

109TH CONGRESS
1ST SESSION

H. R. 3731

To implement the recommendations of the Federal Communications Commission report to the Congress regarding low-power FM service.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2005

Ms. SLAUGHTER (for herself, Mr. CASE, Ms. WOOLSEY, Mr. HINCHEY, Ms. SCHAKOWSKY, and Ms. WATSON) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To implement the recommendations of the Federal Communications Commission report to the Congress regarding low-power FM service.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Enhance and Protect
5 Local Community Radio Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) The passage of the Telecommunications Act
2 of 1996 led to increased ownership consolidation in
3 the radio industry.

4 (2) At a hearing before the Senate Committee
5 on Commerce, Science, and Transportation, on June
6 4, 2003, all 5 members of the Federal Communica-
7 tions Commission testified that there has been, in at
8 least some local radio markets, too much consolida-
9 tion.

10 (3) Local communities have sought to launch
11 radio stations to meet their local needs. Opportuni-
12 ties for starting new stations have been scarce since
13 the late 1970's.

14 (4) In a record setting rulemaking, over 3500
15 formal comments were filed at the FCC, overwhelm-
16 ingly in favor of some form of low power radio serv-
17 ice.

18 (5) In January, 2000, the Federal Communica-
19 tions Commission authorized a new, affordable com-
20 munity radio service called "low-power FM" to "en-
21 hance locally focused community-oriented radio
22 broadcasting".

23 (6) Through the creation of LPFM, the Com-
24 mission sought to "create opportunities for new
25 voices on the air waves and to allow local groups, in-

1 including schools, churches, and other community-
2 based organizations, to provide programming respon-
3 sive to local community needs and interests”.

4 (7) The Commission made clear that the cre-
5 ation of LPFM would not compromise the integrity
6 of the FM radio band by stating, “We are com-
7 mitted to creating a low-power FM radio service only
8 if it does not cause unacceptable interference to ex-
9 isting radio service.”.

10 (8) Currently, FM translator stations can oper-
11 ate on the second- and third-adjacent channels to
12 full power radio stations, up to an effective radiated
13 power of 250 watts, pursuant to part 74 of title 47,
14 Code of Federal Regulations, using the very same
15 transmitters that LPFM stations will use. The Com-
16 mission based its LPFM rules on the actual per-
17 formance of these translators that already operate
18 without undue interference to FM stations. The ac-
19 tual interference record of these translators in their
20 current implementation is far more useful than any
21 results that further testing could yield.

22 (9) Small rural broadcasters were particularly
23 concerned about a lengthy and costly interference
24 complaint process. Therefore, in September 2000,
25 the Commission created a simple process to address

1 interference complaints regarding LPFM stations on
2 an expedited basis.

3 (10) In December 2000, Congress delayed the
4 full implementation of LPFM until an independent
5 engineering study was completed and reviewed. This
6 delay was due to some broadcasters' concerns that
7 LPFM service would cause interference in the FM
8 band.

9 (11) Approximately 600 LPFM stations were
10 allowed to proceed despite the congressional action.
11 These stations are currently on the air and are run
12 by local government agencies, groups promoting arts
13 and education to immigrant and indigenous peoples,
14 artists, schools, religious organizations, environ-
15 mental groups, organizations promoting literacy, and
16 many other civically-oriented organizations.

17 (12) After 2 years and the expenditure of
18 \$2,193,343 in taxpayer dollars to conduct this study
19 (the "MITRE Study"), the broadcasters' concerns
20 were demonstrated to be unsubstantiated.

21 (13) In March 2003, while Congress waited for
22 the results of this study, the Commission opened a
23 filing window for FM translator stations. FM Trans-
24 lators, which extend the range of incumbent full
25 power stations or, in some cases, receive national

1 programming from a satellite feed, fill similar un-
2 used gaps in the spectrum as LPFM stations.

3 (14) The commission received over 13,000 ap-
4 plications in the March 2003 Window, almost four
5 times the number of translators in existence prior to
6 the March 2003 Window. As a result of this unan-
7 ticipated surge of applications, the grant of all appli-
8 cations would virtually eliminate any opportunity to
9 grant LPFM licenses in the future, even if Congress
10 repealed the current legislative prohibitions on
11 LPFM spacing.

12 (15) Detailed analysis of the 13,000 applica-
13 tions also raises grave concerns that the grant of all
14 pending applications in the March 2003 Window
15 would compromise the goal of promoting localism
16 central to Federal regulation of broadcasting: only
17 15 organizations account for more than 50 percent
18 of the applications. Two corporations (with identical
19 corporate officers) account for more than 4,220 ap-
20 plications.

21 (16) The sheer number and geographic scope of
22 these applications suggests that it would disserve the
23 Federal interest in promoting local content by allow-
24 ing these applications to take precedence over
25 LPFM licensees.

1 (17) Furthermore, the Commission has received
2 complaints that parties receiving construction per-
3 mits as a result of the March 2003 Window have
4 marketed and sold these permits without making
5 any effort to construct facilities and provide service.
6 This suggests that the Commission failed to create
7 adequate safeguards to prevent trafficking in the
8 March 2003 Window, as required by section
9 309(j)(4)(E) of the Communications Act of 1934,
10 rendering the March 2003 Window suspect and re-
11 quiring Congressional action.

12 (18) LPFM stations have what is known as
13 “secondary status”. They can be displaced at any
14 time by any full power station, because full power
15 stations have “primary status”. Because full power
16 stations are primary to LPFM, and because of the
17 mandatory spacing rules, the newly expanded full
18 power signal “encroaches” on the pre-existing
19 LPFM signal and requires the pre-existing LPFM
20 to reduce its coverage area or shut down altogether.

21 (19) New digital broadcast technologies in radio
22 enable the delivery of more content using the same
23 amount of channel space. This technology holds
24 great promise for incumbent full power radio licens-
25 ees, who will have the capacity to provide greater

1 public service to their communities. At the same
2 time, the efficiencies from these new technologies
3 can create opportunities for new entrants to broad-
4 casting increasing the diversity of media voices avail-
5 able and creating new opportunities for local pro-
6 gramming.

7 (20) In implementing these new technologies,
8 the Commission is charged with examining how best
9 to balance the interests of enhancing the existing
10 full-power radio broadcasting service, providing op-
11 portunities for new entrants, and Congress' long-
12 standing policy of promoting localism, diversity, and
13 competition. In particular, the Commission should
14 consider the success of the LPFM service in pro-
15 viding quality local content and enhancing the diver-
16 sity of local voices available to their communities.

17 (21) The conversion to digital broadcasting may
18 also create new opportunities and challenges for in-
19 cumbent analog LPFM stations. The current Fed-
20 eral Communications Commission rules for digital
21 radio transition make no provision for opportunities
22 for new entrants in radio. Certain configurations of
23 the technology can create additional channels. Cur-
24 rently incumbent licensees can use these newly pos-
25 sible second channels, while new entrants have no

1 opportunity to take advantage of these new digital
 2 opportunities.

3 **SEC. 3. REPEAL OF PRIOR LAW.**

4 Section 632 of the Departments of Commerce, Jus-
 5 tice, and State, the Judiciary, and Related Agencies Ap-
 6 propriations Act, 2001 (Public Law 106–553; 114 Stat.
 7 2762A–111), is repealed.

8 **SEC. 4. SPECIAL REGULATIONS WITH REGARD TO THE CRE-**
 9 **ATION OF LOW POWER FM STATIONS.**

10 Section 309 of the Communications Act of 1934 (47
 11 U.S.C. 309) is amended by adding at the end the following
 12 new subsection:

13 “(l) SPECIAL REGULATIONS WITH REGARD TO THE
 14 CREATION OF LOW POWER FM STATIONS.—

15 “(1) MINIMUM DISTANCE SEPARATION RE-
 16 QUIREMENTS.—The Commission shall modify its
 17 rules to eliminate third-adjacent minimum distance
 18 separation requirements between—

19 “(A) LPFM stations; and

20 “(B) full-service FM stations, FM trans-
 21 lator stations, and FM booster stations.

22 “(2) PROTECTION OF RADIO READING SERV-
 23 ICES.—The Commission shall retain its rules that
 24 provide third-adjacent channel protection for full-
 25 power FM stations that broadcast radio reading

1 services via a subcarrier frequency from potential
2 LPFM station interference.

3 “(3) ENSURING AVAILABILITY OF SPECTRUM
4 FOR LPFM STATIONS.—

5 “(A) RESTRICTIONS ON LICENSING FM
6 TRANSLATOR STATIONS.—When licensing FM
7 translator stations, the Commission shall—

8 “(i) ensure that licenses are available
9 to both FM translator stations and LPFM
10 stations by, among other means, use of
11 more sophisticated technical options, such
12 as contour overlap and mapping based on
13 the Individual Location Longley-Rice
14 model set forth by the Federal Commu-
15 nications Commission in Docket No. 98–
16 201, and ensure to capture the full usage
17 possibility of the spectrum, rather than
18 using the simplest minimum distance spac-
19 ing methods in allocating LPFM station
20 and FM translator station licenses; and

21 “(ii) provide priority to licensees pro-
22 ducing and broadcasting at least 8 hours
23 of locally originated programming per day.

1 “(B) OWNERSHIP LIMITATIONS; NUMBER
2 OF REPEATERS PER STATION.—The Commis-
3 sion shall not permit—

4 “(i) any entity to own or have an at-
5 tributable interest in more than twenty
6 FM translator stations, nationwide; or

7 “(ii) any single FM radio station to
8 have its broadcast signal repeated more
9 than 20 times through the use of FM
10 translator stations.

11 “(C) SECONDARY STATUS OF TRANS-
12 LATORS.—

13 “(i) PREFERENCE FOR LOCALLY
14 ORIGINATED PROGRAMMING.—The Com-
15 mission shall require that all FM trans-
16 lators, except for fill-in translators, shall,
17 regardless of the order in which their li-
18 censes were applied for or granted, be op-
19 erated as secondary to LPFM stations that
20 produce and broadcast at least 8 hours per
21 day of locally originated programming.

22 “(ii) DEFINITIONS.—For purposes of
23 this subsection—

1 “(I) the term ‘fill-in translators’
2 means a station operating pursuant to
3 47 CFR 74.1201(g), (h), and (i); and
4 “(II) the term ‘secondary’ means
5 that a station shall be subject to the
6 condition that no harmful interference
7 is caused to other radio broadcast sta-
8 tions.

9 “(4) SCHEDULE OF LOW POWER RADIO OPPOR-
10 TUNITIES.—

11 “(A) SCHEDULE OF WINDOWS FOR LOW-
12 POWER FM LICENSING.—The Commission shall
13 establish and publish a schedule for low-power
14 radio licensing windows, with licensing opportu-
15 nities for both stations with effective radiated
16 power of 100 and 10 watts, respectively (re-
17 ferred to as ‘LP-100’ and ‘LP-10’ licenses),
18 available no less frequently than every three
19 years. The Commission shall plan the allocation
20 of its resources to meet the published schedule.

21 “(B) AVAILABILITY IN EACH STATE.—In
22 accordance with section 307(b), the Commission
23 shall ensure that, to the greatest extent possible
24 under its rules as in effect on the date of enact-
25 ment of the Enhance and Protect Local Com-

1 community Radio Act of 2005, at least one LPFM
2 station licensing window shall be available in
3 each State at least once each 3 years.

4 “(C) PROCESSING DEADLINES.—The Com-
5 mission shall grant or deny each LPFM station
6 license application within 2 years of the date of
7 its submission. If the Commission has not
8 granted or denied the license application within
9 such 2 years, the license will be deemed grant-
10 ed, except that—

11 “(i) any delay caused by the failure of
12 the applicant to provide necessary informa-
13 tion required by the Commission’s rules or
14 requested by the Commission shall not
15 count against the 2-year deadline;

16 “(ii) nothing in this subsection shall
17 prohibit an applicant from waiving the 2-
18 year limit, but such waiver shall be in writ-
19 ing and shall include a date certain by
20 which the Commission will act; and

21 “(iii) in cases where applications con-
22 flict or are otherwise contested, the Com-
23 mission shall adhere to the 2-year limit un-
24 less all parties agree to extend the deadline
25 pursuant to clause (ii).

1 “(5) USE OF NEW DIGITAL CAPACITY FOR COM-
2 MUNITY BROADCASTING.—

3 “(A) DIGITAL RADIO PROCEEDING ON
4 PUBLIC INTEREST OBLIGATIONS.—The Com-
5 mission shall initiate an inquiry and rulemaking
6 to explore the public interest obligations of FM
7 and AM digital terrestrial radio licenses. The
8 Commission shall complete the inquiry by Janu-
9 ary 1, 2006.

10 “(B) REPORT TO CONGRESS.—Upon com-
11 pletion of the inquiry required by subparagraph
12 (A), the Commission shall submit a report to
13 Congress stating—

14 “(i) what new public interest obliga-
15 tions the Commission will impose on full
16 power broadcasters to reimburse the public
17 for the free use of additional spectrum in
18 the former guard bands and spectrum
19 rights granted as part of the digital transi-
20 tion of full power radio broadcasters;

21 “(ii) the impact of digital conversion
22 on existing LPFM licensees and the
23 LPFM service as a whole;

24 “(iii) the opportunities to expand the
25 number of LPFM licenses available as a

1 consequence of the digital transition, in-
2 cluding any changes to the Commission's
3 rules that would increase the number of
4 LPFM licenses available after the digital
5 transition; and

6 “(iv) any other changes in the Com-
7 mission's rules or policies that would fur-
8 ther the interests of localism, diversity of
9 voices, and competition as a consequence
10 of the digital transition.

11 “(C) ACTION ON RULES.—The Commission
12 shall issue any rules based on the results of the
13 inquiry not later than June 1, 2006.

14 “(6) PROCEEDING TO RESOLVE THE PROBLEM
15 OF ENCROACHMENT.—

16 “(A) DISPLACEMENT.—The Commission
17 shall ensure that LPFM stations will not be
18 displaced by the granting of licenses to full-
19 power FM stations for use of the spectrum used
20 by LPFM stations.

21 “(B) PROTECTION FROM INTER-
22 FERENCE.—If the Commission considers an ap-
23 plication for a new full-power FM station, or
24 major or minor modification to a full-power FM
25 station, or an application for an FM translator

1 station, or other licensee operating on the FM
2 band, the Commission—

3 “(i) shall consider any operating
4 LPFM station as primary to the applicant;
5 and

6 “(ii) may not grant the application if
7 the grant of the application will cause
8 harmful interference to the existing LPFM
9 station.

10 “(C) REMEDIES FOR INTERFERENCE.—In
11 the event the grant of an application described
12 in subparagraph (B) does, in fact, cause harm-
13 ful interference, the existing LPFM station
14 shall enjoy the same expedited procedures to re-
15 solve interference complaints as existing, un-
16 modified full power FM stations enjoy against
17 LPFM stations.

18 “(D) LOCAL ORIGINATION AS PRE-
19 REQUISITE.—Subparagraph (B) shall only
20 apply to LPFM stations producing and broad-
21 casting at least 8 hours of locally originated
22 programming per day.

23 “(7) ANTI-TRAFFICKING PROVISIONS.—

24 “(A) FUTURE VOLUNTARY TRANSFERS
25 PROHIBITED.—After the date of enactment of

1 Enhance and Protect Local Community Radio
2 Act of 2005, the Commission shall not allow
3 any construction permit for a FM translator or
4 FM booster station to be voluntarily transferred
5 from one entity to another entity.

6 “(B) TREATMENT OF PENDING PER-
7 MITS.—If a construction permit for a FM
8 translator or FM booster station has been vol-
9 untarily transferred from one entity to another
10 entity prior to the date of enactment of En-
11 hance and Protect Local Community Radio Act
12 of 2005, but the Commission has not yet grant-
13 ed a license to operate such station, the Com-
14 mission—

15 “(i) shall require the holder of the
16 construction permit to demonstrate that
17 purchase of the construction permit did
18 not convey an unjust enrichment to the
19 original holder of the construction permit,
20 or to any subsequent holder of the con-
21 struction permit prior to request to oper-
22 ate;

23 “(ii) shall require the holder of the
24 construction permit to demonstrate that
25 granting the right to operate the facility

1 will not convey an unjust enrichment to
2 the current holder of the construction per-
3 mit or any prior holder of the construction
4 permit;

5 “(iii) shall determine separately that
6 granting the license serves the public inter-
7 est;

8 “(iv) in making such public interest
9 determination, shall not consider either the
10 cost to the current holder for construction
11 of the facility or the price the current hold-
12 er paid for the construction permit; and

13 “(v) shall approve such a license only
14 by action of the full Commission, not at
15 the media bureau level.

16 “(C) CANCELLATION.—In the event the
17 Commission determines that purchase of the
18 construction permit created an unjust enrich-
19 ment, or that an unjust enrichment would re-
20 sult from grant of the license to operate, or
21 that grant of the license would not serve the
22 public interest, the Commission shall cancel the
23 construction permit.

1 “(8) DEFINITION.—For purposes of this sub-
2 section, the term ‘LPFM station’ means a low-power
3 FM station.”.

○