

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

In the Matter of

Creation of a Low
Power Radio Service

MM Docket No. 99-25

To: The Commission

FURTHER COMMENTS

EDGEWATER BROADCASTING, INC. (“EB”) and **RADIO ASSIST MINISTRY, INC. (“RAM;”** and together with EB, the “*Ministries*”), hereby submit their further comments regarding certain issues related to low power FM (“*LPFM*”) raised in the *Third Report and Order and Second Further Notice of Proposed Rulemaking, Creation of a Low Power Radio Service (“Third R&O”)*, 22 FCC Rcd 21912 (2007), as well as certain comments submitted in response thereto.^{1/}

First, several commenters in this Docket 99-25 proceeding^{2/} have insinuated that because the Ministries have submitted scores of applications using computer technology to identify communities and prepare applications, those activities somehow are improper. Moreover, they accuse the Ministries of trafficking in authorizations. No rule violations are cited by these accusers, because there have been none. Rather, the accusations all are

^{1/} The Ministries are parties to a multi-party Petition for Reconsideration, filed in this docket on February 19, 2008 (the “*alliance Petition*”), and a Request for Stay, filed on March 13, 2008, by the same multi-party alliance, as well as pleadings ancillary thereto.

^{2/} Including, but not limited to the National Translator Association, Prometheus Radio Project and REC Networks.

based upon innuendo, supposition and resentment – essentially personifying the Ministries as some sort of bogeyman.

The trafficking allegations are predicated upon information that the Ministries have acquired and subsequently sold FM translator station authorizations in return for financial remuneration. Again, the Ministries' delators submit no evidence that any FCC rules or policies have been violated by the Ministries – not even a scintilla of support, in any form of case law or policy citations, that any wrong-doing has been perpetrated. Instead, they feign shock and loathing because certain identified assignments involved monetary consideration rather than being wholly eleemosynary. The basis of these accusations is almost completely insinuation and innuendo.

In the heap of aspersions hurled by the delators, one material fact that is overlooked, if not ignored, is an element of Ministries' publicly disclosed mission that, among other things, explains the declared ambition for:

(T)ransferring hundreds of construction permits to other nonprofit organizations and is assisting many of them in the development of their networks, true to their vision and goals. They (the Ministries) have donated many translator construction permits and are in the process of donating many more. (*See*, <http://www.edgewaterbroadcasting.com/about.php>)

In short, the Ministries – in disposing of some of the authorizations they have acquired – only have been implementing their disclosed mission, and have been doing so in a manner consistent with the FCC's rules and policies. Of course, for some of the accusers, proliferating, perpetuating or espousing the word of a Christian God via radio, probably is viewed as an offense, in itself. Until, however, the Commission determines that it is im-

proper to use computer technology to identify communities that may be eligible for broadcast facilities, or to prepare FCC applications for electronic submission, the use of such methodologies is not improper or unlawful, and the arguments of the Ministries' detractors are nothing more than pure resentment. And resentment is not a basis for dismissing or denying applications that otherwise are legally and technically sufficient. To hold otherwise would be arbitrary and capricious.

More fundamentally, the FCC has control over its own processes and procedures. If the Commission is not satisfied with the consequences of its decisions, whether intended or not, it is up to the Commission, in due course and consistent with law, to adjust those processes and procedures. It is not the obligation of any applicant to forebear from fully utilizing the Commission's systems and procedures because at some future date the exercise may be deemed to be untoward or exploitive, when at the time of utilization they are neither. It is not the duty of applicants to regulate the Commission, but rather the duty of the Commission to regulate its applicants with foresight – not retroactive nor regressive actions taken in hindsight.

Second, early on in this Docket 99-25, the Ministries submitted a technical demonstration illustrating, among other things, the token impact that existing FM full power radio stations, existing FM translator stations, and pending FM translator applications have upon existing LPFM stations and spectrum resources for additional LPFM stations (*i.e.*, LP100 stations). The study demonstrates that that LPFM proponents continue to

have ample opportunity throughout the United States to locate LP100 stations. The Commission essentially found the Ministries' study to be nominally probative because

LPFM stations, due to their limited service area potential, generally require higher population densities to be viable. It seems unlikely that the availability of spectrum in the vast rural portions of the nation will generate significant levels of LPFM station licensing. Third R&O, ¶ 50.

In fact, the foregoing is based upon an isolated anecdotal instance involving New Jersey. Predicated on that anecdote, the Commission apparently dismissed, summarily, the efficacy of the Ministries' study. But as the Ministries observed in their 2005 Comments, neither the Ministries nor any other 2003 FM Translator Filing Window applicant ought to be held responsible for the failure of LPFM proponents to take advantage of the opportunities that existed during the LPFM filing windows. More fundamentally, neither the Ministries nor any other 2003 FM Translator Filing Window applicant should be penalized for properly and timely filing during the Auction 83 window. Yet, that is exactly what the Commission intends to do ... and to do it retroactively. By any measure, that is arbitrary and capricious.

The Ministries' technical demonstration clearly shows that there is more than ample space and spectrum from FM translator stations and LPFM to co-exist across the country. Nevertheless, the Commission has dismissed the Ministries technical demonstration as being less probative and, therefore, essentially meaningless. For the Commission to rely solely on the anecdotal situation involving New Jersey, and extrapolating that anecdote as being applicable to the nation as-a-whole, is arbitrary and plainly faulty. It is analogous to saying that because there are mountains in Vermont, there also must be

mountains in Kansas. Plainly, the absurdity of such a proposition is apparent. Nevertheless, that is how the Commission reached its conclusion of the spectrum scarcity for LPFM, based upon scant, anecdotal evidence that is reasonably rebutted by the Ministries' technical demonstration. Therefore, the Ministries respectfully submit that the Commission ought to reconsider its review of the Ministries' technical materials so as to provide a realistic perspective on its reassessment of the findings reached in the Third R&O.

What is problematic about the Third R&O is that with the ten (10) application limit, the Commission apparently intends to dismiss a plethora of singleton applications that are ripe for grant, as well as many applications targeted for rural areas which, according to the Commission, presumptively are not viable for LPFM. Such action will violate the Commission's mandate to ensure a "fair, efficient, and equitable distribution of radio service" 47 U.S.C. § 307(b).

In summary, for the reasons articulated in the alliance Petition, as well as the faults shown above, the Commission would be well served to reconsider and reverse its decisions in the *Third R&O* to limit to ten (10) proposals per applicant the processing of FM translator applications submitted during the Auction No. 83 filing window. Rather, on reconsideration it should decline to impose forced dismissals of FM translator applications, allow the auction process to work to limit applications as it had initially judged adequate; or, alternatively, adopt other more restrained means to accomplish its objec-

tives – but only after making a clear and reasoned determinations that such steps will, in fact, advance a fair, efficient, and equitable distribution of radio service.

WHEREFORE, the premises considered, the Ministries request the FCC process for grant all extant singleton FM translator station applications now on file, permit applicants to retain all applications that aim to serve rural areas, among others, and reject all specious and insinuating allegations that merely because the Ministries filed a copious number of applications, notwithstanding the absence of any limitations whatsoever, the Ministries somehow abused the Commission's processes.

Respectfully submitted

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&

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