Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Creation of a Low Power Radio Service	)	MM Docket No. 99-25
	)	
	)	

SUPPLEMENTAL COMMENTS

Educational Media Foundation ("EMF"), hereby submits these comments in the above-referenced proceeding to address the impact that the adoption of the Local Community Radio Act of 2010 ("the LCRA") has on the processing of the currently pending FM translator applications from Auction #83, and to suggest the procedures that should be employed to process such applications consistent with the dictates of that Act.

As the Commission is aware, EMF has many translator applications still pending at the Commission from the 2003 filing window from Auction #83. EMF has consistently objected to the Commission's attempt to limit the number of applications that can be processed from that window, and presently has a Petition for Reconsideration of that policy pending.[1] EMF submits that such limits improperly restrict the service that could be provided by translators. This is particularly harmful to the public interest in connection with service outside of major radio markets, where such translator service is most needed, and where it is likely that, to the extent that there is a demand for LPFM service in such markets, that demand can be met on other available frequencies. The "rule of 10" adopted by the Commission in the 2007 Third Report and Order in the above-referenced proceeding would restrict such service and, if future translator

[1] See Petition for Reconsideration filed by EMF and a number of other parties on February 19, 2008.

filing windows have application caps, it might well deny service to more rural areas for the foreseeable future. As EMF has stated to the Commission in its pleadings and in meetings with FCC staff members working on this issue, if applicants are forced to limit their applications to a handful in each window, and if windows open only every few years, applicants will naturally submit applications in large markets first.[2] It may well be decades before a broadcaster like EMF, who is ready and willing to serve many smaller communities, would be able to provide service to smaller communities that are unlikely to receive interest from LPFM stations or other translator applicants. A denial of service to these communities for the foreseeable future does not seem to serve the "needs of the community" as required by Section 5(2) of the LCRA.

The LCRA does not specifically address the disposition of the Auction #83 applications. However, it does dispose of some of the issues raised by the Second Further Notice of Proposed Rulemaking, released concurrently with the Third Report and Order. For instance, it sets the priorities between translators and LPFM stations – finding them to be equal in priority, an issue raised in the Second Further Notice. A plain reading of the statute, at Section 5(3) sets out that FM translators and LPFM stations "remain equal in status", meaning that neither service has a priority over the other. This would mean that applications for such services should be treated by the FCC in the normal manner for stations of equal priority – with neither being entitled to any preference over the other.

In reviewing the basis of the rule of 10, as set out in the Third Report and Order, it appears that many of the determinations underlying that rule were premised on a belief that LPFM stations in some manner were to be preferred over FM translators, perhaps on the presumption that the issues in the Second Further Notice might result in the adoption of

[2] See, e.g. EMF's Letter filed in the above-referenced docket on March 24, 2010.

proposals that would prefer LPFM service over that provided by translators. Given that such a conclusion is precluded by statutory language that these services are "equal in status", any such presumption must fail.

Thus, the Commission must deal with the issue of how to ensure that licenses are available for LPFM stations and FM translators, as required by Section 5(1) of the statute, while still treating the services as equal as required by Section 5(3). EMF, prior to the enactment of the legislation, submitted a Joint Proposal to the Commission seeking to resolve the issues surrounding the Auction #83 applications by agreeing with the principal advocate for LPFM stations that the parties would compromise their positions – allowing for the grant of only a minimum number of FM translator applications (less than 10) to preserve the opportunities for LPFM advocates, allowing for a window for LPFM applicants as soon as the limited number of translators were processed, and then a processing of any remaining translators after the LPFM window.[3] EMF does not believe that the statute precludes the proposals advanced in that compromise.

EMF recognizes that other groups have proposed different solutions that would advance many of the same objectives that the EMF/Prometheus settlement suggested – saving opportunities for LPFM applications while still allowing the processing of the remaining FM translator applications. For instance, a group of 21 broadcast companies led by the Cromwell Group, Inc. have advanced a proposal that would allow for an immediate settlement window for all remaining FM translator applicants, with the proviso that no settlement be approved without a showing that there remains an opportunity for an LPFM station in the community where the translator construction permit would be issued. EMF believes that such a proposal might equally

[3] See the revised Memorandum of Understanding between EMF and the Prometheus Radio Project, filed in this docket on September 22, 2010.

translators and also providing an opportunity for new LPFM stations. Whether the Commission chooses to follow the proposal advanced by EMF and Prometheus, or that advanced by the Cromwell Group, neither would seem to be precluded by the legislation. Also, neither would impose the "rule of 10" to which EMF has objected.

The statute does allow LPFM stations more opportunities to operate in situations where they will not create actual interference to full-power stations, using interference standards much closer to those used by FM translators. These relaxed interference standards should allow for more opportunities for LPFM stations in many markets. EMF urges the Commission to allow these benefits to be realized by proceeding with the processing of the Auction #83 applications through one of the procedures discussed above, or in some similar fashion that preserves the bulk of the pending applications for FM translators, without artificial limits that will unduly delay service to rural areas, but which still allow for LPFM opportunities. EMF remains willing to work with any party to attempt to fashion rules and procedures that will accommodate all parties within the statutory framework established by the LCRA.

Respectfully submitted,

EDUCATIONAL MEDIA FOUNDATION

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