

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: In the Matter of Creation of A Low Power Radio Service, Third Report and Order And Second Further Notice of Proposed Rulemaking

Low Power FM provides a lower cost opportunity for additional new voices to get into the local radio market. Today's item facilitates LPFM stations' access to limited radio spectrum by significantly reforming our LPFM rules.

In order to ensure that the American people have the benefit of a competitive and diverse media marketplace that serves their local communities, we need to create more opportunities for different, new and independent voices to be heard. We need to address the concern that there are too few local outlets available to minorities and new entrants.

The limited number of channels in the radio spectrum bands and the high start-up cost of building a station are significant barriers to entry in broadcasting. It can be very difficult for anyone—in particular a new voice—to find an available channel and gather enough capital to build a new broadcast station.

Today the Commission takes several important steps to improve our Low Power FM rules to better promote entry and ensure local responsiveness without harming the interests of full-power FM stations or other Commission licensees. To preserve opportunities for new LPFM stations, the Order restricts the number of FM translator applications we will grant from the 2003 window. In addition, the Order streamlines and clarifies the process by which LPFM stations can resolve potential interference issues with full-power stations. The Order also establishes a going-forward processing policy to help those LPFMs that have regularly provided eight hours of locally originated programming daily in order to preserve this local service.

Our work in this area is important for localism. I look forward to working with my fellow Commissioners to adopt additional rules that continue to ensure a competitive and diverse media marketplace that serves local communities.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *In the Matter of Creation of a Low Power Radio Service*

It often seems like those of us troubled by media consolidation are relegated to playing defense. The big media companies are nothing if not persistent: lobbying for the elimination or relaxation of ownership limits, seeking waivers of existing rules, proposing merger upon merger and daring regulators to draw the line. In radio, the results have been particularly distressing. Runaway consolidation since the 1996 Act has left us with homogenized content, national play lists, outsourced news, a dumbed-down civic dialogue, and shameful levels of minority and female ownership.

That's why low power radio is such a breath of fresh air. It is a positive response to what ails us. These are truly local stations run by local organizations. They provide an outlet for local voices and local talent. They cover issues of importance to local and very often under-served communities. Low power is truly radio of the people, by the people, and for the people. We cannot let it perish from the earth.

This item makes good progress in putting LPFM on a firmer foundation. In particular, I welcome the decisions on ownership and eligibility that will ensure that LPFM retains its local character; the initial steps we take to limit the preclusive effect of existing translator applications on LPFM; and the initial steps we take to protect LPFM from full-power station encroachment. But we have a lot of work ahead of us. In this regard, I am pleased that my colleagues have committed to further addressing some of the key issues within the next six months, including the priority between LPFM and translator stations, full-power encroachment, and a proposal to permit LPFM stations to use a more flexible contour-based methodology for locating available channels. These proposals—especially if Congress adopts the important recommendation in this item to remove the third adjacency restrictions—could vastly expand licensing opportunities for LPFM stations. Our united goal should be to clear away obstacles to low power and to open a window to license many more such stations as soon as we can.

As important as LPFM is, however, let's never allow ourselves to see it as a complete substitute for full power service. Nor should we ever be lulled into a mind-set that says, "Well, let low power cover that stuff and let the full power stations continue on their happy way." The American people still rely on full power stations for much of their news, information and entertainment. And those full power stations are on the air because they pledged to serve the public interest in return for being allowed to make what is still a very good living. The emergence and strengthening of LPFM does not affect our duty, in any shape, manner or form, to ensure that *all* broadcasters serve the core public interest goals of localism, competition and diversity.

I am pleased to support this as a good step forward, I thank my colleagues and the Bureau for their work. And I want to commend all those many dedicated members of the low power community who have worked so hard and accomplished so much in an environment that has been far less friendly towards them than it should have been.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: In the Matter of Creation of a Low Power Radio Service, Third Report and Order And Second Further Notice of Proposed Rulemaking

When the FCC created low-power FM (LPFM) service in 2000, some argued that there was no viable business model for such a localized medium, while others argued that LPFM stations would undermine the economic stability of existing full-power FM stations. Time, however, has revealed that neither prediction was accurate. There continues to be great public demand for radio spectrum, especially LPFM stations. Full-power FM stations continue to be scarce, and they remain as valuable financial assets. In spite of initial and considerable skepticism, LPFM stations have proven to be a great success story of communications policy. Creating LPFM is one of the few steps that the Commission has taken in recent history to democratize the public airwaves.

Today, the Commission takes steps to reaffirm the non-commercial, local nature and orientation of LPFM stations, and to enhance opportunities for new voices to be heard on the radio dial. Additionally, the Commission finally recognizes the value of LPFM stations as a service that is worthy of some, albeit very limited, channel protection from full-power stations. The clear goals of the rules we adopt today are “to increase the number of LPFM stations that are on the air and providing service to the public; and promote the continued operation of LPFM stations already broadcasting, while avoiding interference to existing FM service.” I believe through this Order we have taken several important steps toward these goals. The item reflects a fair and measured approach, but it unmistakably advances the growth and sustainability of LPFM service for years to come.

In this *Order*, we appropriately strike the balance of providing LPFM stations with some regulatory flexibility, while preserving the local integrity of the service. We reduce the administrative and management burden on community organizations operating LPFM stations, making it possible for them to operate under a voluntary time-sharing agreement and to change the composition of their governing boards without having to wait for a designated filing window. We also provide LPFM construction permit holders, with a showing of good cause, the opportunity for a one-time 18-month extension to current and future construction permits.

In addition to these reforms, we preserve the non-commercial, local nature of LPFM stations by prohibiting most sales of licenses and outright ban any transfer or assignment of construction permits. Preventing the creation of a market for the sale of LPFM licenses and construction permits will help protect the true local quality and community service orientation of LPFM stations that have made them thrive.

Perhaps more than any measure in this item, I am especially pleased that we have tightened LPFM ownership rules. Simply put, we cannot allow what has happened to commercial radio to happen to LPFM. Accordingly, I strongly support the fact that we reinstate the restrictions on local LPFM ownership. In doing so, we explicitly recognize that “doing away with the locality restriction could threaten its predominantly local character, in particular the hallmark of the LPFM’s station’s local character, its local origination of programming.” And, equally important, we clarify that repetitious, automated programming does not meet our local origination requirement.

While this item goes a long way to implement thoughtful reform measures to improve the stability of LPFM service, I am very concerned about the impact FM translators, particularly the applications filed in the 2003 Auction No. 23 translator filing window, will have on LPFM. I am deeply concerned about the preclusive impact of the over 13,000 FM translator applications filed in 2003 will have on the future of LPFM service. Some have argued that these translators could potentially foreclose opportunities for LPFM in the top 50 media markets. This troubles me, as the Commission finds that “processing all of the remaining 8,000 translator applications would frustrate the development of LPFM

service and our efforts to promote localism.” Many of these translator applications were filed by speculators who do not have any connection to the local community whatsoever.

I am, therefore, pleased that my colleagues have agreed to limit the number of permissible translator applications filed by an entity to ten. It is my understanding that this limitation will not affect 80 percent of pending applications. Moreover, translator applicants will now have to select their 10 applications before we open a settlement window to resolve mutually exclusive applications.

I am equally concerned about the displacement and interference of licensed LPFM stations caused by newly authorized full-power FM stations or city of license modifications. While the Commission should not give LPFM interference protection that could prevent a full-power station from modifying its signal or foreclose future full-power FM service or compromise the integrity of the FM spectrum, LPFMs need some stability in order to be successful. In today’s *Order*, we address this problem by affirming that LPFMs will remain secondary to full-power FM stations, but we will consider waivers on a case-by-case basis when there is not a suitable alternate channel for the LPFM. The Order implements this as a policy change, and the Further Notice seeks comment on it as a permanent rule.

Finally, to address some of the imbalances between translators and LPFM, we seek comment on permitting LPFM licensees to use contour protection based licensing standards and limiting the number of translators for each originating station that would have priority over an LPFM. These proposals would enhance opportunities for new voices and thereby promote a diversity of viewpoints over the public airwaves. They are worth pursuing, and I look forward to the public comments.

One of the central goals of the Commission is to promote a fair and equitable use of the broadcast spectrum and to expand opportunities to new voices, such as community-based schools, churches and civic organizations. Establishing LPFM stations, particularly as a noncommercial educational service, to allow these local groups to provide programming that is responsive to local community needs and interests, is one of the most effective ways this Commission can promote such goals. As the record shows, LPFM stations are serving very localized communities and underrepresented groups within communities. Today’s reforms should permit LPFM to continue to live up to this dream.

Accordingly, it is my pleasure to support this item because it provides the American people an opportunity to enjoy one of this nation’s greatest resources – the public airwaves.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE
APPROVING IN PART, DISSENTING IN PART**

Re: Creation of a Low Power Radio Service, Third Report and Order

I appreciate that the hallmarks of LPFM radio stations are its local character and locally originated programming. In fact, I had the opportunity to visit RadioFree Nashville last spring and talk with many of the original founders as well as the staff and radio show hosts. They provide a variety of informational and educational programming, talk shows and unique music formats to West Nashville. In fact, a former colleague, George Haley has a regular show regarding issues affecting individuals facing mental and behavioral health issues and it is precisely this type of forum that LPFM can provide listeners.

I support much of what is in the further notice. In fact, that is a more appropriate place for the majority of the action we take in this item today. I believe that we need to have more input and further comment before taking some of these broad and expansive actions regarding the status and protections of both LPFM and primary or licensed full-power stations and therefore I approve in part and dissent in part.

At present, there are several bills pending before Congress and it would seem appropriate to wait on their instruction before moving forward, especially before moving beyond what is included in the legislation regarding 3rd adjacent channel interference. I also think that we should have a rational basis for setting the standards for Low Power FM, perhaps using the minimum operating guidelines for the required number of hours of operation. Regarding the applications for additional translators, again, I would have preferred a more measured approach, rather than an 80% cut: from 50 to 10. Finally, enhancing the status of Low Power FM licensees as compared to full power FM stations, or creating new status and protections, is beyond the scope of the NPRM and is more appropriately addressed in the Further Notice we are issuing today. Such a sweeping change by an agency should require further notice, consideration, and comment.

Therefore, I dissent from this Order's finding of a ten application limit on translators, from the finding regarding second-adjacent channel waivers, and from the portion of this Order that places Low Power FM in a superior position to full power. I find no justification in the record for such a complete shift in well-established policy. Low Power FM licensees provide a great service to their communities, but they accept their license knowing that they are a secondary service, and accept both the risks and rewards that status entails.

**STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL
APPROVING IN PART, DISSENTING IN PART**

Re: Creation of a Low Power Radio Service, Third Report and Order and Second Further Notice of Proposed Rulemaking

As we've traveled across the country for the Commission's field hearings on media ownership, we have heard from many citizens about the benefits low power radio stations bring to their local communities by enhancing viewpoint diversity. In establishing the LPFM service, the Commission sought to "create opportunities for new voices on the airwaves and to allow local groups, including schools, churches and other community-based organizations, to provide programming responsive to local community needs and interests." I am pleased to hear that these new voices are succeeding in accomplishing that goal and are drawing loyal audiences within their communities.

In today's Order, we adopt several rule changes regarding ownership, eligibility, time-sharing and construction deadlines. We hope that these actions will strengthen and promote the long-term viability of the LPFM service, and the localism and diversity goals that this service is intended to advance.

Also, in a Further Notice of Proposed Rulemaking, we seek comment on whether additional technical rule changes are warranted. Specifically, we consider the following: (1) whether an LPFM station may seek a second-adjacent channel short spacing waiver where implementing a city of license modification for a full-service station would result in interference to or displacement of the LPFM station to an alternate channel, and whether such a procedure can be expanded to include co- and first-adjacent channel situations; (2) whether to impose certain obligations on full service stations with respect to LPFM stations affected by a new station or modification proposal; (3) whether to adopt a flexible contour methodology for the licensing of LPFM stations; and (4) whether to retain the co-equal status between LPFM stations and FM translator stations. These may be viable proposals for finding additional channels on the crowded radio band for low power stations. They raise important questions regarding the relationship between primary and secondary radio services, however, and require careful consideration. We have committed to resolve the issues in the Further Notice expeditiously, within six months. I look forward to the comments we receive on these issues.

However, I dissent in part on three specific issues involving both process and substance. First, the Order adopted by the majority jumps ahead of the rulemaking proceeding by adopting interim processing policies for the second-adjacent channel waivers immediately. This waiver policy would apply retroactively to LPFM stations that must move to an alternative channel because of a pending full-power station's community of license modification. This processing policy is premature. In this context, certainly, we should not make rules through waiver policies or processing policies. Rather, we should abide by our duties under the Administrative Procedure Act to seek and consider public comment before crafting and implementing rules.

Secondly, the majority amends our rules to establish a licensing presumption to protect certain operating LPFM stations from subsequently proposed city of license modifications where there would be no alternate channel available to the LPFM station. Adopting this rule at this juncture is a radical departure from prior Commission precedent made without sufficient public notice. In the 2005 Further Notice of Proposed Rulemaking that led to this Order, we considered a request to adopt a processing policy that would permit the denial of a full service FM station's modification application if a LPFM station would be displaced entirely by the full-power station's move. We did not seek comment on this issue. Instead, in 2005, we concluded:

[W]e disagree with the basic thrust of this proposal, which effectively would provide primary status to LPFM stations with respect to subsequently filed applications for new

or modified full service station facilities. As we stated in the *Report and Order*, “[w]e do not believe that an LPFM station should be given an interference protection right that would prevent a full-service station from seeking to modify its transmission facilities or upgrade to a higher service class. Nor should LPFM stations foreclose opportunities to seek new full-service radio stations.”¹

Clearly, the 2005 Commission recognized and upheld our long-standing policy to treat full-power radio stations as primary to secondary services such as LPFM and FM translators. The majority should not have reversed this precedent without at least seeking further public comment.

Lastly, we limit further processing of FM translator applications submitted during our Auction 83 filing window to 10 proposals per applicant. This number is much too low. It is lower even than the numbers suggested by LPFM advocacy groups in the record. The result is that the service provided by FM translators in many unserved areas may suffer interference.

Accordingly, I dissent in part to this Order. Nonetheless, I support the remainder of the Order. And I thank the Media Bureau for their hard work on these important issues.

¹ *Creation of a Low Power Radio Service*, 20 FCC Rcd 6763, ¶ 38 (2005).