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November 21, 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 Conversation with Dave Grimaldi, Chief of Staff for Commissioner Mignon Clyburn
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 November 20, 2012, the undersigned counsel for EMF had a telephone conversation with Dave Grimaldi, Chief of Staff for Commissioner Mignon Clyburn, to discuss matters concerning the reconsideration petitions pending in connection with the above referenced dockets. Specifics of this communication are set out below.

In connection with MM Docket 99-25 and MB Docket No 07-172, the undersigned discussed the question of the issue of the nationwide cap of 50 applications proposed by the Bureau. The following information and arguments were advanced:

- EMF has argued in the past, and continues to believe, that any application cap should exclude smaller markets, as generally there is no spectrum shortage in these markets, and the provision of new services to these markets is in and of itself a public interest benefit.

- EMF has approximately 290 applications that remain pending. Based on our analysis, we compute that EMF currently has 55 applications that are not mutually exclusive with any other party (21 in markets 151 and smaller, 34 in the larger markets). Thus, a cap of 50 applications will require the dismissal of at least 5 EMF applications that are otherwise grantable today.

- In addition to the 55 markets in which EMF believes that it is the sole applicant, there are another 28 EMF applications that are only mutually exclusive with one other applicant that would also be subject to any application cap that the FCC imposes. 13 of these applications are in the markets below 150. Thus, we could expect that a 50 cap will result in a substantial number of those markets being unserved as both applicants would have to dismiss a number of these translators in order to pursue either applications that are not mutually exclusive or other translators of higher value.

- The 290 pending EMF applications are distributed by market size as follows:

    - Remaining Applications in markets 1 through 150 = 177

    - Remaining Applications in markets 151 through 277 = 55

    - Remaining Application in unrated markets = 58

EMF understands that questions were also raised as to why EMF did not build a number of translators from the 2003 FM Translator Window that were granted before the freeze. EMF received some permits that it returned to the FCC for cancellation or let expire for a number of reasons, principally having to do with translators being secondary services that cover limited geographic areas. In a number of cases, while the applications were pending, EMF acquired full service stations that served the areas proposed by the translators, and thus these translators were no longer necessary. In other locations, when the time came to build, situations had changed, and either there was more interference from other full-power stations, or transmitter sites became unavailable or prohibitively expensive. Given the small area that is served by these translator stations, cost is a big factor as some translators will not reach enough population to generate donations to fund operations – especially when the translators are outside large markets. In addition, there were circumstances where a programming service similar to EMF's became available to the area to be served by the translator so the EMF service was no longer necessary. With a secondary service that is inherently limited to covering a small geographic area, such "failure" rates are to be expected. Note that in EMF's comments on the question of interference to full-service stations by LPFMs, EMF noted that interference issues alone force about 5% of all new EMF translators to go off the air or substantially modify their operations.

EMF notes that, the fact that it did not build 15 or 20 per cent of the CPs that it was granted overlooks the more important fact that it did build the vast majority of those permits that it was granted – and close to 200 new translator stations are now providing EMF service to the public. If a 50 cap had been imposed on the initial applications, approximately 150 communities would not now be receiving the service that EMF now provides.

It was also suggested that, if some of EMF's applications had to be dismissed, the public would not suffer as the service from these translators could be requested in the next translator

window. However, there is no timeframe for such a window, and we expect that it will probably be years before a window is opened (after both the completion of the processing of the current applications and the auction of any mutually exclusive applications, and a subsequent LPFM window). Moreover, there has been much talk about auction caps being applied in future windows. With limits on the number of applications in subsequent windows, it may take several auctions before the service that EMF is now ready to provide will be available.

EMF continues to believe that the 50 application cap is not in the public interest. The other rules adopted by the FCC in this proceeding already protect LPFM opportunities. A further application cap, particularly one that applies in rural areas, only serves to deprive the public in those areas of a choice of programming services. Thus, EMF submits, the cap of 50 applications should be lifted, or markets outside the top 150 markets should be excluded from its effect.

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

David Oxenford

cc: Dave Grimaldi, Esq.