Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Extension of the Filing Date for Time-Shares Submitted	)	DA 14-1513
in Response to the July 9, 2014, Public Notice	)	
Identifying Tentative Selectee in 79 Groups of	)	
Mutually Exclusive LPFM Applications	)	

TO: The Secretary
ATTN: Chief, Audio Division
Media Bureau

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

Future Roots, Inc. ("FRI"), by counsel, hereby submits its Reply to the Opposition to Petition for Reconsideration filed jointly by Ballet Foklorico Ollin, Boyle Heights Arts Conservancy, National Hispanic Media Coalition, Catalyst Long Beach, Inc., Prism Church of Los Angeles, Los Angeles Academy of Arts and Enterprise, and The Emperor's Circle of Shen Yun (the "Opposers"). The Opposition is dated November 26, 2014 and according to the Certificate of Service, was served on the undersigned on November 28, 2014. In the Petition for Reconsideration filed on November 12, 2014, FRI argued, *inter alia*, that the Commission's Media Bureau belatedly and improperly changed the procedures for filing time-share amendments to LPFM applications to the detriment of the public and competing applicants. Opposers present no persuasive arguments to refute FRI's assertions.

To recapitulate, the Commission released a Public Notice on July 9, 2014, announcing tentative selectees in the first groups of mutually exclusive applications to be processed resulting

from the 2013 LPFM filing window. Applicants wishing to enter into voluntary time share agreements were directed to file their agreements as minor amendments to their applications through CDBS.[1] In a Public Notice released after the deadline for filing such amendments, the Media Bureau stated for the first time, in a mere footnote, that a time-share proposal timely filed as an amendment to the application of at least one of the parties to the time-share agreement would be accepted for all of the parties to the agreement.[2]

FRI argued in its Petition that the language of the July PN made it clear that each party to a time-share agreement must amend its respective application in CDBS to qualify to participate in the time-share arrangement. Therein it is stated that "The proposal must be electronically submitted . . . and will be treated as minor amendments to the timeshare proponents' applications and become part of the terms of the station authorization." FRI asserted that the use the plural words "amendments" and "proponents" indicated the Commission's intent that each party would separately amend its own application.

In an effort to refute FRI's logic, Opposers cite the rule that requires such amendments. Section 73.872(c) of the Commission's rules states: "Such proposals shall be treated as minor amendments to the time-share proponents' applications, . . ."[3] Opposers concentrate on the

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[1] *Commission Identifies Tentative Sellectees in 79 Groups of Mutually Exclusive Application Filed in the LPFM Window; Announces a 30-Day Petition to Deny Period and 90-Day Period to File Voluntary Time-Share Proposals and Major Change Amendments,* Public Notice, 29 FCC Rcd 8665, 8670 (2014). (The "July PN")

[2] *Media Bureau Extends the Filing Date for Time-Shares Submitted in Response to the July 9, 2014, Public Notice Identifying Tentative Selectees in 79 Groups of Mutually Exclusive Applications,* Public Notice, DA 14-1513, at n. 6 (MB, October 20, 2014) (the "October "PN").

[3] Opposition, at 3.

phrase, "treated as" as somehow proving their point that an amendment to one application serves to alter the operating proposal of other every applicant in the time-share group. However, if that is what the rule meant to say, it surely would have been written something along the following line: "Such a proposal filed by any party to the agreement shall be treated as a minor amendment to the application of each time-share proponent."

Contrary to Opposers' speculations, the "treat as" is an indicator that such amendments are to be considered "minor-change" amendments as opposed to "major-change" amendments. Such a reading is consistent with the Bureau's prior instructions to the 2013 LPFM applicants. In its December 16, 2013, Public Notice, the Bureau identified the groups of mutually exclusive applications that had been filed in the 2013 filing window and announced that the CDBS was modified as of that date to allow applicants to file only "minor" amendments. The Bureau listed five types of such "minor" amendments, including "partial and universal voluntary time-sharing agreements; . . ." *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period; CDBS Is Now Accepting Form 318 Amendments,* Public Notice, 28 FCC Rcd 16713 (MB 2013).

Making the point to describe voluntary time-share changes as "minor" is also consistent with the Commission's prior usage throughout the low power FM rulemking process. For instance, in allowing parties to successive-term involuntary arrangements to convert to a voluntary time-share structure, the Commission explicitly referred to such proposals as "minor change" applications. *Creation of a Low Power Radio Service,* Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21926 (2007).

Opposers claim that FRI's interpretation of Section 73.872(c) is a new twist created for the convenience of the fact patten presented in LPFM MX Group 27. However, it is the Media Bureau's post-hoc "clarification" in footnote 6 of the October PN that is indeed novel. Nowhere in the prior history of processing LPFM applications is there any hint that the Commission considered it appropriate to amend multiple applications from different applicants on the basis of one party's CDBS submission. There is no such notion conveyed in any of the Commission's order establishing the LPFM rules. There are no such instructions in any of the public notices concerning the processing of applications that resulted from the LPFM filing windows in 2000-2001. In fact, those Public Notices give just the opposite impression when they state: "With respect to a particular mutually exclusive group, applicants that are tied for the highest point total in that group may, within thirty (30) days of the release of this Notice, submit amendments to their applications incorporating voluntary time-share proposals."[4] Why would the word "amendments" be plural if only an amendment to one application is needed?

Furthermore, the principle of separate time-share amendments was explicitly applied by the Commission in the processing of a specific case. In a ruling concerning two tied mutually exclusive applicants in Hendersonville, North Carolina, after disposing of petitions to deny and other preliminary pleadings, the Commission invited the applicants to enter into a time-share agreement and stated:

> In accordance with our established procedures when applicants are tied for the highest point total in a LPFM Mutually Exclusive Group, JBN and ERPS may submit amendments

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[4] *See, Closed Groups of Pending Low Power FM Mutually Exclusive Applications Accepted for Filing,* Public Notice, 19 FCC Rcd 1034 (MB 2004); *Closed Groups of Pending Low Power FM Mutually Exclusive Applications Accepted for Filing,* Public Notice, 19 FCC Rcd 4624 (MB 2004);

to their applications incorporating a voluntary time-share proposal within thirty (30) days of the release date of this *Order*.

JBN, Inc., 23 FCC Rcd 2459, 2463 (2008). The Commission directed both applicants to "submit amendments to their applications . ." If an amendment to only one of the applications were to be considered adequate, there would be no need to use the plural forms of the words "amendments" and "applications." The use of the term "may submit" should not be misconstrued as indicating that the multiple amendments to each application are permitted rather than required. The aspect of this case that was permissive was whether or not the applicants would agree to a voluntary time-share – and not how such an agreement would be affixed to their applications.

Opposers offer the theory that the 2013 LPFM filing window represented the first opportunity to file and process applications since the "the substantive and processing rules were completely re-written" after the last filing windows in 2000-2001.[5] Opposers use this as an excuse to justify the Media Bureau's post-hoc insertion of a new concept into the processing regimen. While significant changes have been made in the LPFM rules since the service was originally established, it is important to note that the provisions of Section 872(c) in question here have not been amended since the rules were first adopted in 2000.[6] The only change that has been made to this rule is that the time for filing amendments containing time-share agreements has been extended from 30 days to 90 days after the relevant public notice. Thus the pertinent provision of the rule adopted by the Commission at issue in this matter has not been changed since 2000. All of the Commission's rulings touching on it have interpreted and applied the same

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[5] Opposition, at 4.

[6] *See*, *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205 (2000).

provision. This includes the *JBN* order – which was a decision of the full Commission and not the Bureau. It can therefore be concluded that in making the pronouncement in footnote 6 in the October PN, the Bureau was acting contrary to binding Commission precedent and beyond its authority.

Opposers suggest that "The concept of a lead application is well known to the staff."[7] Opposers refer to the mechanics of the CDBS where an applicant can file multiple assignment or renewal applications on a signal form. Opposers attempt to create an analogy between such applications and the filing of share-time agreements is misplaced. The situations to which Opposers refer concern a single applicant filing multiple applications. All of the applications are appropriately under the domain of that single applicant. Opposers would stretch this mechanical convenience of the CDBS to fit the circumstance where one applicant is filing a time-share amendment to cover the applications of other parties. This is a completely and startlingly different scenario – a scenario that would lend itself to abuse where applicants could lose control of their applications when amendments are submitted outside of their purview.

The Commission has realized the need for coordination among cooperating applicants to file separate, but complementary, applications in agreements to modify facilities. Section 73.3517(e) of the Commission's rule specifies a procedure for the filing of contingent applications for facilities modifications. Applicants coordinate their proposals so as to move out of each other's way. Time-share agreements involve precisely the same principle – related to time rather than coverage area. In a time-share, each party agrees to refrain from operating during a certain period of time when another applicant's station will be on the air, and to accept this limitation in

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[7] Opposition, at 4.

its authorization. Section 73.3517(e) requires each party to the agreement to file its own application as a part of the master plan. It is inconceivable that Section 73.872(c) could have been intended to operate any differently.

Opposers offer no public policy benefit to their interpretation of the rule that might offset the harm that could ensue if one applicant is routinely allowed to amend any number of its competitors' applications. There is the potential for abuse by overreaching applicants to contort their competitors' proposals. There is also the lack of transparency to the public. Anyone should be able to review an applicant's publicly available application on CDBS to determine what that applicant's proposal for service is. If that proposal is subject to an amendment submitted to amend a different applicant, the changes in the proposal would not be obvious or easily available to the public.

Opposers only nod to any need for their interpretation of the rule is totally self-serving and laughable if described as a public interest benefit. Opposers' Opposition is accompanied by a Declaration from Jessica Gonzalez, executive vice president of one of the applicants in the Opposers' time-share group. She explains that in deciding whether to attempt to amend all seven of the applications in Opposers' group before the filing deadline, she conferred with counsel. She reports that:

> He pointed out that any amendment requires access to a CDBS account number and password, as well as an FRN number and password. An applicant who wanted to join our time share and had authority to join still might have difficulty in amending under a close deadline, because its FCC account data was not standardized, and might be set up or changed, by the applicant, by counsel, or by a consulting engineer. We decided not to attempt to orchestrate individual minor amendments by all seven time share proponents.[8]

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[8] Opposition, Attachment A, at 1-2.

Opposers essentially admit that they did not have their act together in time to accomplish proper amendments by the deadline. They seek to take advantage of the Bureau's relaxed approach to the rule when FRI's time-share group was also working hard to structure an agreement by the Commission's deadline. The Bureau's post-hoc interpretation gave Opposers an unfair advantage to the detriment of its competitors who were striving to submit amendments by the deadline as required by the rule. Furthermore, Opposers' description of their process and condition evokes scenes of a chaotic boiler-room environment where apparently at least some them lacked the competence to manage the mechanics of their online applications in CDBS, or to engage competent professional assistance to do so. Unable to get themselves properly organized in time, Opposers' approach to the process for filing time-share amendments was essentially a backdoor request to extend the time for submitting such amendments by trimming down the list of required procedures. Although the Commission give applicants 90+ days to reach time-share agreements and file amendments, Opposers admit that they could not get the job done within that time. The Commission should question whether parties who cannot master the basics of the online filing process or engage competent help do it for them should be entrusted with broadcast licenses.

Opposers' explanation only serves to reenforce FRI's concern for the threat to the integrity of the process that would arise if the one-amendment-works-for-everyone approach is allowed to continue. FRI has no knowledge and does not imply that ethical improprieties occurred in the structuring of Opposers' time-share group or in the filing of an amendment where that agreement was attached to two of the applications in the group. However, the process is rife

with opportunity for malfeasance. It would be contrary to the public interest to allow such opportunities to continue in the future

The Media Bureau's relaxation of the rule for filing time-share amendments in footnote 6 of the October PN is contrary to precedent, an unauthorized de facto amendment to the Commission's rules, unfair and prejudicial to Opposers' competitors and contrary to the public interest. FRI respectfully urges the Bureau to reconsideration that provision of the October PN, and to rescind or modify it in accord with the foregoing.

Respectfully submitted,

FUTURE ROOTS, INC.

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December 8, 2014

CERTIFICATE OF SERVICE

I, Donald E. Martin, hereby certify this 8th day of December, 2014, that I have caused a copy of the foregoing document to be served by United States first class mail upon the following:

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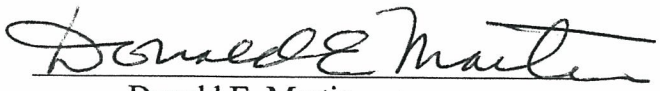

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