

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
)  
Amendment of Sections 74.1203(a)(3) and ) MB Docket No. \_\_\_\_\_  
74.1204(f) of the Commission’s Rules to ) RM - \_\_\_\_\_  
Protect Local Radio Service provided by )  
Fill-In Area FM Translators )  
)

To: Office of the Secretary  
Attn: The Commission

**PETITION FOR RULE MAKING**

This petition for rule making submitted by Aztec Capital Partners, Inc.<sup>1</sup> (“Petitioner”) seeks a rebalancing of the equities in the FM translator rules and specifically Section 74.1203(a)(3) and Section 74.1204(f) of those rules so that local radio service is not forestalled or removed by distant radio stations far outside the local radio market.

In 1990, responding to rule making petitions filed by the National Association of Broadcasters (“NAB”) and others, the FCC adopted rules<sup>2</sup> designed to prohibit FM translators from expanding primary stations’ service areas citing in particular what the NAB called the “Flagstaff situation” in which it was argued that FM translators carrying out-of-market signals were imported into Flagstaff, dominated the ratings, and drove a

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<sup>1</sup> Aztec Capital Partners, Inc. is the licensee of WHAT(AM), Philadelphia.

<sup>2</sup> *Amendment of Part 74 of the Commission’s Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212 (1990) (hereafter the “1990 FM Translator Report and Order”), *aff’d* Memorandum Opinion and Order, 8 FCC Rcd 5093 (1993).

local Flagstaff station off the air.<sup>3</sup> In the same 1990 order, the FCC affirmed that a single complaint of interference from an FM translator station to any listener of any full-service station could remove that FM translator from the air under Section 74.1203(a)(3) of the Commission’s rules, noting that “the provision will be used very rarely ...”.<sup>4</sup>

Today, however, in a full-circle perversion of the FCC’s 1990 intentions, distant full-service stations are increasingly fostering the filing of complaints far outside their communities of license and service areas against FM translators that are enabling the reception of local AM radio stations and local diverse HD sub-channels. The result is that distant out-of-market stations are driving FM translators carrying local radio stations off the air using the 1990 rules.<sup>5</sup>

## I. INTRODUCTION

1. The *1990 FM Translator Report and Order* was adopted at a time when FM translator service only rebroadcast other analog FM signals as primary stations, and FM translators were used “as a means of providing FM service to areas and populations that were unable to receive satisfactory FM signals due to distance and intervening terrain obstructions”.<sup>6</sup> Now, however, FM translators serve AM primary stations as revitalization lifelines providing consistent and reliable signals to local AM radio listeners, and as HD sub-channel enhancements providing diverse analog programming to

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<sup>3</sup> *1990 FM Translator Report and Order*, 5 FCC Rcd at 7216.

<sup>4</sup> *1990 FM Translator Report and Order*, 5 FCC Rcd at 7229. A companion provision, Section 74.1204(f) of the Commission’s rules, enables a distant FM station to keep a fill-in FM translator proposing local service from ever being granted.

<sup>5</sup> One example is the experience of Petitioner described in Section IV below.

<sup>6</sup> *Memorandum Opinion and Order*, 8 FCC Rcd at 5093 (emphasis added).

local FM listeners. Each of these relatively new services is a “fill-in area” FM translator.<sup>7</sup>

2. Petitioner requests that the Commission commence a rule making looking toward the modification of Sections 74.1203(a)(3) and 74.1204(f) of the Commission’s rules with a goal of protecting local listeners of fill-in area FM translators. No change is requested in the secondary status of FM translators<sup>8</sup> and no change is requested in the applicability of the rule to “other area” FM translators.<sup>9</sup> The changes in Sections 74.1203(a)(3) and 74.1204(f) are requested to protect local radio listeners in the primary station’s community of license and service area against a loss of service precipitated by an out-of-market radio station seeking to claim distant radio listeners far outside its service area.

## **II. RULE CHANGES REQUESTED**

3. Petitioner requests that Section 74.1203(a)(3) and Section 74.1204(f) of the Commission’s rules be amended to add the underlined portions:

§ 74.1203 Interference.

(a) An authorized FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to:

...

(3) The direct reception by the public of the off-the-air signals, for fill-in area translators as defined in Section

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<sup>7</sup> Fill-in area FM translators are those serving local listeners within the primary’s station’s service contour as described in Sections 74.1201(h) & (j) of the Commission’s rules.

<sup>8</sup> *See e.g.* Section 73.207 of the Commission’s rules which will continue to ignore FM translators and provide no protection whatsoever to FM translators in the allotment, assignment and modification of FM broadcast stations.

<sup>9</sup> *See* Section 74.1201(i) of the Commission’s rules.

74.1201(h) & (j) within the protected service contour and for other area translators defined in Section 74.1201(i) at any location, of any authorized broadcast station including TV Channel 6 stations, Class D (secondary) noncommercial educational FM stations, and previously authorized and operating FM translators and FM booster stations. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the FM translator or booster 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.

§ 74.1204 Protection of FM broadcast, FM Translator and LP100 stations.

(f) An application for an other area FM translator station as defined in Section 74.1201(i) will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including Class D (secondary) noncommercial educational FM stations and grant of the authorization will result in interference to the reception of such signal.

These amendments will prohibit distant FM stations from claiming distant service areas in the same manner as the “Flagstaff situation”<sup>10</sup>, and will prevent the removal from the air of local AM and HD sub-channel fill-in translator broadcasts.

### **III. SECTION 307(b) CONSIDERATIONS**

4. The FCC’s current application of the existing Sections 74.1203(a)(3) and 74.1204(f) in acting on FM reception difficulty complaints well outside the protected contour of a distant station appears to be a perversion of the “fair, efficient, and equitable

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<sup>10</sup> See Page 1 above.

distribution” provisions of Section 307(b) of the Communications Act. FM stations are authorized by the FCC under Section 307(b) to serve a community of license and a discrete service area encompassed by the FM station’s licensed protected contour. Removing local fill-in contour FM translator service based upon purported interference to a distant FM station listener well outside its protected service contour unfairly, inefficiently and inequitably favors the extension of the distant station’s weak signal to vast areas contrary to Section 307(b), to the disfavor of tens of thousands of local listeners to the fill-in FM translator.

#### **IV. PETITIONER’S OWN PROCEEDING**

5. In support of this Petition for Rule Making, Petitioner points to its own proceeding now before the Audio Division in which a distant FM station is seeking to forestall local service from tens of thousands of radio listeners to its fill-in FM translator.<sup>11</sup> In such proceedings, there is a tremendous cost, effort and resources expended by the FM translator’s primary station in attempting to provide service to its local listeners and to rebuff the charges of interference from a handful of purported distant station listeners.

6. In Petitioner’s case, an FM translator that would provide reliable and consistent service to tens, if not hundreds of thousands of AM listeners to WHAT, Philadelphia has been forestalled by filings submitted by Clear Communications, Inc., the licensee of an FM Class A station some 50 miles away in Southern New Jersey

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<sup>11</sup> Counsel for the distant station is being served with a copy of this Petition for Rule Making.

attempting to extend its signal into the Philadelphia metro area claiming listeners far outside its community of license and service area. These filings allege interference to at most several dozen purported distant listeners in the Philadelphia metro area. The distant Southern New Jersey station is keeping enhanced and consistent local service from being provided to an exponentially greater number of WHAT listeners.<sup>12</sup> WHAT is one of only two radio stations providing Spanish language programming to the fast growing Philadelphia market Hispanic population. WHAT is also the only Latino owned radio station in the Philadelphia market, a market with scarce available FM spectrum space. Without a viable FM translator, WHAT's own viability is in jeopardy.

7. This same Southern New Jersey station has also filed against an FM translator station located west of Philadelphia, again claiming distant Philadelphia area listeners to the detriment of the local radio listeners to the FM translator.<sup>13</sup> Petitioner asks that the FCC and the public review the record in this proceeding, and the countless others now pending or to be filed as more FM translators initiate service, for the full flavor of the dangers posed to local radio service by distant stations attempting to unfairly extend their signals. In each, purported listeners to a distant station are, in conjunction with the distant station, attempting to extend the distant station's signal to remove local radio service to many tens of thousands of radio listeners.

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<sup>12</sup> See FCC File No. BMPFT-20160728AAW.

<sup>13</sup> See W221DG, Exton, Pennsylvania FCC File No. BLFT-20170106ACP.

## V. THE LOCAL COMMUNITY RADIO ACT OF 2010

8. The Local Community Radio Act of 2010 (the “LCRA) may very well provide a statutory guide for the FCC in reviewing and modifying Sections 74.1203(a)(3) and 74.1204(f) of the Commission’s rules.<sup>14</sup> The LCRA requires that LPFM and FM translators remain equal in status,<sup>15</sup> and that decisions licensing new translator and LPFM stations be based upon the needs of the local community.<sup>16</sup>

9. In current FM translator complaint proceedings based upon the existing Sections 74.1203(a)(3) and 74.1204(f), the Audio Division does not assess whether the complaining station’s local community and its local listeners are impacted by a failure of several distant listeners to receive a station well beyond its protected contour. Also, the Audio Division fails to consider whether local listeners to a fill-in FM translator carrying an AM station or an HD sub-channel will be greatly affected if the programming provided by the FM translator is removed from the air. Both failures appear to be contrary to LCRA directives.

10. Also, if under the LCRA FM translators and LPFMs are to remain equal in status, then certain co-channel interference and adjacent channel interference should not be cognizable and not remediated under Section 74.1203 of the Commission’s rules. Low-power FM stations under Section 73.809(a) of the Commission’s rules are not

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<sup>14</sup> 111<sup>th</sup> Congress Public Law 371 (Pub.L. 111-371)

<sup>15</sup> The LCRA in Section 5 states that “FM translator stations ... and low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations (emphasis added)”.

<sup>16</sup> The LCRA in Section 5 directs that the FCC “when licensing new FM translator stations ... shall insure that ... such decisions are made based upon the needs of the local community.”

required to remediate co-channel interference except in the case of interference to subsequently-filed full service facilities: (1) within the 70 dB $\mu$  contour of the full-service FM station; (2) the community of license of the full-service FM station; or (3) any area of the community of license that is predicted to receive at least a 60 dB $\mu$  signal. For FM translators to be treated as “equal in status” as required by the LCRA, a complaining station would therefore have to make a showing of interference within its 70 dB $\mu$  contour, its community of license, or any area of its community of license that is predicted to receive at least a 60 dB $\mu$  signal. Sections 74.1203(a)(3) and 74.1204(f) do not require such a showing nor is Petitioner suggesting that the FM translator rules be modified to such an extent. But Petitioner does believe that, with the local service provided by fill-in FM translators, the directives of the LCRA regarding FM translators and LPFMs being equal in status should be instructive to the FCC in continuing such local service.

## **VI. THE AUDIO DIVISION’S CURRENT *AD HOC* PROCEDURES FOR FM TRANSLATORS**

11. In many of the proceedings seeking to remove a fill-in area FM translator from the air, it appears from FCC records that there are repeated instances of the distant station presenting complainants to the FCC only to have the complainants turn out to be connected to the distant station through friends, family or employees. Such complainants raise significant questions as to the processes employed by the FCC in seeking compliance with Sections 74.1203(a)(3) & (b), and Section 74.1204(f) of the Commission’s rules. The *ad hoc* procedures employed by the Audio Division where



unverified complaints are taken as truth, complainants can refuse to truthfully answer as to their relationships with the complaining station, informal email exchanges take place between the FCC's staff and complaining station, and it is suspected that many complainants are shells for the complaining station, is not a model of administrative procedural due process.

12. These proceedings, in which FM translators serving or proposing to serve large local audiences with reliable and consistent AM service, or with diverse HD sub-channel programming, are being threatened with removal from the air or with not going on the air at all through questionable complainants, are a great burden on local broadcasters. The changes requested to Sections 74.1203(a)(3) and 74.1204(f) in this Petition for Rule Making would greatly circumscribe the current games now played by distant stations in unfairly seeking to extend their protected contours at the expense of local radio listeners.

13. Now, as the FCC's Sections 74.1203(a)(3) and 74.1204(f) procedures stand, a radio station owner or manager is encouraged to troll for complaining individuals to enable that owner or manager to extend his or her station's signal out to the "owner's contour" – that last gasp of his or her radio signal coming through the FM hash. Favorable FCC action on this Petition for Rule Making will eliminate that incentive.

## **VII. CONCLUSION**

14. The equities now favor the local service provided by fill-in area FM translators carrying AM and HD sub-channel primary stations. There has been a

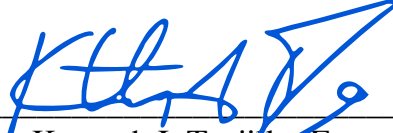
fundamental shift in the nature of fill-in area FM translators to which FCC policy and rules have not adjusted. Fill-in area FM translators are now vital to many communities and listeners.

15. Local radio service provided by an FM translator should not be removed from the air by the FCC unless there is a significant public interest reason to do so, and the public would be significantly served by such a loss of service. Action by the Commission on this Petition for Rule Making will re-adjust the equities between distant stations and local radio listeners.

WHEREFORE, for the reasons above, it is requested that a proceeding be commenced to amend Sections 74.1203(a)(3) and 74.1204(f) of the Commission's rules as described above.

Respectfully submitted,

**AZTEC CAPITAL PARTNERS, INC.**

By  \_\_\_\_\_  
Kenneth I. Trujillo, Esq.  
President

**AZTEC CAPITAL PARTNERS, INC.**  
1341 N. Delaware Avenue, Suite 408  
Philadelphia, Pennsylvania 19125  
(484) 562-0510

April 7, 2017

**CERTIFICATE OF SERVICE**

I, Arthur Camiolo, do hereby certify that a true copy of the foregoing "Petition for Rule Making" was sent this 7<sup>th</sup> day of April, 2017 via U.S. Mail, postage prepaid, to the following:

Erwin Krasnow, Esq.  
Garvey Schubert Barer  
1000 Potomac Street, N.W. Suite 200  
Washington, DC 20007  
(Counsel to Clear Communications, Inc.)

A handwritten signature in cursive script, appearing to read "Arthur Camiolo", written in black ink.

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Arthur Camiolo