

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

In the Matter of)	
)	
Promoting Diversification of Ownership In the Broadcasting Services)	MB Docket No. 07-294
)	
2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996)	MB Docket No. 06-121
)	
2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996)	MB Docket No. 02-277
)	
Cross-Ownership of Broadcast Stations and Newspapers)	MM Docket No. 01-235
)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets)	MM Docket No. 01-317
)	
Definition of Radio Markets)	MM Docket No. 00-244
)	
Ways to Further Section 257 Mandate and To Build on Earlier Studies)	MB Docket No. 04-228
)	

**REPLY COMMENTS OF 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.**

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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 reply to comments on the *Third Further Notice of Proposed Rulemaking* in the captioned matter,¹ insofar as they discuss the *R&O/Third FNPRM*'s inquiry into reallocating TV Channels 5 and 6 to FM broadcasting. *Id.* at 5956, ¶ 100.

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

I. INTRODUCTION AND SUMMARY

The comments support the observation of the undersigned broadcasters, which are all, *inter alia*, licensees of FM translators and/or applicants for new translators in Auction No. 83, that the availability of TV Channels 5 and 6 for radio broadcasting in most areas represents both a golden opportunity for the expansion of broadcast ownership, and an ideal way to resolve competing interests in existing FM spectrum. This includes, most specifically, tensions between low-power FM (“LPFM”) potential licensees and broadcasters with FM translators that currently are before the Commission in Docket No. 99-25.² The comments filed in this proceeding confirm the promise of the undersigned broadcasters’ proposal that reallocation of TV Channel 6 to FM service in all areas where that channel is vacated after the digital television (“DTV”) transition could help satisfy demand for LPFM stations by reserving the top 2 or 3 FM channels that would be created, *i.e.*, 87.9, 87.7 and 87.5 (Channels 200, 199, and 198), for LPFM operation.

As discussed below, whatever concerns some commenters may raise regarding wholesale reallocation of this spectrum generally, the undersigned broadcasters’ proposal offers an immediate solution in the vast majority of broadcast markets to competing interests in the LPFM and FM translator services, by providing more opportunities to those seeking to increase LPFM participation than are achievable elsewhere on the already congested FM dial. More importantly, it does so while not putting at risk valuable FM translator services. The proposal advanced by the undersigned broadcasters would provide immediate relief to LPFM advocates by utilizing virgin spectrum, receivable by commercially available FM radios, that will become immediately available upon the DTV transition on February 17, 2009. This proposal also avoids conflict between

² See Comments of Educational Media Foundation, *et al.* (“EMF *et al.* Comments”), at 2, 4-5, 10-13 (discussing, *inter alia*, *Creation of a Low Power Radio Service*, 22 FCC Rcd. 21912 (2007) (“*LPFM Third R&O*”). The tension between LPFM and FM translators potentially also extends to AM broadcasters. See *Amendment of Service and Eligibility Rules for FM Broadcast Translator Service*, 22 FCC Rcd. 15890 (2007) (“*Use of FM translators by AM stations*”).

LPFM advocates and current FM users. The Commission should recognize the immediate benefits that will flow from this proposal, by expeditiously adopting it, even as it considers broader issues of what to do with the remainder of Channel 6 and with Channel 5 in a more deliberate fashion that weighs all the comments and conflicting proposals advanced in this proceeding.

II. BACKGROUND

In initial Comments, the undersigned broadcasters agreed with proponents of the proposal to reallocate TV Channels 5 and 6 to FM that it could “create[] a staggering expansion of the [] FM band,” and with the FCC assessment “that [it] could yield tremendous opportunities for new entrants,” and noted in particular it could promote diverse broadcast ownership by, *inter alia*, bolstering LPFM opportunities.³ The Comments pointed out that the *R&O/Third FNPRM*’s goal of “expanding opportunities for new entrants and small businesses ... to own broadcasting outlets” in furtherance of a “national communications policy [for] the widest dissemination of information from diverse ... sources,” mirrors the LPFM proceeding’s intent to, *inter alia*, “provide opportunities for new voices” and “new stations,” thereby “fostering a diversity of new voices on the airwaves.”⁴ We explained that, whereas among the proposals to meet the *LPFM Third R&O*’s goals were various anti-translator measures – such as forced dismissal of thousands of Auction No. 83 applications, “altered priorities” between currently co-equal LPFM and translator services, and limiting translator ownership on an originating-station or per-market basis – the reallocation of TV Channels 5 and 6 offers a chance to accommodate LPFM interests

³ EMF *et al.* Comments at 2 (quoting *R&O/Third FNPRM*, 23 FCC Rcd. at 5956).

⁴ *Id.* at 3 (quoting *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) (pl. op.); *Associated Press v. United States*, 326 U.S. 1, 20 (1945)); *Creation of a Low Power Radio Service*, 15 FCC Rcd. 2205-07 (2000) (“*LPFM First R&O*”). See also *id.* (noting LPFM proceeding’s goals geared to “demand for alternative forms of radio service,” “enhance[d] locally focused community-oriented radio,” and “allocation of licenses ... likely to serve under-represented sections of the community”) (quoting *LPFM First R&O*, 15 FCC Rcd. at 2209-10). Cf., *LPFM Third R&O*, 22 FCC Rcd. at 21933 (citing “twin goals of increasing ... LPFM[s] and promoting localism”).

without harming existing or prospective translator service.⁵ This not only furthers the objectives of the instant *R&O/Third FNPRM* on diversifying broadcast ownership, but also better meets the LPFM proceeding's goal of initiating that service without "compromis[ing] the integrity of the FM spectrum," and authorizing LPFMs only "where the stations will fit."⁶

The EMF *et al.* Comments thus provided engineering studies that confirmed the "tremendous opportunities" achievable by reallocating TV Channels 5 and 6 to FM broadcasting and reserving portions of the reclaimed spectrum for LPFM, and in particular that the contour of a single TV Channel 6 station could accommodate *dozens* of LPFM stations in most radio markets, depending on local spacing and other considerations. *See id.* Exh. A. The studies showed, using Sacramento-San Francisco Bay as an example, that on Channel 200 alone, 42 LPFM stations could be made available, with an additional 94 on Channel 199, and 92 more on Channel 198 – or, in other words, an opportunity for as many as 228 new LPFM stations in just one limited area.⁷ Significantly, this takes into account interference from various low-band noncommercial stations, which may well not even exist in markets where there currently is an analog full-power

⁵ EMF *et al.* Comments at 6-8 (citing *LPFM Third R&O*, 22 FCC Rcd. at 21932-36, 21046; *Creation of a Low Power Radio Service*, 20 FCC Rcd. 6763, 6776-81 (2005) ("Second LPFM Recon. Order"); *LPFM First R&O*, 15 FCC Rcd. at 2228; *Media Bureau Suspends Dismissal of FM Translator Applications Related to Processing Cap*, 23 FCC Rcd. 5629 (MB 2008); 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).

⁶ *See id.* at 6 (citing *LPFM First R&O*, 15 FCC Rcd. at 2210, 2228). *See also id.* 5 ("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[.]'" (quoting *Second LPFM Recon. Order*, 20 FCC Rcd. at 6776).

⁷ *Id.* at 15 & Exh. A. *Accord*, Petition for Reconsideration and/or Comment of Mullaney Engineering, Inc., MM Docket No. 87-268, Oct. 26, 2007, at 3 ("Mullaney Petition") (single TV channel could yield 30 additional FM channels). *See also* EMF *et al.* Comments at 15 & nn.22-23 (noting "[t]here is no reason to believe similar results could not be achieved in other markets across the country" and that there will be only nine full-power DTV Stations on Channel 6 post-transition) (citing *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 23 FCC Rcd. 4220, 4221, 4223 & App. B (2008)).

Channel 6 TV station that will disappear after the DTV transition, making even more LPTV opportunities possible in those markets.

The EMF *et al.* Comments also showed that the reallocation/reservation proposal offered by the undersigned broadcasters could be implemented immediately after the DTV transition in that currently available radios are able to receive the frequencies on which the new LPFMs would operate. *Id.* at 14-15. We further showed that more radios encompassing the remainder of Channels 5 and 6 could quickly become available, as the FM band in other parts of the world utilize that spectrum. *Id.* The opportunities presented by this proposal dwarf those that might be realized by sacrificing existing FM translators and the valuable services they already provide, by making translators secondary to LPFM, as is before the Commission in the LPFM proceeding.

Accordingly, the undersigned broadcasters showed that, given the public interest benefits that translators offer and the expectations of continued service their listeners legitimately harbor, and the public interest harm that would ensue from hobbling translator licensees and applicants,⁸ reallocating analog TV Channel 6 to the FM band, while reserving for LPFM the top 2 or 3 FM channels that would be made available, presents an immediate solution the FCC can embrace. Doing so allows the Commission to bypass conflicts between authorizing new LPFMs on the one hand and current translator operation/applications and FM upgrades on the other, and unlike anti-translator measures adopted and/or proposed in the LPFM docket, addresses the larger point that “maxed out spectrum” faced by all broadcasters is the real impediment to LPFM expansion.⁹ As shown below, comments on the *R&O/Third FNPRM* confirm the benefits of the approach that the EMF *et al.* Comments advocated and that are further advanced herein.

⁸ See EMF *et al.* Comments at 7-12.

⁹ *Id.* at 6, 9, 12-13 (citing *LPFM Third FNPRM*, 22 FCC Rcd. at 21934; *FCC Adopts Limit for NCE FM New Station Applications in October 12-October 19, 2007 Window*, 22 FCC Rcd. 18699, 18702 (2007)). Reallocated TV spectrum not reserved for LPFM would be used for other FM operations, to be determined.

III. REALLOCATING TV CHANNEL 6 TO FM AND RESERVING THE TOP 2 OR 3 RESULTING FM CHANNELS FOR LPFM USE WILL AID DIVERSIFICATION OF BROADCAST OWNERSHIP AND PRESERVE VALUABLE FM TRANSLATOR SERVICE, WITHOUT HARMING ANY BROADCAST LICENSEE OR SERVICE

The comments on reallocating TV Channels 5 and 6 to FM support a reallocation-with-LPFM-reservation plan, while comments opposing reallocation as described in the *R&O/Third FNPRM* pose no impediment to adoption of the proposal advanced in the EMF *et al.* Comments to allocate only channels 87.9, 87.7, and 87.5 to LPFM, only in markets they will be vacated by full-power stations in the DTV transition. Indeed, some comments filed in this proceeding support frameworks similar to what the undersigned broadcasters propose. Several comments on the issue support reallocation, with some implicitly implicating the need to resolve FM translator-LPFM tensions. For example, the Diversity and Competition Supporters (“DCS”), who list “building the LPFM service” among the core objectives they identify, explain that insofar as “current [FCC] rules restrict diversity ... by preventing larger metropolitan areas from having enough stations to serve ... sizeable multicultural and multilingual communities,” reallocation of TV Channels 5 and 6 to FM service, “[a]mong all of the proposals ... under consideration in this docket, ... has the greatest potential to deliver economic power to minority owned media.”¹⁰

Comments of the Broadcast Maximization Committee (“BMC”), which strongly support reallocation of TV Channels 5 and 6 to FM use, also recognize the substantial benefits that doing so can confer in terms of meeting LPFM demand. Claiming that “viability of the LPFM service is an important goal in providing local service and specialized programming for underserved segments of the population,” BMC urges that “[f]or the benefit of LPFM stations, the Commission

¹⁰ DCS Initial Comments at 22-24. As some of the undersigned broadcasters noted in the LPFM docket, it is in such urbanized areas that the ability to insert LPFMs is most restricted, yet these are also areas least likely to be aided by forced dismissal of applications in Auction No. 83. *See, e.g.,* Petition for Recon. of EMF *et al.*, MM Docket No. 99-25, Feb. 19, 2008, at 4, 11-14. This is another reason why reallocation of TV Channels 5 and 6 with an LPFM reservation is a superior solution to resolving these competing interests.

... should consider providing separate spectrum space for the LPFM service,” which reallocation of TV Channels 5 and 6 will allow. BMC Comments at 5. BMC cites the vast number of LPFM stations that reallocation would support (though it seeks a set-aside of 8 channels, not merely the 2 or 3 advocated by the undersigned broadcasters), and cogently advises that the FCC:

is heading in the wrong direction by creating more interference, processing burdens and litigation among the affected [LPFM and other] stations. Instead, the Commission should be looking for a long range solution by allowing the LPFM service to flourish in this available spectrum space.

Id. at 6. In a similar vein, the Comments of National Public Radio, Inc., recognize the extent to which reallocation can help address severely congested radio broadcast spectrum, *id.* at 3-5, and specifically note the demands LPFM has placed on the limited spectrum that exists. *See id.* at 4 nn.8-9. Common Frequency, which among other things is an LPFM advocate that favors restrictions on FM translator licensees and applicants in other proceedings,¹¹ sees merit in the reallocation proposal, and in particular what it may mean to, among others, local community radio of the sort LPFM stations might provide. Comments of Common Frequency at 2-5. Other commenters favor the reallocation proposal more generally.¹²

Opposition to reallocating TV Channels 5 and 6 to FM rests almost exclusively on concerns that it will harm the handful of stations slated to occupy those channels after the DTV transition and limit new TV opportunities in the future. ABC, Inc. (“ABC), for example, noting that “some stations must operate on channel 5 or 6 to reach a substantial portion of their current [] viewers” after the transition, argues that “it would not be prudent to ... remove two channels

¹¹ Comments of Common Frequency, Inc., MB Docket No. 04-233, filed Apr. 28, 2008.

¹² *See* Comments of the National Translator Association, *passim*; Comments of Native Public Media and The National Federation of Community Broadcasters at 10-11. *Cf.*, Comments of American Women in Radio and Television, Inc. (national non-profit with “interest in any proposals to advance diversity in mass media” noting *R&O/Third FNPRM*’s “critical implications for future ownership opportunities for woman-owned businesses in the radio and television industry” and agreeing that “reallocating TV channels 5 and 6 for FM ... may have merit”).

from the possible pool of channels.”¹³ NAB similarly claims that “[e]liminating ... free, over-the-air television service on Channels 5 and 6 would harm the public interest,” given the “potential to cause significant disruption to [DTV] service,” especially as, “in some crowded markets, there are no alternative allotments.” NAB Comments at 7, 8. In short, those opposing the reallocation proposal as stated in the *R&O/Third FNPRM* are concerned about the prospects of simply removing TV Channels 5 and 6 from the Table of Allotments wholesale, nationwide, and what it means for the few DTV stations they believe need those channels to operate post-DTV transition.

Such problems are not presented, however, by the proposal in the EMF *et al.* Comments urging reservation of 2 or 3 channels for LPFM, which not only would necessitate use of solely TV Channel 6, but also advocates such use only “where no longer used for [TV] operations.”¹⁴ Accordingly, the proposal in no way involves “[t]aking away channels 5 and 6 from ... broad-

¹³ Comments of ABC at 2, 4. Withers Broadcasting Company of West Virginia (“Withers WV”) claims that reallocation advocates “have no rights vis-à-vis the 21 television licensees to operate on digital channels 5 or 6 ... post-transition.” Withers WV Comments at 2-3. It also cites an example an ABC-licensed station with “no channel to move to” if DTV Channel 6 were not available. *Id.* at 3.

It is curious that Withers WV cites interests of a station not licensed to it, but rather to ABC. *See* Comments of ABC at 4-6 (discussing WPVI(TV), which was “compelled” to operate on Channel 6 post-transition, as WPVI-DT). More importantly, concerns over stations such as WPVI-DT are not implicated by the proposal in the EMF *et al.* Comments. *See infra* at 8-9. It bears noting, however, that among opponents of reallocation that base arguments on the need for some stations to use TV Channels 5 and 6 post-transition, there is not agreement on how many stations fall into that category. *See* Comments of ABC at 3 (“many more than 20 full-power television stations have elected those channels [5 or 6] as the ‘best fit’ ... in an all digital world”); Withers WV at 2 (“WDTV is one of 21 ... stations nationwide that will be operating on either channel 5 or channel 6 after February 17, 2009.”). *Cf.* Comments of the National Association of Broadcasters (“NAB”) at 7 (“More than 20 full-power television stations already have post transition allotments on Channels 5 and 6.”). In any event, the proposal in the EMF *et al.* Comments requires the use of only TV Channel 6, thus decreasing the number of stations even relevant to crafting the immediate solution to LPFM issues that we advocate here, which does not call for displacing *any* full-power TV station.

¹⁴ EMF *et al.* Comments at 12 (emphasis added). *See also id.* at 8-9 (advocating “reallot[ing] soon-to-be unused analog TV Channels ... to the FM service” given that “the DTV transition ... will make [the channels] available *in most areas*”) (emphasis added); *id.* at 13 (“a reallocation solution can ... be implemented immediately and provide immediate relief, since Channel[] 6 will be abandoned *in all but a handful of markets*”) (emphasis added).

casters” who need them,¹⁵ “[r]emoving channels 5 and 6 from the TV band” where continued use is anticipated, Comments of ABC at 2, or “eliminating protection for – or the existence of – free, over-the-air television ... on Channels 5 and 6.”¹⁶ Rather, to the extent TV Channel 6 is vacated by full-power stations in most areas as of February 17, 2009, that spectrum – and only that spectrum not utilized for continued television broadcasting – should be reallocated to FM operation, with the top 2 or 3 FM channels reserved for LPFM. Significantly, proceeding in such a manner makes the instant proposal something the FCC can adopt as an immediate way to sate LPFM demands, even as it considers other TV Channel 5 and 6 issues in this proceeding.

Even some of the opponents of reallocation identified above agree that such mixed use of TV channels post-transition – *i.e.*, continued TV use in a few areas, reallocation to FM everywhere else – is feasible and would serve the public interest. Withers WV, for example, despite opposing the plan it perceived the *R&O/Third FNPRM* to suggest, states that it “would not object to a proposal that would allow a ‘mixed use’ of the 76-88 MHz band” if doing so can “respect the license rights of ... stations ... assigned either Channel 5 or 6 ... post-transition.”¹⁷ Similarly, NAB expresses “broad support for proposals that will help foster a more diverse and robust broadcasting industry.” NAB Comments at 1. It is only fair to assume this extends to measures

¹⁵ Comments of Venture Technologies Group, LLC, at 6.

¹⁶ Opposition to Petitions for Reconsideration of The Association for Maximum Service Television, Inc. (“MSTV”), in *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Dec. 3, 2007, attached to Letter from David L. Donovan, President, MSTV, to Marlene H. Dortch, Secretary, FCC, July 30, 2008, in *Promoting Diversification in the Broadcasting Services*, MB Docket No. 07-294. The undersigned broadcasters do not object to the caveat that, if vacated TV Channels are reallocated to FM with the top 2 or 3 reserved for immediate LPFM use, any such LPFM station “that causes any kind of interference to a licensed digital television station would have to sign off the air until the interference issue is resolved.” Withers WV at 5. This is consistent with limits on LPFM in the current FM band, in any event. *See, e.g.*, 47 C.F.R. § 73.825.

¹⁷ Withers WV at 4. *See also* Comments of Douglas E. Smith at 2 (opposing “removal of spectrum from TV service” but agreeing “Channels 5 and 6 could be used on a shared basis ... for FM ... where there would be no mutual interference with DTV stations in these channels”).

that hold the promise of vastly increased broadcast opportunities, such as that advanced here, provided such changes do not harm existing full-power TV operations or anticipated post-transition DTV protection, which is true of the undersigned broadcasters' proposal. *See supra* at 8-9.

It is also worth noting that the proposal in the EMF *et al.* Comments would do no harm to existing LPFM licensees, and to the extent it affects them at all, would only inure to their benefit. Specifically, our proposal to reallocate TV Channel 6 to FM where unused after the DTV transition and to reserve the top 2 or 3 new FM channels for LPFM is intended primarily to accommodate new LPFM stations, and does not anticipate requiring displacement of already licensed LPFM stations that currently are operating and not facing any technical issues. Rather, the idea is to create a home for the new LPFMs the Commission is trying to provide for in the LPFM proceeding, without sacrificing existing FM translator service or FM translator applications in Auction No. 83. Of course, the newly available Channels 87.9, 87.7, and 87.5 that our proposal would create could be used for existing LPFM stations, which are secondary services, should they be displaced, or if upon being constructed and placed in operation they do not achieve the anticipated coverage. But any such move would come at the LPFM licensee's discretion, and would not be compelled by what the undersigned broadcasters propose.

The foregoing settled, we further note that even if wholesale reallocation of TV Channels 5 and 6 were anticipated, it appears from the comments that there is DTV spectrum to which the few broadcasters presently slated to operate post-transition on Channels 5 and 6 can relocate. Specifically, BMC claims all "remaining Ch. 5/6 TV stations will have alternate channels available to them after the DTV transition." BMC Comments at 3. BMC conducted and submits engineering analyses in which it "identified the 24 post transition DTV stations that will operate on Channel 5 or 6" and shows that "[a] substitute channel was found for every one of them."¹⁸

¹⁸ *Id.* at 10 & Technical Statement Concerning Radio Broadcast Expansion in the VHF TV Channels 5 & 6 and Associated AM Band Uses.

Accordingly, the spectrum that the *R&O/Third FNPRM* proposes to reallocate to FM could be completely clear of all full-power TV use nationwide after the transition.¹⁹

We cannot help but observe that, based on BMC's showing, the FCC would be hard pressed to find that reallocation of TV Channels 5 and 6 to FM use, and the scores of new radio stations it would facilitate, would not better serve the diversity objectives of this proceeding and the public interest, than accommodating a handful of DTV stations that have spectrum alternatives available. This is especially so where reallocation can address the long-building and now-critical "maxed out spectrum situation which prevents [] broadcasters ... from obtaining new licenses in virtually all major [] and many medium-sized markets." *LPFM Third R&O*, 22 FCC Rcd. at 21934. *Cf.*, *Use of FM translators by AM stations*, *supra* note 2. In any event, even if it is possible to assign alternate spectrum to TV Channel 5 and 6 stations slated to keep those allotments post-transition, that is not a necessary prerequisite to the instant proposal to reallocate TV Channel 6 to FM wherever it is presently set to be vacated, and reserving the top 2 or 3 resulting FM channels for LPFM use.

Finally, the comments confirm that existing commercially available equipment makes satisfying LPFM demand by reallocating TV Channel 6 to FM and reserving the top 2-3 channels for LPFM an immediately implementable solution to the competing needs of FM translator licensees/applicants and LPFM interests. For example, as noted in comments in support of DCS, "many radios constructed for distribution in [] markets outside the United States are already designed to operate from 76 MHz to 108 MHz ... to accommodate ... other countries using the CCIR FM band," so "radios ... could be readily available upon ... expansion" of FM in spectrum reallocated from TV Channel 6. Comments of Charles Keiler at 3. *See also* Comments of A1A

¹⁹ It is noted that some of the commenters objecting to the reallocation cite LPTV use of the spectrum. *See, e.g.*, Venture Comments at 6; MSTV Letter at 2. If a channel can be found for all full-power stations in even the most congested market (Philadelphia) as BMC has shown, it would appear reasonable that new channels also could be found for any displaced LPTV stations.

Surf Radio at 1 (“some radios ... cover both the Japanese & C.C.I.R. F.M. bands with a range of 76-108MHz,” which “would be the new F.M. [] band if T.V. channels 5&6 were reallocated”). Common Frequency’s claim that “nobody (or few) own radios to even receive these channels” is thus misplaced.²⁰ As pointed out in the EMF *et al.* Comments, virtually all radios receive Channel 87.9, many receive 87.7, and there already are radios available in the U.S. that receive 87.5. This makes the instant proposal immediately implementable, from all perspectives.

IV. RESERVING FOR LPFM THE TOP 2 OR 3 FM CHANNELS DERIVED FROM REALLOCATION OF TV CHANNEL 6 IN AREAS WHERE IT IS VACATED UPON THE DTV TRANSITION WILL SERVE THE PUBLIC INTEREST AND WOULD PROVIDE IMMEDIATE RELIEF TO LPFM

The public interest benefits achievable by reallocating TV Channel 6 to FM where vacated and reserving the top 2 or 3 FM channels for LPFM are obvious, notwithstanding the opposition to reallocation generally in response to the proposal in the *R&O/Third FNPRM*. As a threshold matter, we note that most claims that reallocation would not serve the public interest arise in the context of wholesale reallocation of TV Channels 5 and 6 nationwide as gleaned from the *R&O/Third NPRM*, without preserving the current post-transition allotments for the handful of full-power TV stations that will remain on those channels.²¹ But this opposition to reallocation on public interest grounds does not apply to our proposal focused on reallocating TV Channel 6 to FM and using the top 2 or 3 new FM channels for LPFM, since it contemplates preservation of those full-power DTV allotments. Thus, the proposal advocated in the EMF *et al.* Comments could be implemented now without any disruption, leaving the broader issues of the use of TV Channels 5 and 6 more generally for the FCC to address over time.

²⁰ Comments of Common Frequency at 3. Moreover, even if equipment now on the market was insufficient and/or had to be adapted or see significant production increases, that is something Common Frequency apparently deems acceptable despite its criticism cited in the text, *see id.* at 4 (“availability of many new channels could entice consumers to upgrade receivers”), especially since Common Frequency itself offers proposals that, to be viable, require adaptation of existing equipment. *See id.* (first bullet).

²¹ *See, e.g.*, Comments of ABC at 2-4; NAB Comments at 8; MSTV Letter at 1.

There can be no doubt regarding the public interest benefits that adoption of the proposal advocated here would yield. The undersigned broadcasters' proposal will allow the Commission to satisfy both the preservation of existing FM translators and the overwhelming interest in new translator licenses evidenced by the number of applications in Auction No. 83 and calls by AM broadcasters to allow them the use of FM translators,²² as well as the clamor for new LPFM opportunities. EMF *et al.* Comments at 8-13. The FCC repeatedly has recognized the vital role FM translators play and the public interest benefits they deliver,²³ and the undersigned broadcasters have demonstrated both the value translator audiences place on the service and the public interest in fulfilling expectations that such existing service will continue. EMF *et al.* Comments at 10-12. The Commission also has found the public interest is served by authorizing an LPFM service and "maximiz[ing its] value ... without harming ... full-power FM stations or other ... licensees," including translator licensees. *Second LPFM Recon. Order*, 20 FCC Rcd. at 6763.

Accordingly, the syllogism is a simple one. If a robust FM translator service serves the public interest, and if it serves the public interest to maximize LPFM opportunities, then FCC action that bolsters both services, rather than pitting them against each another and extracting trade-offs, *must* be in the public interest. Common Frequency, which as noted has favored LPFM over translator interests in the past, agrees that "the best way to promote diversity in broadcasting would be to enact measures that expand local [NCE] radio," Common Frequency at 2, which is exactly what would result from adoption of the undersigned broadcasters' proposal.²⁴

²² See *Use of FM translators by AM stations*, 22 FCC Rcd. 15890.

²³ See, e.g., *Second LPFM Recon. Order*, 20 FCC Rcd. at 6777 ("FM translators provide important aural services to unserved and underserved areas" and "translator-based delivery of broadcast programming is an important objective") (quoting *LPFM First R&O*, 15 FCC Rcd. at 19924); *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, 19 FCC Rcd. 7505, 7524 (2004) ("FM translator stations provide important service to many mountainous and rural areas ... where few other radio signals are available").

²⁴ Unsupported concerns that "radically open[ing] up" the "radio universe" and "flood[ing] the market with new entrants" by reallocating TV Channels 5 and 6 to FM will harm existing

In the long term, the reallocation of TV Channels 5 and 6 to FM broadcasting will clearly serve the public interest. As DCS notes, “after the DTV transition is complete, it could be possible to convert Channel 5 and 6 for FM service,” which would “roughly triple the asset value (and thus the capital access ability) of minority owned broadcasters.” DCS Initial Comments at 25. This, DCS notes, will “deliver economic power to minority owned media” and advance the diversity goals of this proceeding, *id.* at 24, and, by extension, the public interest. *See Third R&O/FNPRM*, 23 FCC Rcd. at 5977 (“[I]t is important for the Commission continually look for ways to foster the development of independent channels and voices. * * * * All of the rules and policies that we adopt are designed to serve the public interest, providing for competition, localism, and diversity in the media.”) (Statement of Chairman Kevin J. Martin). Therefore, it is far from the case, as ABC claims, that “reallocation of TV/DTV channels 5 and 6 for FM service” would be “without any material benefit from a diversity of ownership or other public interest perspective.” Comments of ABC at 2. The public interest benefits are manifest, and should be doggedly pursued by this Commission.

Finally, it is important to recall that the central thrust of the EMF *et al.* Comments is to provide immediate opportunities to LPFM that do not come at the expense of FM translator operators, or at the expense of other FM stations – as the Commission has recognized they must not. *See supra* at 4 (quoting *LPFM First R&O*, 15 FCC Rcd. at 2210, 2228). The undersigned broadcasters’ proposal, to reserve FM Channels 87.9, 87.7 and 87.5, can be implemented in all

radio stations, *see* Venture Comments at 6, simply have no relevance to what we propose here. Proposals to advance LPTV and Class A interests can be addressed on other channels, as may studies that have suggested those VHF channels are not optimal for the DTV use to which all TV users – full-power and LPTV – will eventually transition. These concerns also ignore that licensing myriad locally-owned and -focused LPFM stations is precisely what the FCC hoped for, and expects to have enrich, not diminish, current broadcast offerings. *See, e.g., LPFM First R&O*, 15 FCC Rcd. at 2221-23, 2256 (anticipating, potentially, thousands of applications, notwithstanding one-to-a-party ownership restrictions); *LPFM Third R&O*, 22 FCC Rcd. at 21917 (noting “Media Bureau has received 3236 applications for new LPFM construction permits, of which 1,286 have been granted” and that “there are 809 LPFM stations operating throughout the country”).

but 9 markets immediately following the DTV transition on February 17, 2009. Larger questions of whether to reallocate Channel 5, or whether to displace existing licensees on TV Channels 5 and 6, and the ultimate use of the remainder of Channel 6 and of Channel 5, can be resolved at a later date, as those questions involve complicated balancing issues the FCC must carefully weigh. But use of the 3 potential FM channels discussed here and in the EMF *et al.* Comments is something that the Commission can accomplish immediately -- and is something that will benefit both existing broadcasters and potential LPFM licensees. It will allow these groups to work together, rather than forcing them into adversarial postures. These immediate benefits are manifest, and the Commission should work expeditiously to make them a reality.

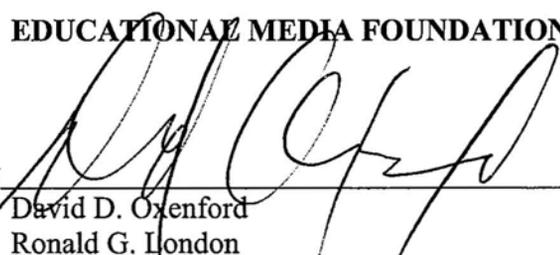
V. CONCLUSION

For reasons stated above and in the initial comments, the Commission should adopt the *R&O/Third FNPRM's* proposal to reallocate the soon-to-be-vacated TV Channel 6 to FM broadcasting, and in doing so reserve the top 2 or 3 new FM channels of that reallocated spectrum for LPFM use, which will allow reversal of the mass dismissal of FM translator applications 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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