

**UPDATE ON THE CURRENT STATUS
OF THE LPFM SERVICE
OCTOBER 2012**

BACKGROUND

The Low Power FM (LPFM) service was initiated by the Commission in January, 2000, in Docket No. 99-25, consisting of two station classes – LPFM (100 watt) and LP10 (10 watt) facilities. Considered a “secondary broadcast service”, LPFM stations, under the current Rules, are required to protect all existing and proposed first and second adjacent and intermediary frequency facilities in its respective allocation study as well as other existing and proposed secondary auxiliary facilities such as FM translators. Although there has been a good deal of controversy as to whether LPFM stations should also be required to protect third adjacent channel stations this debate was resolved by the enactment of the Local Community Radio Act (“LCRA”) which among other things, repealed the LPFM third adjacent channel protection requirement. As of 2008 there are some 800+ LPFM stations currently on the air. There have been no filing windows for new applications since the initial windows in 2000 and 2001 as established in the original Order dated January 27, 2000. It is widely believed at this juncture that future initiation of an LP10 filing opportunity is unlikely to come to fruition, although this, too, is again under some measure of review in conjunction with comments submitted in response to the Commission’s Third Further Notice of Proposal Rule Making in MM Docket 99-25 released in July 12, 2011. More about this NPRM is discussed later in this memo.

EFFORTS TO ENHANCE SERVICE AND PROPOSED CHANGES TO LPFM RULES

Bolstered largely by the efforts of LPFM proponents, an LPFM Forum was held in February, 2005, for the purpose of exploring issues associated with the LPFM application process as a whole and, in a more general sense, with the future of the low power FM service. This was followed by the release on March 17, 2005 of a Second Order on Reconsideration and Further Notice of Proposed Rulemaking and on December 11, 2007 of a Third Report and Order and Second Notice of Proposed

Rulemaking. Aside from the elimination of third adjacent channel protection requirements (which, as described previously, is now part of the Modified LPFM

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Rules) a number of other modifications were suggested for comment or summarily adopted as a result of these proceedings:

- Σ An extension of the LPFM construction period from 18 months to 36 months,
- Σ Whether LPFM applications or stations should have “primary” status over FM translator applications or stations, and,
- Σ Whether LPFM stations should be permitted to continue to operate with a site within the 70 dBu contour of a subsequently authorized second or third adjacent full service FM station.
- A modification in the definition of what constitutes a “minor” engineering change was also adopted, permitting site changes for LP100 stations up to 5.6 km from the prior maximum of 2 km.
- Σ The granting of waivers in certain circumstances of Section 73.807 of the LPFM Rules to permit second adjacent channel short spacings between a potentially displaced LPFM station to a new or modified full service NCE or commercial FM station. LPFM stations granted such a waiver would operate pursuant to Special Temporary Authority (STA) until action on the pending Rule changes would be finalized.
- Σ Encouragement of full service stations to provide technical and financial assistance to an LPFM station at risk from a full service station facility proposal by either developing modification proposals that would avoid the loss of existing LPFM service or helping the LPFM station move to an alternate LPFM channel.
- Σ Adoption of a “contour” protection based licensing standard in lieu of the present minimum distance separations contained in Section 73.807 for the processing of LPFM applications to provide for greater flexibility in

determining available transmitter sites affording thus, additional licensing opportunities in a number of major and spectrum congested markets.

- Σ Whether an alteration in priorities between FM translators and LPFM stations should be considered and whether this potential change should be distinguished between satellite fed translators as compared to those rebroadcasting over the air programming.

The LCRA fully resolved this last proposal as, based on the tenets of the Act, FM translators and booster stations were given equal status and remain secondary facilities with respect to existing full service stations.

In concert with the implementation of the LCRA the Commission issued on July 12, 2011 a Third Further Notice of Proposed Rulemaking setting forth its proposed approach to carry out the initiatives of the LCRA. Chief among these proposals, and

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the most controversial, is the dismissal of all still pending 2003 FM translator applications in densely populated geographic markets in an effort to afford greater licensing opportunities for future LPFM facilities. A number of the previously suggested modifications as described above (i.e., the granting of second adjacent channel short spacing waivers) were also reiterated. Comments and Reply Comments were submitted in response to the NPRM resulting in the release on March 19, 2012 of two separate Public Notices. The item which deals solely with proposed LPFM rule changes is entitled "The Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration" which seeks to further refine and clarify the proposed changes to the LPFM service. The second, and arguably the most critical in terms of the eventual opening of the first LPFM

filing window since 2001, is a combined notice addressing the dual needs as dictated by LCRA of LPFM and FM translator facilities.

An FCC LPFM/FM translator forum for the purpose of clarifying the proposed procedures was held in May, 2012. A tentative timeline to deal with the remaining backlog of 2003 FM translator apps was described at that time with the ultimate end result being the opening of the next LPFM filing window. This timeline has again been delayed due to a filling of a number of Petitions for Reconsideration of the proposed LPFM/Translator resolution process, including the CAP compliance aspect of the Order which limits the maximum allowable translator applications that can be successfully prosecuted and granted. At the time of this writing, it is anticipated that an Order on Reconsideration of these issues will be released by year's end, with hopeful LPFM applicants being given a six month lead time to prepare their applications once a LPFM window is finally opened.

Interested parties in the upcoming window would do well to start preparing now. A local nonprofit entity and board must be established prior to the filing of an application, and organizations established two years prior to a filing window would be given extra points in the event of multiple applicants competing for the same frequency.

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ACTIONS DEMONSTRATING THE FCC'S EXPECTATIONS OF LPFM LICENSEES

In March, 2006 a Texas LPFM licensee incurred a \$3,000 fine for not following proper procedures in the replacement of its FM antenna. Just as is the case with most full service FM facility modifications, either an Application for Construction Permit and/or an appropriate License Application must be filed prior to, or in concert with, specific facility changes. In the case at hand, the station changed the mounting location of its antenna within the prescribed parameters for the simultaneous filing of an FCC 319 license application form, but this was never filed. While the licensee claimed ignorance of the Rules and that the oversight was unintentional, the fact that appropriate action was taken only after a complaint had been filed and the FCC investigated the situation resulted in the fine being upheld. The bottom line here – LPFM licensees do not get a “free ride” and need to be just as apprised of the Rules as full service broadcasters. Numerous other LPFM enforcement actions have occurred since that time.

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