

and children's programs such as Sesame Street that entertain as they teach."¹⁰¹ We will apply the same standards we have applied to full power NCE stations to LPFM stations.

75. Specific questions were raised as to whether Indian tribes may apply for LPFM stations, or whether only their educational institutions may apply. As long as they meet the NCE criteria and other eligibility rules applicable to all applicants, Indian tribes may apply for LPFM construction permits. We have granted NCE radio station licenses to Indian tribes and to educational institutions operated by Indian tribes and thus, this LPFM eligibility rule follows current policy. We will apply the NCE criteria to Indian tribe applicants -- and all applicants -- in the same manner in LPFM as we have in the existing FM radio service.

E. Ownership and Eligibility

1. Local Ownership Restrictions

76. In the *Report and Order* we prohibited common ownership of more than one LPFM station in the same area and cross-ownership of *any* LPFM by any other broadcast station, including translator and low power television stations, as well as other media subject to our ownership rules.¹⁰² Lawson & Langford request that AM licensees be permitted to file LPFM applications, in part, they argue, because of the higher number of minorities that are AM station licensees.¹⁰³ As discussed extensively in the *Report and Order*,¹⁰⁴ we believe that strict ownership rules are an important mechanism for assuring the diversity of ownership that is so critical to this service. We concluded that the interest in bringing new voices to the airwaves would be best served by barring cross-ownership between LPFM licensees and existing broadcast owners and other media entities. We believe that the rules we have adopted for the LPFM service -- *including* the strict cross ownership ban -- will lead to more access by all segments of the population to the airwaves. We will, therefore, maintain the cross-ownership restrictions set forth in the *Report and Order*.¹⁰⁵ As noted in the *Report and Order*, if a licensee of an AM station (or any other station) agrees to divest its interest in its license upon grant of the LPFM license, it may apply for an LPFM license.

77. Cohn & Marks ask us to clarify that an entity may hold both an ITFS license and an LPFM license. Cohn & Marks state that many universities and colleges hold ITFS stations, which transmit a signal to fixed receiving locations and may only be used to transmit formal educational programming offered for credit to enrolled students of accredited schools. We clarify that ITFS is neither a broadcast

¹⁰¹ *Further Notice of Proposed Rulemaking, In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 13 FCC Rcd 21167, 21168 (n.2) (1998).

¹⁰² *Report and Order*, 15 FCC Rcd at 2216-18, ¶ 26-30.

¹⁰³ Lawson & Langford Petition at 3.

¹⁰⁴ *Report and Order*, 15 FCC Rcd at 2217-18, ¶¶ 29-30.

¹⁰⁵ Lawson & Langford alternatively request that AM stations be allowed to provide programming and other support to LPFM stations. This would only be permissible if it did not violate the ban on rebroadcasting or other rules, such as the restriction of LPFM to noncommercial, educational service.

service nor other “media subject to our ownership rules” and is therefore not encompassed by the LPFM cross-ownership restrictions.¹⁰⁶

2. National Ownership Limit

78. The Commission established a staged national ownership rule. For the first two years after a filing window opens, an entity may own only one LPFM station. After the first two years we will allow one entity to own up to five stations nationwide; after three years, we will allow an entity to own up to ten stations nationwide. The purpose of this staged approach is to foster diversity by initially disallowing common ownership of LPFM stations, but eventually permitting common ownership where local applicants fail to come forward.¹⁰⁷ As noted above, since adoption of the *Report and Order* we adopted staggered filing windows based on geographic regions. We clarify that this two year limitation -- as well as other time periods tied to the opening of a filing window -- will begin to run in a geographic region based on the opening of that region’s filing window.

79. *Public Safety and Transportation.* In addition to NCEs, state or local governments or not-for-profit organizations that operate public safety or emergency services¹⁰⁸ are also eligible owners for LPFM licenses.¹⁰⁹ The NYSTA requests that the Commission relax the national ownership rules to allow such government, public safety and transportation entities, such as itself, to hold multiple licenses.¹¹⁰ It argues that in order to disseminate traffic, safety, and other information over a large geographic area, these entities should be able to operate a string of stations along certain roadways. Upon reconsideration, we will allow government, public safety and transportation entities to apply for more than one license without waiting for the expiration of the two year period where no mutually exclusive application is filed in the same window. We agree that government, public safety and transportation agencies have separate and distinct needs from other local organizations that might seek LPFM licenses.¹¹¹ However, we need to

¹⁰⁶ The Commission has maintained that ITFS licensees are not broadcasters for the purposes of regulation. 47 U.S.C. § 153(o).

¹⁰⁷ *Report and Order*, 15 FCC Rcd at 2222, ¶ 39.

¹⁰⁸ These eligible services are defined in Section 309(j)(2)(A) of the Communications Act as “public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that – (i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public.” 47 U.S.C. § 309(j)(2)(A).

¹⁰⁹ NPR argues that the Commission authorized LPFM “travel advisory services” without consideration of the technical and feasibility issues relevant to such a service. NPR Petition at 6. These entities will have to comply with the technical rules applicable to all LPFM licenses; thus, we have no reason to believe this use of the service will cause technical difficulties. As to feasibility issues, we trust that the entities themselves can best determine whether LPFM licenses will serve their needs.

¹¹⁰ NYSTA Petition at 4 and 6 (seeking relaxation of 10-station national cap as well as 2-year 1-station national cap and phase-in caps).

¹¹¹ NYSTA Petition at 7.

balance those needs with our goal of LPFM ownership diversity. We believe that allowing a limited exception to the ownership restrictions for government, public safety and transportation entities where they do not face competing applications strikes the right balance.

80. Thus, we will allow government, public safety and transportation organizations to apply for more than one license, but they must designate a “priority” application among those applications. The “priority” application will undergo the usual selection process as outlined in the *Report and Order* whether or not it encounters mutually exclusive applicants. The other applications they submit will be dismissed if they are mutually exclusive with any other applications but will be eligible for grant in the absence of competing applications.

81. *Schools with Multiple Campuses.* Several schools with multiple campuses sought clarification of the national ownership rules to permit the separate licensing of LPFM stations at several campuses. We believe the LPFM attribution exception should be expanded to cover separate school campuses in most cases, allowing schools to have LPFM stations on separate campuses notwithstanding our national ownership rule.¹¹² For example, if several high schools in an area seek LPFM licenses but are all governed by a local school board, the high schools can assert that they are local chapters of a large organization and can apply for their own licenses. If multiple campuses of the same university apply for LPFM licenses, they too would be considered separate local entities under that exception. The same principle will apply to charter schools that are a part of a larger school system but seek their own licenses.

3. University-Licensed Student-Run LPFM Stations

82. As noted above, in the *Report and Order*, we determined that no broadcaster or other media entity subject to our ownership rules, or any party with an attributable interest in a broadcaster or media entity subject to our ownership rules, could hold an attributable ownership interest in an LPFM licensee.¹¹³ Moreover, we restricted local ownership, allowing an entity to own only one LPFM station in a community.¹¹⁴ Finally, for purposes of our national ownership limits, an entity may own only one LPFM station during the first two years of LPFM service.¹¹⁵

¹¹² This LPFM exception is inapplicable to full service NCE stations, for which there are no national ownership limits. Schools with multiple campuses applying for full service NCE stations are directed to the definition of attribution and the selection standards in 47 C.F.R. § 73.7000 and § 73.7003. *Report and Order*, 15 FCC Rcd at 2225, ¶ 50.

¹¹³ *Id.* at 2217, ¶ 29.

¹¹⁴ *Id.* at 2223, ¶ 44. We use the term “community” to refer to the very small area and population group that makes up a station’s potential service area and audience. *Id.* For purposes of the LPFM local ownership rules, we require that no entity own or have an attributable interest in two or more LPFM stations located within seven miles of each other. *Id.*

¹¹⁵ *Id.* at 2222, ¶ 39. While we will disallow common ownership of LPFM stations for the first two years of LPFM service, we will permit multiple ownership of LPFM stations nationally, up to a maximum of 10 LPFM stations over a phased-in period, to bring into use whatever low power stations remain available but unapplied for. *Id.*

83. Two petitioners ask us to create an exception to these LPFM multiple and cross-ownership rules to allow universities that hold full-power FM radio licenses to obtain LPFM licenses for student-run stations.¹¹⁶ Specifically, petitioners contend that our LPFM ownership rules preclude students from operating a university-licensed LPFM station where the university already holds licenses for radio broadcast stations, including NPR affiliated stations. Petitioners argue that students are not permitted to participate in the operation of these full-power stations and that our LPFM ownership rules deny students the opportunity to operate LPFM stations.¹¹⁷ UCC supports an exception for student organizations cautioning the Commission “to place strict limits on what constitutes a student-run station,” but not to “limit university support for student-run LPFM stations.”¹¹⁸

84. We will allow universities that hold licenses for full-power broadcast stations that are not student-run to apply for LPFM licenses for stations that would be managed and operated on a day-to-day basis by students, provided that they do not face any competing applications. We find that allowing this limited exception to our LPFM ownership rules will promote our goals of maximizing diversity of ownership in a community and providing a medium for new speakers, including students, to gain experience in the broadcast field. Accordingly, if a university’s full-power station does not provide the university’s students with a meaningful opportunity to participate in the management and operation of that station, we will allow the university to apply for a license for a student-run LPFM station on that campus.¹¹⁹ If a license is granted, the station must be managed and operated by students of the university, although as the licensee, the University must retain ultimate control of the station’s operations.

¹¹⁶ Black Petition; *Petition for Reconsideration* of Michael Camarillo, on Behalf of KAMP Student Radio of the University of Arizona (Camarillo Petition).

¹¹⁷ Black argues that because the Board of Regents for the University of Wisconsin holds licenses for campus stations and NPR affiliates at various campuses in the University of Wisconsin system, our ownership rules “disenfranchise” those students who would like to obtain an LPFM license for the Madison campus. Black Petition at 1-2. Black states that the Madison campus has a constituency of more than 40,000 students, and the capability and resources to operate a student-run LPFM station 24 hours per day, seven days per week. *Id.* at 1. Another petitioner, Camarillo, states that KAMP Student Radio is ineligible under our ownership rules for an LPFM license because the “Arizona Board of Regents holds several operating licenses in the state and three of the Board of Regent’s NPR licenses are located at the University of Arizona.” Camarillo Petition at 1. According to Camarillo, the NPR station at the Tucson campus “is not a student-run organization, and students attending the university do not benefit from its operation by being able to express themselves over the station airwaves.” *Id.*

¹¹⁸ UCC Opposition at 8-9.

¹¹⁹ See ¶ 80 (stating that individual campuses of a single university system would be considered a separate local entity under the attribution exception for national or other large organizations). We note that many AM campus radio systems use carrier current technology where the radio signal is carried along electrical power lines. *In the Matter of 1998 Biennial Regulatory Review – Conducted Emissions Limits Below 30 MHz for Equipment Regulated under Parts 15 and 18 of the Commission’s Rules*, ET Docket No. 98-80, *Notice of Inquiry*, FCC 98-102, 1998 WL 292826, ¶ 5 (June 8, 1998); 47 C.F.R. § 15.3(f). The exception we are creating today to our ownership rules applies where the university already holds a license for a full-power broadcast station that does not provide students with the opportunity to manage and operate the station. We will not consider campus carrier current systems in determining whether to grant an LPFM license under this exception because those systems are neither broadcasters nor other media entities subject to our ownership rules.

However, in those cases where a university already holds an attributable interest in a broadcast station, its LPFM application will be eligible for grant only if it does not face competing applications. If the university is a licensee and its LPFM application faces a competing application, the university's LPFM application will be dismissed.¹²⁰ We believe this exception properly balances the interests of local groups in acquiring a first broadcast facility and of university licensees that desire to provide a distinct media outlet for students.

4. Time Periods for the Community-Based Requirement and for the National Ownership Cap

85. In the *Report and Order*, the Commission established a two-year time period during which only local, community-based applicants are eligible, and an entity can only own one station nationwide. UCC asks that we extend both of these time periods in order to give more local groups enough time to organize and submit their applications.¹²¹

86. We deny UCC's request that we extend the two-year time periods for the community-based requirement and the national cap. We considered UCC's concerns when we adopted the *Report and Order* and concluded that we struck an appropriate balance between the interests of local groups and the interest in insuring that the service is used fully.

87. When deciding on the two-year time period for the community-based requirement, we weighed our interest in putting LPFM stations into the hands of local and diverse entities against our interest in ensuring that available spectrum does not go unused. As noted above, we have adopted a staggered filing window approach for accepting LPFM applications based on geographic region. We clarify that the two-year period for the community-based requirement for each jurisdiction starts on the date of the filing window for that jurisdiction. Therefore, in Alaska, California, District of Columbia, Georgia, Indiana, Louisiana, Maine, Mariana Islands, Maryland, Oklahoma, Rhode Island and Utah, for which we opened a filing window on May 30, 2000, the two-year period began running on that date. In the remainder of the jurisdictions, in which LPFM filing windows have not yet opened, the two-year period has not yet begun to run. Thus, applicants in these jurisdictions that have not yet had a filing window will have additional time to organize and prepare their applications. Amherst argues that it will take longer than two years for groups to organize themselves and apply for licenses. We believe that the simplified application process we created for LPFM will ameliorate this concern.

88. With regard to the two-year time period for the national ownership cap, UCC argues that national entities do not have the "experience and connections with a tiny 3 or 7 mile area of a

¹²⁰ We note that our decision is based on petitioners' request that the university be able to hold the student-run LPFM license. Black argues that the university must hold the license to provide the students with the "oversight, continuity, and institutional support they need." Black Petition at 1. Specifically, Black asserts that the university must be able to insure the station and provide students with needed legal advice. *Id.* While this exception applies to the situation where a university holds a license for a full-power broadcast station that does not provide students with the opportunity to manage and operate the station, we note that students or student organizations may apply for an LPFM license that is not associated with the university.

¹²¹ UCC Petition at 4.

neighborhood necessary to serve that neighborhood.”¹²² They seem to be arguing against allowing national entities to hold licenses at all, rather than arguing against the two-year time period for the national ownership cap. Amherst’s arguments do not convince us that our decision to maintain a two-year time period was imprudently made.

5. Foreign Ownership and Non-Stock Entities

89. Questions have arisen with respect to the application of statutory foreign ownership requirements to LPFM applicants and licensees. As we explained in the *Notice*,¹²³ all low-power facilities will be subject to the statutory requirements of Section 310(b) of the Act, which limits foreign ownership and voting interests in radio station licenses, including broadcast licenses.¹²⁴ Sections 310(b)(1) and (b)(2) prohibit the grant of a license to a foreign government or a representative of a foreign government; an alien or representative of an alien; or a corporation organized under the laws of a foreign government.¹²⁵ While foreign parties may act as officers or directors of corporate licensees,¹²⁶ Section 310(b)(3) prohibits foreign entities from owning or voting more than 20 percent of the capital stock of a broadcast licensee.¹²⁷ Section 310(b)(4), which limits foreign ownership in parent corporations, allows us to deny a license application, upon a determination that denial is in the public interest, where more than 25 percent of the parent corporation’s capital stock is owned or voted by foreign entities.¹²⁸ The Commission has determined that Section 310(b) applies not only to corporate interests, but also to partnership and other non-corporate interests.¹²⁹ Thus, we will apply our foreign

¹²² Amherst Petition at 5.

¹²³ *Notice of Proposed Rule Making*, 14 FCC Rcd at 2496-97.

¹²⁴ 47 U.S.C. § 310(b). Section 310(b) also limits foreign ownership in common carrier, aeronautical en route and aeronautical fixed radio station licenses. *Id.*

¹²⁵ 47 U.S.C. § 310(b)(1) and (2).

¹²⁶ Telecommunications Act of 1996, Pub. L. No. 104-104, § 403(k), 110 Stat. 56 (1996); *In the Matter of Amendment of Parts 20, 21, 22, 24, 26, 80, 87, 90, 100, and 101 of the Commission’s Rules to Implement Section 403(k) of the Telecommunications Act of 1996, Order*, 11 FCC Rcd 13072 (1996) (*Citizenship Requirements Order*). Prior to enactment of the Telecommunications Act of 1996, Section 310(b)(3) precluded a license from being granted to a corporation with any foreign officers or directors, and Section 310(b)(4) provided that the Commission could deny an application or revoke a license where any officer of the parent corporation is a foreign party. *Citizenship Requirements Order*, 11 FCC Rcd at 13073, ¶ 2.

¹²⁷ 47 U.S.C. § 310(b)(3). If either the foreign ownership or voting interest in an applicant or licensee exceeds the 20 percent benchmark, we are required by law to revoke the license or refuse to grant the license application. In the Matter of Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended, *Declaratory Ruling*, 103 F.C.C. 2d 511, 517-18, ¶ 12 & n.33, 520, ¶ 16 (1983) (*Wilner and Scheiner I*), clarified upon reconsideration, 1 FCC Rcd 12 (1986).

¹²⁸ 47 U.S.C. § 310(b)(4).

¹²⁹ See *Wilner and Scheiner I*, 103 F.C.C. 2d at 514-15, ¶ 7, 516, ¶ 10 (stating that the Commission has applied the strictures of Section 310(b) to a variety of non-corporate entities, including unincorporated associations and partnerships).

ownership rules and policies on a case-by-case basis to all entities that are LPFM applicants and licensees, guided by Commission precedent.

90. We recognize that many entities that will hold LPFM licenses will be non-stock corporations or other non-stock entities,¹³⁰ and that non-stock entities do not have “owners” in the traditional sense. As the Commission has explained, the specific citizenship requirements of Section 310(b) reflect a deliberate judgment on the part of Congress to prevent undue foreign influence in broadcasting.¹³¹ Thus, for the purpose of determining whether a non-stock LPFM applicant or licensee complies with the statutory foreign ownership requirements, we will first consider the citizenship of those individuals who would have the ability, comparable to that of a traditional owner, to influence or control the licensee. In making these determinations we will be guided by Commission precedent.

91. An applicant or licensee must directly inform us that an ownership structure may or does in fact exceed the foreign ownership benchmarks in Section 310(b) of the Act.

6. Minority Broadcast Training Institutions

92. Minority Media and Telecommunications Council (MMTC) filed a supplementary pleading contending that the Commission should award the first LPFM licenses exclusively to minority broadcast training institutions (MBTIs). MMTC argues that such a provision is necessary to ensure that MBTIs receive licenses wherever they are available in order to assist them in their mission of educating minorities in broadcasting, to prevent discrimination, to remedy past discrimination and its consequences, and to promote diversity.¹³² We decline to grant MMTC’s proposal. First, we do not believe it is necessary to grant MBTIs the right to receive the first wave of LPFM licenses in order to provide them a significant opportunity to participate in LPFM. Although MMTC argues that the chances of MBTIs winning many licenses are remote, it concedes that they would likely be able to earn points under our selection criteria for mutually exclusive applications.¹³³ Thus, as long as MBTIs agree to time-share or, as a last resort, accept a shorter license term as part of a group, they will be likely to be granted a license under the tie-breaker procedures.¹³⁴

93. Second, although we agree that providing minority broadcast education would be a valuable use of the LPFM service, it is not the only valuable use. We believe our current eligibility rules will lead to the ownership of LPFM stations by a wide variety of groups, which will best promote our goals in this proceeding.

¹³⁰ *Report and Order*, 15 FCC Rcd at 2224, ¶ 49.

¹³¹ *Wilner and Scheiner I*, 103 F.C.C. 2d at 517, ¶ 11.

¹³² MMTC later supplemented its pleading with an ex parte letter suggesting that all educational institutions be granted an additional point in the point system for resolving mutually exclusive applications. We consider this issue below in the section on the point system

¹³³ MMTC Petition at 9.

¹³⁴ MMTC argues that time-sharing is impractical for these institutions, but we believe the value of allowing more voices on the air outweighs any procedural hurdles MBTIs must overcome to time-share.

94. Finally, notwithstanding MMTC's argument that *Adarand Constructors v. Pena*¹³⁵ would not apply to their proposal, we believe the legal issues underlying the proposal would pose a risk of delaying the introduction of LPFM service to the public. As we stated in the *Report and Order* in response to requests for preferences for entities controlled by minorities, the Commission is conducting fact-finding studies as to whether such preferences may be justified consistent with *Adarand*.¹³⁶ Depending on the outcome of these studies, as well as our experience with LPFM, we will consider in the future whether to adjust our rules to facilitate participation of more minority-oriented organizations in the service.

7. Unlicensed Broadcasters

95. In the *Report and Order*, we determined that unauthorized broadcasters would not be eligible for LPFM licenses unless they could certify that they (1) promptly ceased operation when directed by the Commission to do so if that direction was received prior to February 26, 1999, or (2) voluntarily ceased operation by February 26, 1999 (within 10 days of the publication of the *Notice* in the *Federal Register*.)¹³⁷ In no event will an unlicensed broadcaster be eligible for an LPFM license if it continued illegally broadcasting after February 26, 1999.¹³⁸ Don Schellhardt requests that we allow unlicensed broadcasters to apply for LPFM licenses if: (1) the unauthorized broadcaster challenged the legality of an FCC order to cease operations and/or sought an injunction to bar the FCC from enforcing such an Order, and (2) the court "allowed" the unlicensed broadcaster to continue operating while the legal challenge was pending.¹³⁹

96. We reject Schellhardt's request. As discussed in the *Report and Order*, our rule on unlicensed broadcasters was based on our concern that past illegal broadcast operations reflect on the entity's proclivity to deal truthfully with the Commission and to comply with our rules and policies. We continue to believe that a party that continued to operate in contravention of an FCC direction to cease operations should not be eligible to apply for an LPFM license. Such a party should have ceased its illegal broadcast while pursuing any legal challenge to a Commission order.¹⁴⁰ Any party ignoring our order has demonstrated an unwillingness to comply with the Commission's rules and thus should not be rewarded with an LPFM license. For the same reasons, we reject Schellhardt's request that those who flagrantly violated a Commission order to cease operating and "continued to broadcast while in hiding"

¹³⁵ 515 U.S. 200 (1995).

¹³⁶ *Report and Order*, 15 FCC Rcd at 2262, ¶ 146.

¹³⁷ *Report and Order*, 15 FCC Rcd at 2225-27, ¶¶ 51-55.

¹³⁸ We have modified Rule 73.854 to make clear that no unlicensed broadcaster that continued to broadcast after February 26, 1999 will be eligible for an LPFM license.

¹³⁹ Schellhardt Petition at 1-2.

¹⁴⁰ We are not aware of any circumstances in which a court has ordered a stay of an FCC order to cease illegal broadcast operations.

or after losing a court challenge be eligible for “probationary licenses.”¹⁴¹

F. Point System For Resolving Mutually Exclusive Applications

97. In the *Report and Order*, the Commission created a point system to determine selection among mutually exclusive applications. The point system includes three selection criteria: (1) established community presence; (2) proposed operating hours; and (3) local program origination. The system will employ voluntary time-sharing as an initial tie-breaker; that is, tied applicants will have an opportunity to aggregate points by submitting time-share proposals. Successive license terms will be used as a final tie-breaker.

98. Kenneth Bowles seeks clarification of the local program origination point language.¹⁴² Under the point system, applicants that pledge to originate locally at least eight hours of programming per day will be assigned one point.¹⁴³ In the *Report and Order* we defined local origination as the production of programming within 10 miles of the proposed transmitting antenna.¹⁴⁴ Bowles argues that this point should be broadened to include programming that “covers local persons and/or their activities and/or local issues.”¹⁴⁵ We agree with Bowles that our definition of locally originated programming should be clarified, but we find Bowles’ preferred substitute to be too broad and difficult to enforce. In the *Report and Order*, we explained that the local origination criteria

derives from the service requirements for full-service broadcast stations, which are required to maintain the capacity to originate programming from their main studios. LPFM licensees will not be subject to main studio requirements, and will have discretion to determine the origination point of their programming. As a comparative selection factor, local program origination can advance the Commission’s policy goal of addressing unmet needs for community-oriented radio broadcasting. In this regard, we believe that an applicant’s intent to provide locally-originated programming is a reasonable gauge of whether the LPFM station will function as an outlet for community self-expression.¹⁴⁶

We believe that these goals will be better served by defining local program origination as the production of programming *by the licensee* within 10 miles of the proposed transmitting site. The intent behind awarding a point for pledges to provide such programming is to encourage licensees to maintain production facilities and a meaningful staff presence within the community served by the station. We clarify that this rule does not necessarily preclude an applicant from claiming a point for local origination

¹⁴¹ Schelhardt Petition at 6.

¹⁴² Bowles Petition at 3.

¹⁴³ *Report and Order*, 15 FCC Rcd at 2261, ¶ 144.

¹⁴⁴ *Id.*

¹⁴⁵ Bowles Petition at 3.

¹⁴⁶ *Report and Order* at ¶144.

based on coverage of a high school away game played more than ten miles away (an example Bowles provided), so long as the production involves facilities located within a 10-mile radius of the antenna. By focusing on who is producing the programming and where, the rule does not require the Commission to evaluate the content of the station's broadcasts to determine their local nature, as Bowles' proposal would.

99. Black seeks reconsideration of the voluntary time-sharing tie-breaker, alleging that the point skews LPFM allocation against stations that could provide 24-hour-per-day programming.¹⁴⁷ We understand that an applicant will have the incentive to propose time-sharing even if it could provide full-day programming in order to maximize its points and increase the likelihood it will be selected. Although this may result in the loss of some valuable programming from a particular source, it will be replaced by programming from a different source. We believe that the benefit of bringing more voices to the radio service outweighs any disadvantages of the time-sharing approach.

100. MMTC argues that all educational institutions should be awarded an extra point in order to ensure that the first wave of LPFM licensees is "seeded" by stable, enduring enterprises that will promote the success and spectrum integrity of the FM service.¹⁴⁸ We will not change the point system to award a greater preference to educational institutions. Educational institutions generally enjoy the ability to achieve the highest comparative advantage available, due to their longevity, community presence, resources, and ability to provide significant amounts of programming and locally-originated programming. They are not, however, the only institutions with such merits. In most cases educational institutions will be able to receive licenses as long as they are willing to time-share.¹⁴⁹ Although some schools might be reluctant to time-share or have to overcome certain internal procedural hurdles to do so, as MMTC argues, the same could probably be said of many other community institutions. Operating on a less than full-time basis would not necessarily significantly diminish their ability to contribute to the community, or, in the case of MBTIs, to train a significant number of broadcast professionals. Moreover, as discussed above, the time-sharing incentives will increase access by more members of the community to the airwaves.

G. Other Issues

101. *Public File and Ownership Reporting.* We deny a request by UCC that we impose public file and ownership reporting requirements on LPFM licensees.¹⁵⁰ As a general matter, we agree with UCC's assertion that these are important sources of citizen information about a station's programming,

¹⁴⁷ Black Petition at 1.

¹⁴⁸ MMTC raises this proposal in its "Suggestion for a Compromise Resolution of the Issues Raised in the Petition to Correct Inadvertent Omission," filed on May 17, 2000. Although this letter was filed after the comment deadline, we are considering it here because it raises a significant issue and no party is prejudiced by our consideration.

¹⁴⁹ Given that most schools would be able to achieve the full three points, giving them an extra point would virtually be tantamount to giving them an absolute preference.

¹⁵⁰ See UCC Petition.

ownership, and compliance with Commission rules.¹⁵¹ As we have already stated in the *Report and Order*, however, these requirements would impose a burden that is out of proportion to the small noncommercial nature of the stations. We also continue to believe that the community-oriented nature of the stations' service further reduces the justification for such requirements. We are not swayed by UCC's argument that nonlocal entities, which may hold LPFM licenses after the initial two years of licensing, will not have an incentive to be responsive to their communities. The unknown extent of such nonlocal ownership and the nature of resulting operations do not warrant the imposition of a disproportionate burden on all LPFM licensees at this time.

102. *Low Power Advisory Committee.* We will not establish a low power advisory committee as suggested by the Amherst Alliance.¹⁵² LPFM broadcasters and other interested parties are free, of course, to form a private organization to promote LPFM, support and assist its members and their operations, and address technical issues with each other and, where appropriate, raise them with the Commission. Amherst Alliance has not raised a compelling reason, however, for governmental institution of such an organization at this time.

103. *Automatic Program Review.* We will not establish an "automatic program review" as also urged by the Amherst Alliance.¹⁵³ It is possible that, in time, our experience with LPFM, as with any new service, will lead us to consider changes in our rules to enhance the quality of the radio service the public receives. Amherst specifically suggests that we plan to revisit our determinations to require 2nd adjacent channel separations, to require "buffer zones" in our channel separations, and to reject low power AM service.¹⁵⁴ They also suggest we consider authorizing 250 watt service in small cities and rural areas, and adjusting wattage ceilings in some urban environments.¹⁵⁵ Although we are open to proposing, or considering proposals, to revise our rules after we have had experience with the service, we do not find it necessary to commit now to a review in the future.

104. *Transfers of Control – Nonstock Entities.* In the *Report and Order*, we established that LPFM licenses (and licensees) cannot be sold or transferred to another entity. We will here clarify, in response to Colorado Christian University's Petition for Reconsideration, that the gradual change of a governing board or membership body to the point that a majority of its members are new since the authorization was granted will not, by itself, constitute a prohibited transfer of control. This policy is consistent with the Commission's practice in responding to these gradual changes in nonstock entities when they occur for full-power NCE licensees.¹⁵⁶

¹⁵¹ *Report and Order*, 15 FCC Rcd at 2277, ¶ 185.

¹⁵² Amherst Petition at 2.

¹⁵³ Amherst Petition at 4.

¹⁵⁴ Amherst Petition at 2-6.

¹⁵⁵ Amherst Petition at 6.

¹⁵⁶ *See Notice of Inquiry*, MM Docket No. 89-77 (Transfers of Control of Certain Licensed Non-Stock Entities), 4 FCC Rcd 3403 (1989).

105. *Regulatory Flexibility*. As required by the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, a Supplemental Final Regulatory Flexibility Analysis has been completed and is attached as Appendix B hereto.

III. CONCLUSION

106. In this *Memorandum Opinion and Order*, we generally affirm the decisions we reached in the *Report and Order*. We do, however, clarify certain rules to provide better guidance to the public, and make minor revisions to improve our procedures and the quality of the LPFM service, and to protect stations operating radio reading services, while at the same time preserving the quality of full power FM service. We also establish a process to ensure prompt resolution of certain interference problems in the unlikely event they occur.

IV. PROCEDURAL MATTERS AND ORDERING CLAUSES

107. Authority for issuance of this *Memorandum Opinion and Order* is contained in Sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 403, and 405.

108. The actions taken in this *Memorandum Opinion and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose no new or modified reporting and record-keeping requirements or burdens on the public.

109. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Memorandum Opinion and Order* including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

110. Accordingly, IT IS ORDERED that the petitions for reconsideration or clarification listed in Appendix E ARE GRANTED to the extent provided herein and otherwise ARE DENIED pursuant to Sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 403, and 405, and Section 1.429(i) of the Commission's rules, 47 C.F.R. § 1.429(i).

111. IT IS FURTHER ORDERED that the Motion of The Amherst Alliance *et al.* for a Decision on the Motion for Reconsideration of the Amherst Alliance filed June 5, 2000, and the Motion of Don Shellhardt *et al.* for a Decision on the Motion for Reconsideration of Don Shellhardt filed June 5, 2000, are to the extent provided herein DISMISSED as untimely and moot pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 403, and 405, and Sections 1.429(d) and (i) of the Commission's rules, 47 C.F.R. § 1.429(d) and (i).

112. IT IS FURTHER ORDERED that the Commission's rules ARE AMENDED as set forth in Appendix A. IT IS FURTHER ORDERED that the provisions of this *Memorandum Opinion and Order* and the Commission's rules, as amended in Appendix A, SHALL BECOME EFFECTIVE 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Magalie Roman Salas". The signature is written in a cursive style with a large initial "M".

Magalie Roman Salas

Secretary

Appendix A**Low Power FM Service Rule Modifications**

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

Part 73 – Radio Broadcast Services

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336

2. Section 73.209 is modified as follows

§ 73.209 Protection from interference.

* * * * *

(c) Permittees and licensees of FM stations are not protected from interference which may be caused by the grant of a new LPFM station or of authority to modify an existing LPFM station, except as provided in Subpart G of this Part.

3. Section 73.514 is modified, as follows

§ 73.514 Protection from interference.

Permittees and licensees of NCE FM stations are not protected from interference which may be caused by the grant of a new LPFM station or of authority to modify an existing LPFM station, except as provided in Subpart G of this Part.

4. Section 73.807 is modified as follows:

§73.807 Minimum distance separation between stations.

Minimum separation requirements for LP100 and LP10 stations, as defined in Section 73.811 and Section 73.853 of this Part, are listed in the following subsections. An LPFM station will not be authorized unless these separations are met. Minimum distances for co-channel and first-adjacent channel are separated into two columns. The left-hand column lists the required minimum separation to protect other stations and the right-hand column lists (for informational purposes only) the minimum distance necessary for the LPFM station to receive no interference from other stations assumed to operating at the maximum permitted facilities for the station class. For second-adjacent channels and IF channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

(a)(1) An LP100 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP100 stations, authorized LP100 stations, LP100 station applications that were timely-filed within a previous window, and vacant FM allotments. LP100 stations are not required to protect LP10 stations. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations.

Station Class Protected by LP100	Co-channel Minimum Separation (km)	First-adjacent Channel Minimum Separation (km)	Second-adjacent Channel Minimum Separation (km)	I.F. Channel minimum separations
	For No Interference Received From Max. Class Facility Required	For No Interference Received From Max. Class Facility Required	Required	10.6 or 10.8 MHz

LP100	24	24	14	14	None	None
D	24	24	13	13	6	3
A	67	92	56	56	29	6
B1	87	119	74	74	46	9
B	112	143	97	97	67	12
C3	78	119	67	67	40	9
C2	91	143	80	84	53	12
C1	111	178	100	111	73	20
C	130	203	120	142	93	28

(a)(2) LP100 stations must satisfy the second-adjacent channel minimum distance separation requirements of subsection (a)(1) with respect to any third-adjacent channel FM station that, as of September 20, 2000 (the adoption date of this *Memorandum Opinion and Order*) broadcasts a radio reading service via a subcarrier frequency.

(b)(1) An LP10 station will not be authorized unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP10 stations, vacant FM allotments, or LPFM stations.

Station Class Protected by LP10	Co-channel Minimum Separation (km)	First-adjacent Channel Minimum Separation (km)	Second-adjacent Channel Minimum Separation (km)	I.F. Channel minimum separations
	For No Interference Received From Max. Class Facility Required	For No Interference Received From Max. Class Facility Required	Required	10.6 or 10.8 MHz

LP100	16	22	10	11	None	None
LP10	13	13	8	8	None	None
D	16	21	10	11	6	2
A	59	90	53	53	29	5
B1	77	117	70	70	45	8
B	99	141	91	91	66	11
C3	69	117	64	64	39	8
C2	82	141	77	81	52	11
C1	103	175	97	108	73	18
C	122	201	116	140	92	26

(b)(2) LP10 stations must satisfy the second-adjacent channel minimum distance separation requirements of subsection (b)(1) with respect to any third-adjacent channel FM station that, as of September 20, 2000 (the adoption date of this *Memorandum Opinion and Order*) broadcasts a radio reading service via a subcarrier frequency.

(c) In addition to meeting or exceeding the minimum separations for Class LP100 and Class LP10 stations in subsections (a) and (b) of this rule section above, new LP100 and LP10 stations will not be authorized in Puerto Rico or the Virgin Islands unless the minimum distance separations in the following tables are met with respect to authorized or proposed FM stations:

(1) LP100 stations in Puerto Rico and the Virgin Islands:

Station Class Protected by LP100	Co-channel Minimum Separation (km)		First-adjacent Channel Minimum Separation (km)		Second-adjacent Channel Minimum Separation (km)	I.F. Channel minimum separations 10.6 or 10.8 MHz
	Required	For No Interference Received From Max. Class Facility	Required	For No Interference Received From Max. Class Facility	Required	
A	80	111	70	70	42	9
B1	95	128	82	82	53	11
B	138	179	123	123	92	19

(2) LP10 stations in Puerto Rico and the Virgin Islands:

Station Class Protected by LP10	Co-channel Minimum Separation (km)		First-adjacent Channel Minimum Separation (km)		Second-adjacent Channel Minimum Separation (km)	I.F. Channel minimum separations 10.6 or 10.8 MHz
	Required	For No Interference Received From Max. Class Facility	Required	For No Interference Received From Max. Class Facility	Required	

A	72	108	66	66	42	8
B1	84	125	78	78	53	9
B	126	177	118	118	92	18

Note: Minimum distance separations towards “grandfathered” superpowered Reserved Band stations, subsections (a), (b), and (c) above :

Full service FM stations operating within the reserved band (Channels 201-220) with facilities in excess of those permitted in § 73.211(b)(1) or § 73.211(b)(3) shall be protected by LPFM stations in accordance with the minimum distance separations for the nearest class as determined under § 73.211. For example, a Class B1 station operating with facilities that result in a 60 dBu contour that exceeds 39 kilometers but is less than 52 kilometers would be protected by the Class B minimum distance separations. Class D stations with 60 dBu contours that exceed 5 kilometers will be protected by the Class A minimum distance separations. Class B stations with 60 dBu contours that exceed 52 kilometers will be protected as Class C1 or Class C stations depending upon the distance to the 60 dBu contour. No stations will be protected beyond Class C separations.

(d) *****

(e) *****

(f) *****

(g) *International considerations within the border zones*

- (1) Within 320 km of the Canadian border, LP100 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian Station Class	Co-channel (km)	First-Adjacent Channel (km)	Second-Adjacent Channel (km)	Third-Adjacent Channel (km)	Intermediate Frequency (IF) Channel (km)
A1 & Low Power	45	30	21	20	4
A	66	50	41	40	7
B1	78	62	53	52	9
B	92	76	68	66	12
C1	113	98	89	88	19
C	124	108	99	98	28

- (2) Within 320 km of the Mexican border, LP100 stations must meet the following separations with respect to any Mexican stations:

Mexican Station Class	Co-channel (km)	First-Adjacent Channel (km)	Second- /Third-Adjacent Channel (km)	Intermediate Frequency (IF) Channel (km)
Low Power	27	17	9	3
A	43	32	25	5
AA	47	36	29	6
B1	67	54	45	8
B	91	76	66	11
C1	91	80	73	19
C	110	100	92	27

- (3) Within 320 km of the Canadian border, LP10 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian Station Class	Co-channel (km)	First-Adjacent Channel (km)	Second-Adjacent Channel (km)	Third-Adjacent Channel (km)	Intermediate Frequency (IF) Channel (km)
A1 & Low Power	33	25	20	19	3
A	53	45	40	39	5
B1	65	57	52	51	8
B	79	71	67	66	11
C1	101	93	88	87	18
C	111	103	98	97	26

- (4) Within 320 km of the Mexican border, LP10 stations must meet the following separations with respect to any Mexican stations:

Mexican Station Class	Co-channel (km)	First-Adjacent Channel (km)	Second- /Third-Adjacent Channel (km)	Intermediate Frequency (IF) Channel (km)
Low Power	19	13	9	2
A	34	29	24	5
AA	39	33	29	5
B1	57	50	45	8
B	79	71	66	11
C1	83	77	73	18
C	102	96	92	26

- (5) *****

(6) The Commission will initiate international coordination of a LPFM proposal even where the above Canadian and Mexican spacing tables are met, if it appears that such coordination is necessary to maintain compliance with international agreements.

5. Section 73.809 is modified as follows:

§ 73.809 Interference protection to full service FM stations.

(a) It shall be the responsibility of the licensee of an LPFM station to correct at its expense any condition of interference to the direct reception of the signal of any subsequently authorized commercial or NCE FM station that operates on the same channel, first-adjacent channel, second-adjacent channel or intermediate frequency (IF) channels as the LPFM station, where interference is predicted to occur and actually occurs within (1) the 3.16 mV/m (70 dBu) contour of such stations; (2) the community of license of a commercial FM station; or (3) any area of the community of license of an NCE FM station that is predicted to receive at least a 1 mV/m (60 dBu) signal. Predicted interference shall be calculated in accordance with the ratios set forth in Section 73.215(a)(1) and (2) of this Part. Intermediate Frequency (IF) channel interference overlap will be determined based upon overlap of the 91 dBu F(50,50) contours of the FM and LPFM stations. Actual interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the LPFM station.

(b) An LPFM station will be provided an opportunity to demonstrate in connection with the processing of the commercial or NCE FM application that interference as described in subsection (a) is unlikely. If the LPFM station fails to so demonstrate, it will be required to cease operations upon the commencement of program tests by the commercial or NCE FM station.

(c) Complaints of actual interference by an LPFM station subject to subsections (a) and (b) must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations within twenty-four hours of the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. An LPFM station may only resume operations at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility for the complaint.

(d) *****

(e) *****

12. A new Section 73.810 is added as follows:

§ 73.810. Third Adjacent Channel Complaint and License Modification Procedure.

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- (a) An LPFM station is required to provide copies of all complaints alleging that the signal of such LPFM station is interfering with or impairing the reception of the signal of a full power station to such affected full power station.
- (b) A full power station shall review all complaints it receives, either directly or indirectly, from listeners regarding alleged interference caused by the operations of an LPFM station. Such full power station shall also identify those that qualify as *bona fide* complaints under this section and promptly provide such LPFM station with copies of all *bona fide* complaints. A *bona fide* complaint:
- (i) is a complaint alleging third adjacent channel interference caused by an LPFM station that has its transmitter site located within the predicted 60 dBu contour of the affected full power station as such contour existed as of the date the LPFM station construction permit was granted;
 - (ii) must be in the form of an affidavit, and state the nature and location of the alleged interference;
 - (iii) must involve a fixed receiver located within the 60 dBu contour of the affected full power station and not more than one kilometer from the LPFM transmitter site; and
 - (iv) must be received by either the LPFM or full power station within one year of the date on which the LPFM station commenced broadcasts with its currently authorized facilities.
- (c) An LPFM station will be given a reasonable opportunity to resolve all interference complaints. A complaint will be considered resolved where the complainant does not reasonably cooperate with an LPFM station's remedial efforts.
- (d) In the event that the number of unresolved complaints plus the number of complaints for which the source of interference remains in dispute equals at least one percent of the households within one kilometer of the LPFM transmitter site or thirty households, whichever is less, the LPFM and full power stations must cooperate in an "on-off" test to determine whether the interference is traceable to the LPFM station.
- (e) If the number of unresolved and disputed complaints exceeds the numeric threshold specified in subsection (d) following an "on-off" test, the full power station may request that the Commission initiate a proceeding to consider whether the LPFM station license should be modified or cancelled, which will be completed by the Commission within 90 days. Parties may seek extensions of the 90 day deadline consistent with Commission rules.
- (f) An LPFM station may stay any procedures initiated pursuant to subsection (e) by voluntarily ceasing operations and filing an application for facility modification within twenty days of the commencement of such procedures.

Section 73.816 is modified as follows:

§ 73.816 Antennas.

- a) Permittees and licensees may employ nondirectional antennas with horizontal only polarization, vertical only polarization, circular polarization or elliptical polarization.

- b) Directional antennas will not be authorized and may not be utilized in the LPFM service, except as provided in subsection (c) of this section.
- c) Public safety and transportation permittees and licensees, eligible pursuant to § 73.853(a)(ii) of this part, may utilize directional antennas in connection with the operation of a Travelers' Information Service (TIS) provided each LPFM TIS station utilizes only a single antenna with standard pattern characteristics that are predetermined by the manufacturer. In no event may composite antennas (i.e. antennas that consist of multiple stacked and/or phased discrete transmitting antennas) and/or transmitters be employed.
- d) LPFM TIS stations will be authorized as nondirectional stations. The use of a directional antenna as provided for in subsection (c) will not be considered in the determination of compliance with any requirements of this part.

Section 73.825 is modified as follows:

§73.825 Protection to Reception of TV Channel 6

- (a) LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances in the following table are met with respect to all full power TV Channel 6 stations.

FM Channel Number	Class LP100 to TV Channel 6 (km)	Class LP10 to TV Channel 6 (km)
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