



**Federal Communications Commission
Washington, D.C. 20554**

**DA 18-597
Released: June 8, 2018**

In Reply Refer To:
1800B3-TSN

Center for International Media Action
Common Frequency, Inc.
Prometheus Radio Project
P.O. Box 42158
Philadelphia, PA 19101

In re: “All Pending Translator Applications”

Informal Objection

Dear Objectors:

Center for International Media Action, Common Frequency, Inc., and Prometheus Radio Project (collectively “Objectors”) have filed an undated Informal Objection (Objection)¹ to virtually every FM translator application pending as of the date the Objection was received by the Commission, 994 in all.² We dismiss and, alternatively, deny the Petition.

Background. According to its caption, the Objection is filed against “All Pending Translator Applications” as of the May 16, 2018, filing date, which includes applications for modification of licenses and permits of existing stations, and also includes applications that were granted before or on the same day as the Objection was filed. In essence, Objectors argue that when Congress directed, in Section 5 of the Local Community Radio Act of 2010,³ that the Commission ensure that licenses are available for FM translators, FM boosters, and LPFM stations, and that those three services remain equal in status,⁴ it effectively mandated an equal apportionment of FM translator stations and LPFM stations in all markets. Objectors contend that, although the Commission in 2013 implemented procedures for then-pending Auction 83 translator applicants to demonstrate that adequate spectrum in spectrum-limited markets

¹ The Objection was filed on May 16, 2018.

² Appendix A to the Objection lists 998 applications against which the Objection is filed. The Media Bureau’s Consolidated Database System (CDBS) indicates that the Objection was filed against 994 applications. We therefore consider that the Objection was filed against 994 applications and shall use that number herein.

³ Pub. L. 111-371, 124 Stat. 4072 (2011) (LCRA).

⁴ Section 5 of the LCRA states:

The Federal Communications Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations, shall ensure that (1) licenses are available to FM translator stations, FM booster stations, and low power FM stations; (2) such decisions are made based on the needs of the local community; and (3) FM translator stations, FM booster stations, and low- power FM stations remain equal in status and secondary to existing and modified full-service FM stations.

would be available for the 2013 LPFM filing window,⁵ no such procedures have been put in place for subsequent translator applicants, such as those applying to relocate cross-service translators or establish new cross-service translators pursuant to the Commission's First Report and Order in the *AM Revitalization* proceeding.⁶ In Objectors' view, the Commission's failure to repeat its 2013 analysis of spectrum availability therefore places the onus of demonstrating compliance with the LCRA on each individual FM translator applicant.⁷ Because, Objectors claim, none of the pending translator applicants listed in the Objection demonstrates the future availability of licenses for LPFM stations, nor demonstrates to Objectors' satisfaction that their applications will serve the needs of the local community, the applications must be dismissed unless such facts are demonstrated.⁸

Discussion. Procedural Issues. The Objections are overbroad, insofar as they include every pending application involving an FM translator, even modification applications that do not constitute applications for "new FM translator stations," under the language of Section 5 of the LCRA.⁹ The fact that Objectors claim that relocations of existing translators pursuant to the 2016 Modification Windows have preclusive effects on LPFM licensing does not change the plain language of Section 5. Thus, the Objections must be dismissed as to all such modification applications. Moreover, 55 of the listed applications were granted on or before the date the Objection was filed,¹⁰ and 35 of the listed applications have already been dismissed. Accordingly, the Objections must also be dismissed as to those 90 applications.

Additionally, an informal objection, like a petition to deny, must allege properly supported specific facts that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest.¹¹ The only factual basis Objectors provide in support of the Objections, other than a conclusory assertion that all 994 applications failed to comply with the LCRA,¹² is a statement listing ten facilities that "a cursory examination . . . quickly revealed . . .

⁵ Objection at 8.

⁶ *Id.* at 8-10. See *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145, 12152-54, paras. 15-17 (2015) (*AMR First R&O*) (announcing two 2016 cross-service FM translator modification filing windows, to be followed by two 2017 auction filing windows for new cross-service FM translators, available to AM licensees and permittees that did not participate in 2016 modification windows).

⁷ Objection at 9.

⁸ *Id.* at 9-13.

⁹ See *supra* note 4.

¹⁰ See 47 CFR § 73.3587 (requiring the filing of informal objection "before FCC action" on application).

¹¹ *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990).

¹² The Commission has found that blanket assertions of a conclusory nature regarding the effect of multiple applications does not meet the evidentiary requirements of a petition to deny or informal objection. See *License Renewal Applications of Certain Broadcast Stations Licensed to Communities in Maryland, Virginia, West Virginia, and the District of Columbia*, Memorandum Opinion and Order, 9 FCC Rcd 2143, 2145, paras. 8-9 (1994) (*License Renewal Applications*) (finding that non-specific testimony regarding interference, and conclusory allegation that 47 license renewal applicants would likely cause interference to National Radio Astronomy Observatory facility, without specific supporting engineering evidence, does not establish a *prima facie* showing that grant of the applications would not be in the public interest).

would preclude the possibility of an LPFM station at the same location.”¹³ This cursory examination is not sufficient to establish a substantial and material question of fact. Therefore, the Objections to those ten applications must be dismissed.¹⁴ Objectors do not provide even a cursory explanation as to the specific facts underlying their objections to the remaining 988 applications, and on that basis we also dismiss the Objection as to those 988 applications.¹⁵

LCRA Section 5. As a separate and independent ground for our decision, we deny the Objection as to all 994 applications for the reasons set forth below. Section 5(3) of the LCRA states that FM translators, FM boosters, and LPFM stations must “remain equal in status and secondary to existing and modified full-service FM stations.”¹⁶ We reject Objectors’ conclusion that equality of status as secondary services necessarily implies that the Commission must ensure that all remaining available spectrum in all markets is equally apportioned among FM translators, FM boosters, and LPFM stations.¹⁷

To the contrary, nothing in MM Docket 99-25 (*Creation of a Low Power Radio Service*) supports Objectors’ claim that Section 5 mandates that the Commission promote the equal use of spectrum by the LPFM and FM translator services or the licensing outcomes that Objectors seek to impose on FM translator new station licensing.¹⁸ As an initial matter, Objectors ignore the extraordinary *ad hoc* processing measures the Commission established in the *LPFM Fourth R&O* to facilitate the successful grant of over 2,000 LPFM new station construction permits from the 2013 window.¹⁹ Equally importantly, Objectors ignore the fundamental differences between the two services that make equal spectrum allocations neither a desirable nor an achievable goal. In its analysis of Section 5, the Commission noted that translators are inexpensive to construct and operate, and can effectively bring service to rural and underserved areas.²⁰ LPFM stations, with limited coverage and other resource

¹³ Objection at 9. We note that nothing in the language of Section 5 of LCRA requires that LPFM licenses be available at the same location as a translator or booster application.

¹⁴ A less cursory examination of the facilities Objectors reference highlights the fact that two of the listed applications were granted in January 2018, Facility ID No. 200042, File No. BNPFT-20171201ACN; Facility ID No. 200045, File No. BNPFT-20171201ACO, and three were granted on May 15 or May 16, 2018, Facility ID No. 203270, File No. BNPFT-20180418ADD (granted May 15, 2018); Facility ID No. 203245, File No. BNPFT-20180419ABC; Facility ID No. 203215, File No. BNPFT-20180419AAA (both granted May 16, 2018). Also, one application was dismissed on May 25, 2018, Facility ID No. 200034, File No. BNPFT-20170726ALN. Therefore, the Objections to those applications must be dismissed as moot.

¹⁵ See *License Renewal Applications*, *supra* note 12, 9 FCC Rcd at 2145, para. 9.

¹⁶ See *supra* note 4.

¹⁷ Among other things, this implies that there is equality of demand for the three services, which Objectors do not demonstrate. We also observe that Objectors do not mention whether FM boosters, for which there has traditionally been less demand, must share equally in available spectrum, even though they, too, enjoy equal status with the other two secondary services.

¹⁸ See generally *Creation of a Low Power Radio Service*, Notice of Proposed Rule Making, 14 FCC Rcd 2471 (1999) (initiating Low Power FM Radio service docket).

¹⁹ See, e.g., *Media Bureau Announces January 10 - January 25, 2013 Filing Window for Auction 83 FM Translator Application Selections and Caps Showings*, Public Notice, 27 FCC Rcd 15961 (MB 2012); *Media Bureau Offers Examples to Clarify Auction 83 FM Translator Application Selections and Cap Showings Requirements*, Public Notice, 28 FCC Rcd 98 (MB 2013). The stringent processing standards adopted in the *LPFM Fourth R&O* (see *infra* note 20) resulted in the dismissal of nearly 4,000 FM translator new station applications.

²⁰ See *Creation of a Low Power Radio Service*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3372, para. 18 (2012) (*LPFM Fourth R&O*)

constraints, are better suited to serve more densely populated areas.²¹ As a result of population distribution differences, the Commission concluded that it was inappropriate to use larger grids in certain markets to identify LPFM licensing opportunities. For this reason, and with broad support from LPFM advocates, the Commission utilized smaller grids to assess and preserve LPFM opportunities “in core city areas.”²² We thus conclude that Objector’s argument is without support or merit.

Our rejection of Objectors’ contention that the LCRA mandates equality of spectrum opportunities for the LPFM and FM translator services compels our further rejection of the position that Section 5 requires that FM translator or LPFM applications must include a demonstration of spectrum for future LPFM or FM translator stations, which the Commission has not required of post-2014 FM translator applicants.²³ As noted above, the Commission’s Auction 83 processing measures were necessitated by the fact that, in the 2003 Auction 83 FM translator filing window, any party was permitted to file as many FM translator applications as desired, without limit as to location or transferability.²⁴ To process the unprecedented volume of Auction 83 applications, the Commission introduced various requirements, including preclusion studies filed by applicants,²⁵ to preserve spectrum for LPFM stations.²⁶ Objectors cite these measures with apparent approval, only to assert that by 2014, “LCRA compliance was forgotten.”²⁷

The only new FM translator applications submitted since passage of the LCRA (Auctions 99 and 100) were filed during the windows opened pursuant to the *AM Revitalization* proceeding.²⁸ Unlike in Auction 83, the Auction 99 and Auction 100 filing windows were strictly limited in the number of applications that could be filed, the parties that could file them, and the nature and location of the translators applied for. Only AM station licensees and permittees could file, and they were limited to only one cross-service translator each, to be used as a fill-in translator contained within the AM station’s 2 mV/m signal contour,²⁹ and that could not be assigned or transferred except as part of an assignment or transfer of the primary AM station.³⁰ This structural limitation on Auction 99 and Auction 100 filers—absent in the Auction 83 filing window—rendered unnecessary the extreme spectrum-preservation

²¹ *Id.* at 3382, para. 39 (“We believe that LPFM stations can best serve the needs of local communities in areas with significant populations where LPFM service is practical and sustainable.”).

²² *Id.*

²³ Objection at 9.

²⁴ See *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15404, para. 4 (2012) (noting that 40 percent of FM translator permits initially awarded in Auction 83 window were assigned to non-applicants, and that co-owned filers of largest number of applications sought to assign more than 50 percent of the construction permits they received).

²⁵ Objection at 3-4.

²⁶ See generally *LPFM Fourth R&O*, 27 FCC Rcd at 3382-88, paras. 38-49.

²⁷ Objection at 8.

²⁸ *AMR First R&O*, 30 FCC Rcd at 12153-54, para. 17. Although 1,098 AM applicants also applied to move existing translators as part of the AM Revitalization 2016 modification windows, these do not fall under Section 5’s mandate to the Commission regarding “licensing *new* FM translator stations” (emphasis added).

²⁹ Objector Prometheus Radio Project has already petitioned for reconsideration of *Revitalization of the AM Radio Service*, Second Report and Order, 32 FCC Rcd 1724 (2017), on the ground that the Commission’s failure to adopt a set distance limit from an AM transmitter for siting cross-service FM translators would negatively impact LPFM stations and their ability to relocate. The Commission denied the Prometheus petition on May 22, 2018. See *Revitalization of the AM Radio Service*, Order on Reconsideration, FCC 18-64 (rel. May 22, 2018).

³⁰ *AMR First R&O*, 30 FCC Rcd at 12153-54, para. 17.

measures implemented for Auction 83 processing. The *AM Revitalization* windows have had a vastly smaller preclusive impact on LPFM licensing than processing all the Auction 83 applications pending at the time the LCRA was enacted would have had. Thus, the failure to re-implement Auction 83 processing policies merely recognized the distinction between that filing window and those of Auctions 99 and 100, and does not indicate that “LCRA compliance was forgotten,” contrary to Objectors’ claim.³¹

We further observe that Section 5 of the LCRA states that the “*Federal Communications Commission*, when licensing new FM translator stations, FM booster stations, and low-power FM stations, shall ensure that” licenses are available to all services, *inter alia*.³² It is thus the *Commission’s* responsibility to ensure that the mandates of Section 5 of the LCRA are met, not the individual applicants’. Although, in Objectors’ view, the Commission failed after 2014 to provide specific means for determining available spectrum for LPFM stations, as discussed above the structural restrictions on Auction 99 and 100 eligibility served to limit the spectrum proposed for new cross-service FM translators, as well as the siting and availability of such translators. More importantly, the language of Section 5 of the LCRA cannot reasonably be read to place the responsibility on each individual applicant to provide evidence that its application leaves sufficient spectrum in its area for any future LPFM stations, absent specific Commission direction to do so.³³ Applicants therefore had no reason to believe that further showings would be required.³⁴ Quite simply, Objectors may not demand actions by individual applicants that are not required either by statute or by the Commission’s rules and forms, and Objectors have not alleged with specificity any other procedural infirmities with the applications to which they have objected.

Additionally, Objectors argue that the LCRA Section 5(3) requirement that the FM translator and LPFM services “remain equal in status” precludes the enforcement of “rules that give one service preference above the other service in relation to signal engineering.”³⁵ They contend that the two services’ differing distance separation protection requirements disfavor LPFM licensing and are, therefore, “a direct violation” of Section 5(3).³⁶ Based on this alleged bias, Objectors also contend that FM translator licensing may violate current and future LPFM stations’ *Ashbacker* due process protections.³⁷

Objectors’ argument is meritless. The Commission previously observed with regard to Section 5(3) that the “cut-off rules are a principal characteristic of the two services, establishing their ‘equal’ status as to each other.”³⁸ Thus, rather than mandating identical technical licensing regimes, the Commission concluded that Section 5(3) could be reasonably interpreted to prohibit waivers of the LPFM

³¹ *Supra* note 25.

³² *See supra* note 4 (emphasis added).

³³ Objection at 8-10.

³⁴ Additionally, applicants are not obliged to respond to information collections propounded by the Commission that do not bear a control number from the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3507(a)(3). *See* 5 CFR § 1320.6(a). It follows that applicants are not obliged to provide information not requested by an OMB-approved information collection.

³⁵ Informal Objection at 12.

³⁶ *Id.*

³⁷ *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945) (*Ashbacker*).

³⁸ *LPFM Fourth R&O*, 27 FCC Rcd at 3375, para. 23.

cut-off rule which prioritizes pending FM translator applications over later-filed LPFM applications.³⁹ Moreover, we have specifically rejected the contention that Section 5(3) requires identical “signal engineering” rules. “Equal in status does not mean subject to identical interference protection and remediation requirements. Indeed, the LCRA itself establishes different remediation standards between FM translators and LPFM and even between classes of LPFM stations. Where Congress intended to impose identical requirements upon FM translators and LPFM stations, it specifically did so in the text of the LCRA.”⁴⁰ We also note that in making this “bias” argument, Prometheus ignores those rules that impose less stringent requirements on LPFM stations.⁴¹

Finally, Objectors’ *Ashbacker* argument fails for the same reasons. The consistent application of our codified FM translator and LPFM licensing rules does not constitute “bias” against LPFM applications. It merely reflects the fact that the applications in these two services are not similarly situated.

Conclusion. For the foregoing reasons, Objectors’ Informal Objections ARE DISMISSED, and in the alternative ARE DENIED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

³⁹ *Id.*, citing 47 CFR § 73.807(d). See also *Creation of a Low Power Radio Service*, Sixth Order on Reconsideration, 28 FCC Rcd 14489, 14500, para. 29 (2013) (use of cut-off rule to establish translator input signal protection rights “is the best way to give effect to the LCRA requirement that the two services remain ‘equal in status.’”).

⁴⁰ *Leo Ashcraft*, Letter Decision, 30 FCC Rcd 7343, 7347 n.25 (MB 2015) (citing LCRA, Section 7(1), which requires that LPFM stations that do not satisfy the third-adjacent spacing requirements provide “the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in section 74.1203” of the Rules).

⁴¹ See, e.g., 47 CFR §§ 73.870(a)(1), 73.809; *Razorcake/Gorsky Press*, Memorandum Opinion and Order, 32 FCC Rcd 2696 (2017) (rejecting argument that an LPFM station operating with a second adjacent channel waiver must demonstrate that it would not cause any interference to a co-channel full power station).