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March 9, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals II, Filing Counter
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: Request for Clarification -- In The Matter Of Creation Of Low Power Radio Service, MM Docket No. 99-25, RM-9208, RM-9242

Dear Ms. Salas

This letter is written on behalf of the law firm of Cohn and Marks, which serves as communications counsel to a number of educational institutions, for the purpose of seeking clarification of a narrow aspect of the Commission's eligibility requirements for low power FM (LPFM) radio authorizations. An original and four (4) copies of the letter are enclosed for the convenience of the Commission's staff.

The relevant rule, Section 73.860 (cross-ownership), provides:

(a) No license for an LPFM station shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to broadcast ownership restrictions.

(b) A party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest.

As the Commission is aware, many universities and colleges hold licenses for Instructional Television Fixed Service (ITFS) stations, the requirements for which are set forth in Sections 74.901 *et seq.* of the Commission's rules. An ITFS station, unlike a traditional broadcast station whose signal is available to the public at large, transmits a signal to fixed receiving locations. The nature of the service which may be offered over the ITFS station is limited by Section

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74.931 of the Commission's rules (*i.e.*, subject to certain exceptions, an authorized ITFS station must be used to transmit formal educational programming offered for credit to enrolled students of accredited schools).

It has come to our attention that an educational institution may have a strong interest in securing an FCC authorization for a LPFM station, but does not wish to divest its interest in its ITFS facilities. This stems from the fact that, under the FCC's rules, while a LPFM station must be used for the advancement of an educational program, this requirement may be satisfied by a wide variety of programming and it is not necessary for that programming to be exclusively educational. Thus, an LPFM station may be used for broader community-based services than an ITFS station and an LPFM station may supplement, rather than replace, the service provided by an ITFS station.

We are of the view that the existing LPFM cross-ownership rule can be interpreted to permit a university or college which is the licensee of an ITFS station to secure a license for and operate an LPFM station without a requirement for divestiture of the ITFS station. However, in order to remove any possible ambiguity in the rule, we request that the Commission issue a clarification so that a university or college may proceed with its LPFM planning with a degree of certainty as to its eligibility. The interpretation proffered herein would clearly advance a major FCC goal in creating the LPFM service, namely, to create a class of radio stations available to community based schools, among others, to serve very localized community needs consistent with maintaining diversity of viewpoints.

It is further requested that the clarification be issued as soon as possible. It is necessary for universities and colleges to take steps, including planning and engineering, at an early date in order to be in a position to file timely applications within the filing window to be established by the Commission. Before pursuing these steps and incurring the expenses associated therewith, it would be beneficial for the schools holding ITFS licenses to have comfort that they will not have to divest their interests in their ITFS stations in order to be deemed eligible for LPFM authorizations.

Very truly yours



Ronald A. Siegel

Enclosures

cc: Roy Stewart, FCC, Room 2-C337
Susanna Zwerling, FCC, Room 2-C337
Bruce Romano, FCC, Room 2-C267