

**UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

**Satellite Feed For NCE Translators)
On Non-Reserved Frequencies)**

FCC Docket RM-10609

**SUPPLEMENTAL REPLY COMMENTS OF
THE AMHERST ALLIANCE,
JOINED BY NICKOLAUS E. LEGGETT
AND WKJCE RADIO**

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THE AMHERST ALLIANCE is a Net-based, nationwide citizens' advocacy group, founded in Amherst, Massachusetts on September 17, 1998. Our Members are current small broadcasters, aspiring small broadcasters and rank-and-file radio listeners. In numerous filings with the FCC, and related statements to Congress, we have actively advanced the goals of media diversity in general and Low Power Radio in particular.

THE AMHERST ALLIANCE, having already submitted Reply Comments in Docket RM-10609 on January 1, 2003, hereby submits Supplemental Reply Comments in the same Docket. We recognize that these Supplemental Reply Comments are late-filed, but we move for their acceptance because they are a response to *another* filing in this Docket, by THE NATIONAL TRANSLATOR ASSOCIATION, that was itself late-filed (on February 12, 2003).

We did not become aware of the National Translator Association filing until March 19, 2003. We have responded to it as quickly as discussion among our Members has permitted.

**We Support NTA's Proposal
For An Omnibus Proceeding
On FM Translators**

While we are likely to disagree with The National Translator Association on some of the specific changes should be made in the FCC's current policies governing FM translators, we do agree with NTA -- *strongly* -- that it is time for an omnibus proceeding on FM translators.

We also agree with NTA that Calvary Chapel's Petition For Rulemaking, in Docket RM-10609, should be dismissed, or at the very least suspended in limbo, and

considered instead as *one* policy option among a number of regulatory alternatives, to be addressed in an omnibus proceeding.

Set forth below, *verbatim*, is the core of NTA's call for an omnibus proceeding on policies governing FM translators:

It is our opinion that the time is at hand to revisit the FM translator rules in their entirety, rather than to modify the one provision as requested by the petitioners. The adoption of the Low Power FM rules has placed new demands on the available spectrum. Then the adoption of digital FM radio, which has signal components in both adjacent channels, raises serious questions about how FM translators are going to continue to fulfill their function. It is time to examine how FM translators will avoid interference with digital FM stations, as well as how they will cope with rebroadcasting digital signals. There is a serious question about how a significant portion of the current FM translators will be able to remain in operation with digital FM stations using three times the spectrum per station.

Elsewhere in its Comments, NTA describes itself as an organization composed of "owners and operators of FM translators, including local governments and special tax districts, service organizations and others concerned with the Association's objectives".

Additional Matters Which Should Be Considered

We hasten to add the following:

(1) *Need For An Immediate "Freeze" On Acceptance And Processing Of FM Translator Applications.* An immediate "freeze" on the submission of translator applications, *and also* on action to approve currently pending translator applications, should be instituted until:

- (a) The testing of alleged Low Power FM interference, as required by a Congressional statute enacted in 2000, has been completed *and* the results considered as part of the omnibus translator proceeding;
And
- (b) The omnibus proceeding itself has been completed;
And
- (c) The resulting policy changes, if any, have been put in place.

The current situation is complicated enough, without allowing more translators to acquire “squatters’ rights” that may later become roadblocks to new regulatory policies.

In particular, we stress that the FCC’s consideration and approval of Low Power FM has been proceeding in somewhat halting steps, while FM translator applications can still be processed under “Business As Usual” conditions. We are deeply concerned that, as a result, FM translator applications, even if submitted *after* the FCC’s establishment of LPFM in January of 2000, could be considered and approved before an appropriate “filing window” has even opened for some of the potential LPFM applicants.

Without a “freeze” on future and currently pending FM translator applications, many aspiring LPFM licensees might find that newly approved FM translators are already occupying all of the otherwise available frequencies -- *not* because the prospective LPFM licensees were not ready and willing to file for these frequencies in time, but because the FCC did not *let* them file for these frequencies in time. The “Business As Usual” acceptance and processing of FM translator applications, when combined with the FCC’s slower pace in opening sporadic “filing windows” for LPFM licenses, is likely to yield “real world” results which are neither fair to potential LPFM applicants nor consistent with the best interests of the listening public.

Because there does not seem to be a shortage of FM translators (or of FM translator applications), and because the mushrooming crop of current and proposed “satellators” is indeed actually a threat to the “localism” the Commission wants to promote, an immediate “freeze” on pending and future translator applications would do no harm to the public interest. In fact, it would *serve* the public interest, both immediately -- by preserving room on the radio spectrum for future applications by truly *local* stations -- and over the long run, by preventing the further development of trends that the Commission may later decide it wants to reverse.

(2) *The NOI Option.* The omnibus proceeding could be a rulemaking *or* a Notice Of Inquiry. Given the range of factors and options to be considered, we believe a Notice Of Inquiry would be preferable -- *if* a “freeze” on translator applications is in place while the NOI, and possible *subsequent* rulemakings, are proceeding.

(3) *Impact Of Low Power FM On FM Translators.* We note the following statement by NTA:

... The adoption of Low Power FM rules has placed new demands on the available spectrum.

This is, indeed, *one* way to characterize the impact of Low Power FM on the radio spectrum in general and FM translators in particular. However, it could *also* be said that LPFM stations, while in one sense placing “new demands” on the radio spectrum, are also *reducing* the previous level of need for translators in the first place.

FM translators, or at least “satellators” and other “distance translators”, were originally envisioned as ways to plug the gaps in coverage in “under-served areas”. Now that Low Power FM stations have been authorized, and are being licensed, there are -- at least potentially -- far fewer “under-served areas” than there used to be.

By the FCC’s regulatory design, as strongly advocated by the initial *supporters* of LPFM, the emerging LPFM stations are uniformly *local* stations. Only a legal fiction differentiates a locally based LPFM station from a locally based full power FM station. It is time to recognize that a “satellator” or other “distance translator” is a *substitute* for locally based programming -- and, as such, should not stand in the way of a locally based radio station, whether that local station is full power FM or Low Power FM.

We *also* note that the amount of room on the spectrum will *increase*, for LPFM stations *and* FM translators alike, when and if the FCC adjusts current channel spacing.

Since the FCC’s ability to take such action is limited, at least with respect to LPFM, by an Act of Congress, the FCC has another compelling reason -- apart from obeying a Congressional directive -- for timely completion of LPFM testing to assess potential “interference”. Without supportive test results, Congress will not allow change in the channel spacing requirements.

(4) *January 1, 2003 Recommendations.* We remind the FCC of the policy recommendations in our January 1, 2003 Written Comments. In particular, we reiterate our calls for either assigning Primary Service Status to Low Power FM stations, *or* assigning a new *Tertiary* Service Status to “satellators” and other “distance translators”.

(5) *April 17, 2002 Petition.* We also remind the FCC of the April 17, 2003 Petition For Rulemaking that proposes comprehensive re-structuring of the FM Band. To date, this Petition, filed by Amherst and several others, has been kept in limbo.

(6) *Other Possible Changes In Policies Governing Low Power FM Stations.* Once the LPFM testing results have been made publicly available, and have become a subject for consideration in the omnibus proceedings on FM translators, other issues besides Service Status and channel spacing requirements may merit review. These other issues could include one or more fundamental ones -- such as whether or not LPFM wattage levels should be increased to a level that would compensate for the erosion of original service areas by disruptive IBOC interference. The LPFM issues could also include matters that are more technical but still important -- such as whether or not the Commission should continue to require frequency-by-frequency LPFM license applications, as opposed to allowing “the pool” of all LPFM applicants in a specific area to compete for “the pool” of all available frequencies in a specific area.

These additional LPFM issues *could* be considered in a separate rulemaking or Notice Of Inquiry. However, given that the proceedings proposed by NTA would *already* involve discussion of *some* issues related to LPFM, as well as some issues related to IBOC interference, it might be a more efficient use of the Commission’s time to expand NTA’s proceedings into a consolidated NOI on the closely related subjects of FM translator policy, LPFM policy and damage mitigation in the face of IBOC interference.

Of course, consideration of the latter subject will be unnecessary if the Commission grants the October 25 Petition For Reconsideration, filed by THE AMHERST ALLIANCE and dozens of other parties, to revoke or suspend the October 11 IBOC approval Order in Docket 99-325.

(7) *Disproportionate Representation Of Certain Types Of Translators.* In light of the apparent over-representation of certain entities -- *and* types of programming -- within the group of licensed and proposed FM translators, it is time for the Commission to consider placing reasonable and workable limits on:

- (a) The number of translators any single entity can own or operate;
And/or
- (b) The number of translator applications any single entity can file with the Commission at any given time.

We also urge the Commission to take into account, when reviewing any particular FM translator application, whether or not the type of programming offered is already well-represented, or even *over*-represented, in the geographic area involved.

In support of this proposition, we specifically reference the documentation placed in this Docket in filings by REC NETWORKS of Arizona and KOL AMI HAVURAH of West Virginia.

(8) *Impact Of In Band On Channel (IBOC) Digital Radio Broadcasting On FM Translators.* We strongly agree with NTA's assessment of the problems posed by the FCC's hasty approval of "interim" In Band On Channel (IBOC) Digital Radio broadcasts on October 11, 2002. As noted above, Amherst has taken the lead in the filing of a multi-party Petition For Reconsideration on October 25, 2002.

For more than a year, THE AMHERST ALLIANCE has recognized that interference from IBOC Digital Radio poses a threat to current and existing Low Power FM stations ... to potential Low Power AM stations ... and to small, independent full power stations, on both the FM and AM bands, as well. More recently, we have heard reports that even "blow torch" full power stations, notably including WOWO of Indiana and WWOR of New York, are being eclipsed by signals from the new IBOC stations. Now we note that the National Translator Association has expressed serious concerns about IBOC as well.

We commend NTA for taking this stand. We also invite NTA to join us, as a retroactive signatory, on the Petition For Reconsideration in Docket 99-325.

That Petition was filed by 34 parties, led by THE AMHERST ALLIANCE and VIRGINIA CENTER OF THE PUBLIC PRESS. Since then, however, retroactive signatories have raised the total number of Petitioners to 39. NTA could make it 40.

We stress again that the FCC's approval of IBOC Digital Radio has strengthened the case for granting full Primary Service Status to Low Power FM stations -- *and/or* developing alternative mechanisms to give such stations a legal basis for seeking relief from the Commission when and if IBOC signals violate their protected service contours.

The less sweeping alternative -- of Tertiary Service Status for “distance translators” -- would still be of great value to LPFM stations, but it would not protect LPFM stations from IBOC interference within protected contours. For a modicum of protection against *IBOC*, LPFM stations require Primary Service Status *and/or* a substitute mechanism for seeking relief from the Commission.

In addition, as noted earlier, the onset of IBOC interference, which was *not* taken into account when the LPFM power ceilings were debated and adopted, has raised the prospect that some of the originally envisioned LPFM service areas could be reduced. Thus, the Commission needs to consider the possibility of increasing the present LPFM power ceilings -- to a point that would compensate for IBOC interference and, thereby, restore the service areas that were originally contemplated for LPFM stations.

Other Parties To These Supplemental Reply Comments

We are joined in these Supplemental Reply Comments by NICKOLAUS E. LEGGETT of Reston, Virginia. Nick is a longtime citizen activist. He has filed Written Comments in dozens of FCC proceedings, and has also authored or co-authored Petitions For Rulemaking and NOIs to the FCC. These proposals have included the Petition that triggered the FCC’s first deliberations on a Low Power FM Radio Service (FCC Docket RM-9208), as well as two Petitions that triggered FCC deliberations on shielding of vital civilian communications equipment, against an Electromagnetic Pulse, in 1986 and 1987 (RM-5528) and again in 2002 through the present (RM-10330).

We are also joined by WKJCE RADIO of Kane, Pennsylvania. WKJCE is an Internet broadcaster, with aspirations to become a Low Power FM licensee, serving small towns and rural areas in northwest Pennsylvania. It is owned and operated by Joanne Lynn Benjamin and Julie Spencer of Kane, Pennsylvania.

Conclusions

As in our January 1, 2003 Reply Comments, we again urge the Commission to:

(1) reject Calvary Chapel's Petition For Rulemaking; *and* (2) adopt a policy of making the Service Status of all "distance translators", aka "long distance translators", secondary to the Service Status of all truly local broadcasters, including Low Power Radio stations.

In these Supplemental Reply Comments, we submit additional recommendations, including the following: (3) the National Translator Association's call for an omnibus proceeding on FM translators should be heeded; *and* (4) the Commission should initiate an immediate "freeze" on acceptance and processing of both future and currently pending FM translator applications, until such time as Congressionally mandated Low Power FM testing has been completed, deliberations in the omnibus proceeding on FM translators have been completed, and resulting policy changes have been put in place; *and* (5) the omnibus proceeding should also include consideration of limits on market share among FM translators, in terms of both particular entities and particular type of programming; *and* (6) the omnibus proceeding on FM translators should take the initial form of a Notice Of Inquiry, rather than a Notice Of Proposed Rulemaking, *provided that* an immediate "freeze" on FM has been placed in effect.

Respectfully submitted,

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