106TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
106–567

RADIO BROADCASTING PRESERVATION ACT OF 2000

APRIL 10, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

R E P O R T

[To accompany H.R. 3439]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 3439) to prohibit the Federal Communications Commission from establishing rules authorizing the operation of new, low power FM radio stations, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment	2
Purpose and Summary	3
Background and Need for Legislation	3
Hearings	4
Committee Consideration	4
Committee Votes	5
Committee Oversight Findings	5
Committee on Government Reform Oversight Findings	5
New Budget Authority, Entitlement Authority, and Tax Expenditures	5
Committee Cost Estimate	5
Congressional Budget Office Estimate	5
Federal Mandates Statement	7
Advisory Committee Statement	7
Constitutional Authority Statement	7
Applicability to Legislative Branch	7
Section-by-Section Analysis of the Legislation	7
Changes in Existing Law Made by the Bill, as Reported	9

70–006

AMENDMENT

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Radio Broadcasting Preservation Act of 2000".

SEC. 2. MODIFICATIONS TO LOW-POWER FM REGULATIONS REQUIRED.

(a) THIRD-ADJACENT CHANNEL PROTECTIONS REQUIRED.—

(1) MODIFICATIONS REQUIRED.—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) CONGRESSIONAL AUTHORITY REQUIRED FOR FURTHER CHANGES.—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 C.F.R. 73.853),

except as expressly authorized by Act of Congress enacted after the date of enactment of this Act.

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

(b) FURTHER EVALUATION OF NEED FOR THIRD-ADJACENT CHANNEL PROTECTIONS.—

(1) PILOT PROGRAM REQUIRED.—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 9 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) CONDUCT OF TESTING.—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) REPORT TO CONGRESS.—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.

Amend the title so as to read:

A bill to require the Federal Communications Commission to revise its regulations authorizing the operation of new, low-power FM radio stations.

PURPOSE AND SUMMARY

Low Power FM (LPFM) refers to a new FM Radio service adopted by the FCC on January 20, 2000. This new radio service is to provide a class of radio stations to serve very localized communities, or under represented groups within those communities, with a new, localized radio broadcast service in order to enhance community-oriented radio broadcasting. However, some questions exist as to the amount of interference that these new stations will bring to the signals of currently operating radio broadcasters.

The purpose of H.R. 3439, the Radio Broadcasting Preservation Act of 2000, is to modify the FCC rules authorizing the operation of low-power FM radio stations. In response to the new service proposed by the FCC, the bill requires Congressional authority for the FCC to eliminate or reduce any interference standards on the radio dial. Further, the bill establishes a pilot program to study the amount of interference that such new low power FM radio stations will cause to existing broadcasters under the interference standards contained in the FCC's original Order, and requires a report to Congress no later than February 1, 2001.

BACKGROUND AND NEED FOR LEGISLATION

The FCC's Order (Mass Media Docket No. 99–25) authorized two new classes of noncommercial LPFM radio services, (1) LP 100, with power from 50–100 watts reaching a radius of about 3.5 miles; and (2) LP 10, with power from 1–10 watts reaching a radius of about 1–2 miles. The Order requires that new stations must be offered by a noncommercial entity, which may include: (1) government or private educational organizations, associations or entities; (2) non-profit entities with educational purposes; or, (3) government or non-profit entities providing local public safety or transportation services. No existing broadcaster, or any other media entity may have an ownership interest, or enter into any program or operating agreement with any LPFM station.

The FCC's original intent in creating the LPFM service was to create a class of radio stations "designed to serve very localized communities or under represented groups within communities." The Commission found that the recent extensive consolidation of radio stations into large commercial groups, combined with the fi-

nancial challenges of operating full power commercial stations, has limited the broadcasting opportunities for highly localized interests.

The controversy regarding this new service revolves around whether or not this new class of radio stations will cause interference to existing broadcasters' signals. Currently, protection exists on the FM dial within three adjacent channel positions. The new FCC Order would lift those third adjacent channel protections in order to allow for the introduction of more low power FM radio stations on the dial.

At the hearings held by the Subcommittee on Telecommunications, Trade and Consumer Protection, the Subcommittee heard testimony that contradicted the FCC studies that supported elimination of third adjacent channel interference protection, as well as evidence that the new LPFM stations may interfere with Radio Reading Services carried on subcarriers of full-power FM stations. The Subcommittee also received testimony that the introduction of LPFM service may have a deleterious effect on the service now provided to listeners by many small market and minority-owned radio stations.

The Committee concludes that these concerns are well-justified and that the FCC erred in rushing to adopt LPFM rules. The bill, therefore, requires the FCC to revise its LPFM rules to maintain preexisting levels of interference protection. It further requires the FCC, using an independent testing entity, to conduct further studies of the potential for interference from LPFM stations and of the impact of LPFM service.

HEARINGS

The Telecommunications, Trade, and Consumer Protection Subcommittee met and held a legislative hearing on February 17, 2000 on H.R. 3439, the Radio Broadcasting Preservation Act. The Subcommittee heard testimony from one panel of witnesses, comprised of: Mr. Bruce Franca, Deputy Chief, Office of Engineering and Technology, Federal Communications Commission; Mr. Eddie Fritts, CEO, National Association of Broadcasting; The Honorable Harold Furchtgott-Roth, Commissioner, Federal Communications Commission; Mr. Charles L. Jackson, CEO, Jackson Telecom Consulting; Mr. Kevin Klose, President and CEO, National Public Radio; Mr. Dirk Koning, Executive Director, Grand Rapids Community Media Center; Mr. David Maxon, Founder, Broadcast Signal Lab on behalf of The Lawyers Guild; Dr. Theodore S. Rappaport, Professor,Virginia Polytechnic Institute and State University; Mr. Bruce T. Reese, President and CEO, Bonneville International Corporation; and Mr. Don Schellhardt, National Coordinator, The Amherst Alliance.

COMMITTEE CONSIDERATION

On March 23, 2000 the Subcommittee on Telecommunications, Trade and Consumer Protection met in open mark up session and approved H.R. 3439, the Radio Broadcasting Preservation Act of 1999 for Full Committee consideration, without amendment, by a voice vote.

On March 30, 2000 the Committee met in open markup session and ordered H.R. 3439 reported to the House, as amended, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3439 reported. A motion by Mr. Bliley to order H.R. 3439 reported to the House, as amended, was agreed to by a voice vote, a quorum being present.

The following amendment was agreed to by a voice vote:

> An amendment in the nature of a substitute by Mrs. Wilson, No. 1, prescribing third adjacent channel protections on the FM radio dial, requiring Congressional authority for future changes to these protections, mandating the FCC to conduct a pilot program administered by an independent testing entity to test whether low power FM radio stations will result in harmful interference to existing FM radio stations, if third channel protections are not in place, and requiring the FCC to report its findings to Congress by February 1, 2001.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3439, the Radio Broadcasting Preservation Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 10, 2000.

Hon. TOM BLILEY,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3439, the Radio Broadcast Preservation Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp (for federal costs), Shelley Finlayson (for the state and local impact), and Jean Wooster (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3439—Radio Broadcasting Preservation Act of 2000

H.R. 3439 would establish guidelines and procedures for licensing low-power FM radio stations. This newly created service would allow noncommercial and educational entities to broadcast radio signals at 10 watts to 100 watts, subject to a requirement that the new station not interfere with existing FM radio broadcasts. This bill would direct the Federal Communications Commission (FCC) to modify its rules to prescribe certain technical and legal standards outlined in the legislation. H.R. 3439 also would require existing applicants to comply with standards required by the bill and would limit eligibility for new stations. Finally, H.R. 3439 would direct the FCC to conduct field studies and other experiments on the minimum distances needed between channels to prevent interference to existing radio stations and translator stations.

Based on information from the FCC, CBO estimates that conducting the studies and regulatory proceedings required by the bill would cost about $1 million in fiscal year 2001, subject to the appropriation of the necessary amounts. We estimate that this additional expense would have no net effect on discretionary spending, however, because the FCC assesses and collects fees from the communications industry to offset the amounts appropriated for such expenses. CBO estimates that H.R. 3439 would not affect direct spending or receipts; therefore pay-as-you-go procedures would not apply.

H.R. 3439 would impose both a private-sector and an intergovernmental mandate, as defined by the Unfunded Mandates Reform Act (UMRA). CBO estimates that the mandate would not impose any significant costs, and thus, would not exceed the thresholds established by UMRA ($109 million in 2000 for private-sector mandates and $55 million in 2000 for intergovernmental mandates, adjusted annually for inflation).

A great deal of uncertainty surrounds the timing and the number of expected applicants under FCC's current plan to establish low-power FM radio stations. However, based on information from industry sources and the FCC's final rule, 47 CFR Parts 11, 73, and

74, CBO assumes that the FCC would issue licenses for up to 400 privately or publicly owned noncommercial stations. The FCC plans to accept the first of five rounds of applications for the low-power radio stations in May and to grant the licenses in September. If H.R. 3439 were enacted after September, any licenses that the FCC issued in September that do not comply with the bill's requirements would be invalid. It is unclear how many licenses would be issued or how many of them would be invalidated by the new requirements in H.R. 3439, however, the invalidation of any licenses would constitute a mandate as defined by UMRA. There would be no new mandate as defined by UMRA if the bill is enacted before any licenses are issued. CBO estimates that the mandate imposed by invalidating licenses would not result in any significant costs. Moreover, assuming that the time between the issuance of licenses and the enactment of the bill would be short, it is unlikely that new license holders would have made any significant expenditures, such as radio equipment, associated with the licenses.

The CBO staff contacts are Kathleen Gramp (for federal costs), Shelley Finlayson (for the state and local impact), and Jean Wooster (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides the short title of the legislation, the "Radio Broadcasting Preservation Act of 2000."

Section 2. Modifications to low-power FM regulations required

Section 2(a)(1) of the bill directs the FCC to modify its rules authorizing LPFM service to provide for minimum separations be-

tween LPFM stations and other stations operating on the same channel, or the first, second, or third adjacent channel from the LPFM station. The Commission is directed to maintain the same level of protection from interference from other stations for existing stations and any new full-power stations as the Commission's rules provided for such full power stations on January 1, 2000, as provided in section 73 of the Commission's rules (47 C.F.R. 73) in effect on that date. The Committee intends that this level of protection should apply at any time during the operation of an LPFM station. Thus, LPFM stations which are authorized under this section, but cause interference to new or modified facilities of a full-power station, would be required to modify their facilities or cease operations.

The Commission is further required to amend its rules to bar issuance of an LPFM license to any applicant that previously engaged in unlicensed broadcasting in violation of section 301 of the 1934 Communications Act (47 U.S.C. § 301). The Committee concludes that the operation of an unlicensed station demonstrates a lack of commitment to follow the basic rules and regulations which are essential to having a broadcast service that serves the public, and those individuals or groups should not be permitted to receive licenses in the LPFM service.

Section 2(a)(2) of the bill prohibits the FCC from further changes to the minimum distance separation rules for FM stations, or from permitting commercial entities to be licensed in the LPFM service, without express authorization by Congress.

Section 2(a)(3) of the bill provides that any license issued by the Commission for an LPFM station prior to the time when the rules are modified pursuant to section 2(a)(1) will be invalid if the LPFM station's facilities would not provide to other stations the interference protections established in the bill.

The bill directs the Commission to conduct tests of the interference effects of LPFM stations. Section 2(b)(1) requires that the Commission conduct an experimental program in no more than nine radio markets by waiving the minimum distance separations for third adjacent channels for the stations that are the subject of the experimental program. The Commission must authorize experimental licenses for LPFM stations in various types of markets which may have differing interference environments.

Section 2(b)(2) mandates the selection of an independent testing entity that is not associated with the Commission to conduct field tests in the markets in the experimental program. The Committee expects there to be a meaningful opportunity for the public to comment on the structure and methodology of the field tests. The independent entity must, at a minimum, accept comments from the public on the extent to which the experimental stations create interference, and conduct audience listening tests in order to establish the level of interference that is objectionable to the average radio listener. In making the latter determination, the Committee intends that the independent testing entity take into account the effects of interference on all kinds of radios in the market, and further, to rely, as appropriate, on international and academic standards for determining interference.

Following completion of the work of the independent testing entity, the Commission will be required under section 2(b)(3) to publish the results of the experimental program and to solicit comments from the public. It must then submit a report to this Committee and the Committee on Commerce, Science and Transportation of the Senate which includes an analysis of the experimental program, the field tests, and the public comments the Commission received. The FCC's report must also assess the impact (using the same standards for establishing the levels of objectionable interference established for the independent testing entity) which modifying or eliminating the protection against third adjacent channel interference would have on listening audiences, on incumbent broadcasters (particularly minority and small market stations and the economic impact that an increased number of LPFM stations would have on those broadcasters), on the transition of terrestrial radio broadcasters to digital service, on stations that provide reading services for the blind, and on FM translator stations generally. The report must also include any recommendations the Commission may have with respect to modifying or eliminating the LPFM rules concerning protection against third adjacent channel interference from LPFM stations, and such other information or recommendations as the Commission may wish to provide.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

○