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111TH CONGRESS, 2d Session | SENATE | REPORT 111–160

LOCAL COMMUNITY RADIO ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 592

MARCH 9, 2010.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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LOCAL COMMUNITY RADIO ACT OF 2009

MARCH 9, 2010.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 592]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 592) to implement the recommendations of the Federal Communications Commission (FCC) report to the Congress regarding low-power FM service, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 592 is to implement the recommendations of the FCC with respect to the assignment of low-power FM (LPFM) radio licenses. The FCC recommended that Congress eliminate certain restrictions on the assignment of these licenses. In addition, the FCC recommended that Congress remove statutory requirements for additional testing on the possibility of interference and economic impact from LPFM stations to commercial broadcasters.

BACKGROUND AND NEEDS

In 2000, the FCC authorized the creation of LPFM stations to allow noncommercial, educational, community-based groups, and public safety organizations to provide a community-based radio service. LPFM licenses are not available to individuals or entities that currently hold a broadcast license. As of January 2010, the FCC had granted 1,320 construction permits for LPFM stations. Of those construction permits issued, 864 stations have been fully licensed and are on the air. LPFM stations generally reach audiences within a radius of 3.5 miles from the LPFM station's trans-

mitting tower and are not protected from interference that may be received from a full-power FM station.

The FCC's rules require LPFM stations to provide interference protection to full-power FM stations. For example, a new LPFM station operating on the same frequency as an existing full-power FM station (for example, at 101.1 FM) is required to have its transmitter located far enough away from the existing station's transmitter to prevent interference. In addition, an LPFM station on the "first-adjacent channel" (101.3 FM) or a "second-adjacent channel" (101.5 FM) must also adhere to distance spacing requirements to prevent interference, though the distance requirements are not as far as for LPFM stations operating on the same frequency.

When it first adopted its LPFM rules, the FCC determined that an LPFM station broadcasting on a "third-adjacent channel" to a full-power FM station (101.7 FM in the continuing example) would not cause significant interference to a full-power FM station. Therefore, the FCC allowed LPFM stations to operate on a third-adjacent channel to a full-power FM station without imposing any minimum distance separation requirement. However, before the FCC was able to fully implement this decision, Congress in late 2000 inserted a provision in the Fiscal Year (FY) 2001 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (Public Law 106–553) requiring the FCC to: (1) hire an independent engineering firm to further study possible interference between full-power FM stations and LPFM stations operating on a third-adjacent channel; (2) delay the removal of third-adjacent channel separation requirements; and (3) report the study's findings and any recommendations to Congress.

Congress's action, which largely affected metropolitan areas, led to the elimination of at least 50 percent of the pending LPFM applications. As a result, there is only one LPFM station licensed in the top 50 cities nationwide. After the appropriations bill passed, the FCC hired Mitre Corporation to perform a study of LPFM interference to full-power FM stations. The study took over two years to complete at an expense of over $2 million. The study confirmed the FCC's initial findings: LPFM on third-adjacent channels poses no significant risk of interference to other radio broadcast stations. The FCC issued its report to Congress in February 2004 recommending that Congress: (1) eliminate the existing third-adjacent minimum distance separation requirements between LPFM stations and full-power FM stations; and (2) eliminate the requirement from the 2000 legislation mandating further testing on the economic impact potential interference from LPFM stations would have on full-power FM stations.

Low-power proponents cite the study as conclusive evidence that the third-adjacent channel protections are not necessary. Existing full-power FM licensees continue to oppose removal of the third-adjacent channel protection and have raised questions about the methodology and results of the study. For example, according to the National Association of Broadcasters, the study: (1) contained severe methodological errors that skewed its results; (2) failed to meet the Congressional directive to conduct independent audience listening tests to establish what is objectionable interference; and (3) failed to meet the Congressional directive to examine the eco-

nomic impact third-adjacent LPFM stations would have on full-power FM broadcasters.

In its report to Congress, the Mitre Corporation recommended not performing the subsequent testing because of the dearth of evidence of any interference. The FCC has estimated that an additional study would cost over $800,000 to complete.

LEGISLATIVE HISTORY

In the 108th Congress, Senator McCain introduced S. 2505, a bill to implement the FCC recommendations, which would expand the availability of LPFM radio licenses and eliminate the requirement for further testing on the possibility of interference from LPFM stations to commercial broadcasters on third-adjacent channels and on the possibility that LPFM stations may pose an economic impact on full-power FM stations. The bill (as amended) was reported favorably by a vote of 12–10. In the 109th Congress, Senator McCain offered a similar amendment to H.R. 5252, which was adopted as an amendment to Title XI of the bill by a vote of 14–7.

In the 110th Congress, Senator Cantwell introduced S. 1675, a bill substantially similar to S. 2505, as introduced, from the 108th Congress. The Committee reported the bill, as amended, favorably by voice vote.

On March 12, 2009, Senator Cantwell introduced S. 592, which would expand the availability of LPFM radio licenses and eliminate the requirement for further testing on the possibility of interference from LPFM stations to commercial broadcasters on third-adjacent channels and on the possibility that LPFM stations may pose an economic impact on full-power FM stations. The bill is cosponsored by Senators McCain, Durbin, Feingold, Leahy, Merkley, Sanders and Schumer.

On November 19, 2009, the Committee held an executive session at which S. 592 was considered. The Committee adopted an amendment proposed by Senator Lautenberg to provide third-adjacent channel protection for full-power FM stations that are licensed in certain states, and for other purposes. The Committee also adopted two amendments offered by Senator Snowe. The first would direct the FCC to conduct a study on the economic impact that LPFM stations will have on full-power commercial FM stations. Such study, however, shall not prevent the FCC from expeditiously modifying its rules to eliminate third-adjacent minimum distance separation requirements, as required by the bill. The second amendment would maintain the prohibition on obtaining an LPFM license if an applicant has engaged in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934. The bill, as amended, was approved by voice vote.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

DECEMBER 9, 2009.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 592, the Local Community Radio Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 592—Local Community Radio Act of 2009

S. 592 would amend rules that limit the number of low-power radio stations that may be licensed by the Federal Communications Commission (FCC). Low-power stations are operated by noncommercial entities and broadcast very weak signals (100 watts or less) that reach a limited geographic area. The bill would direct the FCC to eliminate some engineering requirements on low-power radio stations and ensure the availability of radio spectrum for both low-power FM stations and stations that translate FM signals initially transmitted by other stations (known as FM translators). Finally, S. 592 would require the FCC to report to the Congress on the economic impact of low-power FM stations on full-power commercial FM stations.

Based on information from the FCC, CBO estimates that implementing S. 592 would cost about $1 million over the 2010–2014 period, subject to the availability of appropriated funds. We expect the number of applications for low-power licenses to increase as a result of the bill, which along with the new reporting requirement would increase the FCC's administrative costs. There would be no change in the FCC's offsetting collections, however, because noncommercial entities do not pay fees for such licenses. Provisions affecting the allocation of spectrum between low-power FM stations and FM translators could affect offsetting receipts from future spectrum auctions, but CBO estimates that those changes are unlikely to affect proceeds from the auctions that will be held before the FCC's authority to auction the spectrum expires at the end of 2013.

S. 592 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (URA). To the extent that public entities choose to apply for and develop new radio stations, they would voluntarily incur some costs.

On October 28, 2009, CBO transmitted a cost estimate for H.R. 1147, the Local Community Radio Act of 2009, as ordered reported by the House Committee on Energy and Commerce on October 15, 2009. Both bills affect low-power radio stations, but S. 592 would require the FCC to prepare additional reports for the Congress. The CBO cost estimates reflect that difference. CBO has determined that neither bill contains an intergovernmental mandate; we determined that H.R. 1147 could impose a private-sector mandate that would fall well below the annual threshold established in

UMRA for private-sector mandates ($139 million in 2009, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susan Willie and Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 592 would expand the availability of LPFM radio licenses and eliminate the requirement for further testing. The number of persons covered by this legislation should be consistent with current levels of individuals affected.

ECONOMIC IMPACT

S. 592 would expand the number of radio stations available for potential licensees and promote a new media outlet for consumers and advertisers.

PRIVACY

S. 592 is not expected to have an adverse effect on the personal privacy of any individuals that will be impacted by this legislation.

PAPERWORK

S. 592 has minimal or no impact on current paperwork levels as the FCC is already issuing LPFM station licenses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 would establish the short title of the Act as the Local Community Radio Act of 2009.

Section 2. Findings

Section 2 would set forth a number of Congressional findings concerning, among other things, the increase in radio ownership consolidation during the past decade, the importance and difficulty of establishing local radio stations, and the developments and implications of Federal policies on LPFM stations to date.

Section 3. Repeal of Prior Law

Section 3 would repeal the language in the FY 2001 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act that requires the FCC to delay the licensing of LPFM stations on third-adjacent channels to full-power FM

stations. However, the FCC would retain authority to prohibit any applicant from obtaining an LPFM license if the applicant has violated section 301 of Communications Act of 1934. See section 632 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (Public Law 106–553; 114 Stat. 16 2762A–111).

Section 4. Minimum Distance Separation Requirements

Section 4 would require the FCC to modify its rules to eliminate third-adjacent minimum distance separation requirements between LPFM stations and full-service FM, FM translator, and FM booster stations.

Section 5. Protection of Radio Reading Services

Section 5 would provide interference protection to "radio reading service" (RRS) stations that provide reading services over the radio frequencies to assist the blind. These stations broadcast using a sub-carrier frequency, which is more susceptible to LPFM interference due to its spacing on an FM channel. The FCC currently has a temporary rule preventing LPFM stations from operating on a third-adjacent channel to a RRS. This section would direct the FCC to make this rule permanent.

Section 6. Ensuring Availability of Spectrum for LPFM Stations

Section 6 would require that the FCC ensure that licenses are available to both FM translator stations and LPFM stations. Further, the FCC must consider the needs of the local community in such licensing decisions.

Section 7. Prohibitions on Certain Applicants

Section 7 would direct the FCC to retain its rules which bar any applicant who has engaged in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934 from obtaining an LPFM license.

Section 8. Federal Communications Commission Rules

Section 8 would direct the FCC to retain its third-adjacent channel protection for full-power FM stations that are licensed in significantly populated States.

Section 9. FCC Study on Impact of LPFM on Full-Power Commercial FM Stations

Section 9 would direct the FCC to conduct an economic study on the impact that LPFM stations will have on full-power commercial FM stations.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2001

[PUBLIC LAW 106–553, APPENDIX B; 114 STAT. 2762A–111]

[SEC. 632. (a)(1) The Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99–25, to—

[(A) prescribe minimum distance separations for third-adjacent channels (as well as for co-channels and first- and second-adjacent channels); and

[(B) prohibit any applicant from obtaining a low-power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934 (47 U.S.C. 301).

[(2) The Federal Communications Commission may not—

[(A) eliminate or reduce the minimum distance separations for third-adjacent channels required by paragraph (1)(A); or

[(B) extend the eligibility for application for low-power FM stations beyond the organizations and entities as proposed in MM Docket No. 99–25 (47 CFR 73.853), except as expressly authorized by an Act of Congress enacted after the date of the enactment of this Act.

[(3) Any license that was issued by the Commission to a low-power FM station prior to the date on which the Commission modifies its rules as required by paragraph (1) and that does not comply with such modifications shall be invalid.

[(b)(1) The Federal Communications Commission shall conduct an experimental program to test whether low-power FM radio stations will result in harmful interference to existing FM radio stations if such stations are not subject to the minimum distance separations for third-adjacent channels required by subsection (a). The Commission shall conduct such test in no more than nine FM radio markets, including urban, suburban, and rural markets, by waiving the minimum distance separations for third-adjacent channels for the stations that are the subject of the experimental program. At least one of the stations shall be selected for the purpose of evaluating whether minimum distance separations for third-adjacent channels are needed for FM translator stations. The Commission may, consistent with the public interest, continue after the conclusion of the experimental program to waive the minimum distance separations for third-adjacent channels for the stations that are the subject of the experimental program.

[(2) The Commission shall select an independent testing entity to conduct field tests in the markets of the stations in the experimental program under paragraph (1). Such field tests shall include—

[(A) an opportunity for the public to comment on interference; and

[(B) independent audience listening tests to determine what is objectionable and harmful interference to the average radio listener.

[(3) The Commission shall publish the results of the experimental program and field tests and afford an opportunity for the public to comment on such results. The Federal Communications

Commission shall submit a report on the experimental program and field tests to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than February 1, 2001. Such report shall include—

[(A) an analysis of the experimental program and field tests and of the public comment received by the Commission;

[(B) an evaluation of the impact of the modification or elimination of minimum distance separations for third-adjacent channels on—

[(i) listening audiences;

[(ii) incumbent FM radio broadcasters in general, and on minority and small market broadcasters in particular, including an analysis of the economic impact on such broadcasters;

[(iii) the transition to digital radio for terrestrial radio broadcasters;

[(iv) stations that provide a reading service for the blind to the public; and

[(v) FM radio translator stations;

[(C) the Commission's recommendations to the Congress to reduce or eliminate the minimum distance separations for third-adjacent channels required by subsection (a); and

[(D) such other information and recommendations as the Commission considers appropriate.]

SEC. 632. The Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99–25, to prohibit any applicant from obtaining a low-power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934 (47 U.S.C. 301).

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