WILKINSON) BARKER) KNAUER) LLP

2300 N STREET, NW
SUITE 700
WASHINGTON, DC 20037
TEL 202.783.4141
FAX 202.783.5851
WWW.WBKLAW.COM

DAVID OXENFORD
202.383.3337
doxenford@wbklaw.com

October 15, 2012

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 Lyle Elder, Attorney-Advisor to Chairman Julius Genachowski
MM Docket Nos. 99-25 and 07-172

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 October 11, 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 (collectively, the "EMF Representatives"), met with Lyle Elder, Attorney-Advisor to Chairman Julius Genachowski, to discuss matters concerning the reconsideration petitions pending in connection with 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 close to 200 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 specific approach to protecting areas for LPFM opportunities as adopted by the Commission in the Fourth Report and Order and Third Order on Reconsideration ("*Fourth R & O*") in the above-referenced proceeding.
- However, EMF continues to oppose the nationwide cap on the number of applications that one party can prosecute as imposed by the *Fourth R & O*, and also opposes the one-to-a-market cap imposed by that Order.
- 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, an 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(l) 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.
- EMF has, in connection with its review of the stations that it would protect if there was a 50 cap imposed, dismissed about 200 applications from the 2003 window which it is no longer interested in constructing. It still has approximately 300 applications pending. Of those, over 50 are in unrated markets, and over 50 are in markets 150 and above. Many of these applications would likely be dismissed if EMF was forced to choose only 50 applications to prosecute, thus depriving service to residents of these communities.
- While the Commission has suggested that these applications can be revived in future translator window, that will substantially delay if not deny such service altogether, as there is unlikely to be another translator window for years, and there may well be application caps in such a window. Dismissal of these small market applications could thus forever delay the service that EMF is now ready to provide.
- 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 believes that the NPRM in this proceeding gave sufficient notice to the public of the FCC concerns about speculative applications that these measures could be taken now, without the need for additional comments.

- 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. The FCC has itself recognized that the use of translators by AM stations provides beneficial local service to the public.
- EMF further suggested that the one-to-a-market cap was particularly problematic in large markets, where there can be two or more translators that would serve vastly different areas, even though such areas were technically in the same market.
- Caps are unnecessary as the FCC has already protected LPFM opportunities through the process that it outlined in the *Fourth R & O*.
- EMF suggested that some of the concerns about speculation were overstated, particularly in connection with the one-to-a-market rule. While there may have been some applicants who filed multiple applications on different frequencies at the same site, these were probably not filed for purposes of speculation, but instead so that applicants increased their chances of getting at least one translator that they could get to provide the service that they desired. EMF did not utilize this procedure, but can understand why applicants who were seeking a limited number of translators in specific areas in which they wanted to provide service would have done all that they could to increase their chances of getting a grant, and this filing technique was not against the FCC rules.
- EMF also suggested that speculative intent can be dealt with through the settlement and auction process, as the marketplace incentives provided by the auction would limit any potential profit for speculators.

EMF suggested that the application caps should be removed entirely. As an alternative, if it was deemed necessary to have application caps, EMF suggested that the caps apply to granted applications, not applications, as an application cap will be unlikely to lead to anywhere near the same number of grants as applications. Another alternative would be to exempt small and unrated markets from the caps, as these are likely to not be spectrum limited, and to not be the ones where speculation in the sale of permits is likely to be rampant.

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: Lyle Elder, Esq.