

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

In the Matter of )  
)  
Amendment of Sections 74.1231, 74.1232 ) RM - 9419  
74.1233 and 74.1284 of the Commission's )  
Rules to allow AM licensees to become )  
licensees of FM translators and to use )  
them to retransmit their signals as )  
fill-in service. )

To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

**COMMENTS  
OF  
CREATIVE EDUCATIONAL MEDIA CORPORATION, INC.**

**CREATIVE EDUCATIONAL MEDIA CORPORATION, INC.** ("Creative"), by Counsel, pursuant to *Public Notice DA 98-2527 (released December 10, 1998)*, hereby submits these Comments in the above-captioned rule making proceeding regarding a proposal submitted by The American Community AM Broadcasters Association ("ACAMBA") to permit AM stations to become the owners and operators of FM translators that would re-transmit the AM signal for the purposes of fill-in service. In support hereof, Creative submits the following:

1. Creative is the licensee or permittee of the following full service broadcast stations: KMSI-FM (Moore, Oklahoma), KNYD-FM (Broken Arrow, Oklahoma), WYCS-FM (Yorktown, VA), KDKR-FM (Decatur, Texas), KOZO-FM (Branson, Missouri), and WOFN-FM (Beach City, Ohio). Creative is also the licensee or permittee of the following FM translator stations: K202BN (Fayetteville, Arkansas), K216BT (McAlester, Oklahoma), K242AA (Lawton, Oklahoma), K206BB (Weatherford, Oklahoma), K210BB (Ponca City, Oklahoma), K220CZ (Miami, Oklahoma), K208BV (Enid, Oklahoma) and K213BP

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(Irving, Texas).

2. As a noncommercial broadcaster, Creative has relied upon FM translator stations to provide selective broadcast service to target audiences in or near regions that Creative owns and operates full service FM broadcast stations. While Creative believes that the public interest is served by any AM or FM broadcaster trying to better serve their community through technical improvements, Creative urges the Commission in this proceeding to carefully balance the need of some AM broadcasters to provide better service through the use of FM translator stations with the traditional expectation that FM translator stations are only to be licensed to noncommercial broadcasters. Accordingly, hereinbelow Creative provides responsive comments to the series of proposals proffered by ACAMBA.

**3. ACAMBA submits that many AM stations are at a competitive disadvantage as the result of weak nighttime signals. While FM and TV stations enjoy the benefit of permissible translator services, AM stations are currently denied such service (except in Alaska). See, ACAMBA petition at page 2.**

4. Creative acknowledges that AM daytimer stations are at a competitive disadvantage, and generally cannot provide good nighttime service to their communities of license. While Creative does not oppose any proposal to permit these stations to improve their nighttime service, Creative wants the Commission to limit the use of any such FM translator service for nighttime use only -- these AM broadcasters should not be permitted to provide daytime FM translator service since such a scenario would suddenly result in their having a daytime competitive *advantage* by providing AM and FM service during the daytime. Any use of FM translators by AM broadcasters must be limited to the provision of basic nighttime service to the community of license -- and no more.

5. **ACAMBA proposes that FM translator service be permitted for stand alone AM stations only, with authorized AM power not exceeding 2,500 watts daytime and 500 watts nighttime. See, ACAMBA petition at pages 4 and 5.**

6. Creative agrees that any use of FM translators by AM broadcasters must be narrowly awarded to only the most deserving AM broadcasters. There are several administrative reasons why this is necessary. First, as with any communications service today, there is fierce competition among competing interests for use of frequencies. In this regard, the Commission is faced with some difficult decisions in this proceeding. For example, will the applications by an AM broadcaster for an FM translator station be subject to competing applications by FM broadcasters? If so, will the AM broadcaster be provided a preference? And, since any future proposed use of an FM translator station on a commercial frequency will be subject to an auction, will there be a need for special auction rules for these matters? In the past, when Creative has applied for its FM translator construction permits, it always was faced with the risk of competing applications. Creative submits that FM translator applications filed by AM broadcasters must be subject to the same risk of competing applications, and that no "AM Daytimer" preference be awarded. If any preference is to be awarded, it should be based purely upon an "areas and populations served" basis.

7. Assuming the Commission limits the use of FM translator stations by AM broadcasters to nighttime service only, Creative urges the Commission to entertain **time-share applications** by other parties for use of those frequencies during the daytime. The public interest would be best served if the use of all such frequencies are maximized. The daytime "warehousing" of such frequencies would simply be a waste. Also, Creative submits that any FM

translator station licensed to an AM broadcaster would likewise be considered a "secondary service," and subject to all the same reasons for termination as currently licensed FM translator stations are subject to, such as the implementation of a full service FM station on the same frequency in the same area or the interference with reception of a full service FM station when the FM translator station commenced operations. *See, Section 74.1203(a)(3).*

**8. ACAMBA claims that its proposal differs from other recent AM translator proposals in that it proposes these translators to be located anywhere within the AM station's .5 mV/m contour, as opposed to earlier proposals for service anywhere within the 1.0 mV/m contour. ACAMBA claims that the NAB supported the earlier AM translator proposals. *See, ACAMBA petition at page 7.***

9. If the Commission decides to implement the ACAMBA proposal, Creative believes that it must be as narrow and selective as possible. Section 73.24 of the Commission's Rules requires that the 5 mV/m daytime contour encompass the entire principal community to be served. In practice, the 5 mV/m signal level, but certainly no less than 2 mV/m, is required to provide good in-building service. Under these conditions, Creative believes that the AM translator's 1 mV/m contour should be located entirely within the daytime 2 mV/m contour. This further raises the issue of AM contour calculation methodology. Will measured soil conductivity or M3 soil conductivity be used?

**10. ACAMBA proposes to revise Section 74.1231 of the FCC's rules to restrict noncommercial FM stations to apply for FM translators only in the reserved portion of the FM band. *See, page 1 of ACAMBA's proposed changes to the FCC Rules.***

11. Creative believes that this aspect of ACAMBA's proposal is most contentious. Currently noncommercial FM stations may apply for FM translators on any available noncommercial or commercial FM frequency. Creative would vigorously oppose any changes to Section 74.1231 of the

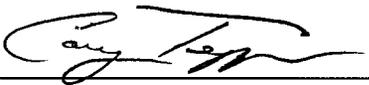
Commission's Rules that would restrict noncommercial FM stations from applying for FM translator stations on any dial position. Finally, it is unclear whether this aspect of ACAMBA's proposal, if accepted, would force noncommercial broadcasters to be displaced off of their currently authorized FM translator frequencies on the non-reserved portion of the FM band. If so, Creative would vigorously oppose such actions.

12. Finally, Creative believes that there is a matter of viability surrounding ACAMBA's proposal. Creative questions whether there is a sufficient number of frequencies available, at the required site locations, on a nationwide basis to permit ACAMBA's proposal to be implemented in a fair and reasonable manner.

WHEREFORE, the foregoing premises considered, Creative urges the Commission to implement a more formal notice and comment proceeding with respect to the ACAMBA proposal so that these matters can be thoroughly addressed.

Respectfully submitted,

**CREATIVE EDUCATIONAL MEDIA  
CORPORATION, INC.**

By:   
Cary S. Tepper

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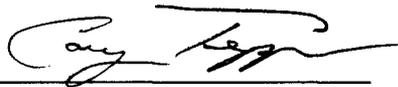
(202) 686-9600

January 11, 1999

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 11th day of January, 1999, I have served a copy of the foregoing "**Comments of Creative Educational Media Corporation, Inc.**" first-class, postage-prepaid, on the following:

Bryan Smeathers, President  
American Community AM Broadcasters Association  
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P.O. Box 973  
Central City, KY 42330

A handwritten signature in black ink, appearing to read "Cary Tepper", written over a horizontal line.

Cary S. Tepper, Esq.