

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

In the Matter of	)	
	)	
Promoting Diversification of Ownership	)	MB Docket No. 07-294
In the Broadcasting Services	)	
	)	
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	)	
	)	
2002 Biennial Regulatory Review – Review of the	)	MB Docket No. 02-277
Commission’s Broadcast Ownership Rules and	)	
Other Rules Adopted Pursuant to Section 202 of	)	
the Telecommunications Act of 1996	)	
	)	
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	)	

To: The Commission, Office of the Secretary

**COMMENTS OF EDUCATIONAL MEDIA FOUNDATION**

Educational Media Foundation (“EMF”), by its attorneys, hereby files its comments in response to the FCC Report and Order and Fourth Further Notice of Proposed Rulemaking in the above-referenced proceeding. EMF is a nonprofit, non-stock corporation which is the licensee of over 250 noncommercial radio stations. As such, the company has a direct interest in the outcome of this proceeding and in questions about noncommercial broadcasting generally. As set forth in more detail below, EMF sees no significant burden on noncommercial licensees in

filing a biennial ownership report on a single unified date, as long as the information required of licensees is clearly defined and limited to that which is necessary for the purposes of the Commission.

### **The Information that Should Be Gathered**

For a non-profit, non-stock corporation like EMF, with a self-perpetuating Board of Directors, there really is limited ownership information that can be provided that would be helpful to the Commission in its assessment of the degree to which minorities and women have ownership or control of broadcast facilities. Currently, in its Form 323-E Ownership Reports, EMF reports on its Board of Directors and its Executive Officers. Seemingly, for a non-stock, nonprofit corporate entity like EMF, this information is all that can and should be required. A nonprofit corporation like EMF is controlled by its Board of Directors, and is managed by its Executive Officers. The information collected about these individuals is where the Commission currently looks to determine control of noncommercial broadcast entities, and there really is no other source to which the Commission could look to determine control of such an entity.

The Commission, in its *Notice of Inquiry on Transfers of Control of Non-Stock Entities*, 4 FCC Rcd 3403 (1989), examined exactly the question about which the Commission is here inquiring – where control lies in non-profit, non-stock corporate entities. In that *Notice*, the Commission tentatively concluded that corporations like EMF are controlled by their Boards, and thus the Commission should look to their Boards in determining where control lies. The Commission went on to conclude that the rotation of members on a self-perpetuating Board does not, in and of itself, work any substantial change in the control of the noncommercial entity.

EMF believes that this analysis is exactly correct.<sup>1</sup> While EMF has a Board of Directors where members serve for a period of time, and then rotate off the Board to be replaced by new members, the corporate identity remains the same. Yet, while serving during their terms, the Board members are responsible for charting the course for the company, voting on and controlling all fundamental decisions and actions that the nonprofit entity may take. As the terms are staggered, continuity of management and operation is maintained. The company retains its identity, even though the Board members may gradually change. These Board members are the only persons to whom the FCC could or should look in assessing the control of entities like EMF.

The more complicated issues faced by the Commission in the commercial context, issues of Equity Debt Plus attribution and the single majority shareholder exception to the ownership rules, simply do not apply to the noncommercial context. Most nonprofit entities not associated with a university or other educational institution or with a government entity, will function much like EMF and their ownership reporting information should be quite straightforward.

**The Commission Should Be Circumspect in its  
Audits of the Ownership Filings of Noncommercial Broadcasters**

In its NPRM, the Commission also asks what review and verification process should be used to determine if the information provided by noncommercial entities is complete and accurate. Initially, EMF submits that the control information for most noncommercial entities will be relatively straightforward and thus the concerns about inaccurate information will be far less for these licensees. There will not be complicated corporate structures with multiple tiers of

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<sup>1</sup> EMF does not read the *Notice* in this proceeding as looking to change the Interim Policy for assessing ownership of noncommercial entities for purposes of determining when there have been changes in control of an entity which require prior FCC approval. EMF submits that the current policy has, for the most part, been working well and that no changes are needed without a full examination of any proposed changes in a separate proceeding. EMF, which interacts with many other nonprofit broadcast entities, has not perceived there to be any substantial issues as to where control of such entities may lie, and thus believes that the Interim Policy continues to function well.

owners with differing rights. There will not be investments of different types with differing voting rights that need to be evaluated to assess whether true control has accurately been reported. Thus, the degree of diligence for noncommercial entities should be substantially less than that required of commercial entities.

Moreover, the Commission must take into account in any review of noncommercial ownership filings that many noncommercial operators may not be sophisticated business operations with large staffs. It has been EMF's experience in dealing with other noncommercial entities that many stations are operated on minimal budgets, and may not be represented by counsel or be as skilled in the preparation of applications as other applicants that regularly appear before the Commission. Thus, while the Commission may be justified in auditing the information provided by such applicants, its purpose in doing so should be to insure that the data is accurate and to train licensees on proper procedures, rather than in a punitive fashion by fining applicants who do not properly complete the required forms. In certain instances the Enforcement Bureau has found that violations of rules by broadcasters have been "willful" simply because they exist, rather than that they were intentional and purposeful violations of the rules. Particularly in the case of ownership filings, where a noncommercial applicant has evidenced its regard for the rule by attempting to file something setting out its ownership on the appropriate date set for such filings by the Commission, monetary penalties should not be assessed if such applicants may have somehow made minor errors in the completion of the filing requirements.

**Conclusion**

For the reasons set forth above, EMF submits that consolidating the ownership filings for noncommercial broadcasters on the same November date as required for commercial operators should not be an issue. Most noncommercial entities held by non-profit, non-stock corporations will have simple filings, where the only information that needs to be submitted will be that for the officers and directors of the companies. The current information, with the additional requirement of the gender and minority status of such principals should also not be an undue burden. But in enforcing any requirement for noncommercial entities, the Commission must be lenient in its enforcement, as these entities are often the least able to afford staffs or counsel required to insure perfection in their filing obligations.

Respectfully submitted,

**EDUCATIONAL MEDIA FOUNDATION**

By:       /s/ David D. Oxenford        
David D. Oxenford

Its Attorney

DAVIS WRIGHT TREMAINE LLP  
1919 Pennsylvania Avenue, N.W.  
Suite 200  
Washington, DC 20006  
(202) 973-4200

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