

**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)	

**Reply Comments of the
National Association of Broadcasters**

I. Introduction and Summary

The National Association of Broadcasters (NAB)¹ renews its objections to the Petition for Rulemaking filed by REC Networks seeking the creation of a new class of 250-watt low power FM (LPFM) service (LP250).² The record demonstrates that, like previous attempts rejected by the Commission, the Petition does not justify such a dramatic change to LPFM service and fails to sufficiently protect incumbent FM radio services, particularly FM translator stations.³ Although permitting LPFM stations to more than double their maximum allowed power will help LPFM stations reach more listeners, granting REC's request would effectively provide LPFM stations the same coverage as full-service Part 73 FM stations, but with a fraction of the obligations. Given that any LPFM entity is always free to apply for a Class A FM station, which would operate with the same radiated power as REC's request,

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); Opposition to Petition for Rulemaking of NAB, RM-11909 (June 21, 2021).

³ Comments of Educational Media Foundation (EMF), RM-11909, at 3-6 (June 21, 2021).

NAB respectfully asks the FCC to prohibit such a sidestep of its rules and dismiss the Petition.

II. Approving LP250 Service May Increase Interference to Other FM Radio Services

NAB echoes EMF's concerns that the Petition effectively ignores the potentially harmful interference that allowing LPFM power increases will cause to existing radio services. While REC asserts that its proposal will cause only *de minimis* disruption to FM radio services, EMF correctly explains that this characterization is unrealistic for at least two reasons. First, EMF notes that the signals of LPFM stations located on the side of raised terrain already extend well beyond their contour based on distance separations afforded in the FCC's rules, sometimes overlapping with and interfering with other radio services (e.g., "foothills" effect). Allowing LPFM stations to significantly increase power is likely to aggravate such problems.⁴

Second, the Petition discounts the "destructive interference" that would be caused to FM translator stations.⁵ EMF describes an illustrative case in Fontana, California, in which allowing an LPFM station to increase power to 250 watts would completely overlap 100% of the population and coverage area of one of EMF's translators, impairing service to more than 23,000 people.⁶ FM translators provide vital radio service to millions of listeners in areas where direct reception of radio broadcast signals is inadequate due to distance or

⁴ *Id.* at 4.

⁵ *Id.* at 3.

⁶ NAB agrees with concerns that more information is needed to assess the potential impact of authorizing LP250 service on full-power television stations operating on channel 6. Consistent with LPFM's secondary status, it is REC's responsibility to prove that its proposal will not impact channel 6 TV stations, but the Petition fails to meet this obligation. The uncertainty of such additional interference further strongly counsels against allowing LPFM stations to increase power. Comments of ABC, Inc., RM-11909, at 4-5 (June 21, 2021).

terrain barriers.⁷ Translators are also a lifeline for many AM broadcasters, helping them to improve fill-in service or launch first-time nighttime service. Without translators, some AM stations would struggle to remain financially viable.⁸ Yet, for all the reams of data that REC submits to support claims that LP250 service will have only a negligible impact, it essentially disregards the potential disruption it may have on the signal quality of FM translators.⁹

Many LPFM commenters allege a huge disparity in how LPFM and FM translator stations are treated under the FCC's rules, claiming that translators can more easily be licensed and sited on the FM band and have more flexibility to reach their listeners.¹⁰ LPFM advocates urge the FCC to place LPFM and FM translators on equal footing, including authorizing LPFM stations to operate at the same power level as translators and expanding the ability of LPFM stations to squeeze into the FM band. Given these concerns, it is perplexing that the Petition fails to even acknowledge the impact of LP250 service on translator service. Moreover, these claims ignore the FCC's finding that LPFM and translator stations, while sharing some characteristics, were designed for different purposes and thus may have differing engineering, interference and other requirements.¹¹ The FCC also found

⁷ *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212 (1990). See also *Matter of Creation of a Low Power Radio Service; Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3372-3 (2012) ("In particular, translators, which are inexpensive to construct and operate, can effectively bring service to rural and under-served areas. . . Translators also are essential components of local and regional transmission systems that efficiently deliver valued programming to listeners.").

⁸ *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, 24 FCC Rcd 9642 (2009).

⁹ Petition at Exhibit E, LPFM Existing Station Upgrade Status List (alleging LPFM potential vis-à-vis only full-service FM stations).

¹⁰ Comments of Jeff Sibert, RM-11909, at 3-4 (June 21, 2021); Reply Comments of Prometheus Radio Project, RM-11909, at 3-4 (June 21, 2021); Petition at 28 n. 74.

¹¹ *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,

that such “bias” arguments ignore rules that impose less stringent requirements on LPFM stations.¹² The FCC should disregard this line of debate.

As NAB explained, the FCC should also be wary of trusting LPFM operators to avoid causing interference to existing services.¹³ A cursory glance at the FCC’s website reveals numerous instances of LPFM stations broadcasting at much higher power levels than authorized, including one station that operated at 23 times its authorized power¹⁴ and another that was recently issued a Notice of Violation for spurious out-of-band emissions affect air safety near the Orlando International Airport.¹⁵ Indeed, even a self-described experienced engineering consultant to LPFM stations (and LPFM station operator) describes LPFM operators as “clueless . . . volunteer[s]” that should be exempt from EAS obligations because they lack the knowledge and training to ensure compliance.¹⁶ If LPFM operators already find it difficult to operate within the current parameters for LPFM service, allowing them to substantially increase their maximum power would seem like a risky course of action, especially given limited Commission resources to investigate unauthorized operations.

III. LP250 Service Contradicts the Intended Purpose and Understanding of LPFM Service

EMF notes that the Local Community Radio Act of 2010 (LCRA) limits the FCC’s authority to modify the interference protection parameters in place at the time.¹⁷

27 FCC Rcd 15402, 15452 n. 339 (2012); “*All Pending Translator Applications*” *Informal Objections*, Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to Center for International Media Action et al., DA 18-597, at 2 (June 8, 2018) (MB Letter).

¹² MB Letter at 2.

¹³ NAB Opposition at 3.

¹⁴ *Id.* at 7.

¹⁵ *Sucremedia Inc., Licensee of Station WBVL-LP*, Notice of Violation (Mar. 2, 2021).

¹⁶ Sibert Comments at 5-6.

¹⁷ EMF Comments at 5.

Specifically, the LCRA states that “FM translator stations, FM booster stations, and low-power FM stations remain equal in status. “¹⁸ However, the Petition essentially treats FM translator stations as “tertiary services” to LPFM stations, in violation of the LCRA.¹⁹

Granting REC’s proposal would also undermine the intended localized nature of LPFM service envisioned by the FCC and Congress by allowing some LPFM stations to expand their coverage area by a hundred percent or more and reach hundreds of thousands of additional listeners, including in some of the largest markets nationwide.²⁰ Doing so would also contradict the careful balance that Congress struck when enacting the LCRA between promoting opportunities for LPFM stations and protecting other FM services from interference. Congress predicated this balance on the 100-watt LPFM power ceiling at the time and REC offers no new information to justify a change to Congress’ understanding.

Furthermore, authorizing LP250 service would contradict the FCC’s aim to preserve the simple nature of LPFM service that has been important to the development of the service.²¹ Interestingly, there is a difference of opinion among LPFM advocates on this point. REC states that, after evaluating the eligibility of LPFM stations to upgrade to 250 watts, it is unnecessary to require LPFM operators to submit contour studies to predict that their station will not disrupt incumbent services, and that an approach based on minimum distance separations is sufficient.²² However, Prometheus supports allowing LPFMs the option to use contour studies to predict no interference to translators, especially in cities.²³

¹⁸ Pub L. No. 111-371, 124 Stat. 4072 (2011).

¹⁹ EMF Comments at 5.

²⁰ *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).

²¹ *Id.*

²² Petition at 18.

²³ Prometheus Reply Comments at 4-5.

Common Frequency disputes REC's approach as overly simplistic and limiting on the number of LPFM stations that should be eligible to upgrade.²⁴ Essentially, these advocates ask the FCC to allow nearly all LPFM stations to upgrade, even in crowded urban areas and even if it contradicts the FCC's goal to maintain the simple nature of LPFM service. In other words, even if the FCC implements REC's approach based on distance separations, it is inevitable that LPFM operators will push for more flexibility to use contour studies in order to squeeze even more 250-watt LPFM stations into urban and suburban markets. NAB submits that the better course is to avoid further crowding the already congested FM band and increasing potential interference to other radio services by dismissing all pleas for LP250 service.

IV. Conclusion

LP250 service is unwarranted because an LPFM entity is always free to apply for a 250-watt Class A station, just like anyone else. NAB fails to see why LPFM operators should be allowed a short-cut that would not only allow them to broadcast with the same amount of radiated power as a Class A station, but to do so while avoiding all the public interest, EAS and other obligations imposed on FM broadcasters. Moreover, approving LP250 service will hinder radio service while America's broadcasters are still working to recover from the devastating economic impact caused by the nationwide COVID-19 pandemic. And doing so now, before the scope of the upcoming LPFM window is known, is even more troubling.²⁵

²⁴ Comments of Common Frequency, RM-11909, at 14 (June 21, 2021).

²⁵ [Letter](#) from FCC Chairman Ajit Pai to The Honorable Xochitl Torres Small, U.S. House of Representatives (July 21, 2020).

Accordingly, NAB requests that the Commission dismiss the Petition for Rulemaking.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right.

Rick Kaplan
Larry Walke

July 6, 2021