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Federal Communications Commission
Office of Secretary

Before the
Federal Communications Commission
Washington, DC 20554

In re Application of	)	
	)	
Petition for Rulemaking of the	)	RM-11338
National Association of Broadcasters to Permit	)	
AM Radio Stations' Use of FM Translators	)	

To: **Office of the Secretary**

Directed to: **The Commission**

COMMENTS OF SUTTON RADIOCASTING CORPORATION

Sutton Radiocasting Corporation, by its attorney, here submits Comments in support of the above-referenced rulemaking "Petition for Rulemaking of the National Association of Broadcasters" ("Petition") filed on July 14, 2006[1]. Sutton Radiocasting and its related corporations, are licensees or permittees of WFSC(AM), Franklin, North Carolina, Facility No. 14554; WNCC-FM, Franklin, North Carolina, Facility No. 14551; WRBN(FM), Clayton, Georgia, Facility No. 56201; WGHC(AM), Clayton, Georgia, Facility No. 68392; W237BB, Facility No. 155761, Hiawassee, Georgia; W281AD, Facility No. 155823, Union, South Carolina; WNEG(AM), Toccoa, Georgia, Facility No. 63330; WLVX(FM), Elberton, Georgia Facility No. 84470; WSGC(AM), Elberton, Georgia, Facility No. 54562; WSNW(AM), Seneca, South Carolina, Facility No. 5969; WWOF(AM), Walhalla, South Carolina, Facility No. 2464; WSGC-FM, Elberton, Georgia, Facility No. 54561; and WGOG(FM), Facility No. 2462, Walhalla, South Carolina. In support of the Petition, the following is stated:

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[1] The "Petition for Rulemaking of the National Association of Broadcasters" was placed on *Public Notice* on July 25, 2006. *Public Notice*, Report No. 2782 (July 25, 2006). Interested parties were afforded 30 days within which to respond. Therefore, these Comments are timely submitted.

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For the first fifty years since its debut in the 1920's, AM radio's contribution to daily life in America was unquestioned. As the first national medium of mass communications, at one time AM radio was a unifying force in the nation. During the last twenty years, channel congestion, interference and low fidelity receivers have taken their toll, dulling the competitive edge of this once vital service. Consequently, in the early 1970's, FM radio began its rise to dominance. Not surprisingly, once loyal AM listeners have shifted their allegiance to newer mass media services that offer them higher technical quality. That was the state of affairs when the FCC began its review of the technical assignment criteria for the AM broadcast service in 1990, and remains the case today. *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 5 FCC Rcd 4381 (1990). In the *Assignment Criteria* proceeding, the FCC believed that the once preeminent AM service was now in critical need of attention, and adopted a series of modifications of its rules, designed to "fix" AM radio.

Specifically, in 1991, the FCC increased the first and second adjacent channel protection ratios to reduce adjacent channel interference and to promote the development of receivers with higher audio fidelity; refined the methodology of calculating nighttime coverage and interference to more accurately measure interference effects (to improve nighttime reception); and in some cases, required a 10% interference reduction when modifications were made to AM station facilities, in order to gradually reduce the overall presence of interference. *Review of the Technical Criteria for the AM Broadcast Service*, MM Docket No. 87-267, 6 FCC Rcd. 6273 (1991). In initiating that proceeding, the Commission stated:

> For the past several years the Commission has involved itself in an intensive effort to identify the service's most pressing problems and the sources of and solutions to those problems. In September of last year we challenged broadcasters, radio manufacturers and the listening public to tell us how we could

> revitalize the AM radio service. In an en banc hearing lasting a full day in November they responded to the challenge. **Their response reaffirms our conviction that a concerted effort by this Commission, the broadcasting community and radio manufacturers can rejuvenate the AM radio service.**

Id. at ¶ 2. Although some degree of improvement no doubt occurred, by no measure did any "rejuvenation" of the AM service ever occur.

As another component of attempting a vast improvement of the AM band, the FCC began implementation of the AM expanded band (1605-1705 kHz). In *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273 (1991), recon. granted in part and denied in part, 8 FCC Rcd 3250 (1993), the Commission adopted measures to improve and revitalize the AM broadcast band, and to establish standards to permit certain AM licensees and permittees to migrate to frequencies between 1605 and 1705 kHz, the "Expanded Band." Toward that end, the FCC began an exhaustive series of proceedings to identify the stations that would allow the greatest degree of improvement to occur on the AM band. On October 14, 1994, the Mass Media Bureau released *Public Notice*, DA 94-1154 which listed the stations eligible to apply for specific Expanded Band assignments. By *Memorandum Opinion and Order*, 10 FCC Rcd 12143 (1995), the Commission partially granted reconsideration, rescinded the earlier *Public Notice* and the initial improvement ranking factors of stations that had petitioned to migrate to the Expanded Band, and solicited comments on proposed technical procedures to calculate revised improvement ranking factors and generate a new allotment plan. In *Comments in Response to Reconsideration of Implementation of the AM Expanded Band and Allotment Plan*, 11 FCC Rcd 12444 (1996), the Commission denied all modifications proposed in comments filed in response to the initial Order, adopted procedures and closed the June 30, 1993 engineering database to further revision. Concurrently, the Mass Media Bureau released *Public*

Notice, Mass Media Bureau Announces Revised Expanded AM Broadcast Band Improvement Factors and Allotment Plan, DA 96-408 (March 22, 1996), which listed the beneficial improvement factor of each station that had petitioned to migrate to the Expanded Band and announced an eighty-seven station allotment plan for new assignments in the Expanded Band. In 1997 the AM expanded band proceeding was terminated, and in 2000 the allocation plan became final. Stations were required to apply for and subsequently begin implementation of the migration of their stations to the expanded band, and reportedly 65 three-year permits for expanded band stations were issued in 1997 and 1998. *Public Notice*, 17 FCC Rcd 1806 (2002). Although the deadline for termination of the original, standard-band channels, has now presumably expired, there has been no tremendous improvement of station technical performance or public revitalization of the AM band.

Moreover, the regulatory imbalance between AM and FM stations is growing rather than narrowing. Even with the introduction of HD Radio, the imbalance between AM and FM stations will grow, insofar as AM stations will be at an even greater disadvantage since they will only have one digital channel and FM stations will have multiple channels.

The bottom line is, without implementation of a bold initiative on the part of the Commission such as that proposed by the National Association of Broadcasters, the AM service will continue its current decline. AM broadcasters need access to translators to have any sort of parity with FM stations.

Sutton Radiocasting therefore supports the NAB Petition and the points made therein, Sutton Radiocasting is of the belief that implementation of the proposal will have a clear beneficial effect on AM broadcasters who are required to reduce service at night. Many AM

broadcasters especially serve a local "niche" that many FM stations have largely abandoned, broadcasting things such as local evening local high school sporting events, evening town meeting, and local emergency information. The ability to disseminate that programming and information in a meaningful fashion has been affected by the need to reduce power in the evening hours. The NAB's proposal, if marketed by local stations in the proper fashion, will allow for local needs and services to be provided in a more complete fashion.

The improvements that would be enjoyed by Sutton's stations, and those of its sister companies, would be substantial. A cursory analysis of the improved nighttime service that can be provided has been undertaken, comparing the interference-free contour of each of the relevant AM stations, and comparing it to a representative FM translator construction permit or application currently in existence or on file in each market. The service improvement would be remarkable::

- WRGC(AM), Sylva, NC (680 kHz, 250 watts DA-N). The station's nighttime Interference-Free Contour is the 29.9 mvm contour. The area and population currently served is 5129 persons in an area of 38.6 sq. km.

  An application for a translator at Sylva for 10 watts on 290D would serve 8623 and 80.6 sq km -- a 68% increase!

- WFSC(AM), Franklin, NC (1050 kHz, 153 watts Non-DA nights). The station's nighttime Interference-Free Contour is the 15.3 mvm contour. The population served is 4591 persons in a 39.9 sq. km. area.

  A translator we have filed for there at 293D would cover 66,749 people over 2295 sq. km. -- an increase of 14 fold!

- WGHC(AM), Clayton, GA (1370 kHz, 2.5 kW daytime only). Therefore, it currently has *no* nighttime service.

  An application for a translator on 288D at Clayton, GA would provide service to 5507 people over 145.4 sq. km.

- WNEG(AM), Toccoa, GA (44 watts non-DA night; 630kHz). The station's nighttime Interference-Free Contour is the 13 mvm contour, providing service to

10,747 people over 37.4 sq. km.

The CP for translator W249CC would provide service to 16,658 people over 264.1 sq. km. This would represent a 55% increase in coverage.

- WSGC(AM), Elberton, GA 1 kW-U 1400 kHz. The Interference-Free Contour is the 26 mvm contour, serving 8521 people over 80.1 sq. km.

  The CP for translator W226AV at Elberton, GA will serve 9399 people over 144.5 km. WSGC is a good example of a Class C AM with equal power at night as daytime but with heavy interference. The translator would operate with a power of only 10 watts, yet achieves a much larger service area.

- WSNW, Seneca, SC 58 watts on 1150 kHz, the Interference-Free Contour is the 23.7 mvm contour, serving only 1320 people over only 11 sq. km.

  The CP for W271AJ translator at Seneca will serve 16,677 people over 121 sq. km. – a coverage gain of over 11 times!

Presumably, these potential service gains that would be experienced are not unique to Sutton Radiocasting.

Presuming, as is evident, that AM service on FM channels is in the public interest and is adopted by the FCC, the next regulatory hurdle that must be examined is the most fair, and expeditious way to implement the service, so that the public can be quickly and appropriately served. The overall goal should be to award use of FM translators in the future for use by the most deserving of broadcasters. Where there is no mutually-exclusivity between applicants, no issue, of course, would exist. However, in the case of the filing of mutually-exclusive applications during a relevant window, a decisive preference, akin to a preference awarded under Section 307(b) of the Communications Act (47 U.S.C. § 307(b)) should be awarded to the most deserving AM broadcasters, namely those with nighttime service issues. In the case of AM broadcasters, when mutually-exclusive, such a decisive preference should be awarded to daytime-only AM stations, as well as AM full time stations whose interference contour

population is 10 percent or less of the station's daytime 2 mV/m contour, will have precedent over all other translator applications. Also, all other AM stations would take second precedent to the above AM stations but before all other applicants. To the extent a large number of FM translator applications remain pending from the last filing window, it is proposed that this action be retroactive to all pending translator applications.

As an integral part of any *Notice of Proposed Rulemaking* issued as a result of the NAB's Petition, the FCC should reconsider and/or accept comments on the permissible area in which an appropriate FM translator could operate. Currently, an FM translator is allowed to rebroadcast an FM station as long as the translator is within the 60 dBu contour of the primary station. That is the case for FM translators operating in conjunction with *any* FM station, regardless of class. It is proposed that in the case of Class A FM stations, FM translators be allowed to rebroadcast over FM translators as long as the translator is with the 54 dbu contour instead of the present rule of 60 dbu. This change is necessary due to the fact that Class A FM stations have 60 dbu contours of only 17 miles over flat earth at maximum facility. This small area restricts the ability to these small FM stations to find a translator location and/or frequency in today's crowded FM band. The 54 dbu of a Class A FM over flat earth at maximum facility goes 22.9 miles, which should allow greater flexibility in location. This modification of the rules would not be made with regard to FM translators working in conjunction with other classes of FM stations.

This rule change should not result in permitting wholesale program origination on FM translators. Sutton Radiocasting is also opposed to local origination on FM translators as proposed by Miller Communications. In the event such pure program origination nevertheless is permitted, it should remain restricted for a period of seven years following the FCC opening

applications for translators to be purchased or filed for by AM stations. After seven years, the FCC could authorize local origination on FM translators as long as commercial broadcast licensees are eligible to apply as well.

Finally, any FCC *NPRM* should make clear an issue only touched on by the NAB's Petition, namely the question of ownership. The NAB Petition requests that "AM stations be permitted to license and/or use FM translators to retransmit their AM service...." Petition at 1. It should be made clear that the proposal would therefore allow (1) AM station licensees or their affiliated to proposed and be granted the right to use an FM translator within the restricted 2.0 mV/m contour/25 mile limit as proposed; <u>and also allow</u> (2) AM station licensees to enter into in essence a "local marketing agreement" to purchase time on *another* licensee's FM translator whose contours are within the prescribed area to rebroadcast their AM station. Both scenarios should be specifically and clearly permitted. The other open question that should be explored in any *NPRM* should be the legality of out-of-market rebroadcasts of AM stations on FM translators by non-affiliated FM translator licensees, *i.e.*, community groups. Currently, FM translators are allow to rebroadcast FM stations, and not serve as merely a "fill-in" translator, as long as it does not receive any support, before or after construction, either directly or indirectly, from the commercial primary FM radio broadcast station, other than technical assistance from the primary station to the extent of installing or repairing equipment or making adjustments to equipment to assure compliance with the terms of the translator station's construction permit and license. 47 C.F.R. § 74.1232(e). Comments also should be solicited to allow rebroadcast of AM stations beyond the limited proposed by the NAB, and long as similar restrictions continue to be imposed.

Conclusion

Even 16 years ago, the Commission determined that "the once preeminent AM service is now in critical need of attention." *Review of the Technical Assignment Criteria for the AM Broadcast Service*, FCC 90-136, ¶ 2 (1990). Although the rule changes adopted in the 1990's may have slowed the degradation of the service, the sensible, feasible, adjustments to the FCC's rules proposed by the National Association of Broadcasters can allow for great strides to be taken by existing AM stations to improve competitiveness in the local radio marketplace and a greater variety of program sources to the public. Adoption of this proposal would be consistent with the Commission's decisions to allow satellite radio, and especially low-power FM stations, in that adoption of the proposal would allow otherwise unused or unusable spectrum to be used in a manner than will provide additional program sources (here, at night) and service to the public, all while having the additional beneficial effect of fostering an AM service that has been harmed and is in danger of partial extinction absent Commission action. Sixteen years ago, the Commission was of the opinion that "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." *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273, ¶ 3 (1991). That sentiment is even more true today. Today, AM stations face competition new competition from additional sources, such as satellite radio, Internet radio broadcasts, and even Ipods. FCC approval of the NAB's proposals would enable AM stations to more aggressively compete in today's media marketplace.

WHEREFORE, it is respectfully requested that these Comments be accepted.

Respectfully submitted,

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