Davis Wright Tremaine LLP

Suite 200
1919 Pennsylvania Avenue NW
Washington, DC 20006-3402

David Oxenford
202.973.4256 tel
202.973.4456 fax

davidoxenford@dwt.com

March 24, 2010

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: Creation of a Low Power Radio Service
MM Docket No. 99-25[1]

Dear Ms. Dortch:

Educational Media Foundation ("EMF"), by its attorneys, hereby submits these additional comments in the above-referenced proceeding. EMF has previously filed numerous pleadings in the above-referenced proceeding dealing with the priorities and conflicts between proponents of new LPFM stations and the licensees and applicants for new FM translator stations (including EMF). We understand that there is an item on circulation among the Commissioners dealing with these issues, and wish to remind the FCC of the issues at stake, and to present to the Commissioners suggestions on how to resolve these issues in a constructive, mutually beneficial manner.

EMF has had several conversations with representatives of LPFM advocacy groups and believes that, with the FCC playing the role of a mediator, there could be solutions developed that would be acceptable to both sides to the LPFM/translator conflicts. Such solutions could allow for the adoption of a comprehensive regulatory scheme governing the LPFM/translator relationship that would avoid the need for further litigation over the preferences and the processing of translator and LPFM applications. Such litigation will no doubt ensue should the Commission adopt the proposals advanced by either side – including any proposal to reinstate the limit on the processing only 10 applications from the 2003 translator window.

As EMF has explained in prior pleadings, a forced limit on the processing of FM translator applications from the 2003 window, whether that limit be 10 applications or 50 applications or any other fixed number, will result in a loss of potential service to rural areas, as

[1] As these comments reference the question of the use of TV Channel 6, they will also be filed in MB Docket Nos. 09-52 and 07-294 which both raise that issue.

translator applicants will naturally favor those applications serving larger metropolitan areas where they reach the most people per translator. LPFM advocates have conceded that there is not a spectrum shortage in more rural markets, yet any cap on translator applications will by necessity hurt the provision of service in those markets, in derogation of the FCC's mandates under Section 307(b) to serve all of the states and communities with radio services. EMF has conveyed to LPFM advocates a proposal that would address that issue. As part of a comprehensive settlement of differences between the parties, EMF would suggest that, rather than dismissing pending translators applications filed in the 2003 window, these translators simply be deferred and held without further processing until after the next LPFM window. To the extent that LPFM applicants do not seek to provide service in the areas that are specified by the translator applications held in this "deferred" category, translator applications not mutually exclusive with any LPFM application can be revived and processed after the next LPFM window – quickly permitting service to be initiated in areas not sought by LPFM proposals – service that might not otherwise be provided if it had to wait for some subsequent translator window. This service to smaller markets might never be provided if there is a low cap on the number of translator filings permitted by one applicant in subsequent translator windows causing them to concentrate their filings in larger markets.

EMF has suggested other ideas that could help to remedy the seemingly conflicting positions between LPFM and translator interests. Instead of having filing windows at different times, where one party or the other fears that they will be precluded from having the opportunity to file for new stations, windows should be open to both translators and LPFM applications. EMF would not object to LPFM applicants having a preference in such a window (and perhaps applicants for FM translators for AM stations also receiving such a preference). By processing both types of applications at the same time, service could be provided where it was needed in an expeditious fashion – but LPFM advocates could get stations where they have a demonstrated need on a preferred basis.

Moreover, EMF submits that there should be an opportunity for existing FM translators to be sold to local groups who want to use them for local services, and converted to LPFM operations. If there is indeed a demand for a local LPFM voice, why shouldn't the market be allowed to decide if the service will be used for translators or LPFM stations? This flexible use, consistent with flexible use policies suggested in the National Broadband Plan for television, allows the market to dictate the best use of spectrum.

Finally, EMF has suggested that 87.5, 87.7 and 87.9 – frequencies that can be received on most radios now in use – be opened for LPFM operations on the basis that they create no interference to television users. In most markets, these channels were vacated by television operators who found digital interference issues on VHF channels to be problematic. To allow LPFM to use these channels will help to provide hundreds of opportunities that might not otherwise be possible.

EMF believes that, given the opportunity and the encouragement by the FCC, a mutually acceptable solution to any LPFM/translator conflicts can be negotiated, saving all parties the delays and costs inherent in further litigation. We would ask that the Commission encourage such negotiations prior to any arbitrary resolution of this matter.

Please contact the undersigned with any questions about this matter.

Sincerely,

David Oxenford

cc: Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker
Sherrese Smith, Legal Advisor for Media to Chairman Genachowski
Joshua Cinelli, Media Advisor to Commissioner Copps
Rosemary Harold, Legal Advisor to Commissioner McDowell
Rick Kaplan, Acting Chief of Staff to Commissioner Clyburn
Brad Gillen, Legal Advisor to Commissioner Attwell Baker
Peter Doyle, Chief, Audio Division, Media Bureau
William Lake, Chief, Media Bureau