

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Parts 73 and 74 of the) RM-11909
Commission's Rules to Create a Second)
Class of Service for Low Power FM)
Broadcast Stations)

Opposition to Petition for Rulemaking

I. Introduction and Summary

The National Association of Broadcasters (NAB)¹ submits this opposition to the most recent request by low power FM (LPFM) radio advocates for the creation of a new class of 250-watt LPFM service (LP250).² The above-captioned Petition for Rulemaking is at least the fifth or sixth bid, and third by REC Networks, to allow LPFM stations to more than double their maximum allowed power.³ The Commission has repeatedly rejected all such proposals on both technical and policy grounds, and the Petition at hand fails to present any new information or circumstances, especially that justifies such a radical change. Although REC claims to have addressed the FCC's objections to earlier requests,⁴ the Petition does no such thing. Even under REC's latest approach, authorizing LP250 service will: (1) risk

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² Petition for Rulemaking, *Amendment of Parts 73 and 74 of the Commission's Rules to Create a Second Class of Service for Low Power FM Broadcast Stations*, REC Networks, RM-11909 (May 28, 2020) (Petition).

³ Motion for Reconsideration, The Amherst Alliance, MB Docket No. 99-25 (Feb. 25, 2000); Petition for Reconsideration, Let the Cities In!, MB Docket No. 99-25 (Dec. 28, 2012); Petition for Rulemaking, Don Schellhardt et al., MB PRM13MB (Apr. 20, 2015); Petition for Rulemaking, REC Networks, RM-11749 (May 18, 2015); Petition for Rulemaking, REC Networks, RM-11810 (June 13, 2018); Petition for Reconsideration, Todd Urick et al., MB Docket Nos. 19-193 and 17-105 (July 13, 2020).

⁴ Petition at 24.

significant over-crowding of the already congested the FM band; (2) impede other radio services at a critical time when local FM broadcasters are still recovering from the devastating economic impacts of the COVID-19 pandemic; and (3) violate the intent of both Congress and the Commission for LPFM service by altering the fundamental hyper-local, simple nature of the service. Moreover, it is simply unnecessary: the FCC has already bent over backwards to improve LPFM service coverage by permitting the use of translators, boosters and other measures. Essentially, LPFM advocates are asking that LPFM stations be permitted to enjoy the same (or even greater) coverage as full-service Part 73 FM stations, but without the same public interest and regulatory obligations. Such an obvious end-run around the Commission's rules would set a dangerous precedent. Accordingly, NAB respectfully requests that the FCC dismiss REC's Petition.

II. Authorizing LP250 Service Would Result in Harmful Congestion of the Already Crowded FM Band and Increased Risk of Disruption To Other FM Radio Services

NAB has explained on multiple occasions that permitting LPFM stations to more than double their power from 100 watts to 250 watts will inevitably hinder other FM radio services.⁵ Although REC's latest plea purports to address some of the technical obstacles cited by the FCC in rejecting earlier requests for LP250 service, the Petition still fails to justify a total overhaul of LPFM service. FM broadcasters report that too many LPFM stations already transmit at higher than authorized power or from an unauthorized location, cause frequent interference and hinder translator service, among other problems, under the

⁵ See, e.g., Letter from Larry Walke, NAB, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket Nos. 19- 193 and 17-105, at 1 (Apr. 16, 2020) (NAB April 16 Letter); Opposition to Petition for Reconsideration, NAB, MB Docket Nos. 19-193 and 17-105, at 2 (Sep. 4, 2020).

current 100-watt regime. Allowing LPFMs to substantially increase their power would unnecessarily exacerbate these harms.⁶

REC claims that, under the approach in the Petition, which seeks to preserve the 20 km buffer zone between LPFM and FM stations, the risk of interference to full-service FM stations will be *de minimis*.⁷ However, this ignores several important concerns. First, the Commission should not have any confidence that LPFM stations are willing or able to ensure the technical integrity of the FM band or safeguard the signal quality of FM service. In previous filings, NAB has described a litany of LPFM failures to comply with even the simplest of FCC rules governing their antenna location, non-commercial status and the Emergency Alert System.⁸ More pertinent are the frequent instances of LPFM stations broadcasting at much higher power levels than permitted, including a Florida station that operated at 1,910 watts instead of their authorized 23 watts, a Sacramento station that operated at 209 watts instead of their allowed 86 watts and a station in South Carolina that operated at 300 watts instead of their authorized 50 watts.⁹ It is important to note that in each case, over-power operation was likely due to the LPFM operator making a conscious decision to purchase and/or install a transmitter that is capable of exceeding its maximum authorized power. Further, only a few months ago, the FCC issued a Notice of Violation to an LPFM station in Florida for excessive emissions that were causing potentially dangerous interference to Orlando International Airport aviation frequencies.¹⁰ While the details of that operation are unclear, unapproved transmitting equipment may have been involved. Moreover, this is only a small sample of such violations, and does not include the

⁶ NAB April 16 Letter at 1.

⁷ Petition at 17.

⁸ Comments of NAB, RM-11810, 6-8 (July 20, 2018).

⁹ *Id.* at 7.

¹⁰ *Sucremedia Inc., Licensee of Station WBVL-LP*, Notice of Violation (Mar. 2, 2021).

myriad of situations where full-service broadcasters incur LPFM interference but lack the time or money to lodge an FCC complaint. Although NAB has no qualms with REC's engineering services, there are far too many LPFM stations that have demonstrated a disregard for the FCC's current technical rules. Approving REC's request could very well lead to even more problems, especially in areas where the FM band is already crowded.

Given this history, if REC's proposal is ultimately approved, the FCC at a minimum should create a system for ensuring compliance by LPFM stations. For example, the Enforcement Bureau should conduct regular inspections of a representative sample of LPFM stations to ensure their proper operation.

Second, even under REC's latest iteration, which claims to restrain the ability of some LPFM stations to upgrade,¹¹ the vast majority of the 2,185 LPFM stations nationwide would still be able to more than double power, including in urban and suburban areas.¹² Those able to upgrade to 250 watts under the Petition's approach include more than 84% of LPFM stations in areas with 25,000 or more persons, nearly 67% of stations in areas with 75,000 or more persons, and almost 40% of stations in areas more than 150,000 persons.¹³ These figures include at least seven stations in both Chicago and San Francisco, 12 in Houston and multiple stations in Los Angeles, Boston and other very large markets where the FM

¹¹ Petition at 15.

¹² *Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules Modernization of Media Regulation Initiative*, MB Docket Nos. 19-193 and 17-105, 35 FCC Rcd 4115, 4131 (2020) (2020 LPFM Order) ("REC states that although its latest proposal would benefit fewer LPFM stations than its previous suggestions, the revised proposal could still enable upgrades by a considerable percentage of LPFM stations, primarily those in suburban and rural areas.").

¹³ Petition at Appendix D.

band is already tightly packed,¹⁴ and much higher totals in suburban areas where spectrum demand is likely to grow as populations shift out of cities.¹⁵

The net effect of approving an LP250 service would be further congestion of the already crowded FM band and increased risk of disrupting other FM radio services, forcing more full-service stations to expend limited resources to monitor and combat interference from high-powered LPFM stations. In particular, the proposal will impede the service of FM translators that play a vital role in retransmitting news and information from full-service stations to listeners who may otherwise lack access to an FM service. It would hinder the establishment, modification or relocation of translators in response to shifting audience needs and interests. The risk is particularly concerning for AM broadcasters that rely on translators to remain financially viable or will use translators as a bridge to retain listeners during a conversion to all-digital AM service.¹⁶

NAB further anticipates that some adjacent-channel translators will be newly “swamped” by an LPFM station if REC’s proposal is approved. That is, permitting an LPFM station to increase power 250 watts will cause the coverage of a nearby translator to change from being perhaps half-obstructed by an LPFM station’s signal to completely contained within the LPFM station’s contour, and more troubling, at least one of these instances is expected to occur in one of the largest markets in the country. In addition, some LPFM stations that upgrade to 250 watts will enjoy service coverage that actually exceeds a traditional 250-watt Class A station. NAB fails to see the equity in such an outcome.

¹⁴ *Id.* at Appendix E.

¹⁵ Bryan Walsh, [Americans are Moving Out of Dense, Costly Cities](#), Axios (Oct. 31, 2020).

¹⁶ *All-Digital AM Broadcasting; Revitalization of the AM Radio Service*, Report and Order, MB Docket Nos. 19-311 and 13-249, 35 FCC Rcd 12540, 12547 (2020).

III. The Harms of REC's Proposed LP250 Service Would Aggravate the Devastating Economic Impacts of the Nationwide Pandemic That America's Broadcasters Are Still Experiencing

REC's proposal comes at an inopportune time for America's broadcasters. The COVID-19 pandemic demonstrated the critical importance of radio service during times of emergency. As government officials, hospitals and education systems responded to the evolving situation, America's broadcasters led the way in rapidly and broadly disseminating information and instructions to their audiences, and under difficult conditions. Radio stations had to quickly reconfigure their systems to comply with social distancing guidelines and remote operations, newsgathering and reporting. At the same time, the economic downturn caused by the pandemic severely impacted the radio industry. Advertising dollars which sustain radio are often among the first cuts when businesses contract during downturns. Many radio broadcasters have been forced to furlough or lay off employees, impose salary cuts, or simply turn off service.¹⁷

Cramming more high-powered LPFM stations into the FM band could substantially harm some broadcasters, particularly AM stations that use translators. NAB understands that authorizing LP250 service would allow some LPFM stations to slightly expand the reach of the few LPFM stations that actually provide meaningful local content,¹⁸ but on balance, it is far more important to preserve reliable access to the news and information provided by incumbent radio broadcasters.

¹⁷ Susan Ashworth, [2020 is the Year that Radio Hits a Proverbial Iceberg, Survey Says](#), Radio World (Sep. 30, 2020).

¹⁸ Petition at 7. NAB has previously noted that a significant percentage of LPFM stations are affiliates of one or more national networks and broadcast little local programming. NAB April 16 Letter at 3.

Moreover, the FCC has indicated that another filing window for new entrant LPFM construction permit applications is on the horizon,¹⁹ which may substantially further increase the number of LPFM stations at the expense of incumbent radio services. NAB strongly objects to implementing any measures that would allow LPFM stations to more than double their power before stakeholders can even begin to estimate the universe of stations that might take advantage of such a historic policy change that would directly affect service provided by full-power radio stations and translators.

IV. LP250 Service is Violative of the Hyper-Localized Nature of LPFM Service Under the Local Community Radio Act

Permitting LPFM stations to more than double their power output would fundamentally alter the hyper-local nature of the service and violate the intent of the FCC when establishing LPFM and Congress' understanding of LPFM service when enacting the Local Community Radio Act (LCRA).²⁰ The overarching purpose for creating LPFM service was to fill in gaps in spectrum that would otherwise go unused by full-powered stations, while creating a service "designed to serve very localized communities or underrepresented groups within communities,"²¹ or "small, local groups with particular shared needs and interests."²² The FCC has imposed several regulatory limits to ensure the community-based nature of LPFM service, including a requirement to have an "established community presence."²³ It has also excused LPFM service from many regulatory obligations in order to

¹⁹ [Letter](#) from FCC Chairman Ajit Pai to The Honorable Xochitl Torres Small, U.S. House of Representatives (July 21, 2020).

²⁰ Pub L. No. 111-371, 124 Stat. 4072 (2011).

²¹ *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2208 (2000) (LPFM Report and Order).

²² *Id.* at 2213.

²³ 47 C.F.R. § 73.872(b)(1)

defray the costs and complexity of LPFM operations, such as minimal Emergency Alert System obligations and no requirement to maintain a local public inspection file.

Permitting LPFM stations to more than double their power output and substantially expand their service area would alter the fundamental hyperlocal nature of the service by allowing LPFM stations to expand their geographic coverage by a hundred percent or more and possibly reach hundreds of thousands of additional listeners, many in some of the largest markets in the country. Notwithstanding REC's assertions,²⁴ the proposal is not aimed at rural markets, but instead could essentially transform LPFM service in most large and suburban markets. Doing so would directly contradict the FCC's recent declaration in the 2020 LPFM Order that it is important that LPFM retain its "localized, simple nature."²⁵ Authorizing LP250 service would also undercut the careful balance that Congress struck when enacting the LCRA. Although the Act does not specifically mention the 100-watt maximum power limit for LPFM service, Congress undeniably crafted the requirements for protecting incumbent service from LPFM interference based on a maximum 100-watt LPFM service. That was the ceiling at the time and neither Congress nor the FCC ever implied or contemplated that LPFM stations would soon be permitted to more than double that power output. As REC knows, the LCRA resulted from intense negotiations among all the relevant stakeholders that balanced the interests of noncommercial entities for more licensing of LPFM stations with those of FM services for interference safeguards. Allowing LPFM stations to belatedly double their maximum power would unfairly undermine the compromise that

²⁴ Petition at 6.

²⁵ 2020 LPFM Order, 35 FCC Rcd at 4131. The FCC recently upheld its decision in the 2020 LPFM Order not to authorize LP250 service on reconsideration, refuting claims that the FCC did not sufficiently explain and justify its findings. *Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules*, MB Docket No. 19-193, Order on Reconsideration (adopted June 17, 2021).

stakeholders reached at the time. There are no new facts or circumstances to support such a transformation of LPFM service, other than the LPFM advocates' desire for more coverage without any additional costs or obligations.

V. **Authorizing LP250 Service is Unnecessary**

As noted in the 2020 LPFM Order, the Commission has taken a range of meaningful steps to maximize coverage by LPFM stations. Only last year, the FCC authorized LPFM stations to use two translators, two boosters, or one of each.²⁶ REC itself strongly supported the use of boosters by LPFM operators and predicted significant LPFM interest in their use.²⁷ The FCC also expanded the ability of LPFM stations to use directional antennas to allow any LPFM facility to operate directionally, using either off-the-shelf or custom antennas.²⁸ The FCC found that that directional antennas would provide LPFM operators significant flexibility in certain situations, and that custom directional patterns could help LPFM stations to relocate in areas with many stations and few transmitter sites. Again, REC itself voiced strong support for this increased capability.²⁹ In addition, the FCC redefined the types of LPFM facility changes that qualify as “minor” changes in order to provide LPFM stations more flexibility to relocate their facilities,³⁰ and allowed co-located LPFM stations to share EAS equipment,³¹ although it wisely rejected requests by LPFM advocates to exempt LPFM stations from EAS obligations altogether.³²

²⁶ 2020 LPFM Order, 35 FCC Rcd at 4125.

²⁷ Comments of REC Networks, MB Docket Nos. 19-193 and 17-105, at 52-53 (Oct. 21, 2019) (2019 REC Comments).

²⁸ 2020 LPFM Order, 35 FCC Rcd at 4118.

²⁹ 2019 REC Comments at 52.

³⁰ 2020 LPFM Order, 35 FCC Rcd at 4122.

³¹ *Id.* at 4134.

³² *Id.* at 4133.

LP250 service is also unwarranted because there is nothing to stop an LPFM entity from operating a 250-watt radio station at any time. LPFM stations are always free to apply for a Class A license, just like anyone else, which would allow an LPFM entity to operate with the same effective radiated power as under REC's proposal. When the FCC considered whether to authorize 1000-watt LPFM stations nearly a decade ago, it ultimately declined to do so because it made more sense for such stations to operate on a primary basis governed by the rules applicable to primary full powered stations.³³ Similarly, since an entity can already apply for a 250-watt FM station, there is no reason to create another class of service that is governed by a different set of rules. It seems apparent that LPFM stations would prefer to simply increase their maximum power to 250 watts while retaining LPFM status to avoid the additional public interest and regulatory obligations (e.g., full EAS compliance, maintain a public inspection file) that attach to traditional Class A service.

VI. Conclusion

The FCC has repeatedly rejected requests by REC and other LPFM advocates for the creation of entirely new 250-watt LPFM service. In the 2020 LPFM Order, following REC's submission of this latest proposal, the FCC found "no merit to REC's contention that new circumstances since the Commission last rejected an LPFM power upgrade warrant a different outcome."³⁴ REC offers no new evidence to justify an increase in power maximum for LPFM service. Approving REC's proposal is not only unnecessary, but it would fundamentally alter the intended localized, simple nature of LPFM service that has been important to the success of the service to date.

³³ NPR Comments, MM Docket No. 99-25 (May 7, 2012), at 3-4.

³⁴ 2020 LPFM Order, 35 FCC Rcd at 4131.

Accordingly, NAB respectfully requests that the Commission dismiss the above-captioned Petition for Rulemaking.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430



Rick Kaplan
Larry Walke

June 21, 2021

CERTIFICATE OF SERVICE

Pursuant to 47 C.F.R. § 1.405(a), I, Larry Walke, do hereby certify that a copy of this Opposition to Petition for Rulemaking in RM-11909 was served, this 21st day of June 2021, to the following:

VIA U.S. MAIL

Michelle Bradley
11541 Riverton Wharf Rd
Mardela Springs, MD 21837

A handwritten signature in black ink, appearing to read "Larry A. Walke".

Larry Walke