DOCKET FILE COPY ORIGINAL ORIGINAL

FISHER WAYLAND COOPER LEADER & ZARAGOZA L.L.P.
2001 PENNSYLVANIA AVENUE, N.W.
SUITE 400
WASHINGTON, D. C. 20006-
TELEPHONE (202) 659-3494

ROBERT C. FISHER
(202) 775-5664

FACSIMILE
(202) 296-6518

INTERNET
rfisher@fwclz.com

RECEIVED
APR 2 8 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 28, 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room #222
Washington, DC 20554

Re: RM-9208 -- Petition for Microstation Broadcasting Service
RM-9242 -- Petition for Low Power FM Broadcast Service
RM-9246 -- Petition for Event Broadcasting Service

Dear Ms. Salas:

Filed herewith, on behalf of Educational Media Foundation ("EMF"), are original copies of its Comments relating to the above-referenced petitions for rulemaking. Yesterday, EMF filed photocopies of the enclosed Comments.

Should there be any questions regarding this matter, please contact the undersigned.

Very truly yours,

Robert C. Fisher

Enc.

rec'd 0+1

Educational Media Foundation

A 501(c)3 Non-Profit Organization

RECEIVED

APR 2 8 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 27, 1998

To: The Federal Communications Commission/Mass Media Bureau

Re: RM-9208 Petition for Microstation Broadcasting Service

Educational Media Foundation ("EMF") is a non-profit corporation which owns 2 AM broadcast stations, 11 FM stations (and construction permits for 3 others), along with 24 FM translators, all operating on a non-commercial, listener-supported basis. EMF's FM stations and translators are located on both the reserved and the commercial bands.

The petition states that licensing microstations would help "energize" our communities, helping "individuals, families and neighborhoods to survive and prosper." Also included is a statement that allowing five microstations per licensee is "enough microstations to allow entrepreneurs to be motivated by the prospect of genuine wealth."

This is not the real world of radio with which we are familar. "Genuine wealth" from a collection of five one-watt radio stations at least fifty miles from each other?

A more likely result would be frustration. Frustration on the part of operators lacking a viable signal and frustration of the part of potential listeners unable to receive a reliable signal.

EMF is concerned that it might not be easy to locate available channels without disrupting existing service (for example, service from an FM translator, or service from a distant station beyond its protected contour). EMF would anticipate that should the proposed rulemaking be adopted as stated that the lack of a viable signal would almost immediately result in requests for additional power and additional channels for the new service which could ultimately degrade the spectrum.

EMF is therefore opposed to the proposed rulemaking.

Submitted by:

EDUCATIONAL MEDIA FOUNDATION

Richard Jenkins, President

1425 North Market Boulevard, Suite 9, Sacramento, California 95834, (916) 928-1515, Fax (916) 928-1861

Educational Media Foundation

A 501(c)3 Non-Profit Organization

April 27, 1998

To: The Federal Communications Commission/Mass Media Bureau

Re: RM-9242 Proposal for Creation of Low Power FM (LPFM) Broadcast Service

FORMAL COMMENTS

Educational Media Foundation ("EMF") is a non-profit corporation which owns 2 AM broadcast stations, 11 FM stations (and construction permits for 3 others), along with 24 FM translators, all operating on a non-commercial, listener-supported basis. EMF's FM stations and translators are located on both the reserved and the commercial bands.

EMF is concerned that the proposed LPFM rulemaking considers only one side of the improvements in receiver technology, that which could allow for relaxed second or third adjacent station and IF standards, while ignoring the other side, that receivers are now able to reliably receive signals over greater distances. EMF is also concerned that the petition does not address the issue of FM translators and possible protection of or disruption to the present FM translator listener. EMF would also like to register comments regarding LPFM economics, pirate radio in the long term, and considering possible second/third/IF requirement changes for full power stations as well as possible LPFM's.

I. Improvements in Receiver Technology & Possible Interference

1. In paragraph 36 of the petition it is cited "with receiver improvements in selectivity in the past many years, and the relatively lower power of the proposed LPFM stations, it serves the public interest that second adjacent channel and third adjacent channel restrictions be discarded for implementation of this service." As an operator of FM stations and translators, we have found this to be generally true in cases of car radios and higher quality home receivers. However, we have noted that in the cases of lower quality radios (such as certain clock radios), selectivity can still be a problem. On the other hand, improvements in receiver quality, especially in automobile radios, has allowed for listenership beyond, and in some cases far beyond, a station's protected contour. For example, in the case of EMF's station in Julian, California (KLVJ), which operates on a listener-supported non-commercial basis on a commercial channel, <u>94% of KLVJ's listener support in 1997 came from areas BEYOND the station's protected contour</u> (EMF's other stations and translators also enjoy significant listenership and financial support from listeners beyond their protected contours). EMF's decision to make a significant investment in KLVJ was predicated largely upon the station's very listenable signal beyond it's protected contour. However, we did not anticipate the possibility of new LPFM's (complete with protected primary contours) being a source of destructive interference. Also, as an owner of 24 FM translators, EMF has experienced the difference between operations on a "clean" channel and operations on a channel with another station or translator either nearby or operating from a distance with a strong line-of-sight signal. Despite clearing FCC contours for legal technical operation, the result can oftentimes be a very noisy, hissy, signal both within and beyond the protected contour.

1425 North Market Boulevard, Suite 9, Sacramento, California 95834, (916) 928-1515, Fax (916) 928-1861

A new signal overlapping a previously existing service, especially when both services are line of sight to a common area, will most likely result in loss of service over a wide area. The petitioner is anticipating literally thousands of new stations to be created upon adoption of the proposed rulemaking, "without interference," It is the concern of EMF that the likely result of establishing a new class of protected FM service, where new stations can be sandwiched in on the basis of contours alone, will be widespread interference without any potential remedy for those receiving interference.

II. Protection and Potential Upgrade of Existing FM Translators

2. The petitioner makes no direct reference to the effect this proposal would have on FM translators. An assumption could be made, however, that as FM translators are a secondary service, that new primary class LPFM's would take priority over existing translators just as new full power stations do presently. In Paragraph 6 of the petition, a suggestion is made "awarding a LPFM license to anyone bumped from their LPTV channel as a form of remuneration that would not cost the government anything." Thus the suggestion is made that a primary class station be awarded in exchange for a secondary service. The petitioner also postulates in Paragraph 4 "opportunities will be available in all markets" and in Paragraph 15 "what I am proposing in this petition is a win-win situation. Everyone wins." If it is true that opportunities exist in all markets and everyone wins (and therefore no one is damaged) perhaps there is room to ensure that current FM translator listeners win as well. We would hope that the commission would protect their established listening habits built over these past many years in considering a new class of service. With the proposal to eliminate 2nd and 3rd adjacent spacing and current IF rules, and with the resulting thousands of new opportunities, we would propose that current FM translators be "grandfathered" in relation to new LPFM primary class service (should that be adopted by the commission). It would then be necessary for new LPFM service to protect grandfathered translators just as they must protect existing full power stations. Alternatively, the commission might consider allowing existing translators a one time opportunity to upgrade to LPFM protected class status similar to what the petitioner proposes in Paragraph 26 for LPFM-2 stations threatened by a proposed new LPFM-1 service. We would propose that continued service to the public should be a commission priority in these instances, especially considering the various opportunities available in all markets. We would also propose that the local ownership requirements proposed by the petitioner not apply in the cases of grandfathered translators upgrading to LPFM-1 status.

3. The petition does not state the relationship between FM translators and proposed LPFM-2 or LPFM-3 stations. Presumably both would operate with secondary status and yet no priorities are given as to proposed service. Would LPFM-2 and LPFM-3 class stations be required to protect and not interfere with existing FM translators? Or does the petitioner propose that the new service take priority over existing or proposed new FM translators? Again, it is the position of EMF that existing audiences should continue to receive service. FM translators do not simply appear and disappear. There are significant investments of time and resources in providing this service, and numerous listeners benefit from a service which oftentimes is not available from other sources on a reliable 24 hour a day basis. The petitioner in Paragraph 12 refers to the investment in LPFM "perhaps less than the cost of a new car," and in Paragraph 21 with regard to the programming "a loosely structured form of broadcasting, often without set hours of operation, sometimes depending on who shows up to broadcast when scheduled." It is

the position of EMF that should such a service be found in the public interest by the Commission, that it not be given priority over existing translators and not be given a priority over translators in the establishment of new service.

III. Other Comments

4. The petitioner refers to investments in LPFM in terms from "perhaps less than the cost of a new car" in Paragraph 12, to "owners who invest their life savings into building a LPFM" in Paragraph 7. The proposed maximum power for an LPFM-1 is the equivalent to the old Class A FM's. The relatively small coverage areas and the difficulties in surviving economically were factors in increasing the power levels to today's Class A 6,000 watts. In the past many of these "mom and pop" type stations had difficulty surviving economically, even with the level of competition at that time. Now the proposal is to recreate this scenario and more. The old Class A would be the maximum power allowed, with even far lower power levels allowed protected status. The number of signals would be dramatically increased, perhaps even doubled in some of the more distant markets. Although the commission has often not taken economic viability into its considerations, the petitioner in Paragraph 59 is already suggesting multiple ownership be allowed "in order to allow these stations to compete on a level with standard FM station owners who have achieved a degree of scale of operation." We would request that The Commission give this issue consideration prior to allowing thousands of new radio stations. In the future, will it be again necessary to again modify the rules to allow these new stations a better chance at economic viability (including the possible relaxation of ownership limits and residency requirements proposed by the petitioner)?

5. In Paragraph 5 the petitioner states that "the bulk of the 'pirate radio' problem will disappear since they will be happily broadcasting (legally) and providing interesting listening alternatives and much needed localism along the way." Recently, we have received reports from Europe where new stations are forced to operate at power levels of a million watts or more to achieve comparable or less coverage areas than we enjoy in the US today. This is not necessary here due to the prudent management of the spectrum here. Pirate stations today are able to broadcast at relatively low levels of power because of how our spectrum has been managed. In a market it is likely you will find second or third adjacent channel situations which are relatively quiet. However, with the interest in LPFM, it is not likely this will be the case for long. Technology is such today that the spectrum will rapidly fill should LPFM be allowed, just as it is virtually full now under the current rules in many areas. It is likely that spectrum WILL NOT be available for tomorrow's pirates, as it may be for today's. It is likely, however, that tomorrow's pirates will be required to operate at significantly higher levels of power to cover the same area covered by today's pirates. Another consideration, is the type of "localism" provided by today's pirate operator really "much needed," especially considering track records which include disregard of the law. And considering the likelihood of widespread "real world" interference this service would be at the expense of broadcasters who have followed the law and the listeners they serve? Another consideration to be considered are the limited resources of the FCC, which appear to be severely stretched at current levels, much less with the added responsibility of licensing thousands of new stations and dealing with the repercussions of a degraded spectrum.

6. In paragraph 36 the petitioner supports the position that second and third adjacent channel spacing restrictions currently embodied in the rules be eliminated as unduly restrictive and unnecessary for the purpose of implementing this new LPFM service. Elimination of these restrictions would certainly help spread the new LPFM service, however no consideration

is made to the possibility of easing some of these restrictions regarding full power stations as well. Currently it would seem that second and third adjacent channel spacings are seemingly maintained simply to ensure a minimum distance between full power stations rather than for real world interference considerations. Current full power directional antenna rules are especially unforgiving when it comes to second and third adjacent channels. EMF would propose that the question of second and third adjacencies be evaluated in the context of both full power and possible LPFM usages.

In summary:

A. Receiver improvements should be considered in the context of both possible second/third adjacent channel spacing requirements AND the enhanced ability of these receivers to receive stations beyond their protected contours.

B. That current FM translators (and the listeners they serve) be given special consideration in terms of a new LPFM protected class station. Specifically, either a grandfather class translator or the ability to upgrade.

C. History would indicate this new class of station would have difficulty surviving economically.

D. The "pirate radio" problem will likely NOT be solved in the long term, the possibility of licensing those who have already shown disregard for FCC regulations should be avoided, and available FCC resources considered.

E. Second and third adjacent station separation rules should be revisited for all classes of stations, not just LPFM's.

Submitted by:

EDUCATIONAL MEDIA FOUNDATION

Richard Jenkins, President

Educational Media Foundation

A 501(c)3 Non-Profit Organization

April 27, 1998

To: The Federal Communications Commission/Mass Media Bureau

Re: RM-9246 Petition for Event Broadcasting Service

Educational Media Foundation ("EMF") is a non-profit corporation which owns 2 AM broadcast stations, 11 FM stations (and construction permits for 3 others), along with 24 FM translators, all operating on a non-commercial, listener-supported basis. EMF's FM stations and translators are located on both the reserved and the commercial bands.

EMF sees the potential value in a new "Event Broadcasting" class of service. However we are concerned that the petitioner volunteers himself to serve as the Frequency Coordinating authority for the United States. He also admits that "some markets suffer from AM and FM frequency band congestion." This could set up a potential conflict of interest. A desire to provide service in a market in which an acceptable frequency does not exist could lead to cases in which secondary, but listenable, signals could be overridden to provide the service. There also appears a possibility that these "event stations" could end up on the air almost continuously under certain circumstances.

Should the FCC decide that this new service is in the public service, we would request a neutral frequency coordinator who would take into consideration a first adjacent or co-channel station's actual signal strength at the proposed transmitter site and throughout the proposed coverage area to insure no interference to the existing broadcast signals.

Submitted by:

EDUCATIONAL MEDIA FOUNDATION

Richard Jenkins, President

1425 North Market Boulevard, Suite 9, Sacramento, California 95834, (916) 928-1515, Fax (916) 928-1861