

**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.