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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of	)	MM Docket No. 99-25
Creation of a Low Power Radio Service	)	RM-9208 RM-9242

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To: The Commission

COMMENTS OF EDUCATIONAL MEDIA FOUNDATION

Educational Media Foundation ("*EMF*"), by its attorneys, hereby respectfully submits its comments to the Commission's Notice of Proposed Rule Making in the above-captioned matter, released February 3, 1999 (the "*NPRM*"), regarding the creation of a new low power FM ("*LPFM*") radio service.[1]

EMF is a noncommercial, educational broadcaster which operates a nationwide network of full power broadcast stations and translator stations. EMF presently owns and/or operates 21 full power stations and 77 FM translator stations. EMF wishes to address the Commission's proposal to afford LP1000 stations primary status against secondary FM translator stations and to comment on the protection status of LP100 stations. EMF is alarmed that the network of translator stations that it has created over the past 12 years, as well as the thousands of other translator facilities operated by other licensees, are now in serious jeopardy of being obliterated in

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[1] These comments are timely filed pursuant to the Commission's Order in this proceeding extending the time for filing comments to August 2, 1999. *See* Creation of a Low Power Radio Service, DA 99-0542 (released May 20, 1999).

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one fell swoop by the Commission's proposal to extend primary frequency use status to LP1000 stations and possible priority status over FM translators for LP100 stations. Although the NPRM did not specifically address whether LP100 stations would be required to protect FM translators, the NPRM did propose that LP100 stations would be required to protect only *primary* radio stations, which suggests that FM translators would not be protected.

EMF urges that the Commission afford FM translators and both LP1000 and LP100 stations equal status with respect to frequency use and interference protection. Whereas translators would remain secondary to other primary services, they should remain on an equal footing with LPFM stations with respect to interference protection and allotment priorities. Accordingly, EMF urges that new LPFM applicants be required to protect FM translators from interference, and vice-versa.

In the case of LP1000 stations, they should not be permitted to cause interference to the protected contour of any existing FM translator or full power station, and the Commission should base the LP1000 station channel allotments on minimum distance separations from other allotments accordingly. In determining the applicable distance separations, however, EMF strongly disagrees with the Commission proposal to permit LP1000 stations to accept interference. This proposal ignores the reality that many stations enjoy listenership beyond their protected contours. For example, as EMF noted in its earlier Comments filed in this proceeding with respect to its noncommercial, full power station KLVJ(FM), Julian, California, 94% of that station's listener support in 1997 came from areas beyond the station's protected contour. By permitting LP1000 stations to accept interference, they may then move their transmitters much closer to the primary service areas of other operating stations. Consequently, an operating

station's signal received by its listeners who are located just outside the station's protected contour will be significantly impaired. Although the LP1000 would theoretically be accepting interference, existing stations would also experience actual interference.

In the case of LP100 stations, the Commission should also require these stations to protect FM translators. Moreover, EMF urges that the Commission impose on LP100 stations the same requirements relating to interference protection as those currently imposed on FM translators under Section 74.1203 of the FCC's rules. Under this provision, an LP100 station should be required to cease operation if it causes interference to the reception of a regularly used signal of any previously authorized and operating FM translator or any full power station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted.

Finally, should the Commission decide to afford LPFM stations interference protection priority, at a minimum, the Commission should "grandfather" interference protection to existing, "pre-launch" FM translator stations as contemplated in the NPRM.[2]

The Commission's proposal to extend primary frequency use status to LP1000 stations, as well as the failure to afford sufficient interference protection against LP100 stations, will disrupt the listening patterns of many FM translator listeners and impose a significant financial burden on EMF and other noncommercial, educational licensees who rely on listener support to fund their operations. In EMF's view, spectrum is available -- especially in the commercial band -- to accommodate both services, and the Commission may successfully implement LPFM service without the need for wholesale displacement of existing and future FM translator service.

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[2] NPRM, at ¶ 29.

If the Commission moves forward with its proposal to afford LP1000 stations primary status, and fails to afford FM translators interference protection from LP100 stations, the operations of existing translator stations will be short-lived. An LPFM applicant desiring to provide service to a particular area need only target a translator in that area and immediately file an application to displace it. Moreover, the LPFM applicant will not even need to engineer its own proposal -- it may simply model its technical facilities on those of the existing translator. As of June 30, 1999, there were over 3100 translator and booster stations licensed to operate in the United States.[3] Each of the FM translator facilities included in that number could be placed in immediate jeopardy of being displaced if not afforded equal priority status.

The Commission authorized FM translators in 1970 as a means of providing FM service to unserved areas.[4] Many translators have since established a loyal base of listeners, whose listening patterns will be disrupted if their source of programming is displaced. In EMF's own case, it estimates that its network attracts more than 500,000 listeners per week. There is no guarantee, and in EMF's view, considerable doubt, that new LPFM stations will provide a desirable substitute service for these existing FM translator listeners. Station programming is not a fungible commodity, and the programming offered by a new LPFM licensee may be directed at a different audience than that of the displaced translator.

EMF fully supports, in concept, the Commission's goal of affording new entrants the ability to add their voices to the existing mix of political, social and entertainment programming.

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[3] *See* FCC News Release, dated July 19, 1999 (FCC Mimeo 94249).

[4] *See In the Matter of* Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 5 FCC Rcd 7212 (1990).

However, it should not be done at the expense of FM translator listeners by subjecting their preferred station of choice to displacement.[5] Reducing the programming options available to existing FM translator listeners is unjustified. EMF has built a loyal core of listeners during the past 12 years, and these listeners should not be singled out to bear the cost of introducing a new LPFM service.

EMF also wishes to emphasize the severe financial consequences that it will suffer from the dismantling of its network of FM translators. EMF relies solely on listener support to fund the cost of its operations, and EMF estimates that a minimum of 26% percent of its donations are received from its FM translator listeners. EMF recognizes, of course, that its translators provide only secondary service and have always remained vulnerable to displacement. Nevertheless, EMF sought to allocate its resources judiciously so as to construct translators in areas where the risk of being displaced by primary services was acceptably low.

EMF's choice to expand its radio network through the use of FM translators was based on the sound expectation that the FCC's ground rules would not be totally revamped to sacrifice one type of service in its entirety for the introduction of another new service. Although EMF has no expectancy interest in its network of translator licenses, it is patently unfair to foreclose EMF from applying for the new LPFM licenses while at the same time permitting the wholesale dismantling of its translator network through displacement by LPFM stations.

EMF is not one of the large group owners, bemoaned in the Comments filed in this proceeding by Ralph Nader and Commercial Alert, that "cater to the basest standards" and drown

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[5] Moreover, whereas FM translators offer programming service on a full-time basis, the proposed LP100 stations may operate only part-time.

its listeners in "a sea of commercialism."[6] EMF operates a non-profit network designed to meet the educational needs of its listeners. As a noncommercial broadcaster, EMF is vigilant in its efforts to ascertain issues of local importance within the communities it serves and to air programming that is responsive to such issues. The Commission contends that creation of a new low power FM radio service will "address unmet needs for community-oriented radio broadcasting."[7] EMF respectfully submits that the displacement of FM translator service will engender a new source of local "unmet needs," which are equally abundant and deserving of service. EMF's FM translator service, and the considerable resources it has spent over the past dozen years, should not be sacrificed simply to implement another new service.

Moreover, in EMF's view the Commission's proposal to afford LP1000 stations primary status against secondary FM translator is not even necessary. The Commission may afford FM translators and LPFM stations equal frequency use priority without creating any serious impediment to the creation of the new LPFM service. Should the Commission adopt its proposal to eliminate 3rd-adjacent channel protection restrictions, an adequate number of channels should be available to support the introduction of LPFM service.[8]

The Commission's proposal to afford LP1000 stations and possibly LP100 stations priority over FM translator stations will guarantee the eradication of FM translators as a service in

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[6] Comments of Ralph Nader and Commercial Alert, dated July 12, 1999.

[7] NPRM at ¶ 1.

[8] EMF does not support the Commission's proposal to eliminate 2nd-adjacent channel protection for LP1000 stations. In EMF's view, the absence of 2nd-adjacent protection would result in unacceptable levels of interference, especially in the vicinity of the LP1000 station's tower site.

its entirety. The resulting reduction in programming options available to existing FM translator listeners lacks sufficient justification, especially when spectrum is available to accommodate both services. Accordingly, EMF respectfully requests that the Commission afford FM translators and the new LPFM stations equal status with respect to frequency use and interference protection.

Respectfully submitted,

EDUCATIONAL MEDIA FOUNDATION

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