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

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	
Governing Modifications of FM and AM	)	RM -10960
Authorizations	)	
	)	

To: The Media Bureau

COMMENTS SUPPORTING EXPANSION OF THIS PROCEEDING OR INITIATION OF AN ADDITIONAL PROCEEDING

Mad Dog Wireless, Inc., by its counsel, in response to Public Notice Report No. 2657, released April 22, 2004[1], hereby supports the broad inquiry into the Commission's existing service rules initiated by First Broadcasting Investment Partners, LLC, and attaches a Petition for Rule Making filed on December 21, 2001 upon which to date the Commission has not sought comments. Mad Dog Wireless, Inc. suggests that either this proceeding be expanded, or a complementary proceeding be initiated, to consider the proposal of Mad Dog Wireless, Inc. to establish a new enhanced FM booster service.

Respectfully submitted,

MAD DOG WIRELESS, INC.

By_____
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Its Attorney

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May 24, 2004

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[1] It is recognized that this submission is late filed. Given that it has been on file at the Commission without action, however, Mad Dog Wireless, Inc. asks leave to file it in this proceeding as possibly the appropriate venue in which it may be considered.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 21, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Washington, DC 20554

Re: Petition for Rule Making to Amend Part 74 of the Rules to Establish a New Enhanced FM Booster Service

Dear Ms. Salas:

Transmitted herewith on behalf of Mad Dog Wireless, Inc. is an original and nine copies of its Petition for Rule Making requesting that the Commission amend Part 74 of its Rules to establish a new "Enhanced FM" booster service that will provide additional FM service to the public.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,

John F. Garziglia

Enclosures

Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 74 of the Rules to	)	**MM Docket No. ____**
Establish a New	)	
Enhanced FM Booster Service	)	**RM No. ____**

To: The Commission

PETITION FOR RULE MAKING

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December 21, 2001

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SUMMARY

Mad Dog Wireless, Inc., ("Petitioner") by counsel and pursuant to Section 1.401 of the Commission's Rules, hereby petitions the Federal Communications Commission to commence a rule making proceeding for the purpose of amending Subpart L of Part 74 of the Commission's Rules to allow FM stations to extend their services areas beyond their present 1 mV/m contours through the use of FM boosters. In essence, Petitioner proposes that FM licensees be allowed to expand their service areas using FM boosters in such a way as to provide service along specific stretches of highway or cover populations lying just out of reach of the main station's signal while fully protecting existing stations' service areas. Such a modification to the rules would result in what might be called "Enhanced FM" service.

Petitioner has identified a number of possibilities for the Enhanced FM service that would greatly improve the overall availability of FM service to the public. Enhanced FM represents an opportunity to provide expanded coverage along interstates, additional service to rural areas, and other extensions of FM service to previously underserved populations. This level of service would be made possible by the Commission's adoption of relatively simple changes to the rules governing the operation of FM boosters. Accordingly, Petitioner urges the Commission to commence a rule making that would remove certain ownership restrictions on FM Boosters and allow the use of boosters to extend the continuous authorized service contour of a commercial FM station. Petitioner has carefully evaluated the policy and engineering aspects of an Enhanced FM service, and offers a set of proposed rules that might be adopted to implement this proposal.

Such a change in Commission policy is appropriate in the face of new economic realities. Competition in the radio industry is greater than ever, as noted by the Commission when it said it "intends to be more responsive to current marketplace realities while continuing to address its core

public interest concerns of promoting diversity and competition." *See FCC Launches Comprehensive Examination Of Rules On Multiple Ownership Of Local Market Radio Stations; Also Sets Interim Policy and Deadlines to Resolve Pending Radio Applications*, MM Docket No. 01-317, 2001 FCC LEXIS 6077 (November 8, 2001). A review of the Commission's origination and development of the FM booster rules makes it clear that the primary reason for the present 1 mV/m contour limitation is to protect full-service stations from competition. There has been a significant shift away from such protection–and toward the marketplace–since the last wholesale reexamination of the coverage area rules. The Commission over the past decade has largely abandoned the Commission's protectionist policies on which it has largely based the rules dictating limited services areas for FM boosters. It is now time for the Commission to revisit the FM booster rules and reassess them with an eye toward their compatibility with the Commission's modern pro-competitive policy framework. Petitioner respectfully suggests that such a reevaluation take place though the adoption of its proposed Enhanced FM service rules.

Before the

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Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 74 of the Rules to	)	**MM Docket No. ____**
Establish a New	)	
Enhanced FM Booster Service	)	**RM No. ____**

To: The Commission

PETITION FOR RULEMAKING

I. INTRODUCTION

Mad Dog Wireless, Inc. ("Petitioner") by counsel and pursuant to Section 1.401 of the Commission's Rules, hereby petitions the Federal Communications Commission to commence a rule making proceeding for the purpose of modifying Subpart L of Part 74 of the Commission's Rules, and to establish a new Enhanced FM booster service, which will enable full-service commercial FM stations to provide travelers and rural residents with expanded FM service through the use of FM boosters which extend a continuous authorized service coverage contour of an FM broadcast station in any direction so long as it does not create any prohibited overlap with another FM station.

In essence, Petitioner is proposing that any FM station be allowed to utilize an FM booster to extend its primary service contour in any direction so long as continuous coverage contour is maintained and no prohibited interference is caused to other existing FM stations. In the case of a Class C station, such a continuous coverage contour would be achieved by placing FM boosters in such as way as the first booster's 1 mV/m signal contour overlaps with the primary station, and then the second booster's 1 mV/m signal overlaps with the first booster, and

so on, creating perhaps a "daisy-chain" of two or three FM boosters to enhance coverage. Under such an enhancement, an FM station could offer listeners uninterrupted service along rural highways by establishing FM boosters at intervals along the highway in such a manner that the contours of each booster overlap, creating an oblong extension of the normally circular primary service contour of the station. Other applications of this service could be the provision of service to hikers and other populations of mountainous areas that could not otherwise support the establishment of full-service stations, either by reason of economy or geography. Petitioner believes that such a scheme is a natural evolution of the Commission's existing FM booster service, and is justified by a vibrant and competitive FM marketplace that has nearly consumed the practical full-service station opportunities available through the existing FM Table of Allotments.

II. EXISTING FM BOOSTER SERVICE

The Commission's current rules governing FM boosters can be found in §74.1201 *et. seq*. Section 74.1231(h) authorizes FM broadcast booster stations as a "means whereby the licensee of an FM broadcast station may provide service to areas in any region *within* the primary station's predicted, authorized service contours."(emphasis supplied). The authorized service contours for commercial FM stations are defined by §74.1201(h) as the "predicted 0.5 mV/m contour for commercial class B stations; predicted 0.7 mV/m contour for commercial Class B1 stations, and predicted 1 m/Vm contour for all other classes of stations."

Resulting Limitations on FM Service

As a result of the limitations on FM booster operation outside of the primary station's authorized service contour, the public has become accustomed to constantly retuning stations as they search for service while, for instance, driving down long stretches of highway. Residents in

very rural areas have been hit particularly hard by this limitation-- unless they live in or near a community large enough to support a full-service station, they are forced to tune distant stations or forego FM service altogether. Similarly, recreational or commercial users whose activities take them into remote areas often find themselves without FM service. While that may be a mere inconvenience in some cases, it can be deadly in others, where lack of broadcast real-time weather and emergency information is not available.

Adoption of the FM Booster Rules

Petitioner believes that the time has come for the Commission to reexamine its FM booster rules and policies, the vast majority of which were adopted over thirty years ago. This position may be better understood after a review of the history and development of the FM booster rules.

In 1970, the rules governing FM translators and boosters were lifted almost entirely without policy comment from the television translator rules developed in the 1950s and 1960s. The original adopting order did not delve into the reasoning behind the Commission's decision to treat FM boosters only as "fill-in" service for existing full-service FM stations. *See* 20 Rad Reg. 2d (P&F) 1538 ("*1970 R&O*"). Since then, the Commission has only substantively revisited the booster-specific rules once, when it relaxed the technical rules regarding signal power and delivery in 1987. *See* In the Matter of Amendment of Part 73 of the Commission's Rules Concerning FM Booster Stations and Television Booster Stations, 2 FCC Rcd 4625.

Unfortunately, the policies that limit FM booster coverage area have been the subject of only minimal direct examination by the Commission, leaving the public with very little explicit explanation of the policy concerns that guided the adoption and modification of the FM booster rules. In many instances, the Commission has expressly excluded the FM booster rules from

consideration in translator proceedings regarding the extension of contours. *See, e.g.*, In the Matter of Part 74, Subpart L of the Commissions Rules Pertaining to FM Broadcast Translator Stations, 44 FCC 2d 794 at n. 2. ("*1974 NPRM*").

The Commission has, however, examined the rationale behind limiting the coverage areas and ownership of FM and television *translators* on a number of occasions since 1970. Since the Commission itself noted that the FM booster rules grew out of the television translator rules, any history or examination of the Commission's FM boosters policies should be informed by its FM and television translator proceedings. *See, e.g.,* In re Vernal, Utah, 62 FCC 2d 561, 562 (1976)("The FM translator rules were based largely on experience with the TV translator service and, to the extent feasible, the wording and numbering of the FM translator rules paralleled the TV translator rules.") The Commission has also clearly stated that FM boosters and translators will be bound by the same rules and policies, except where specifically noted otherwise. *See* 44 FCC 2d 794, 795. Thus, Petitioner believes that policy statements supporting the Commission's actions with regard to both television and FM translators are essential in considering the Commission's position on FM boosters.

Preventing Economic Competition a Central Goal of the Existing FM Booster Rules

Often, in its examinations of the translator rules for both the FM and television services, the Commission has expressly cited prevention of translator competition with existing or future full-service stations as the primary rationale behind the rules limiting coverage area. For example, the *1974 NPRM* outlined the Commission's concerns with regard to the effect of competition by FM translators on existing FM stations. *See* 44 FCC 2d 794. The Commission explained that it was considering modification of its rules because it seemed as if translators were being used to "expand FM broadcast service far beyond the FM stations' predicted service

contours and into major communities where there is already existing FM broadcast service." *See* 44 FCC 2d 794, 796.

The Commission has expressly acknowledged that "the underlying rationale for [Section 74.1232(d)(1)'s] inclusion was to prevent FM station licensees from using FM translators as a competitive means for extending their stations' service areas." *See* In re Application of BER-TEC Broadcasting, Inc., 101 FCC 2d 570, 573 (citing the *1970 R&O*). The Commission continued, pointing out that it had:

> "twice explored amending Section 74.1232(d) in order to prevent unfair competition by distant commercial FM stations. In our Notice of Proposed Rulemaking in Docket 19918, 44 FCC 2d 794 (1974), we proposed to prohibit competitive expansion of an FM station's service area through either a licensee or non-licensee owned translator where the area to be served was within the predicted 1 mV/m contours of more than one FM station licensed to a community other than that of the primary station." *Id.*

Clearly, in the first years following the creation of the FM booster service the Commission relied heavily, if not entirely, on an economic noncompetition rationale for limiting the service areas of FM boosters.

A decade passed before the Commission undertook another substantive look at policies underlying FM translators, beginning with a *Notice of Inquiry* in 1988. *See* In the Matter of Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 3 FCC Rcd 3664 (1988)("*1988 NOI*"). The Commission's initial response to the petitions that prompted the *1988 NOI* is set forth in the *Notice of Proposed Rule Making* it issued two years later. *See* 5 FCC Rcd 2106 ("*1990 NPRM*").

In the *1990 NPRM*, the Commission signaled some willingness to allow contour extensions when it proposed to relax the ownership rules to allow commercial licensees to own and operate translators that extended a signal beyond the 1 mV/m contour into a "white areas"

where there was no predicted FM service. *See* 5 FCC Rcd 2106 at ¶ 17. Petitioner believes that the willingness of the Commission to allow the extension of a contour only into a white area only serves to underscore the Commission's concern with protecting existing FM full-service stations.

Ultimately, the Commission issued a *Report and Order* that declined to adopt its original proposal to allow the extension of a commercial station's primary service contour into white areas. *See* 5 FCC Rcd 7212 ("*1990 R&O*"). Rather, the Commission examined the merits of creating "fill-in" and "other area" applications and adopted rules which allowed only non-commercial FM stations to extend their signals beyond their 1 mV/m contours to "other areas." *See* 5 FCC Rcd 7212 at ¶ 6. However, the Commission declined to follow that proposal with respect to commercial FM stations. Instead, it adopted §74.1231(d), which exists in the same form today. Under that rule, commercial FM stations may own FM translators only where the translator coverage area is entirely contained within the coverage contour of the primary station. No presumptive "white area" exception to the rule was created, despite the requests of some petitioners. Instead, the Commission decided that it would consider waiver requests establishing that a commercial licensee proposing use of a translator beyond its 1 mV/m contour would only be serving an area that had no other FM service (i.e., a "white area"). *See* 5 FCC Rcd 7212 at ¶ 23. Thus, rather than relaxing the rules surrounding commercial use of translators, the Commission strengthened the rules limiting the ability of a commercial broadcaster to extend its signal beyond its primary contour. *See* 1990 R&O at ¶ 6.

Having Justified the Service Area Limitations with Economic Arguments, the Commission is Now Compelled to Revisit the Issue When the State of Competition has Changed.

The Commission, over the years, has made very clear its concern that allowing one commercial FM station to extend its signal into the contour of another through the use of FM

boosters will threaten the viability of the second commercial FM station. However, both the market and the Commission have each provided ample evidence that this concern about the economic viability of such stations need no longer be so great, and that the establishment of an Enhanced FM service should be substantively considered.

III. PROPOSED SERVICE

Today, the FM broadcasting industry operates in a healthy and competitive market—one that would not be harmed, and may in fact benefit—through further competition from within the service. Thus, Petitioner believes that now is the right time for the Commission's Rules to be amended to allow an FM station to extend its contours with boosters in any direction technically possible in order to provide better service to listening audiences, provided that no prohibited overlap with other FM stations is created.

Additionally, the radio broadcast industry is on the cusp of perhaps the biggest change in many years. Two satellite DARS licensees are now instituting nationwide radio broadcast service of 100 channels each. Unchallenged by concepts such as protected service contours and local service concerns, these hundreds of new radio channels will now be available in every community. Existing FM radio stations should not now be hindered from technical improvements to their signal by anti-competition rules that are now decades old. Rather, existing FM radio station should be able to tailor their signal coverage in accord with where their listeners are and to areas where their listeners travel, provided no prohibited interference to other FM stations is caused, even if such a signal coverage area is outside the existing service contour of the station.

Technical Proposal for an Enhanced FM Service

Petitioner has drafted a set of proposed rules (attached as Appendix A) that it believes would best implement its proposal for an Enhanced FM service that retains the existing scheme's interference and service protections. However, the coverage contour and ownership limits have been modified or removed, allowing an FM licensee to extend its contour with an FM booster so long as the 1 mV/m (or, in the case of Class B and B1 stations, 0.5 mV/m and 0.7 mV/m, respectively) contour of the booster: 1) does not overlap with the protected contour of another co-channel or adjacent channel FM station, and; 2) does overlap the primary service contour of the originating station or another FM booster operated by that station, thus creating an uninterrupted area of primary service coverage.

In other words, FM boosters should be able to be placed wherever the coverage contour of the FM booster intersects at some point with the primary service contour of the main station, or intersects the coverage contour of another FM booster for the main station. Such an approach would allow a station to provide continuous and uninterrupted service to listeners passing through expanding exurban areas and along interstate highways. Similarly, it would allow the creation of regional stations to provide useful local coverage to large rural areas. Petitioner is *not* proposing that stations be allowed to create coverage areas hundreds of miles long, but rather that stations be allowed to extend coverage in a specific direction to some limit of distance that is hindered on a technical basis only by other FM services on the same or adjacent FM channels.

Given that Enhanced FM boosters are a mere extension of existing service, much like power increases or one-step upgrade applications, Petitioner proposes that all application to utilize existing FM boosters under the enhanced FM rules be treated as minor change applications and processed under the provisions of §73.1233(b)(1). As to applications for new

FM booster stations, Petitioner believes that "first-come, first-serve" processing would provide the most efficient and fair way of dealing with applications for new Enhanced FM booster stations, and thus should be processed under the provisions of §73.1233(b)(2).

Finally, the proposed rules should also specify that the resulting coverage of Enhanced FM boosters should receive protection as a quasi-primary service so that it is treated as a true extension of the main station's coverage, thus providing some level of assurance that additional services gained through Enhanced FM boosters would not then be lost.

The Current State of Competition Would Allow Adoption of the Enhanced FM Rules

As noted above, the competitive environment of FM broadcasting has changed enormously since the Commission's last substantive look at the FM booster and translator rules. The Commission, in stark contrast to its position as the time of adoption, now views competition as a valuable means of— rather than an impediment to— ensuring that the public is served by quality broadcast stations. The value of competition in the FM services was merely acknowledged as a possibility at the time of the *1974 NPRM*, but is now held up as a central principal on which the Commission bases its approach to regulating the private sector. *See*, *e.g.*, Remarks of Michael K. Powell at the Association for Local Telecommunications Services, Crystal City, Virginia (As prepared for delivery), 2001 FCC LEXIS 6507, (November 30, 2001) (noting that "[c]ompetition is a critical objective of a robust public policy" while committing the Commission to quickly reacting and adjusting to the changing marketplace).

It is important to note that the Commission has shown some flexibility in the coverage area rules in the past. Shortly after adoption of the original rules, a 1974 *Memorandum Opinion and Order* regarding a booster construction permit application for Los Angeles illustrated the Commission's willingness to waive the booster rules to the extent that it would allow some

amount of bulge outside of the 1 mV/m contour of the primary station. *See* In re Application of John Lamar Hill, 46 FCC 2d 234 ("*1974 MO&O*"). The Commission based its decision in part on the existence of "an overriding public interest in the regular operation of the booster station and [that it] perceive[d] *no injury, actual or potential, to anyone*." 46 FCC 2d 234 at ¶ 4. (emphasis supplied).

Similarly, the Enhanced FM booster service proposed by the Petitioner will serve the public interest while injuring no one. It will bring additional service to those who would not otherwise have it and will not interfere with existing services. With strict enforcement of the Commission's existing interference standards, nearby full-service stations will not be threatened. Furthermore, with the issuance of any Notice of Proposed Rule Making on this matter by the Commission, parties interested in establishing a full-service station at one of the few fully-spaced open allotments left in the Table will have ample notice and opportunity to do so.

Facts and Circumstances Now Weigh In Favor of Enhanced FM Service

When the Commission examined the policy considerations underlying the television translator service in a 1978 *Notice of Inquiry*, it highlighted a number of factors on which it focused in considering the restrictions on extensions of broadcast service beyond originally licensed areas. *See* In the Matter of Inquiry into the Future Role of Low-Power Televisions Broadcasting and Television Translators in the National Telecommunications System, 68 FCC 2d 1525, ¶ 17. The factors noted by the Commission as relevant to its balancing of interests between additional coverage and protection of existing stations from competition have changed significantly since then.

Some of the factors specifically examined by the Commission in that proceeding include the public need for program diversity, media competition and impact, efficient spectrum

management, and avoiding interference to existing communications services. The Commission may find that if it puts the matter out for comment and analysis, many of those factors now weigh in favor of lifting such restrictions or are no longer relevant concerns. Clearly, stations utilizing Enhanced FM boosters will provide new or additional service to many areas by efficiently filling in the gaps created by the Commission's previous emphasis on full-service stations without causing any interference to those stations. Or more simply put, circular or nearly circular service areas do not necessarily provide optimum coverage in real world circumstances. Rather, an FM radio licensee should be afforded the opportunity to extend the circle where it is technically possible and where it serves the public interest by providing enhanced FM service to its listeners.

Further Competition in FM Broadcasting Furthers Congressional Intent

As mentioned in Section II, *supra*, the Commission has acknowledged, "the underlying rationale for [Section 74.1232(d)(1)'s] inclusion was to prevent FM station licensees from using FM translators as a competitive means for extending their stations' service areas." *See* 44 FCC 2d 794, 796. It is significant to note that the Commission immediately followed that statement by pointing out that its:

> "*main concern was to balance the need to protect the viability of local FM stations with Congress' intent that there be competition in the business of broadcasting.* Id. at 795." (emphasis supplied).

That balance has now changed—the fundamental viability of stations should no longer be presumptively threatened by competition in the form of mere additional services, and the Commission must adjust its rules to follow Congress' direction that there be competition in the broadcasting business.

In 1985, the Commission repeated its concern with following Congress' mandate when the Commission issued a *Memorandum Opinion & Order* in the case of a dispute over the termination of the first-in-time authorization of an FM translator serving an area where there was an existing full-service FM construction permit. *See* In re Application of BER-TEC Broadcasting, Gold Beach, Oregon, 101 FCC 2d 570 ("*BER-TEC*"). Illustrating the Commission's focus on economic and competitive factors in its decision to limit the reach of translators, the Commission pointed out that the main concern of the *1970 R&O*, and later in the *1974 NPRM* mentioned above, was to "balance the need to protect the viability of local FM stations with Congress' intent that there be competition in the business of broadcasting." *See* 101 FCC 2d 570 at ¶ 6. This case emphasizes that the existing economic conditions and factors were central to the Commission's decisions to allow translators outside of the licensee's primary service area. The conditions of the competitive broadcasting business have changed considerably, and there is little question now about the viability of the FM service, even in rural areas.

Relaxation of the Coverage Area Rules is a Natural Outgrowth of the Re-examination Process Initiated by the Commission in 1988

The Commission's examination of the FM translator rules that started with the *1988 NOI* covered much of the same ground that Petitioner now proposes the Commission revisit. Many of the underlying presumptions about economics and competition, even about the regulatory role of the Commission, have changed significantly since then. The Commission—recognizing that technologies, markets, and even regulatory approaches are continuously changing—understands that it is often important to modify its rules in response to those changes. Even as the Commission requested comments examining the impact of translators on full service stations in

1988, it noted that its own initial conclusions on the matter were "tentative" in nature. *See* 3 FCC Rcd 3664 at ¶ 49. Clearly, the Commission believed that having accurate and timely information about the marketplace were essential to its decision—and now enough of those facts have changed that it warrants the Commission revisiting its decade-old conclusions.

It is significant that when the Commission declined to follow through on the *1990 NPRM's* proposal to relax the ownership rules and allow commercial licensees to own and operate translators that extended a signal beyond the 1 mV/m contour into white areas, the Commission did not adopt similar ownership restrictions for non-commercial licensees, who were then free to use translators to extend their signals far beyond the primary station's service contour. Petitioner holds this up as clear evidence of the Commission's concern with protecting commercial FM stations from further competition in the marketplace at the time. *See* 5 FCC Rcd 2106.

Throughout the rule making process, there was a strong minority of commentors in favor of letting the marketplace decide where translators would best operate. *See* 5 FCC Rcd 2106 at ¶ 15, n. 21. In response to these calls, the Commission proposed a split service, creating "fill-in" translators and "other area" translators. *See* 5 FCC Rcd 2106 at ¶ 17. As noted earlier, however, the *1990 R&O* the Commission ultimately adopted allowed only for the extension of contours in circumstances that ensured that the translator would not create any competition. *See* 5 FCC Rcd 7212. Thus, when the Commission adopted different rules for the commercial and non-commercial stations for "other area" translator applications, it made a conscious choice to protect commercial FM stations from competition. *See* 5 FCC Rcd 7212 at ¶ 30 (noting that "[t]o the extent that this expansion [of FM translators] threatened to undermine the vitality of FM and AM services, we believe that the public will be best served by the revised financial support

rule we now adopt."). Today, Petitioner contends that the result would be almost exactly the opposite—that the Commission's current adoption of the marketplace as an essential arbitor would lead it to create a more flexible regulatory scheme fostering more competition within the FM broadcast service. The Commission now has a chance to allow FM broadcasters to operate in a less restrictive competition promoting environment that can only improve service to the public.

Regrettably, no discussion of a 1987 pro-competition proposal made by AGK Communications ("AGK") is to be found in the *1990 R&O*. AGK, in one of the original petitions prompting the *1988 NOI*, asked that the Commission delete 74.1232(d) in its entirety. *See* 3 FCC Rcd 3664 at ¶ 19. In essence, AGK's proposal and Petitioner's instant proposal share a common goal—the extension of service beyond a station's 1 mV/m contour for competitive purposes. AGK advanced many of the same arguments in support of its petition as Petitioner now does in support of establishing an Enhanced FM service, including the fact that the small market FM stations the Commission had been so concerned with would not face any real competition from extended contour services. *See* 3 FCC Rcd 3664 at ¶ 21. Unfortunately, the Commission's treatment of the AGK petition during the course of the three year rule making was cursory, and there is no record of serious examination of the proposal which might guide the present discussion.

Competition Becoming Key to Commission Decisions

The lack of Commission examination of other options that encouraged competition did not go unnoticed. The concurring statements to the *1990 R&O* by Commissioners Duggan and Marshall complained that the Commission had unduly focused on preventing competition while not adequately examining the possibility of using translators to extend FM service.

A few years later, in 1993, the Commission revisited the *1990 R&O* when it released In the Matter of Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 8 FCC Rcd 5093 (1993) ("*1993 MO&O*"). Two parties seeking expanded translator coverage filed petitions asserting that the Commission's rules regarding service to white areas were "contrary to the Commission's pro-competitive policies and other precedents, observing that the Commission has concluded elsewhere that a rural area is underserved if it receives interference-free service from less than five full-time stations." *See* 8 FCC Rcd 5093 at ¶ 6. The Commission summarily dismissed the parties' petitions seeking expanded service and emphasized a preference for expanded service through full-service stations, rather than through "secondary" translator authorizations. *See* 8 FCC Rcd 5093 at ¶¶ 8-9. Petitioner's Enhanced FM proposal addresses the Commission's objection in that there are no longer very many new full-service allotments available, and the authorization for Enhanced FM boosters to serve the gaps left by the current Table of Allocations would be primary.

Since the *1993 R&O*, the Commission has issued no substantive policy statements in rule makings regarding the FM booster services. During the rule making process, however, a 1991 case involving a petition against a construction permit application for an TV booster was filed. *See* PZ Entertainment Partnership, L.P., 6 FCC Rcd 1240 (1991), *recon. den'd* 7 FCC Rcd 2696 (1992). The petitioner argued that the facilities specified by the application were not economically viable, the Commission responded that:

> "[t]he Commission, however, is not the guarantor of the financial success of its licensees. That is a judgment to be made by the applicants and the marketplace. As we stated in Triangle Publications, Inc.: we are not generally concerned with the competitive status of licensees and are not insurers of lucrative operations. . . . [A licensee's] private objective, then, is of little weight in the determination of the ultimate public interest." 6 FCC Rcd 1240 (citing Triangle Publications, Inc., 29

FCC 315, 318 (1960), *aff'd sub nom.* Triangle Publications, Inc. v. F.C.C., 291 F. 2d 342 (1961))."

Petitioner believes that this statement, based on principles first expressed over forty years ago, provides ample support for a Commission move to adopting a more relaxed approach toward competition in the FM marketplace. An Enhanced FM service would build on this approach, by allowing FM licensees to expand their commercial services to the public without the risk of threatening the viability of other full-service stations. With an Enhanced FM service, the traveling public would enjoy improved continuity of service instead of suffering drops in coverage and the need for constant retuning of stations due to restrictive policies set in place decades ago. In addition to improved service to mobile listeners, the fill-in effect that a primary authorization of an FM booster would have will almost certainly result in an improvement in diversity through additional service to populations across the nation.

IV. CONCLUSION

Petitioner submits that issuance of the Notice of Proposed Rulemaking furthers the public interest in the expansion of FM broadcast service. Furthermore, issuance of the Notice of Proposed Rulemaking will service the public interest by ultimately increasing the number of services available in many areas. Wherefore, the premises considered, Petitioner respectfully requests that Commission commence a rule making proceeding as proposed herein.

Respectfully submitted,

MAD DOG WIRELESS, INC.

By: _____
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Proposed Rules

Subpart L - FM Broadcast Translator Stations and FM Broadcast Booster Stations

§74.1201 Definitions.

(j) FM booster coverage contour. The coverage contour for an FM booster service is congruent with its parent station; for an FM booster for a commercial Class B station it is the predicted 0.5 mV/m field strength contour; for an FM booster for a commercial Class B1 station it is the predicted 0.7 mV/m field strength contour; and for an FM booster for all other classes of commercial stations as well as all noncommercial educational stations it is the predicted 1 mV/m field strength contour. An FM booster's coverage contour must intersect with the primary station's coverage contour or the coverage contour of another FM booster retransmitting the signal of the primary station. The protected contour for an FM booster station is its predicted 1 mV/m contour.

§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, an authorized booster station will not be permitted to continue to operate if it causes actual interference within the city grade contour, and an application for a new FM booster station will not be accepted if it is predicted to cause interference to:

§74.1231 Purpose and permissible service.

[. . .]

(h) FM broadcast booster stations provide a means whereby the licensee of an FM broadcast station may provide service to areas in any region within the primary station's predicted, authorized service contours or beyond the coverage contour of the primary station so long as the coverage contour of the FM broadcast booster station overlaps the coverage contour of the primary station or another FM broadcast booster station retransmitting the signal of the primary station~~.~~ An FM broadcast booster station is authorized to retransmit only the signals of its primary station which have been received directly through space and suitably amplified, or received by alternative signal delivery means including, but not limited to, satellite and terrestrial microwave facilities. The FM booster station shall not retransmit the signals of any other station nor make independent transmissions, except that locally generated signals may be used to excite the booster apparatus for the purpose of conducting tests and measurements essential to the proper installation and maintenance of the apparatus.

~~NOTE: In the case of an FM broadcast station authorized with facilities in excess of those specified by §73.211 of this chapter, an FM booster station will only be authorized within the protected contour of the class of station being rebroadcast as predicted on the basis of the maximum powers and heights set forth in that section for the applicable class of FM broadcast station concerned.~~

§74.1232 Eligibility and licensing requirements.

[. . .]

(f) An FM broadcast booster station will be authorized only to the licensee or permittee of the FM radio broadcast station whose signals the booster station will retransmit~~, to serve areas within the protected contour of the primary station, subject to Note, §74.1231(h)~~.

§74.1233 Processing FM translator and booster station applications.

(a) Applications for FM translator and booster stations are divided into two groups:

(1) In the first group are applications for new FM translator stations or for major changes in the facilities of authorized FM translator stations. For FM translator stations, a major change is any change in frequency (output channel) except changes to first, second or third adjacent channels, or intermediate frequency channels, and any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area. All other changes will be considered minor. All major changes are subject to the provisions of §§73.3580 and 1.1104 of this chapter pertaining to major changes.

(2) In the second group are applications for licenses, applications for FM booster stations and all other changes in the facilities of the authorized station.

(b) Processing booster and reserved band FM translator applications.

(1) Applications for new FM booster stations and minor modifications for reserved band FM translator stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a "first come/first served" basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Conflicting applications received on the same day will be treated as simultaneously filed and mutually exclusive. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead

applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

(2) All other applications ~~for booster stations and~~ reserved band FM translator stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing reserved band applications that have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and/or petitions to deny the listed applications must be filed.

[. . .]

(d) Processing non-reserved band FM booster and translator applications.

(1) Applications for new FM booster stations and minor modifications for non-reserved band FM booster and translator stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a "first come/first served" basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Applications received on the same day will be treated as simultaneously filed and, if they are found to be mutually exclusive, must be resolved through settlement or technical amendment. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

§74.1235 Power limitations and antenna systems.

[. . .]

(c) The effective radiated power of FM booster stations ~~shall be limited such that the predicted service contour of the booster station, computed in accordance with §73.313 paragraphs (a) through (d) of this chapter, may not extend beyond the corresponding service contour of the primary FM station that the booster rebroadcasts. In no event shall~~

~~the ERP of the booster station~~ shall not exceed 20% of the maximum allowable ERP for the primary station's class.

§74.1237 Antenna location.

[. . .]

~~(d) The transmitting antenna of an FM booster station shall be located within the protected contour of its primary station, subject to NOTE, §74.1231(h) of this part. The transmitting antenna of a commonly owned FM translator station shall be located within the protected contour of its commercial primary FM station.~~

CERTIFICATE OF SERVICE

I, Lisa Blackburn, a secretary in the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that I have on this 27th day of May 2004, caused copies of the foregoing Comments Supporting Expansion of this Proceeding or Initiation of an Additional Proceeding to be mailed to the following by first-class United States mail, postage prepaid:

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