

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

In the Matter of)	
)	
Creation of a Low Power Radio Service)	MM Docket No. 99-25
)	

To: Marlene Dortch, Secretary
Federal Communications Commission

REPLY COMMENTS OF THE NEW JERSEY PUBLIC BROADCASTING AUTHORITY

The New Jersey Public Broadcasting Authority (NJPBA), through its attorneys and pursuant to Section 1.415 of the rules, hereby files its Reply Comments in the above-referenced proceeding regarding proposed changes to the rules governing the Low Power FM (LPFM) radio service.¹ In support thereof, the following is shown:

NJPBA is the public broadcasting authority charged with the responsibility for creating and operating a statewide system of noncommercial educational broadcasting stations in the State of New Jersey. Pursuant to that mandate, NJPBA has for many years been building a statewide public FM network to the extent practicable. Currently, NJPBA has activated seven full-service stations and is the permittee or tentative selectee for three more. Nonetheless, NJPBA has been severely hampered in developing complete statewide coverage with full-service facilities due to congestion in the reserved band caused by the sheer numbers of existing noncommercial educational services in the region and, in southern New Jersey, by the preclusionary impact of television Channel 6. Consequently, NJPBA has sought to enhance the reach of its FM

¹ Second Order on Reconsideration and Further Notice of Proposed Rulemaking, MM Docket No. 99-25, 20 FCC Rcd. 6763 (1995) (FNPRM). The Commission extended the deadline for reply comments to September 21, 2005. See Order, DA 05-2348, released August 24, 2005.

service through operation of translators. During the 2003 FM translator window, NJPBA filed some 36 applications for new FM translators. If granted, these translators together would increase the population coverage achieved by NJPBA's existing full service facilities from approximately 1.5 million people to almost 11 million people, and cover approximately 97.5% of the State, a truly dramatic improvement. To date, five of these applications have been granted and 31 remain pending. Under all of these circumstances, NJPBA is vitally concerned that the Commission preserve and protect the opportunities for established broadcasters like NJPBA to improve their service to the public with secondary translator facilities that for decades have been an integral part of the Commission's scheme for providing service to unserved areas.

NJPBA has reviewed many of the comments in this proceeding and observes broad opposition to the Commission's proposals to elevate LPFM stations to primary status vis-à-vis FM translators and to dismiss the applications filed during the 2003 window.² NJPBA likewise strenuously opposes these proposals.

There is no doubt that translators provide critical service to areas which are unserved by a broadcaster's signal, whether by filling in gaps in a commercial broadcaster's primary service area or by expanding the reach of a noncommercial broadcaster's public service.³ There is likewise no significant evidence that, even assuming that the Commission has the requisite authority,⁴ revision of the technical rules will solve LPFM concerns regarding the lack of opportunities in large and medium-sized communities; in fact, NJPBA's experience in one of the most congested areas of the country compels the conclusion that there are virtually no opportunities for new

² See, e.g., Comments of National Public Radio (NPR); Comments of the Public Radio Organizations; Comments of the National Association of Broadcasters; Joint Comments of the Named State Broadcasters Association; Comments of the University of Southern California; Comments of the University of Massachusetts; and Comments of Temple University Public Radio.

³ See, e.g., Comments of the NAB; Comments of NPR; Comments of Temple.

⁴ See in this regard, e.g., Comments of the NAB arguing that the FCC has no such authority, pp. 5-9.

service of any kind in such markets. Indeed, the Commission itself is well aware that FM band congestion may preclude or limit LPFM opportunities in certain markets.⁵ Further, the Commission candidly acknowledges that “[i]t is impossible to determine the precise extent to which the 2003 window-filed FM translator applications have impacted the potential licensing of new LPFM stations.”⁶ In this regard, it should be stressed that the initial round of LPFM filing windows took place during the period May 2000 – June 2001; thus, a frequency available in the 2003 translator filing window that could be used for LPFM service was available to a would be LPFM licensee well before it was made available to FM translator window applicants.⁷ And, too, because translator and LPFM proposals are processed under different technical rules, the filing of any particular translator application by no means necessarily results in the loss of an LPFM opportunity. In all, one cannot conclude that LPFM applicants have been treated unfairly vis-à-vis translator applicants. Under these circumstances, any action conferring “primary” on LPFM stations at the expense of FM translators would be contrary to the public interest.

Further, contrary to the claims of certain parties⁸, notwithstanding the filing of thousands of translator applications during the 2003 window, there is no clear evidence of widespread fraud and abuse in the process. In fact, much of the interest translator facilities arguably is the result of the FCC’s freeze on translator filings, which precluded entities like NJPBA from improving their primary FM service for over five years, as well as its more recent freeze on filings for full-service facilities, which similarly has lasted for over five years and continues to this day. Indeed, NJPBA notes that even the most

⁵ See Comments by Named State Broadcasters Associations, p. 4.

⁶ Second FNPRM, at para. 31.

⁷ See Comments by Edgewater Broadcasting, Inc. and Radio Assist Ministry, Inc., p. 4.

⁸ See Comments by Prometheus Radio Project, et al., Appendix B.

vocal advocates for LPFM interests in this proceeding do not argue for the wholesale dismissal of the 2003 translator window applications.⁹

In the absence of any evidence that translators do not provide critical broadcast service or that LPFM interests have been substantially or unfairly impeded by the applications filed in the 2003 translator window, the Commission should retain its current regulatory scheme for translator and LPFM operations.¹⁰ Consistent with this resolution, it should immediately lift the freeze on translator application processing so that applicants like NJPBA can preserve and expand service to the public. They have invested substantial resources toward that end. Under these circumstances, radical changes in technical rules which confer preferred status on the nascent LPFM service at the expense of FM translators or blanket dismissal of pending applications filed during the 2003 translator window would be arbitrary, unfair and unwise.

NEW JERSEY PUBLIC BROADCASTING
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September 21, 2005

⁹ *Ibid.*

¹⁰ The Commission may well want to limit translator filings in the future and might consider a numerical limit such as twenty. Further, should the Commission decide to make changes in the technical rules despite the overwhelming opposition in this proceeding, it must at a minimum grandfather existing translator operations to preserve existing service and protect the legitimate expectations of licensees and the public alike.