allocation of service. The relevant rule might specify that if the population to be provided new interference-free service by the LPFM station exceeds five times the population which would receive the preclusive interference by the new allocation, the gain of new local service clearly outweighs the loss created by new interference. The LPFM application would be granted accordingly.

Alternatively (but less preferably), if a 100 watt LPFM will not fit, but an 80 watt LPFM in the same location will fit, there seems little reason not to issue the

allocation at 80 watts instead of 100. **This is a critical issue** inasmuch as LPFM stations will be struggling to contain costs. This means taking advantage of existing tower and building locations to minimize both construction and operating costs, and in many cases, to conform with zoning regulations. It would seem illogical to tell a potential LPFM licensee that in order to comply with rigid spacing requirements, their application can only be granted if they build a new tower, even though a suitable existing structure already exists only a mile away. Local zoning or other practical considerations may preclude the construction of a new tower in the exact spot to make a new allocation work. Many potential LPFM licensees would willingly trade power for a more practical tower location.

Carrying this concept one step further, the Commission should consider creating one or two "standard" directional antenna designs for use with LPFM stations (for the LP10 and the LP100 classes) for cases where physical location of an antenna at the edge of the coverage area is much more easily achieved than locating the antenna at the center of the coverage area. One standard type would be for the primary purpose of providing a cardioid-like wide minimum of perhaps -6 dB, to allow "bending" the spacing rules by a fixed reduction in required separation in the arc of the pattern null. The second type of "standard antenna" would be a narrower beam / higher gain design similar to those now commonly used for boosters and translators. This might be a Yagi (or crossed-Yagi) design of perhaps three to five elements to allow the transmitter site to be placed on the periphery of the desired coverage area.

The successful use of directional antennas in low power FM broadcast operations already has a substantial track record in translator operations. Having one or two "standard" directional antenna designs of clearly defined characteristics could provide relief for situations involving difficult antenna placement. At the same time, the use of a table of predefined "separation adjustment coefficients" for these standard antennae would allow the use of such antennae without the need for a detailed engineering analysis of each

instance. This approach allows an efficient allocation process while still meeting the practical needs of the small broadcaster.

While there should be no protection afforded LPFM stations against new primary allocations, this should be subject to some scrutiny by the Commission at the time of grant of a new or changed primary allocation. One can easily envision a circumstance wherein owners of existing primary stations might be highly motivated to apply for antenna or site changes, solely for the purpose of squashing one or more LPFM's in the process, in order to reduce competition for advertising revenues. Moreover, because the coverage areas of LPFM stations would be so small compared to those of primary FM stations (particularly Class B and Class C), only a minor shift in the coverage area of a primary FM station could completely destroy the service areas of one or several LPFM's. Allocation regulations permitting this to occur would clearly be counter to the public interest.

LPFM stations should not be required to provide protection to translators. In accordance with the very genesis of this proceeding, where low-power services are involved, there should be a strong presumption that local service is always preferable to relayed remote service.

Compliance and Enforcement Considerations

All LPFM stations should be inspected at least once per week by a person holding a valid General Class Radiotelephone operator license, or by a person holding **both** a current Restricted Radiotelephone Permit and a Broadcast Engineer Certification (for radio) issued by the Society of Broadcast Engineers. The person making this inspection would maintain adequate written records to establish that the station is being adequately technically monitored and is operating in accordance with the Commissions rules. The person making such certification should be jointly liable with the licensee for the proper technical

operation of the LPFM station, and should be required to timely notify the Commission in writing of any significant violation of the technical rules.

The commission has already seen the enforcement burden created by the recent dramatic increase in "Pirate Radio" operations. It is reasonable to speculate that with the advent of hundreds or thousands of low power or micro-radio operations, that enforcement load could increase substantially. There should be an LPFM "enforcement lottery", whereby representatives of the FCC conduct routine annual field audits of a representative sample of LPFM stations chosen at random each year. These field audits could be funded by the spectrum fees discussed above.

It should be illegal to buy, sell, or own an FM broadcast transmitter capable of operating in excess of the limitations prescribed under Part 15 of the rules, unless the entity holds a valid construction permit or license for an FM broadcast station, or is a regular manufacturer of, or dealer in, such equipment, or in the case of an individual, holds a valid General Class Radiotelephone Operator license issued by the FCC or is certified as a Broadcast Engineer by the Society of Broadcast Engineers.

If the Commission chooses to adopt an "LP10" class of service, I strongly urge that this class not be created until LP100's have been in operation for some time to provide a test bed for how well low power service is able to remain within the boundaries of the Commission's rules.

Ownership Considerations

There should be some method for prioritizing the allocation of new LPFM licenses in a process more reasoned than an auction "riot" of thousands of applicants. The Commission should make some attempt to ascertain which cities, towns, and CDP's (Census Designated Places) do not yet have any local

primary service, and attempt to give these locations allocation priority by order of descending population. This is in basic compliance with Section 307 of the Communications Act of 1934.

Once allocated and assigned, LPFM permits and licenses should not be permitted to be “sold”. If the permittee of an LPFM station cannot or will not complete construction and commence operations, the permit should be surrendered to the Commission, and the allocation be made available for re-assignment to another party by the Commission in accordance with the same procedures used for the initial award of the permit.

Similarly, if an LPFM licensee cannot or will not continue with normal operations for whatever reason, the license shall be surrendered to the Commission, and the allocation be made available for re-assignment to another party by the Commission in accordance with the same procedures used for the initial award of the permit.

Since the avowed purpose of the Low Power FM service is to provide for increased diversity and localism, there is no reason to permit “LMA” agreements, or satellite rebroadcasting, nor to permit ownership of more than one station. The cost efficiencies of providing programming services targeted toward minorities can be provide within the framework of programming syndication and networking, without the need for licensees to amass a large quantity of LPFM stations under common ownership.

Indeed, if such group ownership is allowed, and programming is centrally provided, how are local concerns and interests to be met on a day-to-day basis? I envision a hypothetical group-owned LPFM station targeted at Hispanics in Miami. One day, members of a local Hispanic civic group approach their “community” LPFM station in Miami, only to be told that the programming

decisions are all made in Cleveland. Let u further speculate that there is breaking news of intense interest to this community. The central “news” programming, however, is also done from Cleveland. How can this situation possibly provide truly “local” service?

The Commission initiated this proceeding with the observation that thousands of inquiries were made last year regarding low power local broadcasting. If there is a clear and present demand for “local” service (provided by local ownership and management), then what possible public interest justification could there be for allowing large LPFM group operators to gobble up local outlets so that they are no longer reasonably and immediately accessible to the local populations to be served?

If the Commission inaugurates LPFM service with rules prohibiting multiple ownership, cross-ownership, and absentee ownership and subsequently finds that potential LPFM allocations are left vacant for lack of qualified applicants, the Commission could always relax the ownership rules at a later date in order to achieve its objective of maximizing service. Opening these floodgates at the outset, without first testing the waters, is reckless and contrary to the public interest inquiries which have prompted this entire proceeding.

I strongly support the Leggitt petition in the suggestion that ownership should be limited to individuals whose primary residence is within 25 miles of the station. Absentee ownership provides no value to the public. The owner should be immediately aware of and immediately in control of (and immediately answerable for) the operations of the radio station. Local ownership and management strongly encourages this.

Operational Considerations

LPFM stations should be required to operate at least 80 hours per week.

There is no public interest justification for preclusively allocating a scarce resource, only to have the resource be under-utilized. A pair of licensees should be permitted to time-share an allocation as long as the 80 hour minimum is met by the combination of the two.

EAS equipment and participation should be required of all broadcasters of all sizes. In the grand scheme of things, the cost is minimal and lives may be saved. If a family is killed due to lack of warning of an oncoming tornado, they are no less dead just because they happened to be listening to an LPFM station at the time.

Summary

While numerous points are discussed above, the ones I wish to most strongly emphasize are these:

a) Based on my experience in this field, I respectfully submit that the Commission's suggestion that Low Power FM needs to "benefit from the economies of scale" of multiple ownership is based on a faulty premise. One of the largest expenses of many radio stations is not an operating expense, but rather the financial burden of debt service created by previous resales of the station. Since FM is a mature medium, and since there is clearly very high demand for low power local broadcasting, there is no public interest benefit to private "ownership" and resale of LPFM licenses.

LPFM provides the Commission with a unique opportunity to create a new paradigm for transfer of license. If the LPFM licensee cannot "sell" the license or permit (only return it to the Commission for re-assignment), then the licensee's profit motive would flow solely from broadcast operations, not speculation and trading. Freed of the debt load resulting from prior sales, and considering the need to provide unique content to compete against larger

stations, truly local programming would blossom. We might even see the return of something thought lost forever - the "local" radio newsroom.

b) The airwaves are a scarce resource owned by the public. An LPFM spectrum lease fee based on a percentage of gross income (subject to a minimum amount) would allow money to flow back to the public from the use of a public resource, without unduly burdening those operators with low gross income. Moreover, it would provide a rational means of funding the increased enforcement burden that will result from a large quantity of new stations of modest means.

c) Contrary to the views of some other commenters (most notably the National Association of Broadcaster), "diversity" in broadcasting is not equivalent to counting the number of available formats. From my standpoint as a listener, a station of any format which provides news about what is happening in my local community is much more valuable than another station of any format which provides me with no local information. I currently have access to numerous formats serving the Washington D.C. area, but none of them provides adequate service because none of them provide me needed information about my local community.

d) Reasonable threshold qualifications are needed to prevent a feeding frenzy for the new licenses, and to assure a level of quality and compliance consistent with serving the public interest. Prohibiting multiple ownership, cross-ownership, and absentee ownership are legitimate means to achieve the goals of Section 309(j)(6) of the Act, which are mentioned in paragraph 106 of the NPRM.

Respectfully submitted,

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