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September 26, 2011

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554.

Re: University of Washington Comments in MB Docket No. 99-25; MM Docket No. 07-172; RM-11338, Third Further Notice of Proposed Rule Making, FCC 11-105 (rel. July 12, 2011) ("Third Further Notice").

Dear Ms. Dortch,

The University of Washington ("UW") is the licensee of KUOW-FM, Seattle, WA and files these comments in the above referenced rulemaking:

- 1) UW has two pending applications for new translators at Olympia, WA. These applications have been pending since 2003.
- 2) Seattle and Olympia, are fifty miles from each other, and are entirely separate and distinct communities. According to the 2010 U.S. Census, Seattle had a population of 608,660 persons and Olympia had a population of 44,478. Nevertheless, Arbitron considers both cities to be in the same market for purposes of measuring radio listening.
- 3) UW believes it is a fundamental mistake for the Commission to treat extremely disparate communities, within the same Arbitron market, as having uniform frequency congestion characteristics, when considering the potential allocation of new LPFM channels, in the same market. There is absolutely no engineering evidence for the Commission to conclude that a specific level of frequency congestion in Seattle, is going to be the same, in a much smaller community fifty miles away.
- 4) The Commission's proposed dismissal of UW's pending Olympia translator applications, is completely misguided, and will deny a needed public service to Olympia. At the same time the proposed dismissal will likely contribute nothing to the Commission's efforts to increase LPFM channels in the Seattle area.

UW Comments in MB Docket No. 99-25

September 26, 2011

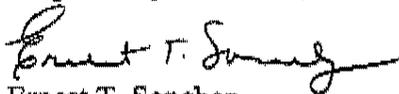
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5) The public policy of increasing LPFM channels, does not justify the blind and arbitrary dismissal of UW's long pending Olympia translator applications, without any empirical technical basis. For the Commission to potentially dismiss the UW Olympia translator applications, with no provable benefit to the LPFM spectrum, is absurd and embodies a prohibited arbitrary and capricious action.

6) It is understandable that the Commission desires, a simple and broad based tool, which can be used to promote the growth of LPFM. Nevertheless, the Commission may not legally abrogate the due process rights of long standing applicants, without a proper and meaningful technical analysis which provides a rational underpinning for the proposed dismissals. The draconian action proposed by the Commission has not been adequately justified.

7) UW has asked respected broadcast consulting engineer Douglas Vernier, to provide a brief technical analysis, of some basis flaws in the Commission's technical approach. Attached is a copy of that study.

Respectfully submitted,



Ernest T. Sanchez

Special Assistant Attorney General

The State of Washington



September 24, 2011

Engineering Statement on Behalf of University of Washington

We have been asked to prepare this statement on behalf of KUOW, Seattle, licensed to the University of Washington.

Dismissal of all translators in a given market where the number of LPFM frequencies is deemed to be below the floor for that market is clearly a draconian overkill. The Commission's conclusion from Common Frequency Study is flawed in that it completely dismisses all application in a given market regardless of circumstances. The exposed flaw is the false assumption that dismissal of all translator applications is necessary to open up the market to additional LPFM opportunities whether or not a "specific" translator application has a preclusive effect on LPFM. Further, the Commission proposes that second adjacent waiver requests for LPFM stations would be considered, however this opportunity for more LPFM stations is not exploited in the Common Market Study.

Within the 3rd Further Notice, the Commission itself states:

"We recognize certain limitations in the data used by the Bureau in its analysis and note, in particular, a number of unknowns. These include site suitability and availability, population levels near studied locations, and demand for LPFM licenses at these locations. Future full service station licensing and settlement activity among the remaining translator applicants also could impact spectrum availability. Given these limitations, the "Channel" and "Total Stations" availability determinations likely overstate, and in some cases may substantially overstate, the number of potential bona fide licenses that will be available to future LPFM applicants in each market."

Yet, the Commission, continues to believe that the information provided in Appendix A, "... provides a useful measure of LPFM spectrum availability." This recognition of the potentially serious flaws in the Common Frequency Study is more reason enough not to enact the premature mass dismissals until analysis of the missing elements in this study can be completed.

The Local Radio Community Act, signed into law by the President, provides that "FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified FM stations." However, the allocation procedure for the LPFM and FM Translator services remains unequal and this, to a large extent, limits the LPFM opportunities in a given market. Under the proposed rules, applications to the FCC in the LPFM service continue use a flawed methodology of minimum distance separations, rather than actual contour protection. While for administrative purposes, the go no-go minimum separations method

makes processing applications slightly less time consuming the method, depending on the terrain, it can often cause increased interference to translators and full service stations. To equalize the LPFM service and the FM translator service, the same protection methodology should be used. The interference contours of FM translators must not overlap the protected contours of other stations. This can be done by reducing the antenna height or power toward the protected station. LPFM stations are not given these technical opportunities, consequently this seriously limits the number of channels available to the service. This is not equality. To correct this situation, in addition to considering a second adjacent waiver request, the Commission should also consider waiving the minimum LPFM separations requirement for first and co-channel LPFM assignments in "below the floor" markets as long as contour overlap, as expressed under section 73.509, does not occur. Based on the current rules, FM translators with ERP's under 100 watts are exempt from the I.F. taboos, however this flexibility does not extend to the LPFM station which, under the rules, must maintain a specific minimum separation from both translators and full service stations that are 53 and 54 channels removed. This too is not equality.

Further, it is puzzling that the 3rd Further Notice, MM Docket 99-34, does not even mention the licensing of L2 or ten watt maximum LPFM facilities. Because of the lower power operation of L2 LPFM stations opening up an application window for this class of LPFM station, already approved in the rules, would provide additional opportunities in spectrum starved markets.

The Commission has before it a Petition filed by the Broadcast Maximization Committee. This proposal would open up TV channels 5 and 6 for the use of LPFM. The proposal makes sense,

for several reasons. It would open frequencies that are not in wide use throughout the U.S. , particularly since the advent of DTV where experience has found that the VHF frequencies are significantly inferior to UHF and secondly it would eliminate any potential interference to existing licensed stations. Since LPFM stations are secondary, their existence in the channel 5 or 6 spectrum would not be a limitation for future primary services, which is the same situation under which LPFM operates in the standard FM band.

Another option that should be considered is the FCC's reservation of a reasonable amount of IBOC bandwidth on existing stations running IBOC subcarriers for the use of low power stations in the top 150 markets. There is precedence for this kind of reservation since it parallels the FCC requirement that NCE stations provide, when requested, an analog sub-carrier (at cost) for a reading for the blind service.

Finally, in an effort to equalize the status of LPFM and FM translators, and to reduce the number of nationally oriented translator applications from applicants known to warehouse, the Commission should apply some type of local ownership criteria to the translator applications currently on file. Rather than dismiss all the translator applications in a given market, the Commission should examine the ownership to determine whether the applicant can be considered local or even regional. With regard to the 150 markets in the Commission's study, if an applicant is deemed to be local it should not be dismissed, however applicants not making the cut should be dismissed.

In conclusion, the Commission's Common Frequency study and its conclusions fall to consider important aspects which make the outcome of the study questionable. Until the above described methods of opening up more opportunities for LPFM channels are fully vetted and until methods can be adopted that prohibit trafficking, existing translator applications in spectrum limited markets should not be summarily dismissed. No FM translator application should be excised by the methods the FCC finally adopts unless it specifically precludes LPFM use of the channel throughout the entire market and not just in one location.

A handwritten signature in black ink, appearing to read "Doug Vernier". The signature is stylized with a large, looping initial "D" and a long horizontal stroke extending to the right.

Doug Vernier,

Senior Engineer and President

D.V. Telecommunications Consultants LLC and

V-Soft Communications, LLC