PUBLIC NOTICE

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MEDIA BUREAU SEEKS COMMENT ON THE ECONOMIC IMPACT OF LOW-POWER FM STATIONS ON FULL-SERVICE COMMERCIAL FM STATIONS

MB Docket No. 11-83

Comments Due: June 24, 2011

Reply Comments Due: July 25, 2011

The Local Community Radio Act of 2010 ("LCRA"),[1] enacted on January 4, 2011, relaxed certain restrictions on low-power FM ("LPFM") stations in order to facilitate the growth of LPFM service.[2] In addition, Section 8 of the LCRA requires the Commission to "conduct an economic study on the impact that low-power FM stations will have on full-service commercial FM stations" and to provide a report to Congress on that study within one year of the LCRA's

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[1] Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011).

[2] For example, the statute requires the Commission to modify its rules in order to eliminate third-adjacent minimum distance separation requirements between LPFM stations and full-service FM stations, FM translator stations, and FM booster stations. LCRA § 3(a). *See* 47 C.F.R. § 73.807. The LCRA also permits the Commission to grant LPFM stations waivers of the second-adjacent channel distance separation requirements in certain circumstances. LCRA § 3(b)(2). The statute further mandates that the Commission take certain factors into account when licensing LPFM stations, FM translator stations, and FM booster stations. *Id*. § 5.

The Commission created the LPFM service in 2000 to "provide opportunities for new voices to be heard" and to "enhance locally focused community-oriented radio broadcasting." *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2206-2208, ¶¶ 1, 3 (2000). LPFM stations operate on a noncommercial educational basis at a maximum power of either 100 watts or 10 watts, depending on their class. Their coverage generally extends three to five miles. Unless the purpose of the licensing entity is public safety, only one LPFM license may be granted per entity, and licensees may not hold attributable interests in any other regulated media entity, including broadcast stations. *Id.* at 2206, ¶ 1; 47 C.F.R. §§ 73.811, 73.853(a), 73.855. According to Commission data, 859 LPFM stations were licensed nationwide as of the end of 2010. *Broadcast Station Totals as of December 31, 2010*, FCC News Release (Feb. 11, 2011).

enactment.[3] In connection with the preparation of the study and report, we seek public comment on the requirements of Section 8 and on the ways in which LPFM stations may have an economic impact on full-service commercial FM radio.

As a preliminary matter, we seek public comment on the appropriate subject matter and scope of the study and report Congress has requested. In particular, the LCRA directs the Commission to study the economic impact that LPFM stations "will have" on full-service commercial FM stations.[4] Based on this use of the future tense and the changes to LPFM service mandated by the LCRA, our preliminary reading of Section 8 is that Congress intended for the Commission to assess any economic impact that LPFM stations may have on full-service FM stations after the statute has been implemented. However, our analysis necessarily must be based on data currently available for existing LPFM stations. We seek comment on whether the LCRA requires the Commission to include in its report predictive judgments about potential impacts that will occur after the statute is fully implemented and additional LPFM stations are licensed pursuant to the LCRA. We also seek comment on how we should account for any limitations involved in making predictive judgments based on currently available data.

In addition, we request input on the metrics we should take into account in our economic study and report to Congress. In order to assess any "economic" impact that LPFM stations may have on full-service commercial FM stations, our initial view is that there are two metrics we should take into consideration: (1) changes in audience ratings of full-service FM stations attributable to competition from LPFM stations and (2) changes in the advertising revenues of full-service FM stations attributable to the existence of LPFM stations. Full-service commercial FM stations derive the vast majority of their earnings from advertising, which in turn is a function of their listenership. Accordingly, we believe that audience ratings and advertising revenues are the most relevant available indicators for evaluating changes in a commercial station's economic performance.

Each of these metrics is discussed in more detail below. We ask commenters to address our preliminary views about the factors relevant to the study and report Congress requested, to discuss the relative importance or usefulness of the factors we have identified, and to suggest other factors we should consider. We also invite commenters to identify relevant resources or data for evaluating these factors and to provide any evidence or information that will inform our review. In addition, we request that commenters provide input on the proper geographic areas to be analyzed for purposes of our study as well as our preliminary conclusion, discussed below, that we need not address interference issues in the study.

Audience Ratings: We invite commenters to provide evidence that LPFM stations have had, or are likely to have after the LCRA's implementation, a direct or indirect impact on the audience ratings of full-service commercial FM stations. Given that LPFM stations generally target niche audiences and have small coverage areas in comparison to full-service stations, to

[3] LCRA § 8. Because Congress refers to "full-power" radio stations as "full-service" stations in the LCRA, we also use that terminology in this Public Notice. *Id*.

[4] *Id*.

what extent do they compete for listeners with full-service commercial stations? Has any such competition had a measurable effect on the audience shares of full-service stations? To the extent that there is available data showing recent changes in the audience ratings of full-service FM stations, what is the best means to discern what portion of such changes, if any, is attributable to competition from LPFM stations, and not a result of unrelated economic conditions? Aside from local audience measurements provided by Arbitron Inc. ("Arbitron"),[5] are there any other sources we should examine? Approximately 54 percent of existing LPFM stations are not located in Arbitron "Metro" markets.[6] Is there any way to measure the effect of such LPFM stations on the audience ratings of full-service FM stations?

Advertising Revenues: We seek comment on the extent to which LPFM stations have had, or are likely to have after the LCRA's implementation, a direct or indirect impact on the advertising revenues of full-service commercial FM stations. LPFM stations are prohibited from airing commercial advertisements and therefore are prohibited from directly competing for advertising.[7] However, we seek comment on whether sponsorship and underwriting of LPFM stations siphon advertising dollars away from full-service stations and on whether LPFM stations impact the advertising revenues of full-service stations in any other respect.[8] What are the primary sources of funding for most LPFM stations, and what percentage of their funding typically derives from underwriting arrangements? Has the level of underwriting increased substantially among LPFM stations since the service was authorized in 2000? Is there any way to discern from aggregated data what portion, if any, of changes in the advertising revenues of full-service commercial FM stations is attributable to competition from LPFM stations, and not a result of unrelated economic conditions? Are the databases maintained by BIA/Kelsey the best sources for tracking radio advertising revenues? Are there any other sources we should examine?

Relevant Geographic Measures: With respect to the metrics discussed above and any others that we may consider, we also seek comment on the appropriate geographic areas to be evaluated for purposes of our economic study. Our current plan is to use two different geographic measures in our study. First, we intend to examine the economic effect of LPFM stations on full-service commercial FM stations with signal contours that either significantly overlap or encompass one or more LPFM stations. There is the greatest potential for direct

[5] Arbitron currently has designated 282 different local geographic markets, or "Metros," each of which is a geographical area in which a cluster of stations serve a unique population that local businesses/advertisers seek to reach. Arbitron Metros generally correspond to Metropolitan Statistical Areas as defined by the Office of Management and Budget. Where Arbitron Metros differ from Metropolitan Statistical Areas, Arbitron has determined that listening patterns and economic interdependence indicates a different market definition is appropriate for radio advertising and programming purposes. Currently, about 60 percent of all U.S. commercial radio stations are licensed to communities within Arbitron Metros, and approximately 85 percent of the U.S. population resides in these markets.

[6] BIA Financial Network Inc., BIA/Kelsey Media Access Pro Radio Analyzer Database, April 23, 2011.

[7] 47 C.F.R. § 73.853(a).

[8] *See* 47 C.F.R. §§ 73.801, 73.503(d).

economic competition between LPFM stations and full-service commercial FM stations in areas in which there is such coverage overlap. Second, we plan to evaluate the economic impact of LPFM stations on full-service commercial FM stations based on geographic markets as defined by Arbitron. Specifically, we will attempt to determine whether full-service commercial FM stations experience any economic effects due to the presence of one or more LPFM stations in the same Arbitron market, regardless of whether there is contour overlap between the full-service station and any LPFM stations. We seek comment on the advantages and disadvantages of each of these proposed measures and on any other approaches we should consider. With respect to the Arbitron market-based approach in particular, we seek comment on the limitations that it may present due to the fact that a large percentage of LPFM stations are not located in Arbitron markets.

Interference Remediation Issues: We currently do not intend to study potential interference issues in connection with our report to Congress. Our preliminary interpretation of the statute is that Congress did not intend the Commission's study or report to assess the potential economic impact on full-service stations due to interference from LPFM stations. Section 8 of the LCRA does not expressly require such an assessment. Moreover, Congress adequately protected against interference problems by including in the LCRA extensive measures designed to resolve any interference from LPFM stations on third-adjacent channels.[9] The statute also requires the Commission within one business day of receiving a complaint of interference from an LPFM station operating on a second-adjacent channel to notify the station to suspend operations immediately until the problem is resolved.[10]

We believe our interpretation also is supported by the history of LPFM service. Congress required the Commission in legislation passed in 2000 to hire an independent engineering firm to study potential interference to full-service FM stations from LPFM stations operating on third-adjacent channels.[11] The subsequent engineering study conducted by The MITRE Corporation and released by the Commission in 2003 (the "MITRE Report") concluded that LPFM third-adjacent channel minimum distance separation requirements could be eliminated, subject to certain stipulations, without creating an interference risk for full-service stations.[12] In contrast to the specific directive in the 2000 legislation requiring the Commission to analyze potential interference caused by LPFM stations, Section 8 of the LCRA does not expressly obligate the Commission to analyze or assess interference issues. Because of this difference in the two statutes, combined with the interference protections included in the LCRA and the conclusions of

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[9] LCRA § 7.

[10] *Id.* § 3(b)(2)(B).

[11] United States Public Laws, Pub. L. No. 106-553, 114 Stat. 2762 (2000); *see also* S. REP. NO. 111-160, at 1-3 (2010); H.R. REP. NO. 111-375, at 4-5 (2009).

[12] *Experimental Measurements of the Third-Adjacent Channel Impacts of Low-Power FM Stations*, The MITRE Corp. (May 2003) at xxvi-xxvii, 2-16 to 2-18, 5-1 to 5-4. The MITRE Report found an interference potential in certain limited circumstances, particularly to FM translators, unless recommended technical requirements are met. *Id.* The LCRA instructs the Commission to address the potential interference that the MITRE Report predicted to FM translator input signals. LCRA § 6.

the MITRE Report, we do not anticipate an economic impact on full-service stations due to interference from LPFM stations.[13] We seek comment on our view that we need not analyze interference issues in connection with the economic study and report required under Section 8 of the LCRA.

Other Issues: We seek comment on whether there are any other potential economic effects that LPFM stations have, or may have after the LCRA's implementation, on full-service commercial FM stations. With regard to any such factors, commenters should provide specific and detailed information. We also offer commenters this opportunity to discuss any other issues we should consider in connection with the economic study and report to Congress required under Section 8 of the LCRA.

PROCEDURAL MATTERS

Ex Parte Rules. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the Commission's Rules.[14] *Ex parte* presentations are permissible if disclosed in accordance with Commission Rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.[15] Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

Comments and Reply Comments. Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.[16] Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies.[17]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs, or the Federal eRulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the websites for submitting comments. For ECFS filers, if multiple docket or rulemaking

[13] *See* MITRE Report at 5-5 (concluding that interference from LPFM stations operating on third-adjacent channels occurred too infrequently to warrant the expense of performing an economic analysis of their potential interference to full-service FM stations).

[14] 47 C.F.R. § 1.1206(b), as revised.

[15] *Id.* § 1.1206(b)(2).

[16] *Id*. §§ 1.415, 1.419.

[17] *See Electronic Filing of Documents in Rulemaking Proceedings*, Memorandum Opinion and Order, 63 Fed. Reg. 24121 (1998).

numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings should include the applicable docket or rulemaking number. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

    - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours at this location are 8:00 a.m. to 7:00 p.m.

    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

    - U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, DC 20554.

Accessibility Information. To request materials in alternate formats (Braille, large print, electronic files, audio format, etc.) for people with disabilities, send an e-mail to fcc504@fcc.gov, or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Additional Information. For additional information, contact Martha Heller, Martha.Heller@fcc.gov, or Julie Salovaara, Julie.Salovaara@fcc.gov, of the Media Bureau, Industry Analysis Division, (202) 418-2330. Press inquiries should be directed to Janice Wise, (202) 418-8165, of the Media Bureau.

By the Chief, Media Bureau

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