



Federal Communications Commission  
Washington, D.C. 20554

August 20, 2015

*In Reply Refer to:*  
1800B3-ATS

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In re: Process Theatre, Inc.  
New LPFM, Sacramento, California  
Facility ID No. 194417  
File No. BNPL-20131113APA

**Petition for Reconsideration**

Dear Counsel:

We have before us the Petition for Reconsideration ("Petition") filed by AMFM Broadcasting Licenses, LLC ("AMFM") seeking reconsideration of a Media Bureau ("Bureau") decision<sup>1</sup> that granted the application ("Application") of Process Theater, Inc. ("PTI"), for a new LPFM station at Sacramento, California ("LPFM Station").<sup>2</sup> For the reasons set forth below, we deny the Petition.

**Background.** As discussed in the *Staff Decision*, the Application included a second-adjacent channel waiver request with regard to Station KQJK(FM), Roseville, California ("KQJK"), which is licensed to AMFM.<sup>3</sup> AMFM filed a Petition to Deny the Application, in which it argued that the second-adjacent channel waiver in the Application request was deficient. AMFM submitted a study indicating that interference to KQJK was predicted if the Longley-Rice propagation algorithm were used instead of the Commission's standard interference calculation methodology.<sup>4</sup> The *Staff Decision* rejected this argument on the grounds that Longley-Rice could not be used to decrease the predicted strength of a full-service FM station.<sup>5</sup>

In the Petition, AMFM argues that the Bureau erred in rejecting its Longley-Rice analysis because Section 3(b)(2)(A) of the Local Community Radio Act ("LCRA") and the *Sixth Report and Order* in the LPFM proceeding both indicated that such terrain-sensitive propagation models were permissible for predicting interference.<sup>6</sup> AMFM also argues that the *Staff Decision* did not consider its argument that

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<sup>1</sup> *Process Theatre, Inc.*, Letter, Ref 1800B3-GL (MB Mar. 11, 2015) ("*Staff Decision*").

<sup>2</sup> The Petition was filed on April 15, 2015. PTI filed an Opposition on April 27, 2015. AMFM did not file a reply.

<sup>3</sup> Application at Attachment 11.

<sup>4</sup> Petition to Deny at 2-5.

<sup>5</sup> *Staff Decision* at 2.

<sup>6</sup> Petition at 1-4, citing Pub. L. No. 111-371, 124 Stat. 4072 (2011). See also *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15425, 1528 ¶¶72, 77 (2012) (implementing Section 3(b)(2)(A) of the LCRA) ("*Sixth Report and Order*").

“only a tiny fraction of the proposed LPFM service area population would receive an interference-free signal” and thus the LPFM Station “would not constitute an efficient use of spectrum.”<sup>7</sup> Finally, AMFM argues that the *Staff Decision* erred in stating that “PTI must ensure that the LPFM Station does not cause interference to any listeners of KQJK” and instead “should have warned PTI that it ‘must ensure that the LPFM Station does not cause interference to any listeners of *any existing or modified full-service FM station without regard to the location of the station.*’”<sup>8</sup>

**Discussion.** The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.<sup>9</sup> AMFM has not met this burden and we will deny the Petition.

When the Commission integrated the relevant provisions of the LCRA into Rules, it permitted the use of the Commission's standard prediction method while also allowing LPFM *applicants* to use alternate prediction methods to demonstrate that a proposed LPFM operation will not result in interference.<sup>10</sup> Thus, while Longley-Rice or other alternate calculation methods may be used in certain situations, neither the LCRA nor the *Sixth Report and Order* authorized them for the purpose of reducing the predicted signal strength of a full-service FM station to oppose an LPFM applicant's second-adjacent channel waiver request, as AMFM proposes to do here. Therefore, we again reject this argument as a basis for denying the Application.

Additionally, the *Staff Decision* should have denied AMFM's argument that grant of the Application is not in the public interest. There is no requirement that LPFM stations provide service to a minimum number of persons, and PTI's proposed service is consistent with LPFM's role as a secondary service intended to supplement the service provided by primary stations. AMFM's reliance on the Statement is misplaced because statements of Commission staffers – including the Chairman – are not binding authority.<sup>11</sup> In addition, the Statement is inapposite because it relates to a proceeding evaluating the Commission's policies regarding foreign investment in commercial broadcast licensees, whereas the current proceeding is for a noncommercial LPFM station. In any event, PTI's proposed service is

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<sup>7</sup> Petition at 5 n.15, citing Statement of Chairman Tom Wheeler, *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, Declaratory Ruling, 28 FCC Rcd 16244, 16254 (2013) (public interest goals “include encouraging investment, innovation, media diversity, localism, and the efficient use of spectrum”) (“Statement”).

<sup>8</sup> Petition at 6-7 (emphasis in original).

<sup>9</sup> See 47 C.F.R. § 1.106(c), (d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

<sup>10</sup> See LCRA § 3(b)(2)(A) (“the Federal Communications Commission may grant a waiver of the second-adjacent channel distance separation requirement to *low-power FM stations* that establish, using methods of predicting interference taking into account all relevant factors, including terrain-sensitive propagation models, that *their* proposed operations will not result in interference to any authorized radio service”) (emphasis added); *Sixth Report and Order*, 27 FCC Rcd at 15423 (“We turn to the manner in which *waiver applicants* can “establish, using methods of predicting interference taking into account relevant factors, including terrain-sensitive propagation models, that their proposed operations will not result in interference to any authorized radio service.””) (emphasis added); 47 C.F.R. § 73.07(e)(1) (“In each case, *the LPFM station* must establish, using methods of predicting interference taking into account all relevant factors, including terrain-sensitive propagation models, that its proposed operations will not result in interference to any authorized radio service.”) (emphasis added).

<sup>11</sup> See generally, *Petition for Declaratory Ruling Concerning Section 312(a)(7) of Communications Act*, Memorandum Opinion and Order, 9 FCC Rcd 7638 (1994), *vacated on other grounds, Becker v. FCC*, 95 F.3d 75 (D.C. Cir. 1996) (referring to letter from FCC Chairman to member of Congress as an informal staff opinion).

consistent with the goals of diversity, innovation, localism and spectrum efficiency because LPFM stations operate as low-power secondary stations that provide new service on a frequency that otherwise would not be used to serve the needs of local communities.<sup>12</sup> We therefore reject AMFM's argument concerning the Statement.

Finally, we reject AMFM's argument that the Bureau must advise PTI that it must cease operations of the LPFM Station if it caused interference "to any listeners of any existing or modified full-service FM station without regard to the location of the station." The Bureau has recently held that Section 3(b)(2)(B) of LCRA only applies to second-adjacent channel stations.<sup>13</sup> This argument is thus meritless.

**Conclusion.** Accordingly, for the reasons set forth above, IT IS ORDERED that the Petition for Reconsideration filed on April 15, 2015, by AMFM Broadcasting Licenses, LLC, IS DENEID.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by the initials "PH".

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Mr. Joseph Parente  
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<sup>12</sup> See *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2208 (2000) ¶4 ("Our goal in creating a new LPFM service is to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities.").

<sup>13</sup> See *LPFM MX Group 34*, Letter, 30 FCC Rcd 7343 (MB 2015).