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

AUG 23 2006

Federal Communications Commission
Office of Secretary

In the Matter of)
)
AM Radio Stations Use of) RM - 11338
FM Translators)

To: The Commission

**COMMENTS
OF
FIVE TOWNS COLLEGE**

FIVE TOWNS COLLEGE ("Five Towns"), by Counsel, pursuant to *Public Notice Report No. 2782 (released July 25, 2006)*, hereby submits these Comments in the above-captioned rule making proceeding regarding a proposal submitted by the National Association of Broadcasters ("NAB") to permit AM stations to use FM translators. In support hereof, Five Towns submits the following:

1. Five Towns is the licensee of Radio Station WFTU-AM at Riverhead, New York. Although Radio Station WFTU-AM is not an AM daytimer station -- having authority to operate at 1 kilowatt daytime and 500 watts nighttime -- Five Towns believes that this proceeding should be expanded to provide special relief to broadcasters, such as Five Towns, that are educational-oriented and cannot provide broadcast service to their entire community of license at night.

2. Five Towns is a unique educational institution. The curriculum at Five Towns combines the worlds of music, media, business, teaching, the performing arts and the entertainment industry. Radio Station WFTU-AM plays an integral role for the college as the students are able to apply their education into the

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outside world, while also catering to the interests and needs of the WFTU-AM listening area.

3. Five Towns is very unique in another important way -- it is practically the only independent radio voice in the nation's eighteenth largest radio market. In today's age of group ownership, Five Towns is a throw back to the traditional days of radio. Five Towns is about as local as local can get.

4. Radio Station WFTU-AM is required to power down fifty percent (50%) during nighttime hours. As a result, the station's coverage to most of Suffolk County, New York are lost. When this occurs, WFTU-AM cannot provide service to the most heavily populated areas in its market.

5. Although the NAB proposal seems to place great emphasis on AM daytimer stations, Five Towns urges the Commission to acknowledge that AM daytimer stations are not the only AM stations that face a competitive disadvantage at night. As described hereinabove, stations such as WFTU-AM lose a significant portion of their target audience when required to power down at night. This proceeding needs to acknowledge the service issues of all AM broadcasters. While Five Towns agrees that any use of FM translators by AM broadcasters must be narrowly awarded to only the most deserving AM broadcasters, determinations based upon power only is most prejudicial. The Commission must look at the unique circumstances of each applicant and base its decision accordingly.

6. Fifteen years ago, within the context of reviewing technical proposals to improve the AM broadcast service, the Commission stated the following:

Over the years ... channel congestion and interference, both radio- and environmentally-induced, have dramatically increased in the AM band.

Coincident with this growth has been a decline in the fidelity of AM receivers. As a consequence, during the last twenty years there has been a well-documented shift of AM listeners to newer mass media services that offer higher technical quality and better aural fidelity. This shift in listenership has clearly dulled the competitive edge of this once vital service.

Nonetheless, we believe that AM radio continues to hold a valuable place on the communications landscape. AM service provides a significant number of outlets that contribute to the vital diversity of viewpoints and programming available to Americans. Indeed, AM often offers the only radio service to listeners in a variety of circumstances, particularly those living in and traveling through rural areas. In view of the undisputed public importance of the AM service, we believe that innovative and substantial regulatory steps must be taken to ensure its health and survival.

For the past several years, the Commission has made an intensive effort to identify the service's most pressing problems and, where relevant and feasible, to adapt the regulatory environment for AM stations that will ameliorate those problems. *Review of the Technical Assignment Criteria for the AM Broadcast Service, 6 FCC Rcd. 6273 at paras. 2-4 (1991) (footnotes omitted).*

Despite the Commission's encouraging words almost half a generation ago, it is accurate to say that the more things have changed, the more they have stayed the same. Much effort has been expended to identify the problems of the AM broadcast service, but little has been done to fix those problems. In reality, the AM broadcast service has been abandoned, and now there is an opportunity to provide some reasonable relief.

7. Five Towns submits that any use of FM translators by AM broadcasters should be narrowly awarded to only the most deserving AM broadcasters -- looking at a combination of such factors as the amount of service loss at night, whether or not the station serves a minority audience, the size of the

station's market and the amount of competition in that market, and whether or not the station is locally owned. There are several administrative reasons why this is necessary. First, as with any communications service today, there is fierce competition among competing interests for use of frequencies. In this regard, the Commission is faced with some difficult decisions in this proceeding. For example, will the applications by an AM broadcaster for an FM translator station be subject to competing applications by FM broadcasters? If so, will the AM broadcaster be provided a preference? And, since any future proposed use of an FM translator station on a commercial frequency will be subject to an auction, will there be a need for special auction rules for these matters? However, should the FCC ultimately permit the rebroadcasting of AM stations on existing appropriately located FM translators, the commencement of this new rebroadcast service could be expedited. Five Towns submits that it is in the public interest to provide this much-needed relief to AM broadcasters as soon as possible, so use of existing appropriately located FM translator stations should be permissible without question.

8. With regard to new FM translator station applications filed by AM broadcasters, Five Towns urges the Commission to adopt a priority scheme for FM translator stations applied for by AM broadcasters serving minority audiences *vis-a-vis* FM translator applications filed by noncommercial FM broadcasters and other commercial broadcasters proposing *other than* fill-in service. First priority should be afforded to AM broadcasters serving minority audiences to receive an absolute right to apply for any available FM translator frequency without the risk of a competing application. These applicants would expect to pay for their channels pursuant to the new FCC auction and revenue rules, but there should be

no risk of mutual-exclusivity filings. Second priority should be afforded to AM daytimers, as these broadcasters also have a long history of service issues. These applicants would not necessarily be afforded a right to apply for an FM translator without the risk of competition, but they would receive priority status (i.e., in the form of a bidding credit) against a non-AM daytimer applicant for an FM translator station. Finally, Five Towns proposes that any AM translator application be afforded absolute priority over any FM translator application filed by an FM station proposing other than fill-in service.

9. If the Commission decides to implement the NAB proposal, Five Towns believes that it must be as narrow and selective as possible in order to avoid applicant abuse and to maintain a level of credibility for this new service. The use of FM translators by AM broadcasters should generally be to provide nighttime service to the community of license only. Therefore, Five Towns believes that the usable area in which to locate these FM translator stations should be generally limited to an area within the AM station's daytime city-grade service contour at any optimum location.¹ Five Towns proposes that any FM translator station associated with an AM station be permitted to operate with a maximum ERP of 250 watts, without regard to HAAT, provided that the added power is used to add service within the AM station's 5 mV/m contour and creates no interference to other FM services. However, in special circumstances, the Commission should be able to waive the daytime city-grade contour limitation for site location if the public interest warrants it, or if necessary to permit the use of a uniquely suitable transmitter site.

¹ Morris believes that AM broadcasters should not be required to locate their FM translators on their AM towers.

10. Five Towns acknowledges, as does NAB in footnote number 10 of its petition, that the Commission has been asked in the past for policy and rule changes similar to that which has been requested by NAB in this proceeding. Regardless of the Commission's actions in the past, the FCC must be flexible enough to react to changing times. For almost two decades now, AM broadcasters have been promised relief to provide better service. But, there have been no material changes. Five Towns submits that, if satellite radio providers such as XM Satellite Radio were permitted to apply for and license terrestrial repeaters to supplement their satellite service/², AM broadcasters should be able to supplement their traditional radio service, too.

11. Although many people in the industry argue that the perils of AM broadcasting will solve itself as more and more AM radio stations go dark, this "survival of the fittest" theory has not panned out. For every AM station that goes dark, a daytimer adds nighttime power or increases power, or a new rimshot allocation is shoe-horned in someplace. The number of AM radio stations in the United States has remained almost constant during the past two decades. Even in the face of high HD Radio conversion costs and the inability of many smaller AM radio stations to afford implementing HD Radio, the number of AM radio stations is not likely to drop fast enough to permit significant interference mitigation or a rebirth of the AM radio service with full-time HD Radio.

12. As the Commission is well aware, most AM stations are not bothered by interference from other stations during the day, but maintaining their coverage at night is heavily undermined by the onslaught of skywave. Even AM radio

² See. e.g., *Order, DA 01-2383 (released October 15, 2001)*.

stations that have decent daytime market coverage find that their nighttime coverage shrinks significantly. As a result, its ability to compete with FM radio stations is severely compromised.

13. Although HD Radio deployment is progressing nicely for the FM radio service, few AM broadcasters have stepped up and made commitments to HD Radio. So long as there remains the risk that nighttime AM radio service can cause interference, thereby forcing a reduction of operating power at night, HD Radio will not be the answer for AM daytimers.

14. The Commission should be reminded that, in other limited circumstances, AM radio stations have been authorized to utilize FM translators in the past. For example, the Commission has approved the use of FM translators for certain radio and TV stations in Alaska. See, *Wrangell Radio Group*, 75 FCC 2d 404 (1980). Also, in 1990, the Commission approved the use of an FM translator during nighttime hours for Radio Station WAMB-AM at Donelson, Tennessee in response to severe interference arising from the operation of a Cuban AM radio station. WAMB-AM proved that there were no other viable solutions, and the Commission granted special authority based, in part, on Section 303(g) of the Communication Act, which "mandates the Commission to provide for experimental uses of frequencies, and generally encourage the larger and more effective use of the radio in the public interest."/³

15. Five Towns agrees with the NAB that the proposal now before the Commission is simple, technically feasible, pro-competitive and in the public

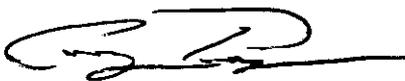
³ See, *Letter by Donna Searcy*, September 17, 1990, to Ann Bavender, Esquire. Therein, the Commission cited three other Florida AM radio stations which had authority to operate FM translators in conjunction with its AM service.

interest. The use of FM translators by AM broadcast stations is clearly a logical extension of the Commission's long-standing efforts to support and improve the AM broadcast service.

WHEREFORE, the foregoing premises considered, Proponents urge the Commission to adopt the NAB proposal.

Respectfully submitted,

FIVE TOWNS COLLEGE

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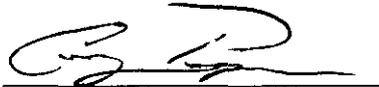
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August 22, 2006

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 22nd day of August, 2006, I have served a copy of the foregoing "**Comments of Five Towns College**" first-class, postage-prepaid, on the following:

Lawrence A. Walke
National Association of Broadcasters
1771 N Street, NW
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A handwritten signature in black ink, appearing to read 'Cary S. Tepper', written over a horizontal line.

Cary S. Tepper, Esq.