

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Creation of a Low)	
Power Radio Service)	MM Docket No. 99-25
and)	
Translator Auction)	AUC-03-83-B (Auction No. 83)
)	

To: The Commission

**MOTION TO
EXTEND FREEZE ON PENDING FM TRANSLATOR APPLICATIONS**

Prometheus Radio Project, Future of Music Coalition, Free Press, Media Alliance, Office of Communication of the United Church of Christ, Inc., Common Cause, Center for Digital Democracy, Benton Foundation, Reclaim the Media, and US PIRG (“Movants”) request that the Commission extend, with minor modifications, the freeze put in place on March 17, 2005, as part of the *Further Notice of Proposed Rulemaking* in MM Docket No. 99-25. *See In re Creation of a Low Power FM Service, Second Order on Reconsideration and Further Notice of Proposed Rulemaking*, 20 FCCRcd 6763, 6778 (2005) (*FNPRM*). In addition, parties urge the Commission to act on the *Emergency Petition for Freeze on Pending FM Translator Applications* (filed March 9, 2005) (*Emergency Translator Petition*), which would expand the scope of the existing freeze to include “all applications, whether for construction permits, licenses, or applications for transfer associated with the translator window opened on March 10th, 2003. *Id.* at 1.

BACKGROUND

On March 9, 2005, Prometheus Radio Project, *et al.* filed the *Emergency Translator Petition*.

As explained therein, Petitioners had accumulated evidence demonstrating that three companies under the control of the same individuals had filed construction permits with the intent to traffic in the naked construction permits in violation of Sections 309(j)(3)(C) and 309(j)(4)(E) of the Communications Act. Although the bulk of the filing concerned the actions of the named parties, Petitioners also observed that several other companies had likewise filed bulk applications for 500 or more translator construction permits. In light of the evidence, Petitioners argued that the precautions taken by the Commission to enforce the anti-trafficking requirements of 309(j)(4)(E) had proven inadequate. In addition to requesting the Commission act on the specific allegations of abuse, Petitioners asked the Commission to freeze *all* applications associated with the window (whether filed by the named parties or filed by others) investigate whether such trafficking in construction permits was widespread. Depending upon the outcome of the investigation, Petitioners suggested the Commission must determine what new rules to adopt to prevent trafficking in accordance with Section 309(j)(4)(E) and whether to dismiss pending applications and open a new window using the new rules.

The Commission has not yet acted on the *Emergency Translator Petition*. Instead, on March 17, the Commission issued the *FNPRM*. In the *FNPRM*, the Commission asked “whether and, if so, under what conditions LPFM applications should be treated as having ‘primary’ status to prior-filed FM translator applications and authorized FM translator stations.” *Id.* at 6778. As an interim measure, the Commission *sua sponte* imposed a 6-month freeze on granting new station construction permits while the Commission “consider[s] these important questions.” The freeze became effective upon release of the *FNPRM*, and will therefore expire on September 17, 2005.

Although the Commission released the *FNPRM* on March 17, it did not appear in the Federal Register until July 7. Subsequently, the Commission extended the deadline for comments to August

22, with replies due September 21. As a result, the Commission will not even have finished the official comment cycle, let alone considered the record and proper policy, when the freeze expires.

The Commission did not mention the *Emergency Translator Petition* in the *FNPRM* or act on it in any way. Rather, the Commission based its decision on comments generated in the *Localism NOI* and on the basis of a public forum on LPFM held February 8, 2005. *FNPRM*, 20 FCCRcd at 6766, 6778. Accordingly, the motion for a freeze on all applications, not merely on grant of new construction permits, remains pending before the Commission.

ARGUMENT

The Commission should immediately grant the requested freeze on all applications associated with the March 2003 Translator Window as requested in the *Emergency Translator Petition* for the reasons granted therein. In particular, the Commission should freeze both the grant of any new construction permits and of any transfer applications. Every transfer application granted potentially represents a violation of Sections 309(j)(3)(C) and 309(j)(4)(E), providing an unjust enrichment to private parties at the expense of the public.

Even if the Commission does not chose to act on the *Emergency Translator Petition* at this time, the Commission should extend the freeze on grant of construction permits that it imposed *sua sponte* in the *FNPRM*. The Commission imposed the freeze so that it could consider the proper policy on whether to grant LPFM applicants primacy over previously filed translator applications or previously granted translator applications. As a result in the delay in publication and subsequent extensions granted by the Commission, the freeze will now expire before completion of the comment cycle. The reasons for granting the initial freeze continue to apply, and the Commission should therefore extend the freeze until it completes its determinations in the rulemaking proceeding.

Movants recognize that the March 2003 Translator window was the first since the Commission froze translator applications and major modifications in 1998 to consider how to implement Congress' directive to resolve license conflicts via competitive auction. Movants have no intent to cause undue hardship on applicants in the 2003 Translator Window that applied in good faith for translators or major amendments needed to cover their pre-existing service area.

Accordingly, Movants suggest that the Commission modify the freeze as follows. The freeze will not apply to applications filed by any entity that filed ten or fewer applications. The Commission, however, would freeze all transfer applications. This would allow those who filed applications to fill gaps in their coverage area to construct translators while preventing either significant expansion of pre-existing coverage areas or trafficking in construction permits. The freeze should remain in place, however, until the Commission resolves the issue of whether LPFM applicants should have primacy over translator applicants or granted translator licenses.

CONCLUSION

WHEREFORE, the Commission should either grant the *Emergency Translator Petition* and impose a freeze on all translator applications and transfer requests associated with the March 2003 Translator Window, or should extend and modify the freeze on translator applications imposed in the *FNPRM*.

Respectfully submitted,

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September 15, 2005

CERTIFICATE OF SERVICE

I, Harold Feld, hereby certify that I caused to be served a copy of the attached MOTION TO EXTEND FREEZE on the following parties:

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_____/s/_____
Harold Feld

September 15, 2005
Date