

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

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

REPLY TO MOTIONS FOR RECONSIDERATION

REC Networks¹ and the Arizona Microradio Association² (collectively “REC”) respectfully files this combined reply to several Motions for Reconsideration (Motions) filed in the above captioned proceeding.

DON SCHELLHARDT

Background. In his Motion, Don Schellhardt (Schellhardt) calls for a process to be put in place for those who have been accused of illegal broadcasting with pending court cases or court orders to bar the Commission from enforcement action pending the outcome of a trial to be eligible for LPFM licensing. Don’s proposal also calls for a “probationary period” for those who have not engaged in unlicensed broadcasting for a specified period. Under this probationary period, the LPFM licensee would be under much closer scrutiny to follow the rules and could have their license revoked for mere material violations of the Commission’s Rules.

Discussion. We must look at the FCC’s character evaluation procedures that apply to the broadcast services as well as the other services. REC questions the FCC’s judgement on the candor of previous unlicensed low power radio operators. From what we have seen in the past, the FCC has a track record of filing enforcement action against *individuals* and not *organizations*.³ If the FCC prohibits the licensing of LPFM stations to *individual* licensees as well as established non-commercial educational organizations, the provisions of §73.854 are unenforceable.

1-REC Networks was established on July 20, 1984 and has operated various telephone entertainment operations as well as computer bulletin boards and websites. Currently REC Networks operates a very popular website for fans of animation, 5 internet audio services, a website offering old REC programming on demand as well as a web based channel search tool used by prospective LPFM licensees to find usable frequencies in their area based on the information from the Report and Order in this proceeding.

2 – The Arizona Microradio Association is a wholly owned entity of REC Networks which is involved in the protection of LPFM interests within the State of Arizona as well as areas surrounding the state.

3 – For example, in the case of Dunifer, the FCC named the individual Stephen Dunifer, as the target for enforcement action and not the organization “Free Radio Berkeley”.

Opinion. REC feels that the Commission should resolve this issue in one of two different ways. The Commission could look at amending §73.853(a) to permit LPFM stations licensed to “individuals proposing to operate a non-commercial educational service.” and use the records of those specific individuals for character evaluations. In the alternative, the FCC could amend §73.854 to permit LPFM licenses to organizations where no more than 25% of the board of directors (the signatories to the application) have been engaged in unlicensed broadcasting as defined in §73.854. This method will allow stations to operate with the technical expertise of the person(s) who were previously engaged in unlicensed broadcasting while maintaining oversight by at least three persons who are considered by the Commission to have the character qualifications to hold a license in the service.

CRAIG FOX

Background. In the Craig Fox (Fox) Motion, he calls for the use of modulation monitoring devices in the LPFM service to prevent overmodulation of the carrier.

Discussion. In §73.801, it specifically states that §73.1570 applies to the LPFM service. §73.1570(b)(2) specifically states the modulation limits for FM stations, including LPFM stations.

Opinion. REC feels that there is no need to codify the requirement for modulation monitoring equipment at LPFM installations as the LPFM licensee will be accountable for the modulation of their signal and could face liability if their signal is out of compliance.⁴ This is an example of the streamlined regulation that the Commission intended for this service.

LOHNES AND CULVER

Background. Lohnes and Culver (L&C) raises the issue that the FCC should reconsider its prohibition of directional antennas in the LPFM service.

Discussion. L&C state that the use of directional antennas is a good engineering tool that permits broadcast stations to provide service to the populated portions of their 60dBu service contour while operating less power to achieve the same service area and could possibly protect current and future broadcast stations.

4 – It would be in the best interest of the LPFM station licensee to have modulation monitoring meters in their transmission system to assure compliance with the law.

Opinion. On the record, REC has supported the use of directional antennas in the LPFM service, especially in areas close to international borders. REC continues to support directional antennas in the LPFM service as long as the 60dBu contour is not increased as a result of using the directional antenna. REC would like to also see directional antennas used in future situations where stations, especially LP-10 reach a mutual agreement to be short-spaced. A good example is two short-spaced high schools can operate directional antennas to serve the campus as well as areas around the school. REC agrees with L&C that directional antennas could be employed in some public safety applications. REC feels that directional antennas can be used to permit LPFM stations to be placed near the fringe of areas currently protected under the rules in respect to TV Channel 6 stations. LPFM stations can employ directional arrays that null out in the direction towards the Channel 6 transmitter, this way more stations can get on the air. In many of these fringe areas, the Channel 6 station is not receivable over the air and the directional antenna would eliminate any potential interference to those closer to the Channel 6 transmitter. REC does not want to see the virtue of directional antennas to set a precedent for future stations to be licensed using prohibited overlap vs. the existing distance spacing protection methods, except in mutually agreed short spacing arrangements. An LPFM licensee is entitled to their entire service contour, even if they are currently operating directional.⁵

ALAN W. JURISON

Background. Alan W. Jurison (Jurison) expresses concerns about grandfathered super-power FM stations in the commercial portion of the band. Jurison is requesting that the FCC protect these commercial stations as they have protected the non-commercial super-power stations.

Discussion. The Jurison pleading includes a list of commercial stations. Many of these stations are in locations where Class C, C1, C2 and C3 stations are not available. Even though there are no stations in Arizona on the list, we reviewed the stations on the list located in Southern California. We point out the Los Angeles stations that are located on Mount Wilson. Even though these are Class B stations and they are grandfathered at a higher HAAT and power, Mount Wilson is shielded to the north. Most areas to the south, east and west of Mount Wilson already can not get LPFM stations, however the areas to the north (in the “High Desert” area) can still receive LPFM service. By increasing every Mount Wilson to a full Class-C status could preclude LPFM service in the High Desert area.⁶

5 – Another LPFM station should not be permitted to overlap omnidirectional protected contours on the grounds that the existing LPFM station is operating directional. That LPFM station operating directional should be able to change to a omnidirectional antenna and cover their entire area. LPFM stations operating on mutually agreed short spacing agreements could have overlapping patterns. LPFM stations should use engineering information such as our “Station Protection Factor” (SPF) to determine if a channel will receive interference from full power broadcasters.

6 – REC Networks has interests in the High Desert Region of Southern California. This includes communities such as Lancaster, Palmdale, Rosamond, North Edwards, Boron, Victorville, Adelanto, Hesperia, Lenwood, Barstow as well as the areas along Interstate Highways 15 and 40 between Barstow, Needles and Las Vegas. In the Boron area, for example, the increase of these facilities to Class C would preclude many channels available in this community, as most of the channels available are first adjacent channels to stations on Mt. Wilson.

Opinion: REC feels that the Jurison proposal is to look after the “best interests” of the LPFM operator. If the LPFM licensee feels that they will receive intolerable interference using a channel due to a grandfathered super-power station, they will not use the channel. If the Commission does accept the Jurison proposal, it should allow LPFM applicants to apply for waivers to the extra protection if there is a showing that the LPFM and full power stations are shielded by terrain. Jurison’s list includes several stations that are already Class-C. As with the non-commercial super power stations, the Commission should not provide any protection beyond Class-C.⁷

AMHERST ALLIANCE

Background: Amherst Alliance (Amherst) has proposed several changes to the Report and Order including: the establishment of an LPFM advisory committee, a two-year review which includes the possibility of creating a Low Power AM (LPAM) service, the establishment of LP-250 stations in areas outside the Top-50 Media Markets as defined by REC or in areas with lower population density, a redefinition of what is considered “educational” broadcasting and the inclusion of “entertainment” in the non-commercial educational service, the “pre-emption” of frequencies by applications for full power and translator stations, primarily in the non-commercial educational service and a “freeze” on all full power construction permit applications retroactive to January 20, 2000.

Discussion: We will look at several of Amherst’s issues separately.

On the advisory committee concept: we feel that an “advisory committee” would be helpful to the development and eventual success of this unique radio service.

On LPAM: In REC’s original comments, we had suggested the use of LPAM as “overflow” spectrum in the event no LPFM spectrum was available. Stations would have been limited to 10 watts. Due to the technical nature of AM, many LPAM stations would be restricted to daytime operations. In the AzMA bandplan, we called for LPAM stations to be used in high schools where no FM spectrum was available.

On LP-250 Stations: In REC’s Amendment to Comments, we called for the establishment of LP-250 stations (which we called A2) in all areas more than 100km from the geographic centers of 50 top metropolitan areas identified by REC as well as all areas except those within 125km of the common border with Mexico.

On the definition of “educational”: The FCC recently reversed a decision that it made regarding the definition of “educational” programming as far as eligibility for the non-commercial educational service is concerned. The Channel *16 Pittsburgh case was distinctive due to the fact that a commercial station was trying to move to a reserved channel.

On the “pre-emption” of frequencies: REC has been carefully watching the daily public notices for applications for construction permits in the non-commercial educational service.

7 – Although not a part of the rulemaking process, REC is requesting that the FM Engineering database include a field that shows the “LPFM status” of full powered stations. For example, if a Class B NCE-FM station is actually operating facilities of a Class C1 station, a separate field showing the “C1” super power status should be made. This will assist the computer searches such as the REC LPFM Search Tool give accurate information. We would also request that existing and future translators have a “sub-class” in the FM database. This will assist in showing exactly how much protection a translator is entitled to. The classes would be “DA”, “DB” and “DC”. In the FM database, we are also requesting that LP-100 stations be classed “D1” and LP-10 stations be classed “D2”.

Opinion: REC agrees in part with Amherst. We feel that an advisory committee representing those involved in all aspects of the LPFM service including the educational users, the community radio users and the public safety users would be in the public interest to help steer this service. REC feels that the implementation of a LPAM service would be impractical at this time due to the additional technical information that would be required. The additional research may be cost prohibitive to many applicants who would otherwise be eligible for FM service (if channels were available). In the alternate to implementation of LPAM, we should look at several options including the elimination of second adjacent restrictions in some cases, even if an IBOC solution is implemented, mutual short spacing of LP-10 stations as well as the use of directional antennas for short spaced stations. REC supports the eventual implementation of the LP-250 service. REC feels that the implementation of LP-250 should not happen until after the LP-10 filing window and the initial implementation of LP-250 should be for stations upgrading from LP-100. LP-250 upgrades would only be permitted in areas outside the Top-50 Media Markets as well as areas more than 125km from Mexico and in situations where LP-100 stations are spaced far enough where both stations could upgrade to LP-250. LP-250 should only be regarded as a rural solution. Definition of “Educational”: As previously mentioned, we mirror our opinion in Shellhardt where we recommended that LPFM stations be made available to “individuals planning to operate non-commercial educational”. The word “educational” has such a broad definition. Everything from college courses to cooking shows to bible readings could be considered as “educational”. We must also include the fact that music and alternative talk programs, such as those proposed by many aspiring community based LPFM licensees could be considered educational. REC defines education as the teaching to someone of something they do not already know or the re-enforcement of a previous teaching of something to someone. We also feel that culture is education. Culture and Diversity is not just about nationality but it is about attitude, it’s about religion, lifestyle, tastes and tradition. Who says that only schools, colleges and universities are the only ones capable of educating? What’s to say that a single person does not have the power to educate? Tell that to the late Martin Luther King Jr., Caesar Chavez as well as those living today who are trying to make a change. Isn’t that what education is all about? Development and change? Our point is that an individual is just as capable of facilitating education to a community as would a school, college, university or church. For this reason, we support the petitions of Amherst and Schellhardt to permit individuals to obtain licenses in the non-commercial educational LPFM service.

Preemption of frequencies: REC agrees with Amherst. The LPFM decision has generated a “land rush” in the band below 92 MHz. Even though REC would support making the rules for LPFM the same as the rules for full power and translator stations in respect to Channel 6⁹, REC is requesting that all applications for construction permits (except those on channels assigned through an allotment proceeding) be dismissed retroactive to January 21, 2000. Exceptions can be made if the full power or translator station proposed has a protected 60dBu contour entirely within the area that restricted from LPFM stations on 91.9 or lower in respect to Channel 6 TV stations (including foreign allotments)⁹.

8 – Currently, full power and translator stations within a predetermined contour to a TV Channel 6 station can be licensed at a certain power level upon concurrence with the TV Channel 6 licensee. REC would like to see the same option made available to LPFM.

9 – We feel that foreign Channel 6 stations, such as XETV, Tijuana, BC Mexico, should be entitled to the same protection as that afforded to domestic Channel 6 stations.

IN CONCLUSION

The decision in 99-25 was a good one but it had some bugs. Hopefully, several of the Petitions for Reconsideration filed will help “de-bug” this service prior to implementation.

REC reserves the right to amend these Comments if additional Petitions for Reconsideration are received in this proceeding.

Respectfully Submitted,

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Electronic Service of documents is encouraged.
March 1, 2000

CERTIFICATE OF SERVICE

This is to certify that this document will be served upon the following parties:

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We are unable to serve Lohnes and Culver since no address was indicated in their Motion.