Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Media Bureau Seeks Comment on the	)	
Economic Impact of Low-Power FM	)	MB Docket No. 11-83
Stations on Full-Service Commercial	)	
FM Stations	)	

To: Chief, Media Bureau

Comments of the National Association of Broadcasters

The National Association of Broadcasters ("NAB")[1] submits these comments in response to the Media Bureau's May 10, 2011 request for comments (the "*Bureau Public Notice*") on the scope of the report required by Section 8 of the Local Community Radio Act of 2010 (the "Act")[2] and the methodology the Commission should follow in preparing the report.

NAB agrees with many of the Bureau's preliminary conclusions concerning the scope of the report and the types of data relevant to the inquiry mandated by Congress. NAB believes that the Commission must examine not only the impact that Low-Power FM radio ("LPFM") stations have had to date, but also the impact they will have as greater numbers of LPFM stations are licensed.

The Act modified several limitations on the licensing of LPFM stations. In particular, the Act eliminated the previous statutory ban on licensing LPFM stations on third-adjacent channels

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[1] NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

[2] Pub. L. No. 111-371, 124 Stat. 4072 (2011).

from full-service FM stations.[3] Congress also permitted the Commission to grant a waiver to an LPFM applicant so that a low-power station can be located on a second-adjacent channel from a full-service FM station.[4]

Scope of the Report. NAB agrees with the Bureau that the report should assess the impact that LPFM stations ***will have*** on full-service stations after the Act is implemented, and not be merely a historical analysis of the impact LPFM has had up to now. As the Commission has recognized, the previous statutory ban on third-adjacent channel spacing for LPFM stations made it difficult to license them in many instances in or near large urban areas.[5] The Act will allow the licensing of a larger number of LPFM stations and permit them to be located in areas currently without LPFM service.

In requiring the report, Congress directed the Commission to examine the impact that LPFM "will have" on full-service stations. Congress' deliberate choice of those words indicates that it wanted the FCC to focus on the future impact of LPFM after the changes required by the Act are implemented. Presumably, Congress required the Commission to prepare the report so that Congress could consider further changing the rules if the operation of LPFM stations would have an adverse impact on FM service; there would be little value to Congress of an economic study of the impact of LPFM under licensing rules that no longer apply.

3 Like the Media Bureau, NAB will follow the Act's usage of "full-service" to refer to full-power FM stations. *See Bureau Public Notice* at n. 3.

4 Act §3(b)(2)(A). LPFM stations operating under a waiver are obligated to suspend operations immediately if their operations create interference to the reception of a full-service station. *Id.* §3(b)(2)(B). The Commission is required to notify LPFM stations operating under a waiver of interference complaints within one business day. *Id.*

5 Third Report and Order and Second Further Notice of Proposed Rulemaking, *Creation of a Low-Power Radio Service*, 22 FCC Rcd 21912, 21933 (2007), *aff'd on other grounds sub nom. National Association of Broadcasters v. FCC*, 569 F.3d 416 (D.C. Cir. 2009).

Because the FCC's report is due only one year after enactment, Congress certainly must have realized that few, if any, new LPFM stations that could be authorized under the revised rules would be operational before that deadline. Thus, Congress clearly expected that the Commission would make reasonable predictions of the economic impact that LPFM stations licensed under the new rules would have on existing FM service.

The Commission Should Focus on the Impact on Niche-Formatted Stations. The Commission's expectations are that LPFM stations will serve audiences with programming that is not available from mainstream-formatted stations.[6] This may not be an accurate assumption. As LPFM stations are licensed in larger urban areas, they may choose formats that compete with existing full-service stations already serving the same niche audiences. The attached study by Dr. Mark Fratrik[7] examined certain niche-formatted radio stations. Dr. Fratrik found that stations with foreign-language, ethnic, blue grass, and other non-mainstream formats are located primarily in urban areas where there have been few LPFM stations up to now. These stations garner much smaller audiences than mainstream-formatted stations in the same markets (perhaps because they have limited coverage areas as well), and consequently, the revenues these stations receive are small. These stations, which may serve similar kinds of niche audiences as LPFM stations will, are economically fragile. If they lose significant parts of their current audience, their survival – or their survival with their current formats – may be in doubt.

A niche-formatted LPFM station with a limited coverage area may not have a significant impact on the economic viability of a market-covering radio station with a mainstream format.

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[6] *See* Report and Order, *Creation of a Low-Power Radio Service*, 15 FCC Rcd 2205, 2213 (2000)(LPFM stations will "serve small, local groups with particular shared needs and interests, such as linguistic and cultural minorities . . .")

[7] Fratrik, *The Financial Position of Radio Stations Providing Non-Mainstream Programming* (June 23, 2011), attached as Appendix A.

The same, however, cannot be said for commercial stations that already provide service to the limited audiences that LPFM stations could seek to attract. Since those niche and other non-mainstream formatted stations in urban areas are likely to be the ones most affected by new LPFM stations, and even a small decrease in their audience or revenues may require them to reduce service or prevent them from continuing to serve their current audience with niche programming, NAB believes that the Commission must pay particular attention to these stations in preparing the report to Congress.[8]

Measuring the Impact of LPFM Stations. The Bureau suggests that the two metrics it should consider in determining the economic impact of LPFM stations on full-service stations are changes in audience size and in advertising revenues. *Bureau Public Notice* at 2-3. NAB agrees that these are the proper measures to consider as changes in stations' audience size generally are reflected in changes in revenues.

The Bureau asks several questions about how it should measure the impact of LPFM using these metrics. It asks first how it can determine the impact of LPFM on the audiences reached by full-service stations outside of Arbitron Metro markets where Arbitron does not measure audience ratings. As the Bureau recognizes, no usable audience data exists for non-Metro stations. BIA/Kelsey also does not compile revenue data for most stations outside of Metros. For those stations, the Commission should use the population within a station's protected contour as a proxy for audience size and revenues.[9]

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8 Although the Act requires the Commission to report on the impact LPFM stations will have on FM stations, urban niche audiences are often now served by AM stations. Dr. Fratrik identifies several of these stations. In looking at the impact that LPFM may have on the economics of full-service stations, the Commission should also consider the impact to the public interest if the licensing of new LPFM stations results in a loss of service from AM stations.

9 Use of the population reached by a station to estimate its revenues may overstate its actual audience size and revenues, particularly for niche-formatted stations, since not all potential listeners will tune in that station. In the absence of other usable date for non-Metro stations,

The Bureau also asks whether sponsorship and underwriting of LPFM stations has or is likely to "siphon advertising dollars away from full-service stations."[10] NAB agrees that some advertisers who now reach minority or niche audiences over commercial stations may divert their radio budgets to underwriting of LPFM stations. Even if that does not occur, however, a low-power station that diverts audiences from a full-service station will reduce the full-service station's advertising revenues because the full-service station may no longer garner as many listeners, regardless of whether particular advertisers choose to support the LPFM station. Particularly for full-service stations serving niche audiences, the loss of listeners may reduce advertising revenues to a point where the station is no longer financially viable or where it would be forced to change to a more mainstream format. NAB believes it is those types of effects that Congress wanted the Commission to consider because they would reduce service for listeners even beyond the area served by a new LPFM station.

The Commission should also recognize in the report that some LPFM stations have sold commercial advertising in disregard of the requirement that they operate only on a non-commercial basis.[11] This record, and the fact that LPFM licensees often have no prior experience with the Commission's rules, means that the Commission cannot simply assume that new LPFM stations will not also try to sell advertising. Particularly considering the expected growth in the

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however, using audience reach will at least identify full-service stations that may be vulnerable to economic losses from LPFM service.

[10] *Bureau Public Notice* at 3.

[11] *See, e.g.,* Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, *Enid Public Radio Association*, DA 10-1293(rel. July 13, 2010)(increased forfeiture for repeated violations of advertising restrictions); *American Heritage Media, Inc.*, 20 FCC Rcd 17147 (2005)(admonishment of LPFM station for broadcasting commercial announcements); Memorandum Opinion and Order, *Technology Information Foundation, Ltd.*, 19 FCC Rcd 22191 (2004)(admonishment of LPFM station for broadcasting commercial advertisements); Memorandum Opinion and Order, *Enid Public Radio Association*, 19 FCC Rcd 16324 (2004) (admonishment of LPFM station for broadcasting commercial advertisements).

number of LPFM stations, NAB recommends that a discussion of appropriate enforcement of the FCC's LPFM rules should be a part of the report.

With respect to revenues for full-service stations, NAB agrees that the BIA/Kelsey database will provide the best source for radio station advertising revenues, particularly since BIA/Kelsey estimates revenues for commercial stations in Metro markets and provides estimates of population reach for all stations. BIA/Kelsey also estimates population reach for LPFM stations, but it does not collect data about the revenues and financing sources for LPFM stations, and NAB is not aware of any other source for such data. To evaluate the economic impact of LPFM stations, the Commission could ask LPFM licensees, or a representative sample of LPFM licensees, to submit information concerning their revenues and financial sources. To avoid any privacy concerns, this data could be collected by the Commission or a contractor on a confidential basis and reported only on an aggregate basis.

Geographic Markets. The Bureau proposes to use two different means of determining the geographic markets within which to assess the impact of LPFM stations. First, it proposes to examine the impact of LPFM stations on full-service stations whose coverage areas overlap with an LPFM station. Second, it proposes to examine the impact of LPFM on all full-service stations in the same Arbitron Metro. NAB agrees that both of these geographic markets should be considered. To the extent that the Bureau only plans to examine places where LPFM stations now exist, however, that limitation would be inconsistent with the Commission's understanding that Congress expects a report on the impact of LPFM after the Act is implemented. NAB suggests that the Commission must look at urban and other markets where no LPFM station may exist today, but could be authorized under the new licensing rules. Since the precise contours of those new stations cannot be predicted, the Commission should study the likely impact of LPFM stations on full-service stations in the Metros where new LPFM facilities could be authorized.

Impact of Interference from LPFM Stations. As the Bureau notes,[12] the Act contains several provisions intended to ensure that any interference to full-service FM stations from LPFM stations be rectified promptly. In light of those provisions, it proposes to ignore any economic impact that might be caused by LPFM interference. NAB does not disagree with the Bureau's approach, but emphasizes that this is another reason why the Commission must commit itself to prompt and vigorous enforcement of the interference protection provisions of the Act.

Conclusion

NAB agrees with most of the Bureau's proposals for preparing the report Congress mandated on the impact that LPFM stations will have on existing radio service. In making the predictive judgment that NAB believes Congress intended the Commission to make, it should pay particular attention to existing radio stations that serve minority and other niche audiences. Those stations are most likely the ones that will face competition for listeners and revenues from the LPFM stations that the Act will now permit to be licensed in urban areas; they also are the most economically vulnerable to a loss of audience or advertising.

Respectfully submitted,

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12 *Bureau Public Notice* at 4.

THE FINANCIAL POSITION OF RADIO STATIONS PROVIDING NON-MAINSTREAM PROGRAMMING

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THE FINANCIAL POSITION OF RADIO STATIONS PROVIDING NON-MAINSTREAM PROGRAMMING

Introduction

To compete in the audio marketplace, radio stations may choose to provide programming of broad interest or programming of more narrow or specific interest. Some local radio stations compete to attract listeners and generate advertising revenues by providing programming tailored to the interests of minorities or other groups of limited size. While stations that provide more generally popular formats can try to attract larger audiences, stations offering niche or non-mainstream programming have smaller potential audiences and much more limited ability to generate advertising revenues. Consequently, even small losses in audiences, and resulting advertising revenues, might threaten the financial viability of niche stations, their continued ability to maintain their current level of services, or their continued choice of those formats.

In this report, we will highlight some examples of various niche formats offered by over-the-air radio stations. We only examined a small number of these formats and only those stations that have such a format as their primary one. Many radio stations are providing non-mainstream programming with a secondary, and even a tertiary format for their stations. Additionally, many stations are providing additional niche programming through their use of digital multicast signals.

For those stations with certain niche primary formats, we will describe their ability to generate revenue using the BIA/Kelsey Media Access Pro[1] database revenue estimates for most radio stations located in the 290 radio markets. For niche-formatted stations located outside those markets, we will detail the populations served by these stations. Both by highlighting their limited populations served and the revenues generated by these non-mainstream formatted stations, we show the challenging competitive position of these stations.

Niche or Non-Mainstream Formatted Stations

Asian Language Stations

One example of non-mainstream formatted stations is Asian language stations. Media Access Pro™ shows eleven stations designated as Asian or Asian/Talk, all located within four radio markets.[2] While these markets have sizeable Asian populations, the revenues generated by these stations are still quite limited. For the nine stations for which there are revenue estimates,[3] their median 2010 revenues were only $650 thousand. This compares with the median 2010 revenues of $2.75 million for all the other stations located in these four markets. In markets of

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[1] BIA/Kelsey maintains a database of all radio and television stations, as well as daily and weekly newspapers. For radio stations located in the 290 radio markets, as defined by the Arbitron Company, BIA/Kelsey estimates advertising revenues for all radio stations obtaining minimum reportable audience levels. For all stations, the database also includes estimates for population located within the stations' primary and secondary contours (and the 2mVm contour for AM stations).

[2] Those markets are New York, NY, Los Angeles, CA, San Jose, CA, and Fresno, CA. There are no LPFM stations now located in these markets.

[3] Two stations attract so little audience that they do not meet minimum reportable levels. As such, there are no revenue estimates for those stations but we can assume that, with very small audiences, their revenues will be similarly limited.

that size with many stronger stations, the financial viability of niche stations with such limited revenue is questionable.

Blue Grass Formatted Stations

Blue Grass formatted stations serve a different type of limited audience. There are six commercial radio stations providing that type of programming, five of which are located outside of any designated radio market.[4] The median population within the 2 mV/m contours[5] served by these six commercial radio stations is about 135,000, with two of the stations reaching only around 50,000 people. The advertising revenues that can be achieved with an audience reach this small, particularly for stations with niche formats, makes it difficult to sustain a station and in particular to provide significant local service.

Ethnic Formatted Stations

A more widespread non-mainstream format being offered by stations is Ethnic programming.[6] There are 52 stations offering this programming with 42 of those stations located in designated radio markets[7] and the other 10 located outside of those markets. For the ones located within designated radio markets, only 31 attract enough audiences to meet minimum

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4 The only exception is WTWZ-AM located in the Jackson, MS radio market.

5 The 2mV/m contour is often used by radio networks to define an exclusive market area for AM stations for particular network programming. Radio companies' use of the 2mV/m contour shows that the marketplace recognizes it as the most relevant contour for AM stations. Although the report mandated by Congress asks for the economic impact of LPFM stations on full-service FM stations, new LPFM operations may also impact AM stations, which are often where minority-oriented commercial programming is found.

6 Ethnic programming is foreign language programming that is not included in the specific foreign language programming categories of Japanese, Portuguese, Polish, Korean, and Greek.

reporting levels, and for which revenue estimates therefore are available. The median advertising revenues for 2010 for that group of Ethnic formatted stations is only $350 thousand. Of the remaining ten stations offering this format outside of designated radio markets, four are located in either Guam or American Samoa, so the estimates for the population served by these stations are not available. For the remaining six radio stations, the median population served is only 136,500; thus, these stations' revenues are likely extremely small.

International Formatted Stations

Another niche format being provided is international programming.[8] There are eight radio stations providing this type of programming, all located within five designated radio markets.[9] Only six of these stations attract sufficient audience to meet minimum reporting standards. The median advertising revenues generated for 2010 for these six stations were only $513 thousand.

Smooth Jazz Formatted Stations

One niche format airing on several radio stations throughout the U.S. is smooth jazz. There are nineteen radio stations airing this type of programming, located in seventeen designated radio markets and two serving communities outside of those markets. Only fifteen of those located in designated radio markets receive enough of an audience to meet minimum

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[7] There are 23 different markets that have at least one station providing this type of programming.

[8] International formatted stations are those stations that report this type of format. None of these International formatted stations are included in any of the other niche formatted stations analyzed in this report.

[9] Those markets are Houston-Galveston, TX, Atlanta, GA, Miami-Ft. Lauderdale, FL, Sacramento, CA and Buffalo-Niagara, NY. Across those five markets, there are a total of 11 LPFM stations, none of which are programming an International format.

reporting levels, and for which revenue estimates are available. The median advertising revenues generated for 2010 for those stations were only $300 thousand. For the two stations outside of those markets providing that programming, the average population reached is only about 48 thousand people.

Foreign Language Formatted Stations

In addition to the Ethnic and International formatted stations, there are twenty other radio stations providing programming in one of the following specific foreign languages – Greek, Japanese, Korean,[10] Polish, or Portuguese. All of these stations are located within fourteen different designated radio markets.[11] However, only twelve of these stations attract enough of an audience to meet minimum reporting standards, and for which revenue estimates therefore are available. The median advertising revenues generated in 2010 for these stations were only $288 thousand.

Conclusion

From this brief examination of certain non-mainstream formats offered by over-the-air radio stations, one can easily see that commercial stations with formats aimed at limited populations are very challenged competitively and financially. For those stations located in designated radio markets, the revenues they earn are very low. For niche stations located outside of designated radio markets, the populations being served by these stations are very limited.

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[10] None of these Korean or Japanese formatted stations are included in the Asian stations analyzed above.

[11] There are 21 LPFM stations across these 14 markets. None of those LPFM stations are providing any foreign language programming.

Consequently, any reduction in their audiences could lead to a noticeable revenue loss, jeopardizing at the least these stations' continued ability to offer such non-mainstream programming and even their financial viability.