

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

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

To: Office of the Secretary (Electronic Filing)

JOINT CONSOLIDATED REPLY COMMENTS
of
SAGA COMMUNICATIONS, INC.
MILLER COMMUNICATIONS, INC.
PEE DEE BROADCASTING, LLC
NORTH PALM BEACH BROADCASTING, INC.
FLAGLER COUNTY BROADCASTING, LLC

Saga Communications, Inc. (“Saga”), Miller Communications, Inc. (“Miller”), Pee Dee Broadcasting, LLC (“PDB”), North Palm Beach Broadcasting, Inc. (“North Palm Beach”), and Flagler County Broadcasting, LLC (“Flagler”) (together, the “Replying Parties”) by their counsel, and pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, jointly electronically file these Reply Comments to certain Comments filed on the Commission’s Notice of Proposed Rulemaking, FCC 07-144, [22 FCC Rcd 15890] released August 15, 2007, and published in the Federal Register on November 6, 2007 [72 FR 62617] (“NPRM”).¹

As discussed in the NPRM, on July 14, 2006, the National Association of Broadcasters (“NAB”) filed a Petition for Rulemaking proposing that the Commission amend its rules to allow AM broadcast

¹ The date for filing reply comments was established as February 4, 2008, so these Reply Comments are timely filed. Replying Parties are all clients of undersigned counsel, for whom he filed separate comments on January 7, 2008. Although each of the clients has different perspectives on the NPRM, they all support its adoption. They also all have a common reaction to the comments of three parties filed in this proceeding. To conserve administrative resources, the clients are consolidating their reply in this document.

stations to operate FM translator stations. The NAB Petition proposed that AM stations be permitted to license and/or use FM translator stations to retransmit their AM service as a fill-in service. Specifically, the NAB proposed that AM stations be allowed to use FM translator stations to rebroadcast the AM signal, provided that no portion of the 60 dBu contour of any such FM translator station extends beyond the smaller of: (a) a 25-mile radius from the AM transmitter site; or (b) the 2 mV/m daytime contour of the AM station. As a result, the Commission proposed rules permitting the use of FM translators by AM stations. As of February 4, 2008, there are nearly 1,000 documents on file in the docket. An overwhelming number support the Commission's proposal. Three parties, Prometheus Radio Project ("Prometheus"), National Public Radio, Inc. ("NPR"), and CBS Radio, Inc. ("CBS") oppose the new rules. Their arguments are not really relevant to the issues in this docket (i.e., eligibility) and the Commission should reject their arguments and promptly adopt the proposed rules.

Comments of Prometheus. Prometheus is the moving party behind the Commission's drive to expand low power FM ("LPFM") stations to something approaching full-power status.² In the *Third R&O and FNPRM* cited in the footnote, their concerns are being fully ventilated. Apparently unappeased by their success in turning the broadcasting industry on its head, now, they are attempting to derail a completely spectrum-neutral attempt to give some aid to standard broadcast stations that desperately need it. Prometheus argues, without a scintilla of supporting evidence, that "Allowing AM stations to use the FM band would stifle the fostering of new entrants, such as low power FM ("LPFM") service, and runs counter to the Commission's goals of localism and diversity." Prometheus says that if the Commission still chooses to allow incumbent AM stations to use the FM band, the Commission must impose three limitations: (1) Allocate FM translators to AM stations only if it will further the Commission's goals of localism and diversity and protect against speculative filings; (2) ensure that LPFM applicants have the

² See 73 Fed. Reg. 3202, published January 17, 2008, announcing the effective date of March 17, 2008, for new LPFM rules adopted in the Third Report and Order, *Creation of a Low Power Radio Service*, FCC 07-204, released December 11, 2007 ("*Third R&O and FNPRM*"). The Commission also seeks comment on new rules that will further erode the commercial FM radio service in the United States, but the comment date has not yet been determined.

opportunity to file for construction permits before licensing of FM translators for AM stations; and (3) resolve the priority issues between LPFMs and FM translators.

If, when Prometheus uses the terms “allocate” and “licensing of FM translators for AM stations” and “resolve the priority issues,” it means the Commission’s proposals to allot new spectrum for use by either FM translators or LPFM, then Replying Parties have little to quibble about in this docket since all those issues will be addressed in the *Third R&O and FNPRM* proceeding. If, on the other hand, Prometheus is opposing the notion that AM stations should be ineligible for FM translators until the issues in the *Third R&O and FNPRM* are resolved, then Prometheus is wrong. Assuming, *arguendo*, that Prometheus opposes eligibility at this stage, then Prometheus’ Comments are based on the false premise that permitting AM stations to use FM translators has some adverse impact on the availability of spectrum. It does not. Requiring the Commission to wait for LPFM applicants to file for construction permits before opening another window for the filing of FM translator applications is not only a bad idea because of the delay involved, but it is also a non-issue in light of the Commission’s action in the *Third R&O and FNPRM*, paragraph 72.³ The proposal before the Commission in this docket is merely whether to permit existing FM translators to rebroadcast AM stations in addition to FM stations. No new FM translators are currently being authorized, and the Commission has said that it will process only 10 proposals per applicant for those applications filed in the last FM translator window.⁴

Should the Commission adopt the proposed rules, the only practical difference to the radio listener is that he or she will be able to hear the programs originated by an AM station on an FM translator rather than just the programs originated by an FM station. This will expand, not limit, program choices in cases where the listener has trouble hearing the programs broadcast by the AM station due to

³ “The next filing window for a non-tabled aural broadcast service will be for new LPFM stations. We plan to open this window after the Commission has resolved the issues raised in this *Second Further Notice*, and has resolved other issues that could significantly impact the availability of future spectrum for LPFM applicants, including the disposal of substantially all of the applications filed in the recent NCE FM window.”

⁴ *Third R&O and SFNPRM*, ¶ 56.

electrical interference. There will be an alternative by tuning in the station on its translator, especially at night. As discussed, *infra*, this is of critical importance to some AM stations whose signals are adequate during the day, but severely limited at night. Authorizing the use of FM translators by AM stations as proposed in this docket will have absolutely no impact on the spectrum because the FM translators would just continue to be used by FM stations if AM stations couldn't use them.

Unlike the Prometheus' constituents who want greater access to noncommercial LPFM spectrum (which will reduce the amount of spectrum available for sale in auctions), commercial broadcasters have to pay dearly for their opportunity to participate in the broadcasting business and provide public service. This investment of capital should be taken into consideration here. Unlike LPFM, commercial broadcasters pay: (1) annual regulatory fees, (2) fees nearly every time they file applications with the FCC, and (3) for new spectrum when they are required to bid for new construction permits, whether they are for full power stations or FM translators. Thus, unlike LPFM, commercial broadcasters have a sizeable investment in their stations and considerable funds to the U. S. Treasury. AM operators have seen their audiences decline with the rapid rise of FM listenership. The AM technology is old, but AM stations offer much to their audiences which promote localism and program diversity. Replying Parties hope that Prometheus will examine the facts without bias and embrace the concept of permitting struggling AM stations the use of FM translators as proposed.

Comments of National Public Radio, Inc. ("NPR"). NPR urges the Commission to "Proceed Cautiously" before adopting the new rules. NPR must be living in an Ivory Tower over on Massachusetts Avenue that denies reality. NPR says that FM translators have "long been considered unhelpful to AM stations." They cite the Commission's *FM Translators*, 49 RR 2d 1499 (1981). Surely, even NPR would concede that AM listening levels have changed considerably in the past 27 years since the FCC adopted *FM Translators*. Times are drastically different today. NPR says it "is unclear why authorizing AM stations to use FM translators promotes the use of the AM service, which is the stated objective of this proceeding." NPR also claims that the proposal to permit daytime-only stations to originate programming

at night is problematic. Not so, many technically daytime only stations operate with less than 250 watts at night on post-sunset authorizations. They are providing service. The only reason they are not on during the day is because of the skywave interference at night. Lastly, NPR claims it is concerned about the “potential consequences for FM services of authorizing thousands of AM stations to use the “new” FM translator stations. Replying Parties respectfully direct NPR to the section of this pleading dealing with Prometheus. A phased implementation may have some practical application in the case of new authorizations, but we are talking principally here about a mature radio service. All NPR need do is glance at the almost 1,000 other comments and the real-world anecdotal evidence supporting the wisdom of the FCC’s proposal.

One need only peruse Section II of NPR’s Comments to figure out why they are filing Comments in this docket. It is because NPR is worried about the possibility of commercial AM stations possibly using FM translators operating on reserved noncommercial educational (“NCE”) channels 200-220. Replying Parties stand moot on that issue, but point out in passing, that this reveals NPR’s real purpose in commenting, not any concerns for the well being of the FM band, but a simple concern for NPR’s own electronic real estate.

Comments of CBS Radio, Inc. (“CBS”). CBS takes the perverse position that the proposal, “rather than helping, has the ironic potential to weaken the AM service by drawing AM listeners to the FM band,” and that the proposal “has the potential to add interference to an already crowded spectrum without doing anything to relieve the congestion in the AM band.”

CBS seems to be laboring under the same misconception as Prometheus. Its Comments are aimed at the prospective problems that might arise from allotting new spectrum for FM translators rebroadcasting AM stations. As shown above, that is not the current case. The decision of whether to authorize FM translators already in existence to carry programs originated by AM stations does nothing to frustrate the Commission’s “ongoing efforts to accommodate full-service FM stations, low power FM stations...and FM translators....” Moreover, we cannot divine the basis for CBS’s statement that the

proposal will result in “adding additional layers of interference from AM licensees to the FM band through the deployment of FM translators....”

Citing an 18-year-old *Notice of Proposed Rule Making*, 5 FCC Rcd 2106, 2116 (1990), CBS behaves as if it doesn’t appreciate the current state of AM radio and how it has changed since 1990. CBS says if the Commission goes ahead with this proposal, it should “ensure that adequate safeguards are in place to prevent damaging interference that could result from further congestion to the FM band.” Replying Parties refer CBS to 47 CFR § 74.1203⁵ which absolutely prohibits interference from an FM Translator no matter where the interference occurs. This safeguard will adequately protect entrenched licensees like CBS, as there is no proposal to change it.

What is absolutely baffling is CBS’s argument that the Commission’s proposal would result in FM translators operating at up to 50.62 kilowatts ERP. Although CBS notes that FM translators are limited to only 250 watts,⁶ CBS failed to note that the NPRM does not propose any change to Section 74.1235.⁷

This appears to be a classic case of a “have” with multiple FM signals and clear channel Class A AM stations (operating with 50 kW non-directional antennas) in the largest markets kicking the “have-

⁵ (a) An authorized FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to:

(1) The transmission of any authorized broadcast station; or
(2) The reception of the input signal of any TV translator, TV booster, FM translator or FM booster station; or (3) The direct reception by the public of the off-the-air signals of any authorized broadcast station including TV Channel 6 stations, Class D (secondary) noncommercial educational FM stations, and previously authorized and operating FM translators and FM booster stations. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the FM translator or booster station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted.

⁶ Sec. 74.1235 Power limitations and antenna systems.

(a) An application for an FM translator station filed by the licensee or permittee of the primary station to provide fill-in service within the primary station's coverage area will not be accepted for filing if it specifies an effective radiated power (ERP) which exceeds **250 watts**. (emphasis added.)

⁷ The only changes proposed are to §§ 74.1201, 74.1231, 74.1232, 74.1263 and 74.1284.

nots” at a time when they are down and the FCC is offering a hand up.⁸ The Commission should not be fooled by CBS and its apparent anti-competitive motives in opposing this beneficial service.

Real-World Experience with FM Translators

Provides a Better Basis for Decision than Theoretical and Self-Serving Concerns

The Comments filed by Prometheus, NPR and CBS are all based on speculation and surmise rather than real-world experience. They are grounded in Prometheus’ imagined worries about possible adverse affects to future LPFM deployment, NPR’s failure to understand that the “circumstances have materially changed” since 1981 for AM stations, and CBS’s guesswork about the “ironic potential to weaken AM radio.” None of the Comments filed by Prometheus, NPR or CBS add anything to the Commission’s deliberations in resolving this proceeding. Of more value are Comments like those filed January 7, 2008, in this proceeding by Replying Parties.

Miller.⁹ One of the Replying Parties, Miller, described in detail the many benefits conferred by its operation of Station WDXY, Sumter, South Carolina, with its co-owned FM translator, W290AY. Miller has obtained special temporary authority¹⁰ from the Commission to use the translator with WDXY. As set forth in its Comments, the response to the use of the translator has been overwhelming. Listeners have called the station to support Miller’s use of the translator since WDXY carries many local programs, including local high school football and basketball games that are held at night when reception of the WDXY signal is poor. Now in its 45th year of operations, WDXY had been suffering from a very poor signal, poor coverage, low listenership, low ratings and very lean business. Sumter and the surrounding area, including Shaw Air Force Base (which is contained within Sumter’s city limit), long ago outgrew WDXY’s ability to cover the market. One election night recently, WDXY was trying to cover the Sumter County election returns from the Sumter County Election Commission in the broadcast

⁸ FCC records show that CBS (or through affiliates) is licensee of numerous Major Market stations including, *inter alia*, Class A Clear Channel Stations WCBS, New York; KNX, Los Angeles; WBBM, Chicago; and KMOX, Saint Louis.

⁹ Miller is also separately filing a short comment today.

¹⁰ BSTA-20070315ACS, and requested extension BESTA-20071113AHX.

center located in the basement of the Sumter County Court House, before Miller added the FM translator to WDXY. Miller's staff members could not even pick up the WDXY station signal in the court house basement, less than 2 miles from the transmitter. With a pristine and robust translator signal, WDXY has received many compliments. The local newspaper has given favorable press coverage and guests are more willing to participate on the morning community live on air talk show. The translator allows the station to cover Shaw Air Force Base, and WDXY now provides regular coverage of Base issues, including monthly reports on Base news with special reports as needed. The Lee County and the Sumter Chambers of Commerce are also actively involved. Over the recent past holiday season, WDXY aired greetings from men and women serving abroad to their families in Sumter and the surrounding communities. The station has also hired a new local news person, a new program director and a new producer and provides live coverage of more local events. WDXY was asked to host one candidate for President of the United States, and WDXY broadcast in their entirety four town meetings involving Presidential candidates. WDXY's morning air personality, Susan Trautsch, was asked to be the moderator for the meetings. Also, WDXY broadcast live a Chamber of Commerce legislative breakfast to discuss topics of community issues and answers and local concerns. For the first time the station is receiving public service announcement requests from outlying communities and it is broadcasting more public service announcements. Advertising sales have improved and the station is operating "in the black" for the first time in many years. These are very positive, provable, benefits of granting permission to AM stations to supplement their operations in this manner.

WCRE. Like Miller, PDB has obtained special temporary authority from the Commission to use FM translator W230AS, Cheraw, SC, to rebroadcast the programming of co-owned AM station WCRE(AM), Cheraw, SC, which operates with 1 kW days and only 97 Watts at night. PDB plans to use of the translator to carry many local programs, including local high school football and basketball games that are held at night when reception of the WCRE signal is poor. PDB has ordered the necessary equipment to begin operating W230AS consistent with its construction permit and plans to shortly begin operations of the FM translator upon receipt and installation of the equipment.

WNZF and WSVU. Flagler is permittee of WNZF(AM), Bunnell, FL, and North Palm Beach is licensee of WSVU(AM), North Palm Beach, FL. The signals of WNZF¹¹ and WSVU¹² are extremely restricted at night. WNZF is a new station, currently under construction, and proposes to operate with a news-talk format. It will be the only commercial radio station in fast-growing Flagler County, Florida, and will be the logical place to turn for important information in the event of an emergency. Flagler has pending an application for consent to assignment of license of an FM translator that Flagler hopes to use with WNZF. In the case of WNZF, while the predicted daytime 2 mV/m contour will serve almost the entire area of Flagler County (2006 population estimate: 62,151) which contains Bunnell and the larger new city of Palm Coast, the predicted nighttime interference free contour would cover only Bunnell (2000 population: 2,122). Use of an FM translator with WNZF would allow the other more than 60,000 residents of Flagler County to receive potentially life-saving news and information in the event of a hurricane or forest fire, both of which plague the area. This is not a case where the AM station's signal is merely bad at night; it will be virtually non-existent outside the nighttime interference free contour at night. The FM translator would cure this situation.

Use of a translator for WSVU, likewise, would allow its listeners to hear the station at night in areas where it can only be heard during the day. WSVU is the only local service to North Palm Beach.

Saga. Saga has requested STAs to operate three of its AM stations with co-owned FM Translators, but none have yet been granted.¹³ In some cases, for a variety of reasons, AM stations broadcast of unique programs not heard on full-power FM stations. For example, WHCU, Ithaca, New York, carries a news-talk format, heavy on local issues, important to the Cornell University community and others in Ithaca; WFEA, Manchester, has been broadcasting continuously since 1932, making it New

¹¹ Existing Permit specifies 9,500 Watts Day, and 520 Watts Night. Pending application specifies 8,700 Watts day, and 250 Watts Night, Directional at Night.

¹² 1,200 Watts Day, and 250 Watts Night, Directional Day and Night.

¹³ BLSTA-20071207AAG for use of an FM translator with WHCU(AM), Ithaca, New York; BLSTA-20071206ACK for use of an FM translator with WFEA(AM), Manchester, New Hampshire; and BLSTA-20071130AYD for use of an FM translator with WTAX(AM), Springfield, Illinois.

Hampshire's first station. Since then, WFEA has offered a unique Adult Pop Standards format and, since 1991, French language programming on Sunday mornings. WFEA is also New Hampshire's home of the Manchester Wolves football team. WTAX, Springfield, Illinois, provides continuous news programming for residents of the Illinois State Capital. It's broadcasts will be enhanced when listeners can hear the station on FM as well as AM.

Conclusion

FM translators would strengthen AM stations by improving the delivery of sound quality and reception of their programs. The Commission can expect many other AM stations to utilize FM translators to re-broadcast programs at night (like local high school sports events or severe weather information) to the stations' daytime service areas where reception of the stations' nighttime programming is severely restricted by reduced power or directional antennas.

WHEREFORE, Replying Parties respectfully urge the Commission to reject the wrong-headed positions of Prometheus, NPR and CBS and adopt the proposed rules as set forth in the NPRM with the suggested modifications noted herein.

Respectfully submitted,

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