

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**OPPOSITION OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ submits this opposition to a Petition for Reconsideration filed in the above-captioned proceeding,² in which the Petitioner asks the Commission to reconsider its decisions in the LPFM Order not to create a new class of 50 watt low power FM (“LPFM”) stations and to eliminate the class of LP10 stations.³ As discussed below, the Petition offers no basis for the Commission to alter its earlier decisions, and therefore should be denied.

In the LPFM Order, the Commission rejected calls for a new class of “LP50” stations because no such prospect was raised in the Notice of Proposed of Rulemaking (“Notice”) in this proceeding. LPFM Order at ¶ 204. The Commission also found that LP50 stations would face many of the same technical deficiencies as 10 watt LPFM stations, which the Commission eliminated in the LPFM Order. *Id.* Accordingly, the Commission correctly decided to continue to authorize only 100 watt LPFM stations.

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

² Petition for Reconsideration, “LET THE CITIES IN!!” (“Petitioner”), MM Docket No. 99-25 (filed Dec. 28, 2012) (“Petition”).

³ *Creation of a Low Power Radio Service, Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fifth Order on Reconsideration and Sixth Report and Order, MM Docket No. 99-25, 27 FCC Rcd 15402 (2012) (“LPFM Order”).

Petitioner now seeks reconsideration of that conclusion. Specifically, Petitioner advocates reserving new LPFM licenses in the “urban core” areas of the top 100 Arbitron Markets for stations that operate at 50 watts and below.⁴ The Petition asserts that this would allow many more new LPFM stations to be licensed in larger markets. Petition at 6-7. In particular, the Petition asks for the licensing of very low power FM stations, including reinstatement of LP10 stations, in the top 10 markets where the FM band is most congested. *Id.* at 7.

The Commission directly addressed and disposed of Petitioner’s concerns in the LPFM Order. First, the Commission correctly concluded that a decision to introduce a new LP50 class could not have been “reasonably anticipated by all interested parties.” LPFM Order at ¶ 204. . The LPFM Notice did not solicit comment on, or even allude to, LP50 stations, permitting LP10 stations to increase power to 50 watts, and/or allowing a new LP50 class of licensees allowed to transmit at any ERP up to 50 watts. To fulfill Administrative Procedure Act requirements, all interested parties would have needed an opportunity to comment fully on the details of the new proposed service (including specific proposed power levels) and myriad related issues.⁵ But here, for example, broadcasters lacked the time and opportunity to examine fully the preclusive impact of a new class of stations on the licensing of FM translators, or the risks of interference that LP50 stations may present to full-power FM radio stations, especially in urban areas.

⁴ Petitioner defines the urban core areas as locations within 18 miles of the center of the top 20 Arbitron Markets, 12 miles for Arbitron Markets 21-50, and 6 miles for Arbitron Markets 51-100.

⁵ See, e.g., *Int’l Union, United Mine Workers of Am. V. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259-61 (D.C. Cir. 2005).

Second, the Commission appropriately recognized that both 50 watt and 10 watt LPFM stations would be technically inefficient. *Id.* at ¶¶ 202, 204. Such micro-power LPFM stations would largely be sought in urban communities where 100 watt LPFM stations are generally precluded by existing services on the FM band. Due to the presence of such existing stations on a crowded FM band, the already paltry service areas of LP50 and LP10 stations would be further reduced because of incoming interference.⁶

Despite their extremely small service areas, however, LP50 and LP10 stations would occupy relatively large interference contours. As the New Jersey Broadcasters explain, an LP10 station operating at maximum power would create an interference contour more than ten times larger than its possible service area – as much as a 126 square mile interference contour.⁷ In New Jersey, and presumably other congested markets, this would have a preclusive effect, and very likely disrupt existing radio service, causing frustration for listeners. In particular, mobile listeners used to crisp, clear FM signals will not tolerate fluctuating signal quality as they drive through the signals of micro-power LPFM stations that have been “scattered through the service areas of full power FM stations.” NJBA Comments at 4.

Overall, any benefit that LPFM stations operating at 50 watts or below may provide would be dwarfed by the inefficient spectrum use and negative impact caused

⁶ See Comments of du Treil, Lundin & Rackley, Inc., MM Docket No. 99-25 at 5 (filed May 7, 2012) (discussing the impact of LP10 stations).

⁷ See Comments of the New Jersey Broadcasters Association (“NJBA”), MM 99-25 (filed May 7, 2012), at 2.

to the FM band, existing radio services and listeners.⁸ The Petitioner has presented no argument or data that dispute these conclusions.

Finally, as NAB previously explained, the Local Community Radio Act was based on the Commission's existing regulations and technical requirements,⁹ all of which reflect LPFM as a 100 watt service.¹⁰ The discussions and negotiations leading up to congressional enactment of the LCRA were based on LPFM as a 100 watt service. Authorizing LP50s and lower powered LPFM stations now would disrupt the careful balance drawn by Congress in the Act.

For the aforementioned reasons, NAB respectfully urges the Commission to deny the petition for reconsideration requesting the authorization of LPFM stations operating at 50 watts and below.

Respectfully submitted,



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⁸ See LPFM Order at ¶ 202 (eliminating LP10 class because it is “an inefficient utilization of spectrum,” and unlikely to be “economically viable.”).

⁹ Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011) (“LCRA” or the “Act”).

¹⁰ Reply Comments of NAB, MM Docket No. 99-25 (filed May 21, 2012), at 10-11.