

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Amendment of Service and Eligibility)	MB Docket No. 07-172
Rules for FM Broadcast Translator Stations)	RM-11338
)	

COMMENTS OF PROMETHEUS RADIO PROJECT

Prometheus Radio Project¹ (“Prometheus”) respectfully submits these Comments in response to the Commission’s Notice of Proposed Rulemaking (“*NPRM*”) seeking comment on proposed rules allowing AM stations to use FM translators.² Allowing AM stations to use the FM band would stifle the fostering of new entrants, such as the low power radio FM (“*LPFM*”) service, and runs counter to the Commission’s goals of localism and diversity. Thus, Prometheus respectfully opposes the proposed rules.

Nonetheless, despite the harm this would cause to the *LPFM* service and the public interest, if the Commission still chooses to move forward in allowing incumbent AM stations to use the FM band, the Commission must allocate the valuable FM spectrum only after considering its policy objectives and pending interests. That means (1) allocating FM translators to AM stations only if it will further the Commission’s goals of localism and diversity and protect against speculative filings; (2) ensuring that low power radio applicants have the opportunity to file for construction permits

¹ Prometheus Radio Project is a non-profit organization founded in 1998 by a group of media activists to promote community radio. Prometheus’s primary focus is on creating a vibrant community of *LPFM* stations and listeners, which it does by assisting the building of radio stations and by sponsoring events that promote awareness and support for *LPFM* radio.

²22 FCCRcd 15890 (2007).

before any licensing of FM translators for AM stations; and (3) resolving the priority issues between LPFMs and FM translators.

I. INTRODUCTION

The FM band has proven to become a valuable resource, which various parties - both new entrants and incumbents - are attempting to access, as evidenced by recent history at the Commission.³

The Commission itself has recognized that “[d]emand for radio spectrum is, if anything, increasing.”⁴ In allocating the spectrum, the Commission is required to ensure that the grant of a license will serve the public interest, which includes advancing localism and diversity. The Commission has acknowledged the important role new entrants play in advancing localism and diversity when it sought to foster the LPFM service; the Commission at that time noted that “[o]ne of the most important purposes of establishing [the LPFM] service [was] to ... expand diversity of ownership” and to “foster local, community based service.”⁵

However, incumbent broadcasters continue to try to find ways to hoard the FM band, even though few desirable channels remain and few significant opportunities for channels have opened up in recent history for new entrants. This has led to an increased interest in access to “spectrum holes”

³See e.g., National Association of Broadcasters, *Petition for Rulemaking of the National Association of Broadcasters*, RM-11338 (filed July 14, 2006); Miller Communications, Inc., *et al.*, *Petition to Allow FM Translator Licensees to Locally Originate Programming*, RM-11331 (filed April 27, 2006); Comments of Prometheus Radio Project *et al.*, *In the Matter of Creation of a Low Power Radio Service*, MM 99-25 (filed Aug. 2, 2005) (seeking *inter alia* the creation of spectrum for LPFM service); Emergency Petition for Freeze on Pending FM Translator Applications, MB-99-25, AUC-03-83-B (filed March 9, 2005) (“Emergency Petition”) (notifying the Commission of the illegal speculation of translator licenses).

⁴*Third Report and Order and Second Further Notice of Proposed Rulemaking, Creation of a Low Power Radio Service (“Third LPFM Report & Order”)*, ¶ 51, MM Docket No. 99-25 (rel. December 11, 2007)

⁵*Report and Order, Creation of a Low Power Radio Service (“LPFM Report & Order”)*, 15 FCCRcd 2205, 2216, 2217 (2000).

between full power stations. Despite the limited availability of desirable channels on the FM band, and the apparent demand for available FM channels, the Commission has retained a rather lackadaisical approach to distributing these remaining “spectrum holes.” This was especially evident in the Commission’s handling of licensing translators to incumbents at the expense of licensing LPFM stations to new entrants.

In 2000, the Commission made clear its intention to allow new entrants to access the spectrum by creating the LPFM service. The Commission initially decided to authorize LPFM stations to operate on third adjacent channels. Unfortunately, after alleged claims of interference by National Public Radio and the National Association of Broadcasters, the Commission lost its authority to allocate LPFM stations on third adjacent channels until further studies were conducted to determine whether there was any merit to the interference claims.⁶ Consequently, the inability to license LPFMs on third adjacent channels impacted the licensing of LPFMs in the most desirable areas - urban and densely populated areas - pending further study.⁷

However, in March 2003, while the LPFM interference claims were being studied, the Commission opened a filing window for translators, allowing incumbent broadcasters to access the same channels that LPFMs were prevented from accessing due to claims of interference. The Commission issued no limits or processing guidelines to ensure that the window would result in the allocation of translators pursuant to the public interest. As a result, the translator filing window

⁶Making Appropriations for the Government of The District of Columbia for FY 2001 Act, Pub L. No. 106-552, § 632, 114 Stat. 2762, 27620A0111 (2000).

⁷The Commission has been able to license LPFM stations on fourth adjacent channels; these stations are mostly found in rural and less densely populated areas.

attracted an “extraordinary volume” of applications.⁸ The Commission received more than 13,000 applications, approximately four times the number of applications as the number of translator stations authorized during the entire history of the translator service.⁹ Eventually, after allegations of speculation,¹⁰ the Commission instituted a freeze on translator applications and has recently taken steps to limit the number of translator applications it will accept from one entity.¹¹

The Commission’s lack of a consistent direction in allocating these available channels runs contrary to its goals to award licenses that will promote diversity and localism. This lack of a clear vision can be especially harmful since radio continues to be a vital asset both for broadcasters and listeners. Thus, it is especially imperative that the Commission allocate valuable FM spectrum with an eye towards its statutory mandate to serve the public interest.

II. AM STATIONS MUST NOT GAIN ACCESS TO THE FM BAND AT THE EXPENSE OF THE PUBLIC INTEREST

While Prometheus acknowledges that AM stations face certain problems, these AM stations at least have the ability to broadcast. There are many groups that would like to broadcast, but are unable to do so because they cannot currently get on the FM band. Allowing incumbent AM broadcasters to crowd the FM Band would take away the possibilities of new entrants and local citizens to increase the diversity of voices in communities and provide service to local communities. For example, organizations wishing to apply for LPFM stations would now be displaced not only by

⁸*Second Order on Reconsideration and Further Notice of Proposed Rulemaking, Creation of Low Power Service (“Second LPFM Report & Order”),* 20 FCCRcd 6763, 6777 (2005).

⁹*See id.*

¹⁰The granting of these applications would have had an obvious devastating impact on the ability of new entrants, such as LPFMs, to gain access to the FM band.

¹¹*See Third LPFM Report & Order* at ¶56 (limiting applicants to ten translator applications).

FM broadcasters with translators, but also AM broadcasters with translators. Thus, Prometheus continues to believe that AM incumbent stations that are already broadcasting should not be allowed the opportunity to receive additional signals when there are those that are still trying to get their first channel. However, if the Commission still chooses to allow AM station to use FM translators as a fill-in service, it must make sure that the public interest is protected.

III. THE COMMISSION MUST CONTINUE TO ADVANCE THE PUBLIC INTEREST IN ALLOCATING THE FM BAND

In promoting the public interest, two of the Commission's basic obligations are furthering localism and diversity. Localism and diversity must continue to be the bedrock principles guiding the Commission, and allowing AM stations to broadcast on FM translators would not necessarily advance these goals. For example, only in situations where the AM station is locally owned will the grant of an FM translator as a fill-in service potentially promote localism. On the other hand, awarding FM translators to AM incumbents will do nothing to advance diversity since that channel will be merely duplicating an incumbent's signal. By contrast, licensing a new entrant would mean that there was a new source of programming.

Thus, if the Commission chooses to allow AM station to use FM translators as a fill-in service, the Commission must: (1) ensure that the use of public spectrum is in accordance with the goals of diversity and localism; (2) ensure that new entrants, specifically LPFM applicants, are able to apply for construction permits before any FM translators are permitted to rebroadcast AM programming;¹² and (3) complete the pending rulemaking notice in the *Third LPFM Report & Order*.

A. The Commission Must Place Limits on the Use, Ownership, and Eligibility of FM Translators by AM Stations.

AM stations argue that they need FM translators for relief in coverage deficiencies. To make

¹²*Third LPFM Report & Order* at ¶ 72.

certain that impoverished AM stations get the relief they need, but discourage any abuse of the acquisition or use of these translators, the Commission must place certain limitations on eligibility, ownership, and use. These limitations will also encourage localism and diversity. Thus, Prometheus urges the Commission to adopt the following limitations to the use of FM translators by AM stations:

- AM stations must only use FM translators as a fill-in service.
- Only standalone AM stations must be eligible for an FM translator.¹³
- Each AM station owner must only be allowed one FM translator.
- Translators must be limited to AM station owners who do not own an FM station in the same market.
- Local origination on FM translators can only be allowed for daytime AM stations during the nighttime hours when their stations are not authorized to operate.

B. LPFM Stations Must Remain a Distinct Service.

The Commission has asked whether AM daytime-only and Class C stations should be allowed to simulcast and/or originate programming over LPFM stations as a fill-in service.¹⁴ Prometheus is heartened by the efforts of the Prayer Tower Mission and the Vandalia Citizens Council to join in collaboration agreements between full power licensees and LPFM stations.¹⁵ However, Prometheus strongly opposes the ownership or use of LPFMs to repeat AM or Class C stations and any changes to the LPFM eligibility and service rules;¹⁶ to allow LPFMs to rebroadcast the signals of AM stations

¹³The concerns regarding the limitations of AM service seem to be regarding struggling owners of AM stations that would benefit from this policy. However, many AM stations are owned by large companies and the interests of large companies should not be allowed to hide behind the interests of survival of genuine small businesses. Limiting FM translators to standalone stations will prevent abuse, while genuinely protecting the interest of the AM station owner.

¹⁴See *NPRM*, 22 FCCRcd at 15897-98.

¹⁵See *id.* at 15894-95, n. 32.

¹⁶See *e.g.*, 47 CFR §§ 73.853, 73.858, and 73.860.

would have grave consequences for, and runs contrary, to the goals of the LPFM service as a whole.

For instance, the direct rebroadcast of a commercial AM station by an LPFM station would violate the Commission's rules. A direct rebroadcast would likely include commercials, which are prohibited in the LPFM service.¹⁷

In addition, the Commission established the LPFM service specifically to "create a class of radio stations designed to serve very localized communities or underrepresented groups in communities."¹⁸ It is these very same objectives that LPFM stations are now fulfilling, and unlike the selection of AM broadcasters, LPFM licenses are awarded based on the applicant's "established community presence" and commitment to "local program origination."¹⁹ Furthermore, LPFM stations allow new entrants to enter the market. Thus, the LPFM service should remain a distinct service and not be used to supplement the AM service.

C. The Commission Must Complete the Pending LPFM Second Notice of Further Notice of Proposed Rulemaking Before Allowing AM Stations to Use FM Translators.

The Commission should not allocate valuable FM spectrum without considering pending interests. The Commission has recently acted on the rulemaking initiated in the *Second LPFM Report and Order* and has initiated a rulemaking in the *Third LPFM Report & Order*. This rulemaking will determine the priority of translators *vis a vis* LPFMs, which could affect the spectrum availability for LPFM applicants.

¹⁷An LPFM/AM collaboration can exist under existing rules. While LPFMs are prohibited from repeating a full power station's signal, they are free to carry individual programs from any source. Thus an "LPFM version" of a program, without the commercials and with appropriate station identification announcements, can be produced and shared between the commercial station and the LPFM station.

¹⁸*LPFM Report and Order*, 15 FCCRcd at 2208.

¹⁹*Id.* at 2258-59.

While the Commission has already determined that the next filing window for a non-tabled aural broadcast service will be for LPFM stations,²⁰ this will not address assignments or sales of FM translator construction permits to AM stations. If the Commission allows AM stations to access translators prior to completing the rulemaking pursuant to the *Third LPFM Report & Order* and depending on the Commission's resolution, some LPFM applicants could be foreclosed from seeking LPFM stations. Such an outcome would be contrary to the Commission's commitment to resolve all "issues that could significantly impact the availability of future spectrum for LPFM applicants...."²¹ Thus, the Commission should not allow AM station to access translator licenses without first resolving the pending rulemaking and allowing LPFM applicants the first opportunity to gain access to the spectrum.

IV. CONCLUSION

Prometheus respectfully requests that the Commission prohibit the use of FM translators by AM incumbents so that a maximum number of opportunities remain for new entrants. If the Commission, nevertheless, chooses to allow AM incumbents to use FM translators it should adopt guidelines that will ensure that the use of these translators will further the public interest. Additionally, the Commission must not allow the use of FM translators by AM incumbents until LPFM applicants have had the chance to apply for an LPFM station. Finally, the Commission must not allow the use FM translators by AM incumbents until it has determined the priority between LPFMs and translators.

²⁰*Third LPFM Report & Order* at ¶ 72.

²¹*Id.*

Respectfully submitted,

/s/

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