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Federal Communications Commission  
Office of the Secretary

July 30, 2008

Kevin J. Martin, Chairman  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

99-25  
07-294

**Re: MM Docket No. 99-25  
Creation of a Low Power Radio Service  
MB Docket No. 07-294  
Promoting Diversification of Ownership  
in the Broadcasting Services**

Dear Chairman Martin:

On behalf of the broadcasters listed below, we urge the FCC to withhold action on the Second Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced Low Power FM ("LPFM") proceeding,<sup>1</sup> until it has fully considered the proposal to reallocate TV Channels 5 and 6 for FM broadcasting as posited in the pending Third FNPRM in the above-referenced Diversification proceeding.<sup>2</sup> Proponents suggest the proposal can "create[] a staggering expansion of the [ ] FM band," and the Commission expressly "agree[d] that [it] could yield tremendous opportunities for new entrants." *Id.* at 5956, ¶ 100. Plainly, such new entrants include potential LPFM licensees that the FCC seeks to accommodate in the face of, *inter alia*, a vibrant and well-populated FM translator service and overwhelming interest in new translator licenses by applicants in the Auction No. 83 window. Accordingly, the FCC should explore the promise of reallocating unused analog TV channels to the FM service and reserving the top two or three channels of that reallocated spectrum for LPFM operations, rather than rushing to judgment on proposals in the LPFM proceeding that portend serious adverse consequences for FM translator licensees and applicants, including each of the undersigned, all of whom support FCC implementation of reallocation of portions of TV Channels 5 and 6 in a manner that bolsters LPFM opportunities.

In many regards, this letter reflects an embarrassment of riches. On the one hand, the Commission oversees an FM translator service with a long history of providing rural and other areas with vital local news, information, and entertainment, and unique content often overlooked by full-power commercial broadcasters, and on which communities throughout the country have come to rely. On the other, the FCC seems to face insatiable demand for licenses by a multitude of would-be applicants to operate LPFM stations that have the potential to expand – possibly exponentially – diverse ownership in the FM band. Recognizing (among other things) that "translators provide valuable service" and that "translator-based delivery of broadcast program-

<sup>1</sup> *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd. 21912 (2007) ("*LPFM Third R&O*" and "*LPFM Second FNPRM*," respectively).

<sup>2</sup> *Promoting Diversification of Ownership In the Broadcasting Services*, 23 FCC Rcd. 5992 (2008) ("*Third Diversity FNPRM*").

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ming is an important objective,”<sup>3</sup> the stated goal in the LPFM docket has been to “maximize the value of the LPFM service without harming ... full-power FM stations or other Commission licensees,” including FM translator licensees *Id.* at 6763. Yet despite this objective, the FCC has suggested that FM translators, and in particular the Auction No. 83 filings, are having and/or could have a “preclusive impact” on LPFM opportunities.<sup>4</sup>

This has led the Commission to seek comment on prospects for “altering the priorities” between the currently co-equal LPFM and FM translator services. *Id.* at 21046, ¶ 84. Significantly, the *LPFM Third FNPRM* represents the second time in that rulemaking the Commission pursued this line of inquiry,<sup>5</sup> indicating the obvious difficulty it has had striking the proper public interest balance between translators and LPFM stations. Similarly, the *LPFM Third R&O* retroactively limited FM translator applicants in the Auction No. 83 window to processing no more than ten of their then still-pending proposals, then the Commission suspended effectuating the limit after applicants, including some of the undersigned broadcasters, sought a stay.<sup>6</sup>

At the same time, LPFM advocates have urged FCC adoption of proposals that would seriously hamstring not only Auction No. 83 applicants and thus *future* FM translators, but also *existing* translator service representing established offerings on which local niche listeners rely to meet their specialized needs. For example, the *LPFM Third FNPRM* sought comment on a proposal by Prometheus Radio Project, *et al.* (“Prometheus”), to limit priority status to 25 translators for each originating station, even while acknowledging the plan is administratively infeasible given that FM translators may change primary stations without advance notice.<sup>7</sup> Even before the Commission could rule on that proposal, Prometheus moved on to proposing that “no one entity, no matter where it is located, should be able to own more than ten translators with coverage in the top 303 Arbitron rated markets on a basis ... primary to an LPFM.”<sup>8</sup> Were the FCC to adopt any such proposal, it would allow, if accompanied by proposed changes in technical standards for the LPFM service to put it on the same interference footing as translators, LPFM applicants to simply identify existing unprotected translators and replace those stations – upending established audiences and disrupting significant financial investments by translator licensees.

Such efforts to bolster LPFM opportunities at the expense of existing and future FM translator services are patently inconsistent with the Commission’s stated objectives in the LPFM

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<sup>3</sup> See *Creation of a Low Power Radio Service*, 20 FCC Rcd. 6763, 6777-78 (2005) (“*Second LPFM Recon. Order*”). See also *id.* at 6777 (“FM translators provide important ... services to unserved and underserved areas”).

<sup>4</sup> *LPFM Third R&O*, 22 FCC Rcd. at 21932-36. This is a matter of some dispute in the LPFM proceeding.

<sup>5</sup> See *Second LPFM Recon. Order*, 20 FCC Rcd. at 6776-78.

<sup>6</sup> See *LPFM Third R&O*, 22 FCC Rcd. at 21935; *Media Bureau Suspends Dismissal of FM Translator Applications Related to Processing Cap*, 23 FCC Rcd. 5629 (MB 2008).

<sup>7</sup> *Second FNPRM*, 22 FCC Rcd. at 12095. The proposal also risks depriving communities of service they have come to rely upon, if it happens to be provided by a translator that is outside the 25 selected for priority status.

<sup>8</sup> Comments of Prometheus Radio Project, *et al.*, MM Docket No. 99-25, Feb. 19, 2008, at 21-22; Reply Comments of Prometheus, *et al.*, MM Docket No. 99-25, Apr. 21, 2008, at 23-24 & n.13 (same).

proceeding.<sup>9</sup> As the comments, reconsideration petitions and stay requests in the LPFM docket reflect, disrupting the co-equal status of FM translators and LPFMs would unfairly change the rules mid-game. It would adversely affect licensees who obtained authorizations and constructed facilities under an established regulatory scheme, and would deny the listening public services on which they have come to rely. Similarly, following through on a forced mass dismissal of Auction No. 83 applications, in hopes of bolstering opportunities for LPFM stations that *might* one day in the future aid FCC goals relating to diverse programming, is rife with logical, administrative law, and First Amendment infirmities. It also is blatantly inequitable to the applicants who invested effort and resources to submit proposals that, under FCC-created processing rules in place at the time, engendered legitimate expectations that the applications would be processed.

The *Third Diversity FNPRM*'s proposal to reallocate analog TV Channels 5 and 6 (once no longer used for television operations in most markets) offers promise that the FCC could satisfy LPFM interests without facing the difficult problems outlined above. Such reallocation could open opportunities for LPFM in freshly licensed spectrum. This would avoid pitting LPFM against other valuable services, including FM translators, that have an established role – and that deliver significant public interest benefits – on the existing broadcast dial. Significantly, some have observed that “the chief contributor to LPFM station preclusion is a ‘maxed out spectrum situation’ which prevents any broadcasters, NCE or commercial, translators or LPFM stations, from obtaining new licenses in virtually all major markets and many medium-sized markets.”<sup>10</sup> Reallocation of portions of TV Channels 5 and 6 would thus be a solution superior to the anti-translator proposals floated in the LPFM proceeding. To the extent such reallocation is a viable solution for meeting demand for LPFM allocations, it also would avoid protracted legal battles almost certain to follow any FCC effort to open LPFM opportunities by diminishing the protection afforded existing licensees and/or the procedural rights of auction participants, which could delay LPFM use of spectrum, or at least place it under a cloud until finality attaches.

Conversely, the reallocation solution can be, to a great extent, implemented immediately and provide immediate relief. Channel 6 will be abandoned in all but a handful of markets as of the February 17, 2009, DTV transition, and many FM radios already can tune to the top portion of the Channel 6 spectrum. Accordingly, LPFM operators could quickly be authorized to operate in the spectrum in the vast majority of radio markets throughout the country.

The broadcasters below thus support the proposal in the Diversification proceeding to reallocate returned analog TV Channels 5 and 6 to the FM service, and further urge that the FCC reserve the top two or three channels of that reallocated spectrum for LPFM use. In aid of this proposal, we are filing in the Diversification proceeding engineering analyses to help demonstrate how many new LPFM stations could be located in the newly vacated TV Channels 5 and 6 in the band received by current FM receivers. The engineering analysis shows these channels are receivable by current FM equipment, which will assure that LPFM stations in the new band will be capable of reception immediately upon license. Given the significant impact that potential

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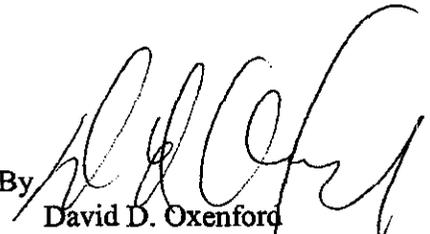
<sup>9</sup> See *supra* (quoting *Second LPFM Recon. Order*, 20 FCC Rcd. 6763, 6777-78).

<sup>10</sup> *LPFM Third R&O*, 22 FCC Rcd. at 21934 (citing Comments of Station Resource Group at 5).

availability of this "new" spectrum will have on whether the FCC should take the other, more disruptive steps under consideration in the LPFM proceeding, a decision on the *LPFM Third FNPRM* should not issue until broadcasters represented here (and other interested and/or potentially effected parties) have had a full opportunity to comment on the reallocation proposal and prospects for an LPFM reservation, and the Commission fully explores the merits of same and this alternative solution to the intractable issues implicated in the LPFM proceeding.

For these reasons, the named broadcasters respectfully urge the Commission to consider the possibility of analog TV Channel 5 and 6 reallocation to the FM service and reservation of parts thereof for LPFM as raised in the Diversification proceeding, alongside the other proposals pending in the LPFM proceeding for bolstering opportunities in that service, and to not act on the *LPFM Third FNPRM* until comments and replies are filed in the Diversification proceeding and interested parties and the Commission have fully explored the merits of reallocation and its significance to LPFM opportunities.

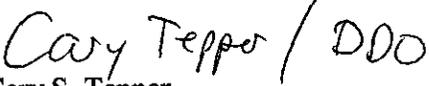
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Promoting Diversification of Ownership	)	MB Docket No. 07-294
In the Broadcasting Services	)	
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2006 Quadrennial Regulatory Review – Review of	)	MB Docket No. 06-121
the Commission’s Broadcast Ownership Rules and	)	
Other Rules Adopted Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
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Cross-Ownership of Broadcast Stations and	)	MM Docket No. 01-235
Newspapers	)	
	)	
Rules and Policies Concerning Multiple Ownership	)	MM Docket No. 01-317
of Radio Broadcast Stations in Local Markets	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244
	)	
Ways to Further Section 257 Mandate and To Build	)	MB Docket No. 04-228
on Earlier Studies	)	

**COMMENTS OF EDUCATIONAL MEDIA FOUNDATION, E-STRING WIRELESS, LTD.,  
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July 30, 2008

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Educational Media Foundation, E-String Wireless, Ltd., Horizon Christian Fellowship (San Diego), Liberty University, Inc., Living Proof, Inc., Victoria Radioworks, Ltd., Positive Alternative Radio, Inc, and Calvary Chapel of Twin Falls, Inc., by counsel and pursuant to Sections 1.415 and 1.419 of the FCC rules, hereby comment on the *Third Further Notice of Proposed Rulemaking* in the captioned matter,<sup>1</sup> and in particular its proposal to reallocate TV

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<sup>1</sup> *Promoting Diversification of Ownership In the Broadcasting Services*, 23 FCC Rcd. 5922 (2008) (“*R&O/Third FNPRM*”).

Channels 5 and 6 for FM broadcasting. *Id.* at 5956, ¶ 100. Proponents of the proposal suggest it could “create[] a staggering expansion of the [ ] FM band,” and the Commission has “agree[d] that [it] could yield tremendous opportunities for new entrants.” *Id.* The undersigned broadcasters, all of which are (among other things) licensees of FM translators and/or applicants for new translators in Auction No. 83, believe the FCC should do far more than take a “hard look” at the TV Channel 5 and 6 reallocation proposal, which the *R&O/Third FNPRM* seems to indicate will be the case. *Id.* Instead, the undersigned believe the availability of these channels in most markets presents a golden opportunity for expansion of broadcast ownership opportunities, and presents an ideal way to resolve – without adverse impact on the public interest or any broadcaster – competing interests in existing FM spectrum that remain in tension in a number of proceedings, including most notably, the Commission’s low-power FM (“LPFM”) proceeding.<sup>2</sup>

Accordingly, these Comments support reallocating analog TV channels 5 and 6 to the FM band. They also urge that the FCC reserve for LPFM the top 2 or 3 new FM channels that can be made available via such reallocation. This would allow the Commission to bypass conflicts between authorizing new LPFM stations on the one hand, and current translator operations and applications and FM upgrades on the other. Finally, we offer engineering analyses to show the number of new LPFM stations the vacated spectrum could accommodate in the band received by current FM receivers, and that these channels are receivable by current equipment. This assures that LPFM stations in the new band will be capable of reception immediately upon license, and demonstrates that these channels can solve an immediate problem in an immediate fashion.

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<sup>2</sup> *Creation of a Low Power Radio Service*, 22 FCC Rcd. 21912 (2007) (“*LPFM Third R&O*” and “*LPFM Second FNPRM*,” respectively). These Comments are being concurrently filed in the LPFM docket so that they will become part of the record in that proceeding as well.

## I. INTRODUCTION AND SUMMARY

Implicit in any FCC initiative, such as the instant proceeding, to “expand[ ] opportunities for new entrants and small businesses ... to own broadcasting outlets” in furtherance of “national communications policy that the widest dissemination of information from diverse ... sources is essential to the welfare of the public,”<sup>3</sup> must be that such “opportunities” in significant part take the form of new broadcast outlets rather than merely supplanting existing service. Many steps taken or proposed in the *R&O/Third FNPRM* reflect this truism. See, e.g., *id.* Sections III.B.1, IV.B, IV.F, IV.H. Regulatory measures in the name of diversity ought not rely solely, or even heavily, on merely playing “musical chairs” with licensees, station authorizations, or already-occupied spectrum. While such efforts may alter the mix of broadcast owners in a service, and even provide some opportunity for new entrants, these measures also risk that the displaced licensees/services were themselves diverse and/or provided unique or under-represented programming formats.

While the instant *R&O/Third FNPRM* appears in large part designed to avoid such pitfalls, that is not necessarily so in other FCC proceedings that, at their core, have among their objectives goals that are the same as those the Commission seeks to advance here. By way of particular example, the Commission’s LPFM proceeding seeks to “provide opportunities for new voices to be heard,” to satisfy “demand for alternative forms of radio service,” to “enhance locally focused community-oriented radio broadcasting,” and to “permit a ... number of new stations to be authorized, fostering a diversity of new voices on the airwaves,” as well as “allocation of licenses ... likely to serve under-represented sections of the community.”<sup>4</sup> Recognizing (among

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<sup>3</sup> *R&O/Third FNPRM*, 23 FCC Rcd. at 5924 (quoting *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 663-64 (1994) (quoting *Midwest Video*, 406 U.S. 649, 668 n.27 (1972) (plurality opinion); *Associated Press v. United States*, 326 U.S. 1, 20 (1945))).

<sup>4</sup> *Creation of a Low Power Radio Service*, 15 FCC Rcd. 2205-07, 2209-10 (2000) (“*LPFM First R&O*”). See also *LPFM Third R&O*, 22 FCC Rcd. at 21933 (citing “twin goals of increas-

other things) that “translators provide valuable service” and that “translator-based delivery of broadcast programming is an important objective,”<sup>5</sup> the stated goal in the LPFM docket has been to “maximize the value of the LPFM service without harming ... full-power FM stations or other Commission licensees,” including translator licensees. *Id.* at 6763. Nonetheless, as discussed in greater detail below, the Commission has entertained proposals in the LPFM rulemaking that would have a substantial adverse impact on the FM translator service, and already has ordered the mass dismissal of Auction No. 83 applications for new FM translators.<sup>6</sup>

The “tremendous opportunities for new entrants” that the Commission believes can arise from the reallocation of TV Channels 5 and 6 in this proceeding,<sup>7</sup> plainly could be utilized to help satisfy demands for LPFM allotments. Specifically, the top 2 or 3 channels that can be made available for FM by such reallocation, which might be characterized as 87.9, 87.7 and 87.5 (or Channels 200, 199, and 198), could be reserved for new LPFM stations, opportunities for which the Commission has suggested are currently impeded by crowding in the FM band. Indeed, the submission that gave rise to the *R&O/Third FNPRM*'s inquiry at issue here contemplated exactly this type of reservation. *See* Petition for Reconsideration and/or Comment of Mullaney Engineering, Inc., MM Docket No. 87-268, Oct. 26, 2007, at 3 (“Mullaney Petition”) (cited in *R&O/Third FNPRM*, 23 FCC Rcd. at 5956) (noting that reallocation of TV channels to

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ing ... LPFM[s] and promoting localism”); *Broadcast Localism*, 23 FCC Rcd. 1324, 1383 (2008) (“expanding opportunities for LPFM stations would ensure [ ] more local voices are available”).

<sup>5</sup> *See Creation of a Low Power Radio Service*, 20 FCC Rcd. 6763, 6777-78 (2005) (“*Second LPFM Recon. Order*”). *See also id.* at 6777 (“FM translators provide important aural services to unserved and underserved areas”).

<sup>6</sup> *LPFM Third R&O*, 22 FCC Rcd. at 21935. *But see Media Bureau Suspends Dismissal of FM Translator Applications Related to Processing Cap*, 23 FCC Rcd. 5629 (MB 2008) (suspending implementation of dismissals after applicants, including some broadcasters commenting here, sought a stay of the *LPFM Third R&O*).

<sup>7</sup> *See R&O/Third FNPRM*, 23 FCC Rcd. at 5956 ¶ 100.

FM would allow FCC to, *inter alia*, “allot groups of contiguous channel blocks for translator only use, for LPFM only use” and for similar uses).

Such an approach is a far better alternative than pursuing translator-adverse alternatives under consideration in the LPFM proceeding. It would improve diversification in the broadcast services without harming a vibrant and well-populated FM translator service that has a long history of providing rural and other areas with vital local news, information, and unique content often overlooked by full-power commercial broadcasters – and on which communities across the country have come to rely – or undermining the overwhelming interest in new translator licenses in Auction No. 83. Thus, the undersigned parties urge the Commission to use this opportunity to fulfill perceived needs for new services by reallocating soon-to-be unused analog TV channels to FM service and reserving the top 2 or 3 channels of that spectrum for LPFM operations, rather than rushing to judgment on proposals in the LPFM proceeding that portend serious adverse consequences for translator licensees and applicants, and for the public interest.

## **II. BACKGROUND**

The instant *R&O/Third FNPRM* by no means represents the only ongoing FCC proceeding in search of ways to open doors to diverse new entrants in the broadcast service, as noted above. From the beginning, Commission intent in creating an LPFM service sought to advance this objective as well, by authorizing a supplemental, localized radio service that would provide an outlet to new voices, but that would have equal priority with FM translators and boosters. While the Commission designed LPFM to enhance radio broadcasting to localized areas and under-represented groups in communities of license across the country, *see LPFM First R&O*, 15 FCC Rcd. at 2207-08, it is indisputable that LPFM cannot – and was never intended to – replace full-power FM service, with its established record of providing news, information, and entertainment programming on which communities nationwide have come to rely.

Nor was LPFM intended to displace FM translators, the “role [of which] among aural services ... is to provide secondary service to areas in which direct reception of signals from FM broadcast stations is unsatisfactory due to distance or intervening terrain.” *Second LPFM Recon. Order*, 20 FCC Rcd. at 6776. Unsurprisingly, in adopting LPFM, in addition to stating the above-noted intent to maximize the value of the service without harming full-power FM or other FCC licensees, the Commission declared it would not “compromise the integrity of the FM spectrum,” and would authorize LPFM only “where the stations will fit.” *LPFM First R&O*, 15 FCC Rcd. at 2210, 2228. Finding places “where the stations will fit” has proved problematic, however. *See, e.g., LPFM Third R&O*, 22 FCC Rcd. at 21929-42; *Second LPFM Recon. Order*, 20 FCC Rcd. at 6776-81.

This in large part explains why, despite its stated objective, the FCC has suggested in the LPFM proceeding that FM translators – and in particular overwhelming interest expressed by a wealth of proposals for new translators in the Auction No. 83 filing window – are having and/or may have a “preclusive impact” on LPFM opportunities.<sup>8</sup> This led the Commission to seek comment on prospects for “altering the priorities” between the currently “co-equal” LPFM and FM translator services, *LPFM Third FNPRM*, 22 FCC Rcd. at 21046, notwithstanding that, as some have observed, “the chief contributor to LPFM station preclusion is a maxed out spectrum situation which prevents any broadcasters, NCE or commercial, translators or LPFM stations, from obtaining new licenses in virtually all major markets and many medium-sized markets.” *Id.* at 21934. Indeed, the Commission has now twice in the LPFM rulemaking pursued the “altered

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<sup>8</sup> *Id.* at 21932-36. This has been disputed by parties in the LPFM proceeding, including some commenting here. *See, e.g.,* Petition for Recon. of EMF *et al.*, MM Docket No. 99-25, Feb. 19, 2008, at 4, 11-14 (discussing mismatch between areas where LPFM opportunities are wanting and FM translators typically seek to serve and/or for which applications are pending).

priority” line of inquiry,<sup>9</sup> indicating the obvious difficulty it is having striking the public interest balance between translators and LPFM stations. Notwithstanding this difficulty, however, the *LPFM Third R&O* retroactively limited FM translator applicants in Auction No. 83 to processing no more than ten of their then still-pending proposals, though the Commission suspended effectuating this limit after applicants, including some of the undersigned broadcasters, sought a stay of the *LPFM Third R&O*. See *supra* note 6.

At the same time, LPFM advocates have urged FCC adoption of proposals that would seriously hamstring not only Auction No. 83 applicants and thus *future* FM translators, but also existing translator service representing established offerings on which local niche audiences rely to meet their specialized needs. For example, the *LPFM Second FNPRM* sought comment on a proposal by Prometheus Radio Project, *et al.* (“Prometheus”), to limit priority status to 25 translators for each originating station, even while acknowledging the plan is infeasible administratively given that FM translators may change primary stations without advance notice.<sup>10</sup> Even before the FCC could rule on that proposal, Prometheus moved on to advocating that “no one entity, no matter where it is located, should be able to own more than ten translators with coverage in the top 303 Arbitron rated markets on a basis ... primary to an LPFM.”<sup>11</sup> Were such a proposal adopted, it would, if accompanied by proposed changes in LPFM technical standards to place that service on the same interference footing as FM translators, allow LPFM applicants to simply identify existing unprotected translators and effectively replace those stations. In other

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<sup>9</sup> See *LPFM Second FNPRM*, 22 FCC Rcd. at 21046; *Second LPFM Recon. Order*, 20 FCC Rcd. at 6776-78.

<sup>10</sup> *Second FNPRM*, 22 FCC Rcd. at 12095. The proposal also risks depriving communities of service they have come to rely upon, if it happens to be provided by a translator that is outside the 25 selected for priority status.

<sup>11</sup> Comments of Prometheus Radio Project, *et al.*, MM Docket No. 99-25, Feb. 19, 2008, at 21-22; Reply Comments of Prometheus, *et al.*, MM Docket No. 99-25, Apr. 21, 2008, at 23-24 & n.13 (same).

words, LPFMs would simply supplant FM translator stations – including, potentially, those that have been in place for years and years – that currently provide vital services to the public.

Absent another alternative, FCC resolution of LPFM-translator tensions thus stands to run wholly counter not only to statements of intent in the LPFM proceeding – and the core goals at stake there and in this Ownership Diversification proceeding – but also to the well-founded expectations of the public that FM translator services on which they have come to rely will continue. As the record in the LPFM proceeding reflects:

FM translator stations are an indispensable means by which public and nonprofit entities, such as ... NPR and other networks, as well as state and local public radio entities, serve rural communities that are often unable to receive full power service or are ignored by commercial full power radio stations. As noted ... , FM translator stations are critical in delivering essential news, weather, and emergency information, particularly in rural and terrain challenged areas. In fact, FM translator stations are often the only cost effective way to provide regional and state-wide programming to many small communities that cannot directly receive the signals of full power radio station due to mountainous terrain, for example, or that cannot support their own full power radio stations.<sup>12</sup>

Over the years, licensees have invested substantial sums in the FM translator service to address inadequately served needs for, and interests in, specialized programming, including news, weather, and community information, as well as a wealth of educational and religious offerings. There is a real – and substantial – audience that relies on service from these stations.

All of the foregoing make vitally important the proposal in the present proceeding to reallocate soon-to-be unused analog TV Channels 5 and 6 to the FM service, and the possibility that portions of that spectrum can be reserved for LPFM operations. In this regard, the DTV transition set for a hard cut-off date of February 17, 2009, that will make TV Channels 5 and 6

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<sup>12</sup> Reply Comments of Edgewater Broadcasting, Inc., *et al.*, MM Docket No. 99-25, Sept. 19, 2005, at 2 (citing comments; footnotes omitted). *See also Amendment of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd. 7212, 7219 (1990) (translators help licensees serve “areas in which direct reception of signals from FM broadcast stations is unsatisfactory due to distance or intervening terrain obstructions”).

(among others) available in most areas of the country,<sup>13</sup> laid the foundation for the reallocation proposal in the *R&O/Third FNPRM*. It thus presents a unique opportunity not just to increase diverse ownership in broadcast services generally, but to do so in part by satisfying competing interests of both FM translator licensees/applicants and LPFM advocates. It is particularly significant in this regard that these channels are receivable by currently available FM equipment,<sup>14</sup> which will assure that LPFM stations in the new band will be capable of immediate reception.

This alternative means the Commission can avoid pursuing proposals in the LPFM proceeding that threaten serious losses by FM translator licensees and by members of the public who rely on the services the stations provide. It also means that, rather than displacing existing service and/or artificially contracting the number of FM translator licenses the Auction No. 83 filing window might yield, the FCC could satisfy LPFM interests by adding channels and voices with each LPFM station licensed to the newly re-used spectrum. It also would ensure that opportunities for FM upgrades in the existing band would not impede the siting of new LPFM stations that the LPFM proceeding seeks to facilitate. *Cf.*, *FCC Adopts Limit for NCE FM New Station Applications in October 12-October 19, 2007 Window*, 22 FCC Rcd. 18699, 18702 (2007) (“*NCE Application Limit Notice*”) (“recogniz[ing] desire to protect existing service to the public by upgrading NCE FM translators to NCE FM full service stations”). Accordingly, the approach advocated here would serve the goal in both the LPFM and instant Ownership Diversification proceedings to truly expand opportunities and bring new members into the broadcast fold.

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<sup>13</sup> *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 23 FCC Rcd. 4220, 4221, 4223 & App. B (2008) (“*Advanced Television Eighth R&O*”).

<sup>14</sup> *See infra*, Section IV.

### III. OPTIMIZING REALLOCATION OF TV CHANNELS 5 & 6 SO THAT IT INCLUDES FACILITATING NEW LPFM STATIONS IS PREFERABLE TO LPFM PROPOSALS THAT WILL HARM TRANSLATOR SERVICE

Reallocating TV Channels 5 and 6 for FM broadcasting in a manner that bolsters LPFM opportunities is a solution far superior to demands by LPFM advocates for FCC disruption of the co-equal status of LPFMs and FM translators so as to limit the number of translators protectable nationally from potential LPFM interference, and to the already adopted but not yet implemented FCC plan to slash the number of FM translator proposals in Auction No. 83. The broadcasters commenting here, as well as other noncommercial educational and commercial broadcasters with varying formats, employ translators to provide listeners with programming in rural and other areas, by serving unique niches often overlooked by full-power commercial broadcasters, or by bringing service to areas hampered by terrain from receiving signals of local broadcasters. These are often the most loyal radio audiences when they are listening to a high-quality service that meets their otherwise unmet programming desires. The fact that the filing window in Auction No. 83 drew over 13,000 FM translator proposals from over 850 applicants, *see FNPRM Third R&O*, 22 FCC Rcd. at 21934, attests to the value of translators in providing service to the public, and to the beliefs of many that translators provide a vital means of serving broadcast audiences.

As the Commission has recognized, the public has a “legitimate expectation that existing service will continue.”<sup>15</sup> In that context, it also found “[r]emoval of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service.” *Id. See*

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<sup>15</sup> *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd. 7094, ¶ 19 (1990) (“*New Community MO&O*”). The loss of service that would arise from city of license changes discussed in the *New Community MO&O* was replaced by a gain in service elsewhere – and usually a substantial gain, or the licensee would not consider the change. Even in those cases, licensees must demonstrate the loss areas continue to receive substantial numbers of additional services before a station can move. Proposals supported by Prometheus and other LPFM advocates would potentially terminate service of a translator for an LPFM that may not serve the same area and that, because of power limitations of the LPFM service, may serve fewer people than the displaced translator.

also *Quorum Radio Partners of Va., Inc.*, 23 FCC Rcd. 857, 859-60 (MB 2008); *Roy E. Henderson*, 22 FCC Rcd. 19170, 19173 (MB 2007) (each applying *New Community MO&O*, 5 FCC Rcd. at 7097). Putting aside that the FCC already has ordered forced dismissal of thousands of FM translator applications in the name of removing an alleged “preclusive impact” on LPFM opportunities,<sup>16</sup> the Commission appears to be contemplating displacement of *existing* service in the LPFM proceeding with respect to FM translators. Moreover, it is considering such a measure despite the fact that, when it has displaced a service in the past, it made a point to find alternate spectrum/means for it to continue to satisfy public expectation regarding continuity of service.<sup>17</sup> From outward appearances, the FCC does not appear inclined to do anything along these lines for FM translators displaced by LPFM operations.<sup>18</sup> Conversely, the proposal in the *R&O/Third FNPRM*s to reallocate TV Channels 5 and 6 for FM use, and the suggestion here to reserve for LPFM use the top 2 or 3 channels that can be made available for FM, would displace no one, and would provide LPFM spectrum useable immediately without disrupting any existing operations.

In addition to depriving listeners of programming on which they rely, granting LPFM stations priority over FM translators will have a severe financial impact on long-standing,

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<sup>16</sup> See *Third LPFM R&O*, 22 FCC Rcd. at 21935. See also *Broadcast Localism*, 23 FCC Rcd. at 1384. See also *supra* at 6 & n.6 (discussing retroactive cap of 10 FM translator proposals per applicant in Auction No. 83).

<sup>17</sup> For example, in relocating television broadcast auxiliary service in the 2 GHz spectrum in order to facilitate introduction of Advanced Wireless Services, the FCC ensured that the former’s operations “could continue to be effective” notwithstanding displacement and “balance[d] the unique interests” of the services. *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service*, 18 FCC Rcd. 23638, 23648, 23651 (2003) (modifying plan for relocating incumbent TV broadcast auxiliary licenses). See also, e.g., *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd. 14969 (2004) (adopting rules for relocating incumbent television broadcast auxiliary service licensees in the 2 GHz spectrum as part of rebanding of 800 MHz proposed by Nextel).

<sup>18</sup> This is particularly problematic given the significant limitation that displaced FM translators can move only to adjacent channels. 47 C.F.R. § 74.1233(a)(1) (as compared, for instance, to TV translator and LPTV stations that, when displaced due to predicted interference to or from authorized full-power stations, may without any adjacency requirement file applications to change channels and have them considered a minor modifications). *Id.* § 73.3572(a)(4).

reputable nonprofit organizations such as NPR, EMF, and other public radio entities that utilize translators to provide unique, niche programming in the public interest. For these entities, there are substantial costs already sunk into constructing and maintaining a translator network.<sup>19</sup> Moreover, substantial donor income that helps support the mission of noncommercial broadcasters comes from translators. Listeners to noncommercial services support stations with their donations – effectively, they feel like they have paid for the service. Substantial disruption in the operation of existing translators could impair noncommercial entities by impacting donations, and/or by irreparably damaging the reputations and goodwill nonprofits enjoy, if listeners lose valued programming to which they have donated.

Conversely, the *Third Diversity FNPRM*'s proposal to reallocate analog TV Channels 5 and 6 (where no longer used for television operations) opens up the possibility of the FCC satisfying LPFM interests without facing the difficult problems outlined above. Reallocation would open opportunities for LPFM in freshly licensed spectrum. This, in turn, avoids pitting LPFM against other valuable services, including FM translators, that have an established role – and that deliver significant public interest benefits – on the existing broadcast dial, or against potential FM upgrades by existing broadcasters. Indeed, according to the Mullaney Petition, “[o]ne TV channel is capable of creating 30 additional FM channels which equates to more than 2,000 new or improved FM facilities.” Mullaney Petition at 3.

Moreover, unlike anti-translator measures adopted and/or proposed in the LPFM proceeding, reallocation would address the larger point, noted above, that “maxed out spectrum” is the real problem underlying LPFM preclusion, as well as crowding faced by all broadcasters –

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<sup>19</sup> The average translator, with its accompanying equipment for receipt of programming and remote control, represents an investment of \$18,000. These investments would be lost if the FCC adopts any of the proposals in the LPFM proceeding that puts existing translators at risk. Conversely, a solution that facilitates the growth of the LPFM service without such translator displacements – such as reallocation of TV Channels 5 and 6 with reservations for LPFM – preserves sunk investments by these nonprofit entities.

NCE or commercial, translators or LPFM – in major and medium-sized markets. *See supra* at 6 (citing *LPFM Third R&O*, 22 FCC Rcd. at 21934). *See also NCE Application Limit Notice*, at 19702 (recognizing pent-up demand for new NCE spectrum). To the extent reallocation is a viable solution for meeting demand for LPFM allocations, it also would avoid protracted legal battles certain to follow any FCC effort to broaden LPFM opportunities by diminishing the protection afforded existing licensees and/or procedural rights of auction participants, and which could delay LPFM use of spectrum, or at least place it under a cloud until finality attaches. Indeed, given its technical feasibility demonstrated below, a reallocation solution can, to a great extent, be implemented immediately and provide immediate relief, since Channels 5 and 6 will be abandoned in all but a handful of markets as of the February 17, 2009, DTV transition, and most FM radios already can tune to the top portion of the Channel 6 spectrum.

#### **IV. ENGINEERING ANALYSES CONFIRM THE EFFICACY OF MEETING THE DEMAND FOR LPFM WITH SPECTRUM REALLOCATED FROM TV CHANNELS 5 & 6**

In view of the foregoing, the undersigned broadcasters support the *R&O/Third FNPRM's* proposal for post-DTV transition reallocation of TV Channels 5 and 6 to FM broadcasting, and further advocate that in doing so the Commission reserve the top 2 or 3 channels of that reallocated spectrum for LPFM allotments.<sup>20</sup> Engineering studies confirm the “tremendous opportunities” that are achievable by reallocating TV Channels 5 and 6 to FM broadcasting and reserving portions of the reclaimed spectrum for LPFM, especially given that the contour of a single TV Channel 6 station would accommodate approximately *three dozen* LPFM stations, depending on local spacing and other considerations. Thus, as set out in the attached Exhibit A, the potential for LPFM use on these new channels is stunning.

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<sup>20</sup> The remainder of the reallocated spectrum would be used for other FM operations to be determined.

For example, analyzing the Sacramento-San Francisco Bay area, there would be available, despite the existence of several low-band NCE stations, dozens of frequencies for LPFM stations – many multiples of what could potentially be available even if every FM translator were displaced.<sup>21</sup> As the engineering statement further shows, on Channel 200 alone, 42 LPFM stations could be made available in this limited area. An additional 94 could operate on Channel 199, and 92 more on Channel 198. Thus, there would be the opportunity for as many as 228 new LPFM stations in just this limited geographic area.<sup>22</sup> There is no reason to believe similar results could not be achieved in other markets across the country.<sup>23</sup>

The beauty of the instant proposal is that current radios will be able to receive new LPFM stations in reallocated TV spectrum reserved for LPFM use, so it could be implemented immediately after the end of the DTV transition. Virtually all digitally tuned FM radios already are capable of receiving FM stations at 87.9 MHz, and many can also receive those on 87.7 as well. A review of the technical specifications of other radios already on the market show that receivers also are available in the U.S. market that receive 87.5. Just by way of example, the Grundig G6 Aviator AM/FM, aircraft band and Shortwave Radio<sup>24</sup> will receive the reallocated frequencies proposed for LPFM reservation herein, as will the Sony ICF-SW7600GR.<sup>25</sup> Older radios without digital tuners often can receive these frequencies as well, as demonstrated by the fact that

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<sup>21</sup> The projections assume optimal spacings for the stations. But even absent such spacings, as is clear from the magnitude of what the engineering statement reveals that the opportunity for LPFM service is far greater on these channels than elsewhere on the already crowded FM dial.

<sup>22</sup> *Accord*, Mullaney Petition at 3 (single TV channel could yield 30 additional FM channels). There will be only nine DTV Stations on Channel 6 post-transition. *See Advanced Television Eighth R&O*, 23 FCC Rcd. 4220, App. B.

<sup>23</sup> Only in a handful of markets where Channel 6 remains in use by DTV stations, *see supra* note 22, will these opportunities not be immediately available.

<sup>24</sup> Available, among other places, at: [www.amazon.com/Grundig-G6-Aviator-aircraft-Short-wave/dp/B0014T5UM4/ref=pd\\_bbs\\_3?ie=UTF8&s=electronics&qid=1217364029&sr=8-3](http://www.amazon.com/Grundig-G6-Aviator-aircraft-Short-wave/dp/B0014T5UM4/ref=pd_bbs_3?ie=UTF8&s=electronics&qid=1217364029&sr=8-3).

<sup>25</sup> Available, among other places, at: [www.jr.com/sony/pe/SON\\_ICFSW7600GR](http://www.jr.com/sony/pe/SON_ICFSW7600GR).

many FM radios already can receive audio from TV Channel 6 in addition to transmissions in the FM band.

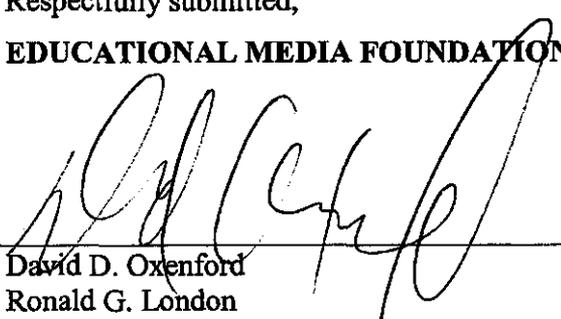
Moreover, equipment to receive these bands also can be quickly multiplied, as the FM band in other parts of the world encompasses this spectrum. For instance, in Japan, the FM band begins at 76 MHz (and ends at 90 MHz), and there are already radios on the market designed to pick up this FM band, and "extension" kits that allow existing radios engineered to receive the 88-108 MHz FM band to receive the lower frequencies as well. Accordingly, radios capable of receiving the frequencies reallocated from TV Channels 5 and 6 could readily be imported, and other equipment exists that could be adapted as well, were the FCC to adopt the proposals set forth therein.

## V. CONCLUSION

For the foregoing reasons, the FCC should adopt the proposal in the *R&O/FNPRM* to reallocate the soon-to-be-vacated TV Channels 5 and 6 to FM broadcasting, and should moreover reserve the top 2 or 3 channels of that reallocated spectrum for LPFM use, which will allow a reversal of the mass dismissal of FM translator applications the Commission has ordered in Auction No. 83, and the abandonment of proposals in the LPFM proceeding that would harm existing and future FM translator services on which the public has come to rely.

Respectfully submitted,

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July 30, 2008

**Engineering Statement**

This exhibit has been prepared to show the possible benefit to the public of reassigning a portion of the Channel 6 spectrum for the use of low power FM ("LPFM") service. The reassignment of even a small portion of the Channel 6 spectrum would allow for a vast expansion of the LPFM service (creating far more opportunities for new LPFM service than would any proposal to disrupt existing FM translator service and its possible extension to serve AM stations).

This study shows the potential for LPFM use in the Sacramento and San Francisco Bay areas, though similar benefits would be possible in virtually every market except for those few areas where there will be a Channel 6 station remaining in operation after the end of the digital transition. The existence of a high power FM-ED station on 88.1 may also limit the number of LPFMs that can be allocated in some markets. As shown in the attached maps, such a station would not have the effect of totally eliminating the potential for LPFM use of the proposed spectrum in parts of the markets where such FM-ED stations operate, especially if second and third adjacent channel separations are waived to some degree (note that KFCF, KZSC and KEAR-FM which are shown on the attached maps all class B facilities on 88.1 MHz).

In order to show the quantity of new LP100 facilities that could be created, a set of maps was drawn. Each map was created using the allocation spacings outlined in 47 C.F.R. 73.807. Existing FM stations were added, and a spacing circle was drawn for each FM facility according to its relationship to the channel proposed (a list of existing facilities considered is included at Exhibit A7). With each successive channel below channel 200, the theoretical LPFM allotments created in the previous exhibit were included. Thus a "running total" could be achieved.

Channels 198 through 200 (87.5-87.9 MHz) were chosen for this study since Channels 199 and 200 are readily available on today's radio receivers and Channel 198 is occasionally available. Thus, service on at least two of these three frequencies could be received, just as the audio portion of Channel 6 is currently receivable today. Without any additional expense to the public, these theoretical allotments could be received.

Exhibits A1 through A3 were created using the current table supplied in 73.807. According to these exhibits the following number of new facilities could be created:

Channel	# of new facilities	Running total
200	42	42
199	94	136
198	92	228

# Educational Media Foundation

Exhibit A

5700 West Oaks Boulevard ♦ Rocklin ♦ California ♦ 95765

Exhibits A4 through A6 were created using the table in 73.807 without affording protection to 2<sup>nd</sup> and 3<sup>rd</sup> adjacent allocations. According to these exhibits the following number of new facilities could be created:

Channel	# of new facilities	Running total
200	56	56
199	130	186
198	124	310

The statements made in this exhibit are all true and correct to the best of my knowledge and belief

Respectfully submitted,

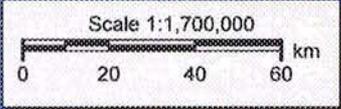
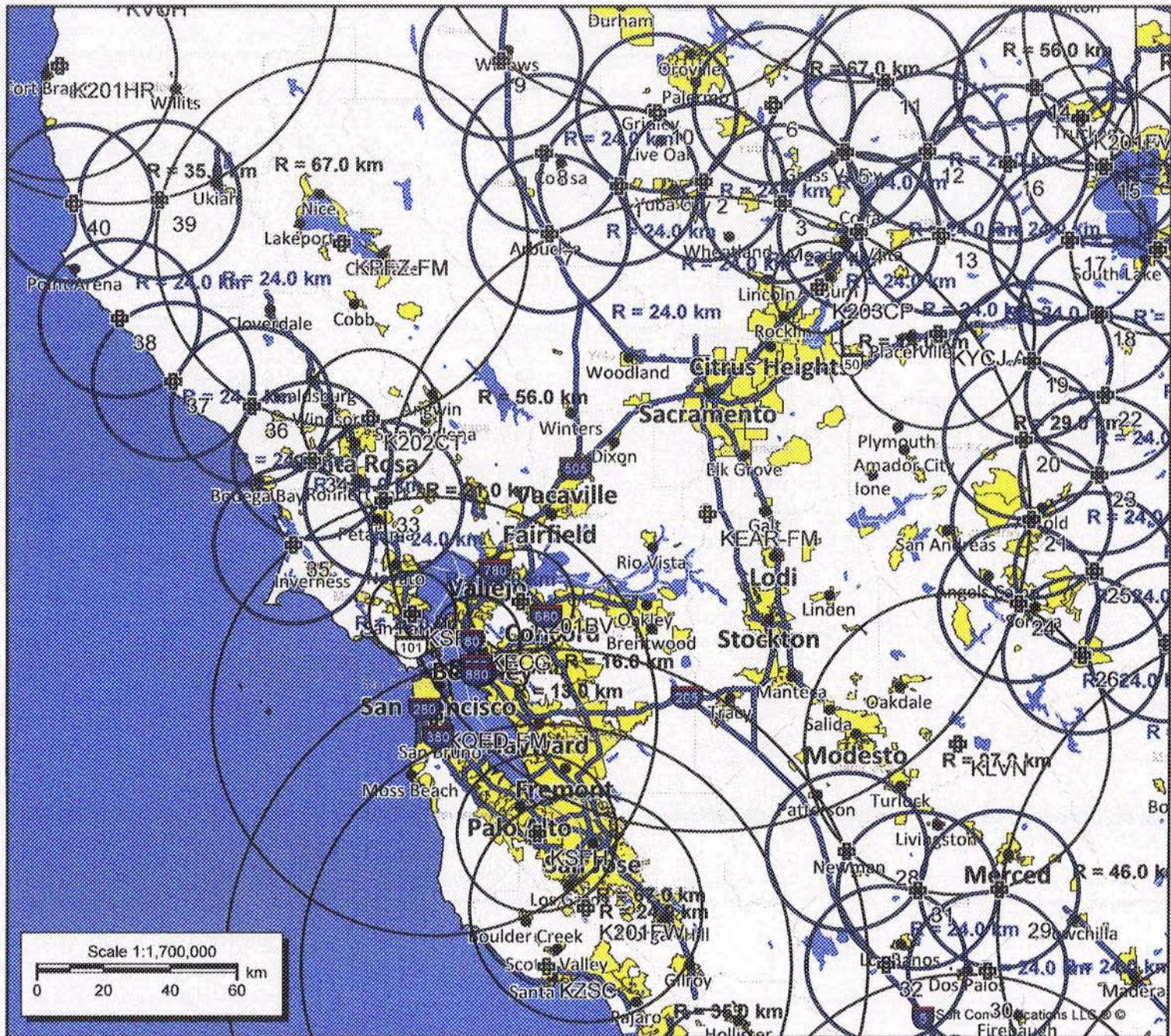


David Velasquez  
Signal Development Application Manager  
Educational Media Foundation  
July 30, 2008

CH200 LPFM  
Northern California  
Theoretical allotment

40 new allotments

Exhibit A1

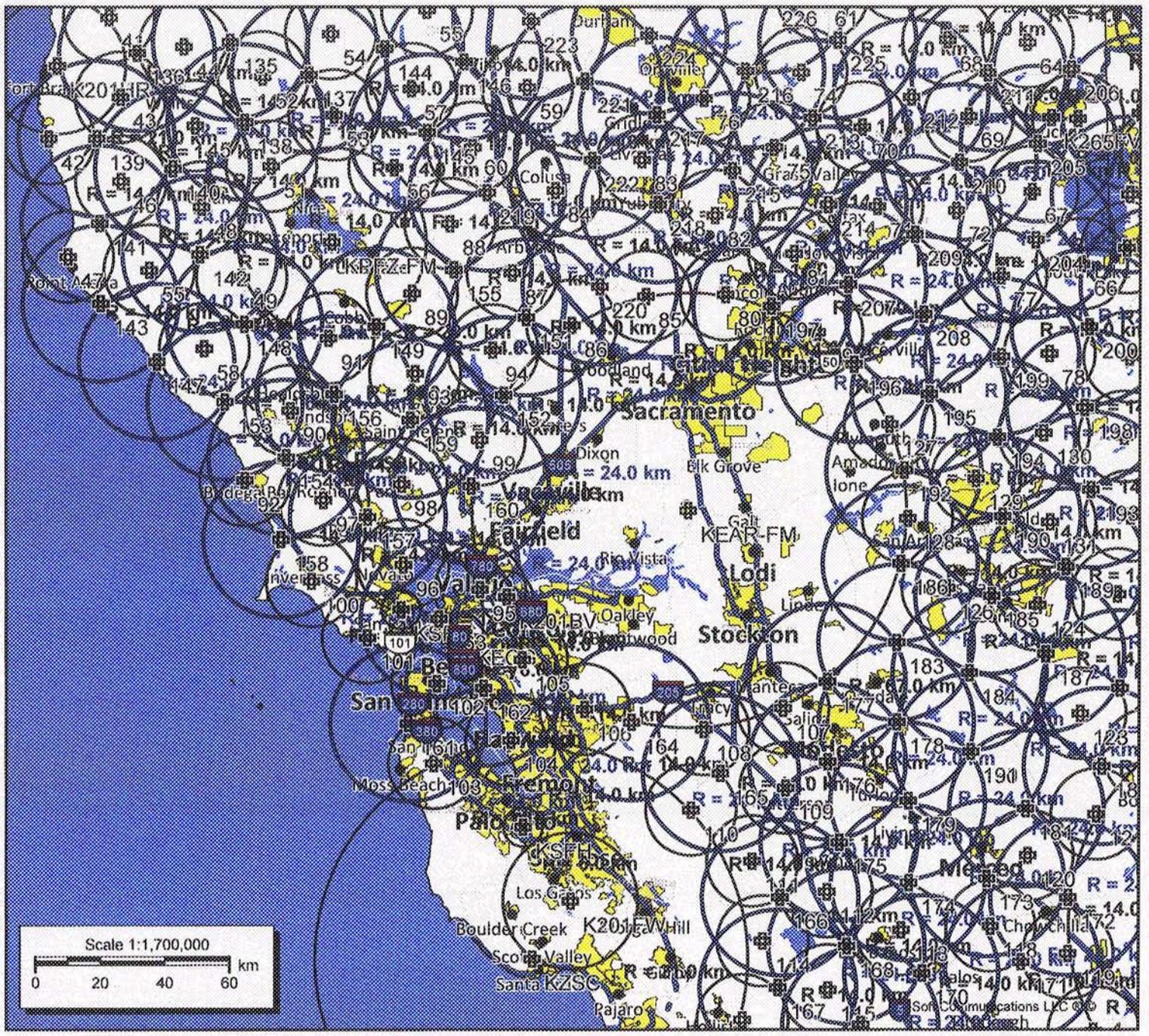




CH198 LPFM  
Northern California  
theoretical allotment

92 new allotments

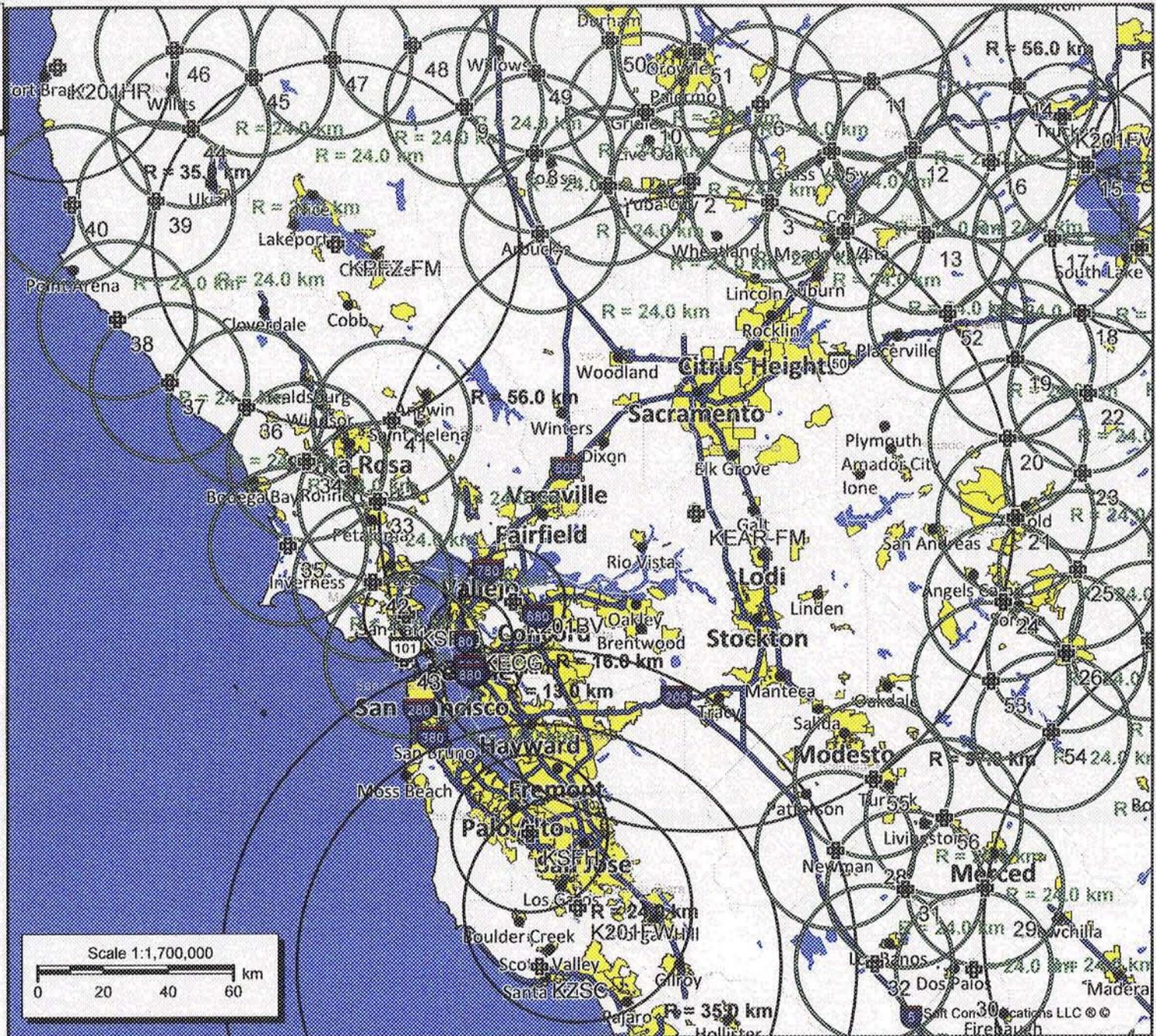
Exhibit A3



CH200 LPFM  
Northern California  
Theoretical allotment  
no 2nd or 3rd protection

58 new allotments

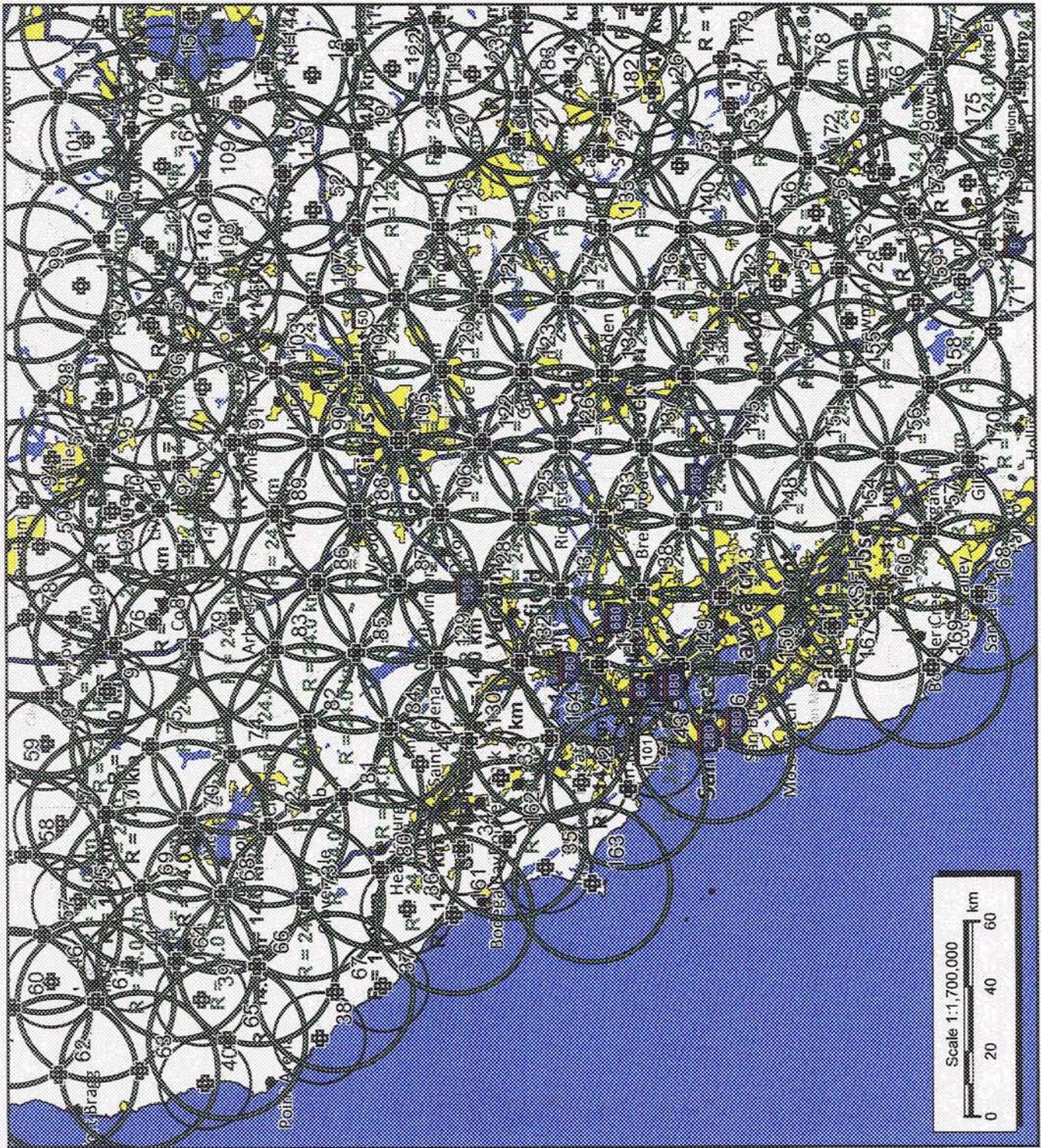
Exhibit A4



CH199 LPFM  
Northern California  
Theoretical allotment  
no 2nd or 3rd protection

130 new allotments

Exhibit A5





**Exhibit A7**

Call Sign	Lic	Chan.	Svc	Cls	City	ST	DA	Power
KSFH	LIC	200	M	D	Mountain View	CA	No	0.01
K200AA	LIC	200	X	D	Sun Valley	NV	No	0.028
KJAR	LIC	201	M	A	Susanville	CA	No	0.03
KPFZ-FM	LIC	201	M	A	Lakeport	CA	Yes	0.1
KJAR.C	CP	201	M	A	Susanville	CA	No	0.03
KQNC	LIC	201	M	A	Quincy	CA	No	0.5
KFCF	LIC	201	M	B	Fresno	CA	No	2.4
KZSC	LIC	201	M	B	Santa Cruz	CA	Yes	20.0
KEAR-FM	LIC	201	M	B	Sacramento	CA	No	8.4
K201FB	LIC	201	X	D	Tulare	CA	No	0.007
K201HR	LIC	201	X	D	Fort Bragg	CA	Yes	0.099
K201AJ	LIC	201	X	D	South Lake Tahoe, E	CA	No	0.005
K201HO	LIC	201	X	D	Reno	NV	Yes	0.075
K201FV	LIC	201	X	D	Truckee	CA	No	0.08
K201FB.A	APP	201	X	D	Tulare	CA	No	0.01
K201FW	LIC	201	X	D	Los Gatos	CA	Yes	0.009
K201HL	LIC	201	X	D	Garberville	CA	No	0.01
K201BV	LIC	201	X	D	Benicia-martinez	CA	Yes	0.004
KSRH	LIC	201	M	D	San Rafael	CA	No	0.007
KECG	LIC	201	M	D	El Cerrito	CA	No	0.017
KYCJ.A	APP	202	M	A	Camino	CA	No	0.05
KYCJ	LIC	202	M	A	Camino	CA	No	0.05
KDKL	LIC	202	M	B	Coalinga	CA	Yes	1.4
KQED-FM	LIC	203	M	B	San Francisco	CA	No	110.0
KLVC	LIC	202	M	B	Magalia	CA	No	5.7
KWTW	LIC	203	M	B	Bishop	CA	Yes	0.9
KQKL	LIC	203	M	B	Selma	CA	Yes	50.0
KVUH	LIC	203	M	B	Laytonville	CA	No	1.0
KLVN	LIC	202	M	B1	Livingston	CA	No	6.1
KLRH	LIC	202	M	C1	Sparks	NV	No	1.8
KLRH.C	CP	202	M	C1	Sparks	NV	No	2.95
KKRN.C	CP	203	M	C2	Bella Vista	CA	Yes	0.59
KJCQ.C	CP	203	M	C2	Westwood	CA	Yes	0.75
KJCQ	LIC	203	M	C2	Quincy	CA	Yes	0.79
K202CT	LIC	202	X	D	Santa Rosa	CA	No	0.01
K202DU	LIC	202	X	D	San Juan Bautista	CA	Yes	0.01
K203CU	LIC	203	X	D	Burney	CA	No	0.25
K203DZ	LIC	203	X	D	Johnstonville	CA	Yes	0.25
K203CP	LIC	203	X	D	Penryn	CA	No	0.01