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To:  
FCC Media Bureau – Audio Division  
Peter Doyle  
James Bradshaw

In the matter of:  
Creation of a Low Power Radio Service (MM Docket 99-25)  
Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations (MB Docket 07-172)

Dear Sirs:

I am not able to get to DC to discuss these issues with all of you in person, so I will discuss them here. A copy of this letter will be placed in the dockets through ECFS.

There recently have been some ex-parte presentations involving Prometheus Radio Project (PRP) as well as Educational Media Foundation (EMF) as well as submissions to the docket by The Amherst Alliance (Amherst). I would like to take some time and reiterate some of the positions of REC on the various issues raised.

### **Translator Caps**

In regards to the translator application caps, I see the “50-cap” and the “one to a market” decisions that the Commission has made do not necessarily address the issue of LPFM availability, but to address the issue of speculation as a result of the Auction 83 window back in 2003. We called that window the “Great Translator Invasion” because it was an invasion. It was definitely the most abusive use of FCC resources that I have ever experienced in my lifetime. It was REC that first broke the story about the pattern of assignments that took place shortly after the construction permit grants. The activity that took place in Auction 83 definitely identified a very broken application process that was very vulnerable to abuse. This is what the 50-cap addresses. One-to-a-market, in our opinion addresses the abuse of FM translators being leased by non-commercial entities to commercial entities, a business practice that EMF is currently engaged in. Thanks to this questionable, but legal process, the Detroit area, an area that is one of the most economically disadvantaged metropolitan areas would not be able to obtain an LPFM station unless its placed in certain areas where it must be an LP-10 (which the Commission also proposes to discontinue).

In Appendix A of this letter, we note the 18 entities<sup>1</sup> that still have more than 50-pending applications. Several of these applicants have a large majority of their applications in a single or two metro markets,

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<sup>1</sup> - We consider Radio Assist Ministries (RAM) and Edgewater Broadcasting (EB) as a single entity and we still feel that they should be treated as such for 50-cap and one-to-a-market enforcement. In addition, the same argument can be made for Capstar TX Limited Partnership, Citicasters Licenses LP and Clear Channel Broadcasting Licenses,

many with overlapping service areas. We feel that if the Commission was to first apply the Channel Points policy to these applicants, we will see the number of entities that exceed the 50-cap reduced from 18 to 10 (11 if you consider RAM and EB as separate entities). When you consider that there are still over 600 entities that have at least one pending translator application, the 50-cap impacts only 3% of those entities. REC feels that the 50-cap is sound policy and impacts only a super-minority of entities who filed in Auction 83 including the two entities who filed the most applications in the window. Most small and regional translator operators will continue to be able to obtain many of their translators despite the 50-cap.

REC does feel though that the “one-to-a-market” rule may have been over-applied as it would impact the ability for rural areas, including many where there is plenty of LPFM availability to obtain translators. REC feels that translators that are applied for by the actual broadcasters who will be using them and not speculators who will just turn them around and sell them can coexist in rural areas with local LPFM voices. This is why REC made itself a party in the Petition for Reconsiderations filed by EMF as well as Hope Christian Church of Marlton, Inc., Bridgelight, LLC, and Calvary Chapel of the Finger Lakes, Inc. (the “Hope Petitioners”) by supporting their Petition to waive the “one-to-a-market” rule in certain rural situations. In our proposed limited waiver criteria, we supported the three points proposed by the Hope Petitioners:

- No overlapping service contours,
- At least one LPFM opportunity at the transmitter site must be available, and
- No assignments or transfers of the CP or license for 4 years.

In addition, REC added the following three points:

- For a 4-year period, the primary station of the translator must be commonly owned and must be the main channel of the primary station (no HD2).
- The 60dBu contour cannot overlap a 30km radius around the designated center of markets 1 through 20, 20km around spectrum limited markets 21 through 50 and 10km around spectrum limited markets 51 through 100.
- The “50-cap” would still apply, despite this waiver.

REC supports the notion that the channel point protection rules were designed to protect LPFM opportunities within the metro markets to assure a balance between LPFM and Translators as required by the Local Community Radio Act. This would make sense since the original intention of translators were to expand FM radio services into rural areas while LPFM stations were intended to bring new local voices into metropolitan neighborhoods and suburban and rural towns.

### **Second Adjacent Channel Waiver and Directional Antennas**

REC still feels that considerations should be made for “de-minimus” population overlap as we outlined in *Education Information Corporation* however, if the Commission feels that such a method could not be practically applied in an LPFM environment, we would agree with PRP and have a single policy that covers both LPFM and FM broadcast translators with a single waiver policy. We would like to see the actual policy spelled out for potential applicants not referred to various pieces of case law (*Living Way, etc.*) so we know what rules we should be applying.

The current *Living Way* policy for translator second-adjacent channel protection works well for that service because translators are generally located on mountaintops. This policy will also not severely

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Inc. as a single “Clear Channel” entity. Unlike Radio Assist/Edgewater, only the Capstar entity currently exceeds the 50-cap.

impact LPFM stations that are located very close to the primary second adjacent channel stations. However, for some sparsely-populated rural areas that are located in what we call “cross-fire zones” (areas that are located between two metro markets), these areas may have a fairly large (500+ meter) overlap area but a very minimal population (less than 100 persons) within the overlap area. We feel that rural areas that fall into this situation should be given some consideration despite a very minimal population overlap.

REC also supports limited applications of directional antennas in the LPFM service. For those LPFM applicants with the financial means to obtain a directional antenna, they should be permitted to apply with one (especially off-the-shelf) in order to address certain second adjacent channel situations. In addition, we feel that LP-100 stations within 125 km of the Mexican border should be permitted to operate directional antennas that null towards Mexico but operate their full 100 watt ERP to the farthest lobe. Metro areas like Tucson and San Diego should be given the opportunity to operate a full 100 watts and still stay compliant with the international agreement. An applicant who chooses to operate a less-expensive non-directional antenna would be limited to 50 watts as they are today.

### **Local Programming**

REC has been observing a recent upswing within the Catholic radio community to obtain LPFM licenses for the sole purpose of carrying programming from Catholic programmers such as EWTN. We feel that it is vitally important that LPFM remains locally operated and locally programmed. There is definitely a justification to carry “network” or “imported” programming, especially for ethnic formats, but there must be some accountability at the local level and a certain threshold of the programming day should be dedicated to the service area of the LPFM station. PRP has performed a lot of research on the Local Programming issue including addressing potentially constitutional arguments and we support PRP’s research and conclusions on local programming.

### **Conclusion**

REC continues to support the 50-cap as a method of addressing the issue of translator speculation however we feel that the “one-to-a-market” rule unnecessarily penalizes entities that are not excessive filers but those who happened to have more than one application in a boundary determined by a private sector organization (Arbitron). We also feel that LPFM applicants should be permitted some flexibility to use directional antennas as long as the parameters of LPFM are not exceeded and we support PRP’s arguments to assure that there is a minimum level of local programming. We also continue to strongly support the enhancement of LP-10 to a 50-watt service in order to improve LPFM opportunities in urban areas as well as give places like New York City their only true hope for LPFM.

Thank you for your time.

Respectfully Submitted,



Michelle “Michi” Eyre  
Founder, REC Networks

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October 23, 2012

**APPENDIX A****AUCTION 83 APPLICANTS WITH MORE THAN 50 APPLICATIONS PENDING**

<b>Applicant</b>	<b># Pending Currently</b>	<b>Short spaced to protected LPFM channel points</b>	<b>Comments</b>
Aleluya Christian Broadcasting	73	57	All 73 applications are in the Houston market.
<b>Brigham Young University</b>	70	0	Many of their applications are concentrated on a few sites but many different channels.
Burlington County College	59	30	53 applications in the Philadelphia metro market.
<b>Calvary Chapel of Twin Falls, Inc.</b>	158	65	100 applications distributed over 31 metro markets.
Capstar TX Ltd. Partnership (Clear Channel)	52	15	28 spread fairly evenly among 21 markets.
<b>Community Broadcasting, Inc.</b>	56	5	Mostly rural.
<b>Covenant Network</b>	126	3	Mostly rural.
CSN International (Calvary)	71	34	56 applications in 16 different markets.
<b>Donald F. Hendren</b>	55	0	20 in Prescott/Flagstaff market.
<b>Edgewater/Radio Assist</b>	1,534	264	
<b>Educational Communications of Colorado Springs, Inc.</b>	78	14	33 applications in 3 metro markets.
<b>Educational Media Foundation</b>	494	209	328 applications in 85 markets.
Edward A. Schober	69	25	17 applications in New York City, 23 in Philadelphia.
Gold Coast Broadcasting LLC	70	38	All metro filings, mostly Los Angeles and Oxnard.
<b>Indiana Community Radio Corporation</b>	68	10	32 applications in Indianapolis metro market.
Radio Training Network	57	24	30 applications in 9 metro markets.
<b>Robert J. Connelly, Jr.</b>	123	54	73 applications in Fresno, 48 in Visalia/Tulare/Hanford.
WAY-FM Media Group	82	38	52 applications in 13 metro markets.

Entities in **bold print** are those that would still be exceeding the 50-cap even if all applications that are short-spaced to protected LPFM Channel/Points are dismissed.