

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter Of)
)
Amendment of Section 74.1231(g))
of the Commission's Rules)
)
)

MM Docket No. _____

RM - _____

To: The Commission

PETITION FOR RULE MAKING

James H. Facer ("Petitioner"), by his attorneys and pursuant to Section 1.401 of the Commission's Rules, hereby requests that the Commission commence a rule making proceeding to amend Section 74.1231(g) of the Commission's Rules to permit FM translator stations to originate public service announcements (PSAs) limited to no more than 30 seconds per hour. In support thereof, Petitioner states as follows:

Introduction

Petitioner brokers time on several FM translator stations under local marketing agreements and is in the process of acquiring other FM translator facilities and seeking the Commission's consent thereto. During the acquisition process, Petitioner has learned that under the Commission's current rules he is unable to originate PSAs over these translator stations, which are generally located in remote, rural areas of the country. Petitioner has recognized that the communities that many FM translator stations serve have a need for public service access to the airwaves that is currently not being met by the primary FM broadcast stations that are being

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retransmitted. The communities that receive service from FM translator stations need a means by which the communities and their civic and charitable groups can promote public activities, including meetings and events that serve local communities' needs and interests. Petitioner would like to help meet this pressing need by originating, on a limited basis, PSAs over FM translator stations and submits that such a service would benefit communities and their residents served by FM translator stations.

A. The Commission Should Amend the FM Translator Rules to Allow for the Transmission of Public Service Announcements to Promote the Public Interest

Petitioner has an interest in advancing the specific, distinct public interest needs of the communities that FM translator stations serve. Thus, Petitioner proposes modifying the Commission's FM translator rules to allow for the transmission of PSAs limited to no more than 30 seconds an hour, which would afford FM translator stations the opportunity to provide a small, but significant, contribution to their local service areas.¹

It is a basic tenet of the Communications Act of 1934, as amended (the "Act"), that the nation's airwaves are to be used in the most efficient manner possible to serve the public interest and necessity. See 47 U.S.C. §151 (Supp. 1997) (establishing the Act for the purpose of "regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, ... a rapid, efficient, nation-wide, and world-wide wire and radio communication service..."); 47 U.S.C. §309(a)(1991) (stating that "the Commission shall determine, in the case of each application filed with it..., whether the public interest, convenience, and necessity will be served by the granting of such

¹ As required by Section 1.401(b) of the Commission's rules, the text of the Petitioner's proposed modifications to Section 74.1231(g) is attached hereto. See Exhibit A.

application”); *Turner Broadcasting System, Inc. v. FCC*, 117 S.Ct. 1174 (1997) (citations omitted) (noting that “it has long been a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public”); and *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 586 (1981) (citations omitted) (stating that “the aim of the Act is to secure the maximum benefits of radio to all the people of the United States”). It is the Commission’s mandate to promote this usage of the airwaves through the issuance of licenses and the adoption of rules and regulations for the development and exploitation of the nation’s radio frequency spectrum. The proposed rule change contained herein is in support of these goals.

Under Section 74.1231(g) of the Commission’s Rules, an FM translator station, which retransmits the signal of an FM broadcast station, may only originate warnings of emergencies and limited solicitations for and acknowledgments of financial support. Petitioner submits that FM translator stations can provide an additional service to the communities and public they serve if given the authority to originate and transmit limited amounts of PSAs. As such, Petitioner proposes modifying Section 74.1231(g) to enable FM translator stations to originate public service announcements of no more than 30 seconds an hour so that the special and specific public interest needs of the local communities they are licensed to can be addressed.

The focus of the PSAs that primary FM broadcasters are interested in airing is, understandably, limited to the groups, events and activities that are situated in and affect the primary listening area. Consequently, primary station broadcasters are not willing to devote air time to far-away groups and events. As a result, the communities that receive FM station broadcasts via translators do not have the benefit of promotion of their local blood drives, school

fund-raisers, scouting events and the like over the radio airwaves. The local charities in the remote and isolated areas often served by FM translator stations need and deserve support from local media. In being granted the right to originate limited public service announcements, the Petitioner and FM translator station licensees will be allowed to expand the charitable services that they provide to their communities of license. The public will benefit from this expanded use of the local translator station facility. This is a practical, efficient and community-oriented use of FM translator stations and local communities, not private parties or the owners of the FM translator stations, will greatly benefit therefrom.

B. Allowing FM Translators to Transmit Public Service Announcements Promotes the Public Interest Without Significant Disruption and Without Harming Other Broadcasters

As noted above, amendment of the FM translator rules to allow for the origination of limited PSAs will afford FM translator stations the opportunity to make additional contributions to the communities that receive their signals. This significant gain by the public comes without any loss by or harm to primary stations or other, competing broadcasters. If Petitioner's proposed amendment were adopted, the small, out-of-the-way communities which many FM translator stations serve, will acquire a small but important means of promoting community events and organizations. The limited time and frequency of the proposed PSAs (a maximum of 30 seconds per hour) will enable these broadcasters to assist the needs of the local community and its charitable organizations without any significant disruption of the primary FM broadcaster's programming. Furthermore, competing broadcasters are not harmed, and the use of FM translator stations as retransmitters, not originating stations, not impaired, by the proposed grant of authority, as these messages are broadcast voluntarily, without compensation to the FM

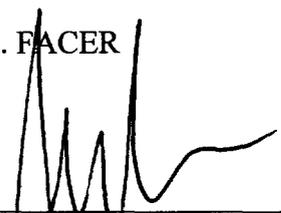
translator station.² Petitioner asserts that, given the significant public gains and lack of harm to other parties, FM translators should be granted the opportunity to originate limited PSAs.

Conclusion

Accordingly, for all the foregoing reasons, Petitioner respectfully requests that the Commission initiate the rule making requested herein and that it amend its Rules accordingly.

Respectfully submitted,

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² Petitioner submits that the instant request is not at variance with the policies adopted by the Commission in Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 68 RR 2d 705 (1990). In that proceeding, the Commission rejected proposals for local program origination authority, but did not deal with the matter of public service efforts. Serving the public interest, as provided for herein, has always been a concern of the Commission's. See, e.g., Deregulation of Radio, 49 RR 2d 1 (1981); En Banc Programming Inquiring Statement, 20 RR 1901 (1960). This proposal serves to further these goals without detrimentally affecting the role of FM translator stations as secondary services.

EXHIBIT A

PROPOSED CHANGES TO THE FM TRANSLATOR RULES

§74.1231 Purpose and permissible service.

...

- (g) The aural material transmitted as permitted in paragraph (f) of this section shall be limited to **(i)** emergency warnings of imminent danger, **and (ii)** to seeking or acknowledging financial support deemed necessary to the continued operation of the translator, **and (iii) public service announcements**. Originations concerning financial support **and public service announcements** are each limited to 30 seconds an hour, for a cumulative total of 60 seconds an hour. Within this limitation the length of an particular announcement will be left to the discretion of the translator station licensee. Solicitations of contributions shall be limited to the defrayal of the costs of installation, operation and maintenance of the translator or acknowledgments of financial support for those purposes. Such acknowledgments may include identification of the contributors, the size or nature of the contributions and advertising messages of contributors. Emergency transmissions shall be no longer or more frequent than necessary to protect life and property.

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