

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Petition for Rulemaking filed by Miller ) RM-11331  
Communications, Inc. *et al.*, )  
Amendment of Sections 74.1201, 74.1231 )  
And 74.1232 of the Commission’s Rules )

To: The Commission

**COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)<sup>1</sup> submits these comments on the above-captioned Petition for Rulemaking.<sup>2</sup> Petitioners propose amendment of Sections 74.1201, 74.1231 and 74.1232 of the Commission’s Rules<sup>3</sup> to allow for program origination by FM translator stations. For the reasons stated below, NAB respectfully requests that the Commission deny the petition.

FM translator and booster stations play a vital role in broadcasting, helping extend FM radio service to areas that cannot receive a signal due to terrain obstructions or distance. Under the current rules, an FM translator rebroadcasts the signal of an FM radio broadcast station “without significantly altering the characteristics of the incoming signal” by “translating” the

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<sup>1</sup> The National Association of Broadcasters is a trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and the Courts.

<sup>2</sup> See Public Notice, *Consumer and Government Affairs Bureau Reference Information Center Petition for Rulemaking Filed*, Report No. 2771 (May 10, 2006); Petition for Rulemaking, Miller Communications, Inc., Kaskaskia Broadcasting, Inc., and Virden Broadcasting Corp., (“Petitioners”) (Filed April 27, 2006) (“*Petition*”)

<sup>3</sup> 47 C.F.R. §§ 74.1201, 74.1231, and 74.1232

signal to a new frequency, usually at a low or limited power.<sup>4</sup> Although a secondary service, FM translators provide a crucial link to communities that may otherwise go unserved by traditional radio service.

Although the Commission has rejected similar requests before on sound grounds,<sup>5</sup> Petitioners make yet another attempt to radically alter the current FM translator service. Significantly, however, they offer no evidence to justify any change in the Commission's position. Essentially, Petitioners ask the Commission to transform what has been historically a supplemental service into a new broadcasting class. A change in the program origination rule would turn FM translators into radio stations. While we agree that promoting localism is a laudable goal, amending the FM translator rules is not the best approach to achieving that goal. Providing program origination authority to FM translators could drastically undermine the viability of primary full power FM stations, particularly stations in rural and remote areas and decrease rather than increase local service. The detriments of such a change would outweigh any benefits the Petitioners speculate could accrue from their proposal.

Nothing has changed in the 16 years since the Commission last visited this issue that would necessitate the broad alterations Petitioners seek. To the contrary, over that period, there has been a dramatic increase in the number of media outlets – from full power radio and television stations to low power FM, the Internet and even satellite radio services– that make the requested changes to the FM translator rules even less necessary to serve the public interest than they were in 1990. Petitioners have provided no new evidence that counteracts this substantial increase in multimedia voices.

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<sup>4</sup> 47 C.F.R. §74.1201(a)

<sup>5</sup> Report and Order, *In the Matter of Amendment of Part 74 of the FM, Commission's Rules Concerning Translator Stations*, 5 FCC Rcd 7212 (1990) (“1990 Report and Order”)

As the *1990 Report and Order* articulated clearly, “the proper role for FM translators is that of a secondary service intended to supplement the service of FM broadcast stations.”<sup>6</sup> Since FM translators were first approved in 1970,<sup>7</sup> the balance between broadcast stations as a primary service and translators as a secondary service has ensured the viability of the overall broadcast system.<sup>8</sup> This was the original intent of the Commission; and it has been a resounding success. Now Petitioners hope to upset that balance by creating a new broadcasting class. As the Commission stated in 1990, granting Petitioners’ request would undermine the incentives for efficient broadcast development.<sup>9</sup> The Commission stated that in order to avoid degradation to the overall broadcast system, it is crucial to maintain the current rules, and preserve the balance between FM stations and translators that helps ensure Americans receive the best possible radio service.<sup>10</sup>

Petitioners ground their argument on an alleged need for additional programming outlets. However, full power radio stations have already filled the role of providing community responsive programming for years. Broadcasters have proven again and again their commitment to localism. They have served, and continue to serve, their communities through political forums, interviews of community leaders, and public service announcements. Broadcasters

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<sup>6</sup> *Id.* at 7213.

<sup>7</sup> The FM translator rules are set forth at 47 C.F.R. §§ 74.1201-74.1290.

<sup>8</sup> *Amendment of Part 74 of the FM, Commission’s Rules Concerning Translator Stations*, 5 FCC Rcd 7212, 7219 ¶48

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

provide local news, local music and other crucial public affairs programming.<sup>11</sup> While an argument can be made that more local programming is always better, when balanced against the effect that a new program origination rule would have on full power stations, the balance is not in its favor. Introducing a new class of broadcast stations would undercut the localism efforts of full power broadcasters. FM translator owners already may override 30-seconds of programming per hour for fundraising efforts, and may, in cases of imminent danger, interrupt rebroadcasted programming to provide emergency warnings.<sup>12</sup> These limited rules make sense for a service that is secondary by definition to full power stations. Allowing any more programming on translators would put increased strain on full power stations that survive by providing local interest content.

Finally, Petitioners argue that rules governing FM translators should be aligned with those rules governing TV translators. Contrary to Petitioner's claim, TV translators, by definition, may not originate programming.<sup>13</sup> However, in the 1982 *Report and Order* that Petitioners cite, the Commission did create a new class of low power television stations that could originate programming.<sup>14</sup> Even if one were to correct Petitioners' argument to say that FM translators should have the same rights as low power television stations, it still ignores the crucial distinction between the television and radio markets. Simply put, there are far more radio stations than television stations in the United States. Currently, there are a total of more than

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<sup>11</sup> See *In Re In the Matter of Broadcast Localism*, NAB Comments in MM Docket No. 04-233; Reply Comments of NAB in MM Docket No. 04-233 (Jan. 3, 2005) at 2-25.

<sup>12</sup> 47 C.F.R. §1231(g).

<sup>13</sup> 47 C.F.R. §74.701(a)

<sup>14</sup> Report and Order, *An Inquiry into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, 51 RR 2d 476 (1982)

13,700 radio stations in the U.S. compared to about 1,700 full power television stations.<sup>15</sup> Thus, for television, there is a much greater need for additional voices.

At the time of the creation of low power television, large areas of the country that may have been serviced by radio stations received no local television signal. In order to service those areas, a television broadcast signal was “daisy-chained” from the closest television station, perhaps hundreds of miles away, into the unserved market over a series of translators and boosters. For those more remote and rural areas, this television signal may not have been “local” by the standard definition. In areas of the country that could not support a full power television station, and never received any local news, weather or politics via the television, the need in 1982 for a low power television service was clear.<sup>16</sup> The same cannot be said for the radio market today where, even in many remote areas of the country, there are multiple local radio choices.

The Commission created the low power television service eight years before the most recent FM translator proceeding.<sup>17</sup> The Commission was well aware at the time of the distinction between the rules governing low power television and FM translators, and did not find the comparison worthy of discussion, let alone precedent for a radical change. Similarly, the Commission could have addressed FM translator program origination when, in 2000, it created

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<sup>15</sup> According to a recent FCC news release “Broadcast Station Totals as of March 31, 2006,” released May 26, 2006, there are 13,748 radio stations in the country, compared to only 1,752 full power television stations. Even when you add the 2,157 low power television stations, there are still less than 1/3 the total number of television stations as compared to full power radio stations.

<sup>16</sup> The Commission noted that comments for the 1982 Report and Order “overwhelmingly favor institution” of low power TV. *An Inquiry into the Future Role of Low Power Television Broadcasting*, 51 RR 2d 476 ¶10.

<sup>17</sup> *Amendment of Part 74 of the FM, Commission’s Rules Concerning Translator Stations*, 5 FCC Rcd. 7212 (1990)

the low power FM service.<sup>18</sup> And again, the Commission did not find it necessary to provide a lengthy comparison.

In conclusion, while broadcasters appreciate the crucial role FM translators play in the proliferation of radio service, we remain convinced that a change to the program origination rules would drastically undermine the Commission's stated goals of a healthy and vibrant radio system. Accordingly, the NAB respectfully requests that the Commission dismiss this *Petition*.

Respectfully submitted,

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<sup>18</sup> See Report and Order, *In the Matter of Creation of Low Power Radio Service*, 15 FCC Rcd 2205 (2000)

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing comments of the National Association of Broadcasters were served via first-class mail, postage prepaid, this 9<sup>th</sup> day of June 2006 upon the following:

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