

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
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MITRE Corporation’s Technical Report, ) MM Docket No. 99-25  
“Experimental Measurements of Third- )  
Adjacent-Channel Impacts of )  
Low-Power FM Stations” )  
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To: The Commission

**COMMENTS OF COX RADIO, INC.**

Cox Radio, Inc. (“Cox”), by its attorneys, submits herewith its comments regarding the MITRE Corporation’s (“MITRE”) statutorily mandated report (“*Report*”) addressing the impact of low power FM (“LPFM”) stations on third-adjacent channel full power FM stations.<sup>1</sup> To increase the number of potential stations in the Commission’s newly created LPFM service, the agency abandoned third-adjacent channel protections.<sup>2</sup> Congress reinstated those protections, however, although still affording a mechanism for future reduction of the separations requirement if independent testing so justified.<sup>3</sup> The Commission selected MITRE to conduct the independent testing, and the agency now seeks comment on MITRE’s results, as Congress

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<sup>1</sup> See Comment Sought on the MITRE Corporation’s Technical Report, “Experimental Measurements of the Third-Adjacent-Channel Impacts of Low-Power FM Station,” *Public Notice*, DA 03-2277 (rel. July 11, 2003). The Comment date later was extended to October 14, 2003. See *Order*, MM Docket No. 99-25, DA 03-2767 (rel. Aug. 29, 2003).

<sup>2</sup> Creation of Low Power Radio Service, *Report and Order*, MM Docket No. 99-25, 15 FCC Rcd 2205 (2000).

<sup>3</sup> *D.C. Appropriations – FY 2001*, Pub. L. No. 106-553, § 632, 114 Stat. 2762, 2762A-111 (2000) (hereinafter “*Radio Preservation Act*”).

required.<sup>4</sup> Cox, either directly or through its wholly-owned subsidiary CXR Holdings, Inc., owns and operates over seventy AM and FM radio stations throughout the United States and has a strong interest in preventing harmful interference to existing, relied-upon broadcast service. Cox finds that MITRE’s report fails to provide an adequate basis for any modification of the minimum distance separations for third-adjacent channels and accordingly urges the Commission to refrain from recommending any changes to Congress.

The National Association of Broadcasters (“NAB”) in its review has concluded that MITRE’s report is fundamentally flawed and cannot reasonably serve as a basis for reducing the third-adjacent channel separations requirement. Cox agrees and supports NAB’s conclusions that the *Report* fails to meet the statutory requirements. Congress asked for the Commission’s recommendation, based upon the testing report at issue here, on whether to reduce the minimum distances for third-adjacent channel stations. Congress offered great leeway for conducting the tests, but it plainly and pointedly directed that the testing was to include “*audience* listening tests to determine what is objectionable and harmful interference to the *average* radio listener.”<sup>5</sup>

MITRE produced and compiled a voluminous report, but it did not have audiences judge whether objectionable and harmful interference occurred, and neither were its interference determinations based upon any manner of averaging. Instead, a single individual – indeed, a professional technician – offers the sole opinion for all of MITRE’s extensive interference determinations.<sup>6</sup> Congress made very clear that MITRE was not to conduct the directed tests in this fashion, and it is not difficult to understand Congress’s reasoning. As MITRE acknowledges

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<sup>4</sup> *Id.*, § 632(b)(2)(A).

<sup>5</sup> *Id.*, § 632(b)(2)(B) (emphasis added).

<sup>6</sup> *Report*, Vo. 1 at 1-13.

in its *Report*, human perception of harmful interference is “very subjective.”<sup>7</sup> In the *Radio Preservation Act*, Congress made no pronouncement as to what constituted interference, nor did it ask the Commission or MITRE to make such a subjective determination. Instead, Congress required the use of independent *audiences* to determine the amount of interference that the average listener would find objectionable.

Congress allowed for no exceptions to this testing requirement. Although any excuse thus would be unacceptable, MITRE’s particularly is unsatisfactory. MITRE explains in the *Report* that it disregarded Congressional directive about the use of audiences and averages because “cost factors made this impossible.”<sup>8</sup> MITRE posits that, in cases where its technician admittedly found objectionable and harmful interference, it ostensibly was prepared to “incur[] the expense for listening tests.”<sup>9</sup> Nonetheless, MITRE then unscientifically concludes that it does not “*feel* that there are enough cases of perceptible interference” to warrant such expense.<sup>10</sup> In other words, MITRE opaquely reasons that, while its individual technician admittedly found interference, the unspecified number of cases was insufficient to warrant statutory compliance – especially given the limits of MITRE’s compensation. Such inconsistent logic and economic excuse making is unreasonable and, in any event, cannot countenance ignoring federal statute.

Moreover, because of MITRE’s improper conclusions about the supposedly insufficient number of cases of perceptible interference, the *Report* fails to address other Congressionally

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 1-13-14.

<sup>9</sup> *Id.* at 1-14.

<sup>10</sup> *Id.* (emphasis added).

specified issues, most notably the economic impact of modifying the separations requirement.<sup>11</sup> Accordingly, Cox and others have been denied a meaningful opportunity to comment on the *Report*, contrary to the express intention of Congress.

Cox agrees with NAB that the Commission cannot reasonably rely on the *Report* to recommend modifications to the separations requirements. MITRE has elevated the opinion of a sole professional above that of the average radio listener, and, more to the point, it unabashedly has elevated cost concerns above Congressional mandate. MITRE essentially substitutes its judgment for that of Congress's as to what would constitute an acceptable *Report*. Accordingly, Cox urges the Commission to refrain at this time from recommending any changes to the Congressionally reinstated minimum distances between third-adjacent channel stations.

Respectfully submitted,

**COX RADIO, INC.**

By: /s/ Kevin F. Reed

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<sup>11</sup> *Radio Preservation Act*, § 632(b)(3)(B)(ii).