Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Revision of Procedures Governing Amendments	)	MB Docket No. 05-210
to FM Table Allotments and Changes	)	RM-10960
of Community of License in the Radio Broadcast	)	
Services	)	

To: Marlene H. Dortch, Secretary
Office of the Secretary

COMMENTS OF EDUCATIONAL MEDIA FOUNDATION

Educational Media Foundation ("EMF"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's rules, hereby submits its comments in response to the Notice of Proposed Rule Making in the above-captioned proceeding, released June 14, 2005 (the "*NPRM*"). The *NPRM* was released in response to a Petition for Rulemaking filed by First Broadcasting Investment Partners, LLC ("First Broadcasting") proposing a number of changes to the Commission's procedures governing modification of commercial FM and AM broadcast facilities that are designed to improve the efficiency of the process.[1/] Two such proposals urged the Commission to permit community of license changes through the filing of an application for minor modification rather than, as is now the case, by rulemaking for FM or through the filing of a major change application for AM. As First Broadcasting demonstrated, the current procedures governing community of license changes result in long processing delays and excessively burden the Commission's limited resources. For this reason, EMF supports these proposals. Moreover,

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[1/] *See Amendment of the Commission's Rules Governing Modification of FM and AM Authorizations*, Petition for Rulemaking, filed March 5, 2004.

EMF urges the Commission to permit changes to the communities of license of noncommercial FM stations operating in the reserved band through the filing of a minor modification application.[2/] Currently, FM stations operating on noncommercial frequencies must undergo a procedure similar to that of AM stations in order to change their communities of license. That is, they must wait until the Commission opens a window for the filing of new station and major change applications. While noncommercial frequencies are not auctioned, such applicants must still wait until their application is processed to determine whether it may be evaluated as a singleton or whether it must be evaluated against other competing applications. As with commercial stations, the use of the minor modification procedure for noncommercial FM community of license changes will dramatically reduce the delays and burden on Commission resources endemic to the current process.

DISCUSSION

EMF is the licensee of hundreds of noncommercial educational radio broadcast and FM translator stations serving communities throughout the country with educational programming, including religious and family-oriented programming and contemporary Christian music, as part of either the K-LOVE Radio Network or the Air-1 Radio Network. As a major noncommercial licensee, EMF has often sought, as part of an ongoing effort to upgrade its stations, to change the community of license of noncommercial FM radio stations operating on commercial frequencies through the initiation of a rulemaking proceeding to amend the FM Table of Allotments. EMF's experience has been similar to that of First Broadcasting and some of the other commenters on

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[2/] Noncommercial FM stations operating on nonreserved channels and AM stations operating noncommercially are governed by the same rules applicable to their commercial counterparts. Thus, rule changes resulting from the adoption of the proposals set forth in the *NPRM* should automatically be applicable to these stations.

the First Broadcasting Petition. That is, it has participated in FM allotment proceedings that took several years to be resolved. Even worse, however, is EMF's complete inability to pursue community of license changes for its reserved band FM stations. While EMF would have liked to change the communities of license of several of its FM stations operating on noncommercial frequencies, as with the AM service, filing windows are few and far between. In fact, the licensee notes that since the Commission's adoption in April 2000 of the window filing/point system procedure for selecting among competing noncommercial applicants, the agency has never opened a full power noncommercial FM filing window.[3/] Thus, EMF has not been able to pursue these beneficial upgrades.

Moreover, even when the Commission does open such a window, EMF and other noncommercial licensees seeking to implement community of license changes will have to wait until their applications are examined to determine whether the applications are mutually exclusive and, if so, they must wait for the Commission to evaluate the applications in the mutually exclusive group pursuant to Section 307(b) of the Communications Act, as amended. If this evaluation is not dispositive, applicants must wait again for the Commission to determine the successful applicant pursuant to its point system. If the experience of AM applicants is any indication, this process could take several years to complete.[4/] In fact, the Commission has yet to dispose of some of the mutually exclusive applications that have been pending since its

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[3/] *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Report and Order*, 15 FCC Rcd 7386 (2000); *Memorandum Opinion and Order*, 16 FCC Rcd 5074 (2001); *Second Report and Order*, 18 FCC Rcd 6691 (2003).

[4/] EMF notes that a community of license change proposal it filed in the filing window for AM Auction 84 on January 30, 2004 remains pending even though the application was a singleton. *See* FCC File Nos. BMJP-20040130BKQ, BMJP-20050106AAG.

adoption of the noncommercial comparative standards five years ago.[5/] As with changes to the communities of license of commercial-band radio stations, such lengthy delays do not serve the public interest. Moreover, many of the Commission's observations with respect to community of license changes in the AM service are equally true of such changes in the noncommercial FM service. For example, applications proposing such changes are typically subject to challenge only by petition to deny or informal objection, and then only when the applicant files a long-form application. Furthermore, as with AM, because applications for major modification and for new stations must also be filed during a window, there is no guarantee that the noncommercial community of license change applicant will even be able to implement its proposal. Yet, these community of license change proposals are relatively simple in comparison to the technical complexity of major modifications and new station applications and are almost always mutually exclusive with the applicant's existing operations. As with their commercial counterparts, restricting these relatively simple applications to filing windows, which incite the filing of hundreds or even thousands of applications, along with applications for new stations and complex facilities modifications is inefficient, unnecessary, and increases the burdens on the Commission's staff.

Finally, EMF notes that although the *NPRM* did not specifically include noncommercial FM stations within its proposal to permit community of license changes via minor modification application, inclusion of these stations is appropriate. As the Commission has recognized, the

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[5/] *See* Public Notice, Section 1.65 Amendment Deadline Established for Noncommercial Educational FM and FM Translator Station Applicants, DA 04-4009, released Dec. 22, 2004 (announcing the commencement of review of pending mutually exclusive applications to construct new noncommercial FM and FM translator stations under the noncommercial comparative standards and establishing deadline of January 21, 2005 for updating these applications).

final rule adopted in a rule making proceeding need not be identical to the proposed rule, but must merely be a logical outgrowth of the proceeding. *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, ¶ 15 (1990) (citing *National Black Media Coalition v. FCC*, 791 F.2d 1016, 1022 (2d Cir. 1986).) In this case, the *NPRM* specifically requests comment on various proposed changes in the procedures for changes of community of license in the radio broadcast services, many of which if adopted will automatically affect stations operating noncommercially (albeit on non-reserved frequencies). Moreover, as demonstrated above, the situation faced by non-table, noncommercial FM stations is essentially identical to that of AM stations, and the Commission's rationale for proposing changes in the rules governing AM community of license changes applies equally to noncommercial FM stations. Recognizing this fact, the Commission specifically noted in the *NPRM* that it had declined to adopt the minor change proposal for the AM and noncommercial FM services in 1999. In sum, the *NPRM* clearly indicated that modifications to the radio broadcast community of license change procedures would be considered, and the application of the proposed new procedures to the noncommercial FM service is sufficiently related so as to be a logical outgrowth of the original *NPRM* proposal.

Accordingly, EMF urges the Commission to adopt and apply First Broadcasting's proposal to permit changes in AM and FM broadcast station communities of license by minor modification application not only to radio broadcast stations operating on commercial frequencies but also to reserved-band noncommercial FM stations.

Respectfully submitted,

EDUCATIONAL MEDIA FOUNDATION

By: Veronica D. McLaughlin Tippett
David D. Oxenford
Veronica D. McLaughlin Tippett

Its Attorneys

PILLSBURY WINTHROP
SHAW PITTMAN LLP
2300 N Street, NW
Washington, DC 20037-1128
(202) 663-8000

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