

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

To: The Commission

**REPLY COMMENTS OF
NATIONAL PUBLIC RADIO, INC.**

Introduction

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, National Public Radio, Inc. ("NPR") hereby submits its reply comments in response to the initial comments on the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.¹

NPR's initial comments recognized the important service AM stations have long provided. We also recognize that, at least conceptually, allowing AM stations to utilize FM translator stations to address gaps in an AM station's coverage may offer benefits to AM stations with significant gaps in coverage. Indeed, the comments filed by many AM station licensees demonstrate strong interest among such entities in improving their service coverage.

¹ See In the Matter of Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, Notice of Proposed Rulemaking, MB Docket No. 07-172, 22 FCC Rcd 15890 (2007) [hereinafter "NPRM"]. Unless otherwise indicated, all citations to comments are to comments filed in this proceeding in response to the NPRM.

At the same time, the NPRM leaves many questions unanswered. First and foremost, nowhere does the Commission explain why it is prepared to authorize AM station to use FM translator stations after having twice previously rejected the idea.² Nor does the NPRM explain how encouraging listeners to use the FM band will improve the AM service.³ The Commission only recently characterized the FM band spectrum as "maxed out,"⁴ but it makes no attempt to reconcile that reality with proposed rule changes that will only encouraging greater demand for FM band facilities.

For these reasons, NPR urged the Commission to proceed cautiously to ensure that the promised benefits are realized without significant adverse consequences. In particular, NPR endorsed a phased implementation based on needs and priorities.⁵ Since this proceeding is intended to address technical challenges confronting certain AM stations,⁶ the highest priority for FM translators should be those AM stations with a demonstrated need to address gaps in service coverage, such as stations with specific obstacles to service coverage and, perhaps, daytime-only stations. Such an approach will target relief to those AM stations with a specific need and without producing a deluge of applications. As an alternative, the Commission might consider authorizing only those AM stations with specific service challenges to apply for FM translator facilities.

² NPR Comments at 2.

³ Id. at 2-3. See also Comments of CBS Radio Inc. at 1

⁴ In the Matter of Creation of A Low Power Radio Service, Third Report and Order and Second Further Notice of Proposed Rulemaking, MM Docket No. 99-25, at ¶ 50, rel. Dec. 11, 2007.

⁵ NPR Comments at 4.

⁶ NPRM, 22 FCC Rcd. at 15891.

In either event, phasing in the proposed authorization or limiting its availability to those stations with a demonstrable need would not undermine implementation of the rule change nor harm the public.⁷ Pragmatic considerations animate every rule change proposal, and tailoring the rule or its implementation to address specific needs and avoid obvious pitfalls is in the interest of the Commission, the broadcast industry, and, ultimately, the listening public.

There is also merit to limiting the number of applications that an AM station might file in a future filing window to prevent speculation in such applications.⁸ The Commission should not, however, use this proceeding to impose a limit on the number of FM translator station licenses any one entity may hold or change the priority accorded FM translator station applicants.⁹ These issues have not been properly raised in this proceeding.

Finally, there is no basis in the record of this proceeding for de-reserving the portion of the FM band reserved for noncommercial educational ("NCE") use.¹⁰ For 70 years, the Commission has limited the use of the reserved-FM channels to eligible entities that propose to provide an NCE service.¹¹ However important it may be to revitalize the AM band service by enabling listeners to receive such services via the FM band, de-reserving the limited amount of FM spectrum allocated specifically for NCE use would have drastic adverse consequences.

⁷ Id., 22 FCC Rcd. at 15897. See also Comments of the National Association of Broadcasters at 8-9.

⁸ See Public Notice, FCC Adopts Limit For NCE FM New Station Applications In October 12 - October 19, 2007 Window, MM Docket No. 95-31, rel. Oct. 10, 2007.

⁹ Comments of Samuelson-Glushko Technology Law and Policy Clinic, University of Colorado School of Law at 35-36.

¹⁰ NPR Comments at 5-7. See NPRM, 22 FCC Rcd. at 15897-98.

¹¹ NPR Comments at 6.

Among other things, commercial AM services will necessarily compete with NCE services for use of the reserved channels, further diminishing already scarce opportunities for NCE services and breeding listener confusion. Accordingly, if, after resolving the questions noted above and in NPR's initial Comments,¹² the Commission proceeds to adopt final rules in this proceeding, it should not alter the criteria for using the reserved FM spectrum.

Conclusion

As set forth more fully herein and in NPR's initial Comments, the Commission should proceed cautiously to avoid or minimize any adverse consequences and, in any event, it must preserve the reserved portion of the FM band for NCE use.

Respectfully Submitted,



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¹² See page 2, *supra*; NPR Comments at 2-3.