

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Parts 73 and 74 to Improve) MB Docket No. 19-193
Low Power FM Radio Service Technical Rules)
)
Modernization of Media Regulation Initiative) MB Docket No. 17-105

Opposition to Petition for Reconsideration

Pursuant to 47 C.F.R. § 1.429(f), the National Association of Broadcasters (NAB)¹ submits this opposition to the Petition for Reconsideration filed by certain “LPFM Commenters” seeking reconsideration of the FCC’s decision not to create a new class of 250-watt low power FM stations (LP-250).² The Petition should be dismissed because it does not present any new facts or arguments that were unknown prior to the Order, or describe any change in circumstances, that justify reversal of the FCC’s well-considered answer to this question.³

As a preliminary matter, Petitioners claim that the Order failed to address their comments on the FCC’s tentative conclusion in the Notice not to create a new LP250 service.⁴ They state that their comments “dissected and analysed [sic] this reasoning to

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 Reconsideration, MB Docket Nos. 19-193 and 17-105, filed by Todd Urick (Common Frequency), Paul Bame (Prometheus Radio Project), et al. (LPFM Commenters) (July 13, 2020); *Amendment 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, Report and Order, 35 FCC Rcd 4115 (2020) (Order); *Amendment of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules, Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, 34 FCC Rcd 6537 (2019) (Notice).

³ 47 C.F.R. § 1.429(b).

⁴ Petition at 2; Notice, 34 FCC Rcd at 6539 n.15.

show the FCC's position was not supported by the record or fact."⁵ However, a cursory scan of the Order reveals that the FCC cited the Petitioners' comments and reply comments no fewer than 49 times in the Order, including four times in the six paragraphs devoted to the LP250 issue.⁶ The FCC should dismiss Petitioners' complaints that their views were not properly considered in the Order.

I. Creating a New LP250 Service Will Increase the Risk of Interference to FM Services Already Challenged by the COVID-19 Pandemic and Weather Emergencies

NAB has previously explained that allowing LPFM stations to more than double their power from the current maximum 100 watts will inevitably increase the risk of interference to full-power FM stations and FM translators.⁷ NAB members report that LPFM service already create interference issues under the existing power limit. Approving Petitioners' request will result in a significant increase in the risk of interference compared to the fairly limited potential increase in coverage for LPFM stations.

We explained that, even under the thrice-modified version of REC Networks' proposal filed shortly before the Order, an overwhelming majority of the nearly 2,220 LPFM stations in the U.S. would be able to more than double their power, including more than 85% of LPFM stations in areas with 18,000+ people, 70% in areas with 75,000+ people and almost 40% in areas with 150,000+ people.⁸ Authorizing LP250 service would further crowd the already congested FM band, potentially reducing FM service for hundreds of thousands of listeners. Doing so would also impede modifications of FM translators, in particular, translators that AM stations rely on for a lifeline or may want to use as a bridge to all-digital service.

⁵ Petition at 2.

⁶ Order, 35 FCC Rcd at 4129 n.96, 4130 n. 100 and n. 104, and 4131 n. 110.

⁷ Letter from Larry Walke, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 19-193 and 17-105, at 1 (Apr. 16, 2020) (NAB Letter).

⁸ NAB Letter at 2 citing Letter from Michelle Bradley, REC Networks to Ms. Marlene H. Dortch, Secretary, FCC, MB Docket No. 19-173 (Apr. 7, 2020) (REC Letter).

The COVID-19 pandemic has illustrated the importance of FM service during times of emergency. Americans need reliable access to the critical news and information that local radio stations provide. FM stations are already making heroic efforts to serve their communities despite economic and technical obstacles caused by the pandemic, as well as the recent spate of hurricanes and tropical storms. The FCC should avoid any steps that could degrade FM signal quality or further jeopardize the viability of FM stations.⁹

II. Petitioners Fail to Provide Any New Facts or Arguments Sufficient to Support Reversal of the FCC's Decision Not to Create LP250 Service

Petitioners rehash several claims in support of LP250 service that the FCC already fully considered in the Order. First, they restate that LPFM licensees would be willing to bear the increased complexity of submitting contour overlap studies needed to support LP250 applications, and the costs of hiring an engineer to prepare such studies, if it led to higher powered service.¹⁰ Therefore, they argue that the FCC mistakenly concluded that authorizing LP250 service would over-complicate the current process LPFM applications.

However, the FCC considered and rejected this same argument in the Order, specifically citing Petitioners' comments in doing so.¹¹ The FCC explained (not for the first time) that the use of contour overlap would "introduce an unnecessary level of complexity to LPFM licensing by requiring all LP-250 applicants to prepare engineering studies examining the relationship of their own contours to those of all adjacent channel stations."¹² Such an approach would upend the carefully planned simple design of LPFM service, which has successfully facilitated the filing of thousands of LPFM applications that the FCC can

⁹ See, e.g., Richard Wagoner, [Can Radio Survive the Financial Hit from Coronavirus?](#), Los Angeles Daily News (Apr. 21, 2020); [April Saw A Big Spike In Stations Going Silent. Many Cited Coronavirus As The Culprit](#), Inside Radio (Apr. 29, 2020).

¹⁰ Petition at 4.

¹¹ Order, 35 FCC Rcd at 4130 n. 104.

¹² *Id.* at 4130.

efficiently process.¹³ The FCC added that, although the record shows that LPFM stations would be willing to accept some added complexity to upgrade to 250 watts, proponents (including the Petitioners) failed to provide any evidence that altering the simplicity of the LPFM service would be appropriate.¹⁴

Petitioners offer no new information about the burden on applicants of preparing contour studies, and entirely ignore the impact on the FCC of having to review such studies. Nor do they address the fact that some LPFM applicants may be disadvantaged if required to prepare and submit complex contour studies. Given that Petitioners do not offer any new factual evidence or legal arguments to counter the FCC's well-established decision that LP250 service is out of step with the fundamental simple nature of LPFM service, the FCC should dismiss these claims.

Second, Petitioners retread arguments that the FCC wrongly concluded that creating allowing LP250 service would conflict with the LCRA,¹⁵ a finding reached by the FCC on multiple occasions. In the Order, the FCC explained again that, although the text of the LCRA does not specifically cap LPFM power levels, the Act does prohibit reduction of the minimum distance separations between LPFM and FM stations in effect when the Act was enacted,¹⁶ and that LP250 supporters have not shown that LP250 service could be consistent with these spacing requirements.¹⁷

¹³ *Id.*

¹⁴ *Id.* at 4131; Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011) (LCRA).

¹⁵ Petition at 5-7; see e.g., Comments of REC Networks, MB Docket Nos. 19-193 and 17-105, at 2 (Oct. 21, 2019); Petition for Reconsideration, Let the Cities In!, MB Docket No. 99-25 (Jan. 13, 2013).

¹⁶ See, e.g., Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15479 (2012).

¹⁷ Order, 35 FCC Rcd at 4130; LCRA § 3(b)(1).

Petitioners urge the FCC to relitigate its view of the LCRA, but do not offer any additional facts or policy reasons. The FCC has repeatedly and consistently spoken on this matter, and while Petitioners may disagree with the Commission, the FCC's approach is perfectly valid, thoughtful and requires deference. Furthermore, Petitioners do not answer NAB's logic that creating LP250 service would be inconsistent with Congress's understanding of LPFM service when it enacted the LCRA. Although the Act does not mention the 100-watt power limit for LPFM, it is clear that Congress crafted the interference protection scheme and other requirements in the Act based on that parameter, since it was the maximum at the time and neither Congress nor the FCC ever expressed any interest in an increase. As Prometheus is well-aware, the Act struck a careful balance between the interests of noncommercial entities for more licensing of LPFM stations with those of incumbent services for interference safeguards. Allowing LPFM stations to more than double their maximum power now, a decade later, would upend the careful balance that stakeholders forged at the time.¹⁸

Nor do Petitioners address the design of LPFM to "serve very localized communities or underrepresented groups within communities."¹⁹ 250-watt LPFM stations would change the fundamental hyper-local nature of LPFM service by allowing LPFM stations to expand their geographic coverage by a hundred percent or more and potentially reach hundreds of thousands of additional listeners. As Petitioners offer nothing more than a bald plea for the FCC to reverse its long-established view of the LCRA, the FCC should also dismiss this claim.

Finally, Petitioners state that the FCC should allow LPFM stations to increase power because it has helped other services overcome similar challenges. They describe LPFM

¹⁸ NAB Letter at 4.

¹⁹ *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2208 (2000).

difficulties penetrating building walls, overcoming interference from full-power stations and FM translators, and terrain conditions that hinder signals.²⁰ Petitioners then list some FCC actions intended to assist other services, such as the AM radio revitalization initiative.²¹

Again, Petitioners seek to reargue the same question already disposed of in the Order, but do not offer any new facts or arguments to support reconsideration. The FCC specifically considered the input of many commenters who urged reconsideration of the FCC's tentative rejection of LP-250 service in the Notice, for the same reasons offered by the Petitioners,²² including Petitioner's comments asking the FCC to assist LPFM as it has other services.²³

The Order set forth the FCC's reasons for not creating a new LP250 service, namely, that doing so would conflict with the LCRA, complicate LPFM licensing and be inconsistent with Congress's and the Commission's intent when establishing the LPFM service.²⁴ Regarding Petitioner's request for similar treatment to other services, the FCC repeated the various actions it has already taken to assist LPFM stations, such as allowing them to rebroadcast their signal over FM translators. The FCC stated that translators should significantly improve many of the reception issues that have caused LPFM stations to request a power increase.²⁵ NAB also notes that the Order adopts other policies intended to help LPFM service, including facilitating use of directional antennas and FM boosters, and LPFM station modifications,²⁶ all of which should reduce the need for a power increase.

²⁰ Petition at 9-11.

²¹ *Id.* at 10 citing *Revitalization of the AM Radio Service*, MB Docket 13-249.

²² Order, 35 FCC Rcd at 4129.

²³ *Id.* at n. 96.

²⁴ *Id.* at 4129.

²⁵ *Id.*

²⁶ Order at 4117-4126.

Simply put, the Petition contains nothing new in terms of facts, legal arguments or intervening circumstances that justify a reversal of the FCC's decision not to establish a new LP250 service. Moreover, if an LPFM applicant or station wants to operate a 250-watt radio station, it can apply for a Class A license just like any other entity. There is no reason for the FCC to create another class of service that would be governed by a different, less burdensome set of rules.²⁷

III. Conclusion

For the reasons stated above, NAB respectfully requests that the Commission dismiss the above-captioned Petition for Rulemaking.

Respectfully submitted,

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Rick Kaplan
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September 4, 2020

²⁷ For example, LPFM stations need not maintain a public inspection file or purchase an emergency alert system (EAS) encoder, and despite their non-commercial obligations, often sell ads just like a commercial broadcaster.

CERTIFICATE OF SERVICE

Pursuant to 47 C.F.R. § 1,429(f), I, Larry Walke, do hereby certify that a copy of this Opposition to Petition for Reconsideration in MB Docket Nos. 19-193 and 17-105 was served, this 4th day of September 2020, to the following:

VIA U.S. MAIL

Todd Urick
28631 Sloan Canyon Rd
Castaic, California 91384

Handwritten signature of Larry Walke in cursive script.

Larry Walke