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VIA ELECTRONIC FILING

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

Re: Summary of the Ex Parte Meeting with Dave Grimaldi, Chief of Staff and Media Legal Advisor to Commissioner Mignon L. Clyburn
MM Docket Nos. 99-25, 07-172 and 09-52

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission Rules, this notice of an ex parte presentation in the above-referenced matter is being provided. On January 26, 2012, Joe Miller, Vice President for Signal Expansion at Educational Media Foundation ("EMF"), Brian Gantman, Government Relations Director/In-House Counsel at EMF and the undersigned counsel for EMF, met with Dave Grimaldi, Chief of Staff and Media Legal Advisor to Commissioner Mignon L. Clyburn to discuss matters concerning the above referenced dockets. Specifics of the conversation are outlined below.

In connection with MM Docket 99-25 and MB Docket No 07-172, the EMF representatives made the following points:

- Throughout this proceeding, EMF has advocated to the Commission that both translators and LPFM stations are important, and it has worked with LPFM advocates to find a way to advance the interests of both parties.
- EMF has already constructed about 150 translators from the 2003 window, as the company looks to serve areas that desire the programming service that it provides
- EMF generally supports the market-by-market approach to deciding which of the translators from the 2003 window should be processed and which should be dismissed, as set out in the Commission's *Third Further Notice of Proposed Rulemaking*, released July 12, 2011 (the "*Further Notice*"). While EMF, in its comments in response to the *Further Notice* filed September 6, 2011, suggested certain minor changes to the proposals that would more accurately reflect the preclusive effect of translators on LPFM stations, it believes that this general methodology is a sound way to proceed.

- EMF has always opposed a nationwide cap on the number of applications that one party can prosecute, and continues to oppose the adoption of any cap pursuant to the *Further Notice*. When EMF and Prometheus offered a settlement proposal to the Commission in 2010, one of the most important points to EMF in that settlement was the lack of a national cap.
- The national cap will be injurious to rural listeners, as any cap, no matter what limit is imposed on the number of applications that can be processed, will result in applicants pursuing applications that serve the most people and dismissing those applications that serve more rural areas with smaller populations.
- Dismissal of applications that serve rural areas is of concern, as these areas are the ones that are most in need of diverse services, and translators provide the most cost-efficient way to provide these services.
- There is not a spectrum shortage for translators in rural areas, and there is also likely to be less demand for LPFM applications outside of the metropolitan areas, another area of agreement between EMF and Prometheus in their settlement agreement from 2010. *See*, revised settlement agreement between EMF and Prometheus Radio Project, filed in this Docket on September 22, 2010, at Item I(1) of the Memorandum of Agreement. Thus, any forced dismissal of translator applications outside of the major markets does not significantly advance LPFM opportunities, but instead just denies service to listeners who desire the service that EMF provides.
- If there are concerns about unjust enrichment that prompted the calls for an application cap, these calls can be answered through direct restrictions on such enrichment – e.g. prohibitions on the sale of applications granted as a result of the FCC's actions, either through outright bans on such sales, the imposition of holding periods on stations received as a result of the window, or limitations on compensation that can be received (e.g. limits on sales to the out-of-pocket expenses of the applicant). EMF does not oppose any such restrictions, as it filed its applications for purposes of building stations and expanding its service to the public. EMF did note, however, that one company that filed for many translator applications and sold many of the translators that it received, sold many of its translators to broadcasters to provide translator service for AM stations, which the FCC has itself recognized provides beneficial local service to the public.

In addition, EMF discussed its understanding of the fact that the Commission would be issuing some further document to examine the technical status of LPFM stations, which would particularly look at the question of second adjacent channel spacing waivers. EMF expressed concerns about any blanket waiver of second adjacent channel spacings, noting:

- Under the Local Community Radio Act, LPFMs that cause second-adjacent channel interference to any full-power station, even outside of the protected contours of the full-power station, have to cease operations if they cannot remedy the interference.

- This is similar to the translator rules that govern translator operations generally, including second-adjacent channel spacings.
- EMF has a sophisticated and experienced engineering staff that evaluates translator placement to try to minimize possible interference concerns. Even so, about 5% of its new translators have to cease operations after being constructed as they cannot resolve interference complaints, and even more have to make some accommodation to resolve interference complaints.
- For a broadcaster, such a situation, while serious, is a cost of doing business. For an LPFM applicant, who may have raised funds specifically for the operation of an LPFM station on a given frequency, an interference complaint that causes them to shut down their station could cause the LPFM operator to lose everything- including the costs of establishing the station, with no opportunity to operate at all.
- Chances that LPFM operators, who are likely to be less technically sophisticated, and more likely to be relying on automated programs to tell them where they might apply, will be less sensitive to potential interference than an experienced translator operator like EMF, and will be less able to respond to an inference complaint. Applications may be filed wherever there appears to be a "hole" allowing for a new LPFM station, without any real evaluation of the likelihood of interference that the station might cause or receive. Thus, the incidence of interference claims is likely to be higher with LPFM operators than with translator operators.
- Such conflicts will be problems for not just the LPFM operator, but also the full-power station suffering the interference and for the FCC, which will be forced to deal with many complaints about such interference.

In connection with the Rural Radio proceeding, Docket 09-52, the meeting participants had a quick discussion of the issues. EMF noted that it had filed on May 6, 2011 a Petition for Reconsideration of the Commission's *Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, released March 3, 2011. Specific concerns expressed by EMF include:

- The change in the Commission's evaluations of applications proposing moves of FM stations into metropolitan areas, making such moves more difficult, eliminates the one way in which niche or minority oriented broadcasters can get an FM station in many metropolitan areas. As the ownership of stations in most markets is quite consolidated, there are few available stations in those markets at prices that minority or independent broadcasters can pay.
- In virtually all metropolitan areas, the only way to add new stations to the market is through a move-in from a rural area. By making such move-ins more difficult, the FCC is in effect freezing the competitive situation in those markets, no matter how much those markets grow.
- New services are more available in rural markets and any move of a station from a rural to an urban market frees up opportunities in those rural areas for new or

improved services. Had there been more time for discussion, EMF would have referred to the chart attached as Exhibit 2 to the Joint Comments of Radio One, et. al., filed in this Docket on July 13, 2009, which demonstrated how move-ins to metropolitan areas freed spectrum for other changes in stations in rural areas.

- EMF noted that, from its own experience, many stations in rural areas are having difficult financial times as competition has significantly grown in those markets over the last 20 years, both in terms of radio station availability and in terms of competition from satellite and other media. EMF noted the statistics contained in the Petition for Partial Reconsideration filed by Radio One et. al. in this docket on May 6, 2011, at pp. 15-16, showing that there is no lack of service or opportunities for new stations in these rural areas. The Radio One Petition for Partial Reconsideration cites figures showing that, since the effective date of the rules permitting the processing of city of license changes as minor applications (January 19, 2007), only 19% of all city of license change applications proposed to cover more than 50% of an urbanized area (110 out of 561 applications), and that number was down to only 10% of the applications filed in the last year before the filing of the pleading, as opportunities and economics have made these move-ins more difficult and less financially attractive. During the same period of time, the Commission has awarded permits to 940 new stations in rural areas.
- EMF also raised questions about the lack of standards. If a substantial increase in population served is not in and of itself a public interest benefit, what is? Does providing a new 20th service to several hundred thousand people outweigh the loss of a 10th service to 25,000 people? How are these judgments to be made? What criteria are to be used? EMF made the point that business judgments need to be made on such evaluations, and the *Second Report and Order* provided no standards by which such judgments can be made.

A copy of this notice is being submitted in the relevant docket. Should there be any questions concerning this matter, please contact the undersigned.

Sincerely,

David Oxenford

cc: Dave Grimaldi