

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

Re: Creation of a Low Power Radio Service, Third Report and Order and Second Further Notice of Proposed Rulemaking, MB Docket No. 99-25

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).